

**CITY OF FLORENCE
RESOLUTION NO. 8, SERIES 2019**

A Resolution Granting a Limited, Non-Exclusive Franchise to Astound Broadband, LLC dba Wave, a Washington limited liability company, to Operate and Maintain a Telecommunications System to Provide Telecommunications Services within the City Limits of Florence.

RECITALS:

1. The Florence City Council has the authority under the Florence City Code, its Charter, the Oregon Constitution, and State and Federal law, to grant franchises for the use and occupation of its Rights of Way.
2. Florence City Code (FCC) Title 8, Chapter 7: Right of Way Management, established through Ordinance No. 5, Series 2017, governs the use and occupation of the Public Right of Way by Communications Providers and applies to this Franchise Agreement.
3. Astound Broadband, LLC dba Wave, a Washington limited liability company, (hereinafter "Grantee") currently operates a non-exclusive franchise within the City of Florence to operate and maintain a telecommunications system.
4. The Grantee's franchise was originally between the City of Florence (hereinafter "City") and Coastcom, Inc., and later transferred to Grantee on August 15, 2016. The rights, privileges and authority granted within it contained an initial term of five (5) years, and later extended to an expiration date of August 15, 2017.
5. The City of Florence and Grantee have been negotiating new franchise terms since 2017.
6. The terms of the 2008 franchise agreement have applied to the use of the right-of-way by Grantee during the franchise negotiations.
7. The City finds that Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal, and technical ability of the Grantee is sufficient to provide services, facilities, and equipment necessary to meet the future telecommunications-related needs of the community.
8. Having afforded the public adequate notice and opportunity for comment, the City desires to enter into this Franchise with Grantee for the construction and operation of a telecommunications system for telecommunications services on the terms set forth within the Franchise Agreement.
9. The City and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal.
10. Ordinance No. 5, Series 2019, repealed Ordinance No. 19, Series 2008, an ordinance granting a non-exclusive franchise to CoastCom, Inc. to operate and maintain a telecommunications system within the City limits of Florence and repealed Ordinance No. 12, Series 2016, an ordinance approving the assignment of the franchise to Astound Broadband, LLC, and declaring an emergency.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:

1. The terms of the Franchise Agreement with Grantee are shown in Exhibit A.
2. Grantor hereby approves the Franchise Agreement and the terms in Exhibit A.
3. This Resolution takes effect immediately upon adoption.

ADOPTION:

This Resolution is passed and adopted on the 20th day of May, 2019.



Joe Henry, Mayor

Attest:



Kelli Weese, City Recorder

Wave Franchise Agreement

SECTION 1. Permission Granted; Applicable Law; Conflicts with City Code.

- A. Subject to the provisions contained herein, and to the city code, ordinances, and resolutions of the City of Florence, specifically FCC Title 8, Chapter 7 governing the use and occupation of the Public Right of Way, Oregon State Statutes and the Constitution of the State of Oregon, the City hereby grants to Grantee the nonexclusive revocable limited Franchise, right and privilege to construct, install, operate, maintain, and upgrade, a Communication System for the purpose of providing Communications Services, including but not limited to internet, voice, and, video services, subject to FCC Title 8, Chapter 7 in, under, along, over and across Rights of Way, in the City. Nothing herein shall be deemed to convey any right, title or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the Rights of Way for the limited purposes and term stated in this Franchise. The permission granted herein to Grantee shall hereinafter be referred to as "Franchise." As used herein the term "Public Right(s) of Way" or "Right(s) of Way" shall have the meaning as provided in FCC Title 8, Chapter 7.
- B. "Communication System" means Communications Facilities that Communications Providers use to provide Communications Services as all of the above terms are defined by FCC Title 8, Chapter 7.
- C. "Grantee" means Astound Broadband, LLC dba Wave, a Washington limited liability company
- D. Grantee shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the entire term of this Franchise; provided that no action of the City may alter any material term of this Franchise. Where the terms of this Franchise expressly and directly conflict with the City Code (specifically including Title 8, Chapter 7), the City Code shall prevail.

SECTION 2. General Conditions.

- A. Grantee has represented to the City it is authorized to provide Communications Services in Oregon by the Public Utility Commission of Oregon.
- B. There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any City Code provision, ordinance, resolution or statute, and Grantee by its acceptance of this Franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its lawful exercise of such rights or power, heretofore or hereafter enacted or established; provided that no action of the City may alter any material term of this Franchise. Neither the granting of any Franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

C. Insurance and Indemnification

i. Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the City, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property related to the Grantee's construction or operation of the Communication System and shall indemnify and hold City, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Communication System, provided that the City shall give the Grantee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the City shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the City. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the City for any damages, liability or claims resulting directly from the willful misconduct or sole negligence of the City or for the City's own use of the Communication System.

ii. Insurance.

a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$2,000,000 per occurrence, Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	
Umbrella Liability	\$2,000,000 per occurrence C.S.L.

b. The City shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.

c. The Grantee shall furnish the City with current certificates of insurance evidencing primary and non-contributory coverage upon request.

D. Whenever the consent of either the City or Grantee is specifically required by City Code or in this Franchise, such consent will not be unreasonably withheld.

SECTION 3. Plans Approval, Permits and Construction.

- A. The Communication System herein provided for, shall be constructed, installed, operated, maintained, located, relocated, and removed as specified in Title 8, Chapter 7 of the Florence City Code. The obligations of Grantee set forth in Section 8-7-6-14(B) of the FCC shall be amended to read as follows: The permittee shall, for a period of three (3) year thereafter, be liable for all permittee's defects in materials and workmanship relating to such Construction or Restoration.
- B. The obligations of Grantee set forth in Section 8-7-19(A)(2) of FCC Title 8, Chapter 7 are here by modified to read: "Upon written request by the City, Grantee shall provide information reasonably sufficient to show the location of Wave's facilities in the Right of Way.
- C. Grantee hereby notifies City that it intends to provide capacity or bandwidth to its customers by lease, use agreements or otherwise. Grantee's obligations under Section 8-7-8-23 are deemed fulfilled provided that Grantee notify the City of the entity using, leasing or otherwise renting Grantee's Facilities if the revenue from such entities is not included within the Gross Revenue calculations and paid as a portion of the City's Franchise Fees under this Agreement. Any such information provided to City shall be subject to confidentiality restrictions imposed by contract or applicable law. Grantee understands that City may be ordered to disclose such information under Oregon Public Records law. At all times, Grantee shall retain exclusive control over such Facilities and remains responsible for all terms of this Agreement, including but not limited to locating, servicing, repairing, relocating or removing its Facilities.
- D. The obligations of Grantee set forth in Section 8-7-8-20 of FCC Title 8, Chapter 7 are here by modified to read: "If the City contracts for telecommunications services or renews existing service agreements from Wave after the effective date of this Franchise, Wave will offer to provide such services at rates no more than its regular government pricing available in the State of Oregon for substantially similar services.

SECTION 4. Franchise Fees

- A. For the rights granted herein, Grantee agrees to pay to the City 5% of Gross Revenue, as defined by Resolution No. 5 Series 2017, derived by Grantee from the operation of their Facilities in the Right of Way to provide Communications Services, (including leased capacity or leased bandwidth to other telecommunications providers) or \$500, whichever is greater. This fee is payable as set forth in paragraph B below and is payable to the City.
- B. Payment of the fee due the City shall be made on a quarterly basis, within thirty (30) days of the close of each calendar quarter. Payments shall be by check, or a mutually agreeable alternative method, and each payment shall be accompanied by an accounting of gross revenue and a calculation of the amount payable.
- C. The Grantee shall pay interest at the rate of 9% per year for any payment made after the due date.

SECTION 5. Term of Franchise; Amendment.

The right, privilege and term of Franchise granted herein shall continue and exist for a period of ten (10) years from the date of approval by the City of Florence. This Franchise may be extended with the mutual, written consent from both parties per FCC Title 8, Chapter 7.

SECTION 6. Nonexclusive Franchise.

The grant of this Franchise shall not confer any exclusive right, privilege, license or franchise to occupy or use the Rights of Way of the City for delivery of Communications Services or any other purposes, and nothing herein contained shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation, subject, however, to the rights granted to Grantee herein. Nothing agreed to in this Franchise is intended to deny or lessen the powers and privileges granted the City under the Constitution and laws of the State of Oregon.

SECTION 7. Cancellation of Franchise.

The City or Grantee may revoke, alter, suspend, or cancel this Franchise under the terms and conditions provided in FCC Title 8, Chapter 7; subject to any other rights or remedies that Grantee may have, including but not limited to judicial or regulatory review.

SECTION 8. Notice:

Communications relating to this Franchise will be deemed given when received, when sent by certified mail, return receipt requested, to the following addresses or as may be later designated by written notice of the other party:

Grantee: Astound Broadband, LLC
401 Parkplace Center, Suite 500
Kirkland, WA 98033
Attn: Legal Department

City: City of Florence
Attn: City Manager
250 Highway 101
Florence, OR 97439

With copies to:

WaveDivision Holdings, LLC
c/o RCN Telecom Services, LLC
650 College Road East, Ste, 3100
Princeton, NJ 08540
Attn: Regulatory Department

WaveDivision Holdings, LLC
c/o RCN Telecom Services, LLC
105 West First Street
South Boston, MA 02127
Attn: Regulatory Department

SECTION 9. Governing Law.

This Franchise is governed by and will be construed in accordance with the laws of the State of Oregon without regard to any conflict of laws provision.

SECTION 10. Severability.

Nothing in this Franchise is intended to be inconsistent with the State or Federal Law and further neither the City nor Grantee waives any rights granted under State or Federal Law by agreeing to this Franchise.

In the event that any one or more of the provisions contained herein, is, for any reason, held to be unenforceable in any respect under law or regulation, the remainder of this Franchise will not be affected thereby and will continue in full force and effect.

SECTION 11. Proprietary Information.

Grantee stipulates that it understands that Oregon law limits the authority of the City to shield from public disclosure information given to the City by Grantee. The parties agree to work together to avoid disclosures of information which would result in economic loss or damage to Grantee because of anticipated mandatory disclosure requirements to third persons. To the extent Grantee has provided documents to the City that constitute business or trade secrets and/or proprietary information, Grantee must provide said information in an envelope marked, "Proprietary Information: Do Not Disclose." The City will exercise good faith efforts to protect the confidentiality of the information provided within the confines of Oregon's Public Records Disclosure requirements. Grantee agrees to indemnify and hold harmless the City for any loss or liability for legal penalties relating to non-disclosure, including costs or attorney's fees because of nondisclosures requested by Grantee under Oregon's open public records law. City promises to provide reasonable notice and opportunity to Grantee to defend and/or seek a protective order preventing disclosure under the open public records law. City agrees not to contest Grantee's motion to intervene in any case involving disclosure of Grantee's records, should Grantee decide to become a third-party intervenor in such a case.

SECTION 12. Entire Agreement.

This Franchise Agreement constitutes the entire agreement between Grantee and the City with respect to the subject matter contained and may not be amended or modified except by written document, signed by both parties. Grantee reserves all rights it may have under state or federal laws or regulations.

CITY OF FLORENCE

Astound Broadband, LLC dba Wave

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date