

A BILL FOR AN ORDINANCE GRANTING A) ORDINANCE BILL NO. 2015-5
NON-EXCLUSIVE FRANCHISE FOR ASTOUND)
BROADBAND, LLC, DOING BUSINESS AS)
WAVE) ORDINANCE NO. 2861

THE CITY OF LEBANON ORDAINS AS FOLLOWS:

Section 1.

1.1 Definitions. For the purpose of this franchise, the following words and phrases shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words in the singular number include the plural number. The word 'shall' is mandatory and 'may' is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

- A. "City" refers to and is the City of Lebanon, Linn County, Oregon, and includes the territory as currently is or may in the future be included, within the boundaries of the City of Lebanon.
- B. "City Council" refers to and is the legislative body of the City of Lebanon.
- C. "Company" refers to and is Astound Broadband, LLC, D/B/A Wave and its successors and assigns.
- D. "Communications Facilities" refer to and are only those facilities reasonably necessary to provide telecommunications services within the City.
- E. "Facilities" refer to and are all facilities reasonably necessary to provide telecommunications services into, within and through the City and include plants, works, systems, lines, equipment, underground links, switches, wires and radio links.
- F. "Public Utility Commission" refers to and is the Public Utility Commission of the State of Oregon or other authority succeeding to the regulatory powers of the Public Utility Commission of the State of Oregon.
- G. "Revenues" refer to and are those amounts of money which the Company receives from its customers within the City for the sale of exchange access services, as authorized by ORS 221.515, adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments and excluding taxes, surcharges or other governmentally imposed charges.
- H. "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in said City.

Section 2.

2.1 Grant of Franchise. The City hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Ordinance, the non-exclusive right to furnish, sell and distribute any telecommunications or telecommunications-related services to the City and to all persons, businesses and industries within the City; a non-exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to provide communication facilities to the City and to persons, businesses and industries within the City and in the territory adjacent thereto; and a non-exclusive right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of this Ordinance.

2.2 Conditions of Occupancy. The Facilities installed by the Company pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Streets and Other Public Places and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Places. Prior to the commencement of any construction, extension or relocation of Company's Facilities in the Streets and Other Public Places, Company agrees to obtain the necessary and required approvals from the City including a right-of-way permit and right-of-way permit fees.

2.3 Term of Franchise. The term of this franchise shall be for twenty (20) years, beginning August 7, 2015 and expiring August 7, 2035.

2.4 Renegotiation. Every five (5) years from the effective date of this ordinance, either party may notify the other of its intention to renegotiate or amend this ordinance. Within 180 days prior to the fifth, tenth or fifteenth anniversary of the effective date of this ordinance, notice shall be given of a party's intent to negotiate the terms of this ordinance by sending such notice by regular or certified mail to the other party or its successor to this franchise.

Section 3.

3.1 Franchise Fee. In consideration for the grant of this franchise, the Company shall collect and remit to the City the sum equal to seven percent (7 %) of the Revenues.

3.2 Payment Schedule. For the franchise fee owed on Revenues received after the effective date of this Ordinance, payment shall be made in monthly installments. The franchise fee payment shall be due monthly and payable within sixty (60) days after the close of each month. Payments at the beginning and end of the term of this Ordinance shall be prorated. All payments shall be made to the City Finance Manager. The City, or any committee appointed by the City Council, shall have access to the books of the Company for the purpose of auditing or checking to ensure that the franchise fee has been correctly computed and paid.

3.3 Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the City in lieu of any occupancy tax, license tax, or excise upon the privilege of doing business or in connection with the physical operation thereof,

but does not exempt the Company from City right-of-way permit fees, lawful taxation upon its real property, sales and use taxes or any other tax not related to the franchise or the physical operation thereof.

3.4 In-Kind Service. In lieu of all or a portion of the franchise fee payment required under this Section 3, Company may 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 Company charges to third-party customers for substantially equivalent services.

Section 4.

4.1 Conduct of Business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its right and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be conflict with the laws of the State of Oregon.

4.2 Compliance with PUC Regulations. The Company shall comply with all applicable rules and regulations adopted by the Public Utility Commission.

Section 5.

5.1 Location of Facilities. Company facilities shall not interfere with the City's water mains, sewer main, or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition.

5.2 Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall comply with all lawful specifications, requirements and regulations of the United States, the State of Oregon and the City of Lebanon in effect at the time of such construction. All public and private property disturbed by Company construction or excavation activities shall be restored within sixty (60) days after receiving written notice by the City. All restoration shall be at the Companies expense to as close as practical to its former condition. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent lots, streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of Company in the event the Company fails to perform such work within a reasonable time after Notice from the City.

5.3 Relocation of Company Facilities. If at any time the City requests the Company to relocate any distribution line service connection, or other Company Facility installed or maintained in streets or other public places in order to permit the City to change street grades, pavements, sewers, water mains or other City works, such relocation shall be made by the Company at its expense. All relocation work by the Company shall be

completed within 120 days of written notice of the City. Written notice shall include copies of plans which include the location of City facilities. The Company is not obligated hereunder to relocate any facilities at its expense, which were installed in private easements obtained by the Company. Following relocation, all property shall be restored to substantially its former condition by the Company at its expense. The City will reasonably exhaust alternatives not requiring relocation.

5.4 Underground Construction. In those areas of the City where all of the transmission or distribution facilities of other private utilities are underground, the Company likewise shall construct, operate, and maintain its Communication Facilities underground. Nothing contained in this Section 5.4 shall require the Company to construct, operate, and maintain underground any ground-mounted appurtenances.

The City shall notify Company within 30 days following receipt of subdivision requests for areas within the City. It shall be the responsibility of a subdivision developer to make arrangements with the Company pursuant to the requirements of Lebanon Development Code Chapter 16 Section 16.16.050. For all other developments or projects, the developer is responsible for providing adequate advance notification and access to Company and other potential users of an open trench. Notwithstanding the foregoing, company shall not be required to utilize any open trench.

5.5 Rules and Regulations. All lines and equipment constructed under this grant shall be constructed in accordance with established practices as commonly used in the telecommunications industry and the rules and regulations of the Public Utility Commission of the State of Oregon, and its duly or legally constituted successors in authority; and the rights and privileges herein granted in said streets, alleys and public highways shall be subject at all times to such ordinances and reasonable regulations as are now or shall hereafter be ordained or passed by said City concerning similar uses and excavations in the care of streets, alleys and public highways.

5.6 Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein and not in violation of any state or federal laws; and provided further that such regulations are applied to Company in a uniform and non-discriminatory manner. The Company agrees to comply with all such regulations, now existing or duly adopted, in the construction, maintenance and operation of its facilities and in the provisions of telecommunications services within the City.

5.7 Inspection, Audit and Quality Control. The City shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Ordinance at all reasonable times, but no more than once per year. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner. The cost of such audit shall be paid by the City unless the result of the audit reveals an underpayment of franchise fees of greater than 5%, in which case the cost of the audit shall be paid by Company.

5.8 Maps. The Company shall prepare and submit to the City a map showing the location of its distribution system within the City, showing location of its distribution system within the City, showing location of all appurtenances incident to the distribution system, insofar as such facilities can reasonably be determined. The map shall be revised no more frequently than annually by the addition of the information hereby required as the system is extended or revised. The City agrees that any such maps shall not be used by it or disseminated by the public for use in locating underground facilities.

Section 6.

6.1 Indemnification. The Company shall maintain its structure, apparatus and other equipment as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company shall save the City harmless from all liability or damage and all reasonable expenses necessarily accruing against the town by third parties and arising out of the exercise by the Company of the rights and privileges hereby granted, provided such liability or damage was not caused by the City.

6.2 Notice to Company. The City will provide prompt notice to the Company of any claim or action against the City arising out of the exercise by the Company of its franchise rights.

Section 7.

7.1 Assignment. The Company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, or assignments to secure financing, unless the City shall approve such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

7.2 Saving Clause. If any portion of this franchise Ordinance is declared illegal or void by court or competent jurisdiction, the remainder of the Ordinance shall survive and not be affected hereby. In such case, the parties shall proceed with due diligence to attempt to draft provisions that will achieve the original intent.

7.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by the ordinance shall be in writing and shall be deemed to have been 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 5 business days after having been posted in the regular mail.

The notices or response to the City shall be addressed as follows:

City of Lebanon
Attn: City Clerk
925 Main Street
Lebanon, OR 97355

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

Astound Broadband, LLC
401 Parkplace Center Suite 500
Kirkland, WA 98033

7.4 Acceptance. This Ordinance shall take effect thirty (30) days after its enactment by the City Council and approval by the Mayor, but shall become null and void unless within sixty (60) days after enactment Company shall file with the City acceptance of the terms and conditions of the ordinance.

Passed by the Lebanon City Council and executed by the Mayor on this on this 8th day of July, 2015 by a vote of 4 yeas and 0 nays.

CITY OF LEBANON, OREGON



Paul R. Aziz, Mayor
Bob Elliott, Council President

ATTESTED BY:



Linda Kaser, City Clerk


In the matter of granting a non-exclusive franchise to Astound Broadband, LLC for the right to enter, occupy, and use the City of Lebanon's public rights of way to construct, install, operate, maintain, and repair a fiber optic based telecommunications system.) City of Lebanon) Ordinance Bill No. 2015-5) Ordinance No. 2861) ACCEPTANCE)

WHEREAS, on July 8, 2015, the City Council of the city of Lebanon, Linn County, Oregon, (the "City") passed Bill No. 2015-5 and adopted Ordinance No. 2861, granting a non-exclusive franchise to Astound Broadband, LLC ("Astound") for the right to enter, occupy, and use the City's public rights of way to construct, install, operate, maintain, and repair a fiber optic based telecommunications system (the "Ordinance").

WHEREAS, a copy of the Ordinance, has been received by Astound.

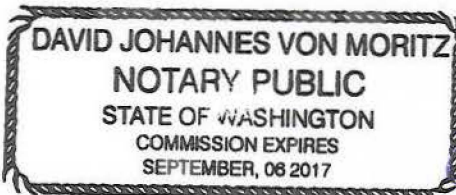
NOW, THEREFORE, Astound hereby unconditionally accepts the Ordinance and all terms and conditions thereof, and files this, its written acceptance, with the City.


IN TESTIMONY WHEREOF, Astound has caused this written Acceptance to be executed in its name by James A. Penney, its Executive Vice President, thereunto duly authorized on this 23 day of July 2015.



 James A. Penney
 Executive Vice President

State of WASHINGTON) On this 23 day of July, 2015, personally appeared)
)ss. before me James A. Penney who stated)
 County of King) that (s)he is the Executive Vice President of)
Astound Broadband, LLC, a limited liability)
 company, and that the instrument was signed on behalf of the)
 company, and acknowledged said instrument to be its voluntary)
 act and deed. Before me:





 DAVID JOHANNES VON MORITZ
 Notary Public in and for the State of Washington
 Residing at Seattle
 My Commission Expires: 09-08-2017