

ORDINANCE NO. 4998

An Ordinance granting a non-exclusive telecommunications franchise to Astound Broadband, LLC, d/b/a Wave ("Grantee" or "Franchisee")

RECITALS:

1. Whereas, pursuant to Federal law, State statutes, and City Charter and local ordinances, the City is authorized to grant non-exclusive franchises to occupy "public rights-of-way" as defined by McMinnville Municipal Code ("MMC") 3.18 (sometimes referred to as "Public Ways" in this Franchise), in order to construct, operate, and maintain a telecommunication systems within the municipal boundaries of the City of McMinnville ("Franchise Area" or "Service Area");
2. Whereas, the City has found that the Franchisee meets all lawful requirements to obtain a franchise, and therefore approves the application;
3. Whereas, both the City and the Franchisee expressly reserve all rights they may have under law to the maximum extent possible; neither the City nor the Franchisee shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this agreement.

NOW, THEREFORE, THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

Section 1. **Definitions** For the purpose of this Franchise Agreement, terms, phrases, words, and abbreviations shall have the meanings ascribed to them in Chapter 3.18.010 of the McMinnville Municipal Code ("MMC") except as otherwise defined herein.

Section 2. **Grant of Authority**

2.1. **Grant.** The City of McMinnville ("Franchising Authority" or "City") hereby grants to the Grantee a nonexclusive right to conduct a general telecommunications business within the City and nonexclusive right to place, erect, lay, maintain and operate in, upon, under and over public rights of way within the City poles, wires, cables, fiber optics, conduit and other appliances and conductors (collectively, facilities) for the transmission of light, electricity, or other impulses for telecommunications purposes, including the provision of telecommunications, private line, and Internet access services (collectively, telecommunications services). Such facilities may be strung upon poles and other fixtures above ground or may be laid underground in pipes and conduits or otherwise protected. This ordinance does not grant Grantee authority to use its facilities to provide any non-telecommunications services. The facilities installed pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.

2.2. **Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance. In the event of a conflict between Chapter 3.18 of the

MMC in effect as of the date of this Franchise and this Franchise, Chapter 3.18 of the MMC shall control, and the Grantee is subject to the lawful exercise of the police power of the Franchising Authority, including all provisions of MMC Chapter 3.18. In the event of a conflict between this Franchise and any amendment to MMC Chapter 3.18 effective after the date of this Franchise, this Franchise shall control. The City will administer this Franchise in a uniform, non-discriminatory manner with respect to other telecommunications franchises.

2.3. Non-Exclusive. The Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful organizations to provide telecommunications or telecommunications services within the Service Area.

2.4. Term. The Franchise granted hereunder shall be for a term of ten (10) years commencing on the effective date of the acceptance of this ordinance by Grantee, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.5. Franchise Review. Upon the commencement of sale of telecommunications services within the city, and within sixty (60) days of the third anniversary or any of the subsequent anniversaries of the commencement of the sale of telecommunications services within the city, the Franchising Authority may, but is not required to, conduct a limited review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment that the Grantee continues to effectively serve the public in light of new developments in telecommunications technology together with related developments in telecommunications law and regulations, and community needs and interests. Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review.

If after, completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations and/or extending the term of the Franchise, the Franchising Authority, with the express written agreement of the Grantee, shall modify the obligations and extend the term of the Franchise accordingly.

Section 3. Standards of Service

3.1. Conditions of Occupancy.

A. The telecommunications system installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways. Prior to the commencement of any construction, extension or relocation of Grantee's telecommunications services in the Public Ways, Grantee agrees to obtain the necessary and required approvals from the Franchising Authority, including a right-of-way permit and payment of applicable fees.

B. Grantee's services shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, cables or other facilities that may be in the Public Way by or under the City's authority. Grantee and City shall work together during any design process affecting the Public Way to establish suitable locations for Grantee's facilities, provided however, that all new installations serving new development shall access new lots and parcels through utility easements delineated on the approved partition or subdivision plat for such development.

3.2. Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the telecommunications services there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. In the event Grantee fails to restore the Public Way to a condition reasonably comparable to the condition existing immediately prior to such disturbance, the Franchising Authority may restore or cause to restore such Public Way at the expense of Grantee; provided, that the Franchising Authority provides Grantee with reasonable notice to restore and grantee fails to restore such Public Way within the time period given by the franchising authority.

3.3. Relocation at request of the Franchising Authority. Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services, provided that:

A. The City Engineer or designee first makes a reasonable determination that such relocation, removal, disconnection, protection or support is convenient or necessary for a public purpose or a City improvement project;

B. The City provides Grantee with at least forty-five (45) days prior written notice describing the schedule for such relocation, removal, disconnection, protection or support; provided, however, that in the event of an Emergency, the City shall only be obligated to give Grantee written notice as soon as practicable under the circumstances; and

C. The City provides Grantee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Grantee's Facilities so that Grantee may relocate its Facilities in other City Rights-of-Way or other location in order to accommodate such improvement, provided however, that nothing in this section shall require City to obtain or guarantee the availability of an alternative location or compensate Grantee therefor.

3.4. Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of Grantee, provided: (A) the expense of such shall be paid by the Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section 3.4, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than 120 days for a permanent relocation.

3.5. Trimming of Trees and Shrubbery.

Subject to acquiring prior written permission of the Franchising Authority or the McMinnville Water and Light Commission, as applicable, including any required permit, the Grantee shall have the authority, but not the obligation, to trim trees that overhang a Public Right of Way of

the Grantor so as to prevent the branches of such trees from coming in contact with its facilities, in accordance with applicable codes and regulations.

3.6. Safety Requirements. Construction, operation, and maintenance of the telecommunications services shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations, in compliance with all adopted building, construction safety and fire codes and standards and the National Electric Safety Code. The telecommunications services shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7. Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its telecommunications services underground. The Franchising Authority shall not incur any construction or expense in the event Grantee is lawfully required by the Franchising Authority to place its distribution facilities underground as provided in this Section 3.7. Nothing contained in this Section 3.7 shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

3.8. Placement of Facilities Underground; Access to Open Trenches. Should it become a matter of public interest and convenience that a certain portion of the Grantee's aerial facilities and aerial facilities of other users of the Public Ways be placed underground, the Franchising Authority shall conduct a hearing to determine whether the underground placement of such facilities will serve said public interest and convenience. The Franchising Authority shall provide written notice of this hearing to Grantee, who shall be afforded a meaningful opportunity to comment at the hearing.

3.9. Required Extensions of the Telecommunications services for Residential Service. If Grantee offers telecommunications services to more than ten Residential Subscribers (as defined below) within the Service Area, Grantee agrees to provide telecommunications to all residents in the Service Area subject to the density requirements specified in the Section 3.9. If Grantee offers telecommunications services to more than ten Residential Subscribers within the Service Area and receives a request for telecommunications service from a Residential Subscriber in a contiguous unserved area where there are at least 12 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of Grantee's trunk or distribution cable which is to be extended, it shall extend its telecommunications services to such, Residential Subscriber at no cost to said Residential Subscriber for the telecommunications services extension, other than the publicized Standard/non-Standard Installation fees charged to all Residential Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the telecommunications services into any portion of the Service Area, where another operator is providing telecommunications service. "Residential Subscriber" or "Subscriber" means an individual or household customer who subscribes to Grantee's telecommunications services for non-commercial use in a house, apartment, condominium, townhome, mobile home, or other residence in the Service Area and does not include any commercial, institutional, or governmental customer.

3.10. Subscriber Charges for Extensions of the Telecommunications services for Residential Service. If Grantee offers telecommunications services to more than ten Residential Subscribers within the Service Area, Grantee agrees to provide telecommunications services as specified in the Section 3.10. If Grantee offers telecommunications services to more than ten Residential Subscribers within the Service Area, no Residential Subscriber shall be refused service arbitrarily. However, if any area does not meet the density requirements of Section 3.9 above, the Grantee shall only be required to extend the telecommunications services to Residential Subscriber(s) in that area if the Residential Subscriber(s) are willing to share the capital costs of extending the telecommunications services. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from Grantee's trunk or distribution cable, and whose denominator equals (12). Residential Subscribers who request service hereunder shall bear the remaining cost to extend the telecommunications services on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Residential Subscribers be paid in advance. Residential Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the telecommunications services from the tap to the residence.

3.11. Omitted.

3.12. System Standards. This Section 3.12 will apply only if and to the extent that Grantee offers telecommunications services to more than ten Residential Subscribers. The telecommunications services shall meet or exceed all applicable technical and performance standards. The Grantee shall also comply with all applicable testing requirements. Upon request, Grantee shall advise the Franchising Authority of schedules and methods for testing the telecommunications services within the Service Area to determine compliance with the provisions of applicable technical standards. Representatives of the Franchising Authority may witness the tests. This first paragraph of Section 3.12 will apply only if and when federal or state law imposes technical and performance standards on the telecommunications services provided by Grantee, and Grantee and the City acknowledge that no such standards apply to telecommunications services as of the date of this Franchise.

Written records of all system tests required by applicable federal or state law to be performed by or for the Grantee shall be maintained at Grantees business office, and shall be available for inspection during Grantee's normal business hours by the Franchising Authority upon written request. Grantee, upon written request of Franchising Authority, shall provide a summary or complete copy of such test results.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs or maintaining the telecommunications services, Grantee shall do so at such times that will cause the least amount of inconvenience to Subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to Subscribers.

Notwithstanding anything to the contrary, Grantees obligation to provide, replace, construct, maintain or operate the telecommunications services under this Franchise shall be excused for any period during with such service is prevented or interrupted by causes beyond the control of Grantee including acts of nature, fire, flood, unavoidable casualty, extra-ordinary delays in

transportation, strikes or power interruption or regulations. Telecommunications service shall thereafter be restored as soon as reasonably possible.

3.13. Customer Service Standards/Complaint Resolution. This Section 3.13 will apply only if and to the extent that Grantee offers telecommunications services to more than ten Residential Subscribers. Should a Subscriber have an unresolved complaint regarding telecommunications service with Grantee, the Subscriber may file a complaint with the Franchising Authority and thereafter to meet or discuss jointly with the representatives of the Franchising Authority and grantee within 30 days of filing the complaint with the franchising authority to address and resolve the Subscriber's complaint. For purposes of this paragraph, a "complaint" is a grievance related to the telecommunications service provided by the Grantee within the Service Area that is reasonably remedial by Grantee but does not include customer contacts resulting in routine service calls that resolve the subscriber's problem satisfactorily to subscriber

Section 4. Regulation by the Franchising Authority

4.1. Franchise Fee; Regulation of Rates.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to the greater of five percent of annual Gross Revenue or \$2,500.00. "Gross Revenues" shall mean any revenue received by Grantee from the provision of telecommunications services in the City, provided, however, that such phrase shall not include: (1) any tax, fee or assessment of general applicability collected by Astound Broadband from subscribers for pass-through to a government agency; (2) any revenue derived from the provision of Internet access services where such franchise revenue is expressly prohibited by federal or state law; and (3) unrecovered bad debt.

The franchise fee payment shall be due quarterly and payable within forty five days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. The percentage amount of the franchise fee may change, at the discretion of the Franchising Authority, if provided for by new federal law and upon ninety days' notice to Grantee by Franchising Authority.

With the approval of the Franchising Authority, Grantee may, in lieu of all or a portion of the minimum franchise fee payment required under Section 4.1(A), provide telecommunications or other services to the City. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation and the offset value of any such services provided to the City will be determined based on the standard rates Grantee charges to third-party customers for substantially equivalent services.

B. Audit of Franchise Fee Payments

B.1. Franchising Authority or its designee may conduct an audit or other inquiry in relation to payments made by Grantee no more than once every two years during the Term. As a part of the audit process, Franchising Authority or Franchising Authority's designee may inspect Grantee's books of accounts relative to Franchising Authority at any time during regular business hours and after thirty (30) calendar days' prior written notice.

B.2. All records deemed by Franchising Authority for Franchising Authority's designee to be reasonably necessary for such audit shall be made available by Grantee in a mutually agreeable format. Grantee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of written request. Grantee may provide such responses within a reasonable time that is mutually agreeable, after the expiration of the response period above, so long as Grantee has made a good faith effort to procure any such tardy response.

B.3. If the results of any audit undertaken which included gross revenue from the sales of telecommunications services within the city, indicate that Grantee (i) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by five percent (5%) or less, then the Franchising Authority shall pay the costs of the audit. If the results of the audit indicate Grantee underpaid the franchise fee by more than five percent (5%), then Grantee shall pay the reasonable, documented, independent third-party costs of the audit, which costs shall be limited to seven thousand five hundred dollars (\$7,500) if any audit discloses an underpayment of the franchise fee in any amount, Grantee shall pay Franchising Authority the amount of the underpayment, together with interest computed from the applicable due date, at a rate per annum equal to the highest Bank Prime Rate during the period of delinquency plus one percent (1%). The Bank Prime Rate shall mean the prime lending rate as it appears in the wall Street Journal during the period of delinquency.

C. Omitted.

4.2. Inspections for Compliance. This Section 4.2 will apply only if and to the extent that Grantee offers telecommunications services to more than ten Residential Subscribers. The Franchising Authority may inspect the telecommunications services within the Service Area, during reasonable times and in a manner that does not unreasonably interfere with the normal business operations of Grantee, in order to determine compliance with standards imposed by applicable federal or state law. Except in emergency circumstances, such inspections may be undertaken only after giving no less than five (5) days advance notice thereof and after giving Grantee an opportunity to be present during such inspections. In the event such inspection determines that Grantee's telecommunications services has substantially failed to comply with the applicable standards, the cost of the inspection shall be borne by the Grantee. Except in emergency circumstances, the Franchising Authority agrees that such inspection shall be undertaken no more than annually, and that the results thereof shall be provided to Grantee.

4.3. Renewal of Franchise.

A. The Franchising Authority and the grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal for the grantee's Franchise shall be governed by and comply with MCC Sections 3.18.445 through MMC Sections 3.18.455.

B. Notwithstanding anything to the contrary set forth in this Section 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

4.4. Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority pursuant to MCC 3.18.460. Notwithstanding the foregoing, Grantee may, without the City's consent, pledge the Franchise to its lenders solely for the purpose of securing indebtedness, except that the City's consent shall be required before the lender assumes the Franchise.

Section 5. Books, Records and Maps

5.1. Books and Records. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location or to provide the Franchising Authority to view certain books and records in electronic format. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential under applicable federal and state law, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

5.2. Maps. Grantee shall maintain "as built" drawings for the facilities at Grantee's business office, and make them available to the Franchising Authority for inspection during normal business hours upon written request. "As built" drawings shall be updated as changes occur in the facilities serving the Service Area. Upon written request of the Franchising Authority, Grantee shall provide the Franchising Authority copies of strand and trench maps showing the location of Grantee's lines within the Public Ways in the Service Area within sixty (60) days of request for the same. The Franchising Authority recognizes that the information contained in such maps is confidential and proprietary, and remains the property of the Grantee. To the extent provided under the Oregon Public Records Law, the Franchising Authority shall safeguard such information from public law.

Section 6. Insurance and Indemnification

6.1. Insurance Requirements. The Grantee shall maintain in full force and effect at its own cost, and expense, during the term of the Franchise, insurance as required by MCC 3.18.540.

6.2. Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend, the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of Grantee's construction, operation, or maintenance of its facilities.

6.3. Bonds and Other Surety. Except as may be required for construction purposes by MMC Chapter 3.18, no bond or other surety shall be required of the Grantee at the inception of the Franchise. In the event Grantee is required by the Franchising Authority to obtain a bond or other surety in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days in advance written notice thereof stating the specific reasons for such requirement.

Section 7. Enforcement and Termination of Franchise

7.1. Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2. The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3. Public Hearing. In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(c) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing, which specifies the time, place and purpose of such hearing, and provide Grantee the opportunity to be heard.

7.4. Enforcement. Subject to applicable federal and state law and pursuant to MMC 3.18.480, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

A. Seek specific performance of any provision, which reasonable lends itself to such remedy, as an alternative to damages; or

B. Commence an action at law of monetary damages or see other equitable relief; or

C. In the case of a substantial default of material provision of the Franchise, seek to revoke the franchise in accordance with Section 7.5.

7.5. Revocation. Should the Franchising Authority seek to revoke the Franchise, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to call the relevant officials, agents, employees or consultants of the Franchising Authority as permitted by law, to compel the testimony of other persons as permitted by law. A complete record consisting of all written exhibits, minutes and an audio tape shall be made of the hearing by the Franchising Authority.

Following the hearing, the Franchising Authority shall determine whether the franchise shall be revoked. If the Franchising Authority determines that the franchise shall be revoked, Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority de novo. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonable beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's facilities within the Service Area is attached, as well as unavailability to materials and/or qualified labor to perform the work necessary.

7.7. Removal of Facilities after Revocation, Termination or Expiration of Franchise. After revocation, termination or expiration of the franchise, and upon reasonable notice from the Franchising Authority, Grantee shall remove from the Public ways all or a portion of its telecommunications services and property. The Franchising Authority's notice shall be in writing and shall state whether all or a portion of Grantee's facilities must be removed and the date by which removal shall be completed.

Section 8. Miscellaneous Provisions

8.1. Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonable withheld.

8.2. Entire Agreement. When accepted in accordance with Section 8.6, this Franchise, as supplemented by the requirements of MMC Chapter 3.18 constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be valid if mutually agreed to in writing by the parties.

8.3. Notice. Unless expressly otherwise agreed between the parties, every notice or response require by this Franchise to be served upon the Franchising Authority of the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a

properly sealed and correctly addressed envelope; a) upon receipt when hand delivered with receipt/acknowledgement, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Manager
City of McMinnville
230 NE Second Street
McMinnville, OR 97128

Notices or responses to the Grantee shall be addressed as follows:

Astound Broadband, LLC
Attn: James A. Penney, EVP
401 Kirkland Parkplace
Suite 500
Kirkland, WA 98033

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

8.4. Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5. Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph term or provision hereof, all of which will remain in full force and effect for the term of the franchise.

8.6. Acceptance of Franchise. This ordinance does not grant a franchise unless it is accepted in writing by Franchisee within sixty (60) days after its enactment.

Passed by the Council this 24th day of November 2015 by the following votes:

Ayes: Drabkin, Hill, Jeffries, Menke, Ruden, Yoder

Nays: _____

Second Reading: Read and passed by the Council this 8th day of December 2015, by the following votes:

Ayes: Drabkin, Hill, Jeffries, Menke, Ruden, Yoder

Nays: _____

Approved this 8th day of December 2015.



COUNCIL PRESIDENT

Attest:

Approved as to form:



CITY RECORDER



CITY ATTORNEY