

1 **RESOLUTION NO. 2016-26**

2
3 **A RESOLUTION OF THE CITY OF LINCOLN CITY CONSENTING TO THE**
4 **ASSIGNMENT OF A NON-EXCLUSIVE TELECOMMUNICATION**
5 **FRANCHISE**
6

7 **WHEREAS**, the City of Lincoln City ("Grantor") granted to CoastCom, Inc.,
8 an Oregon corporation ("Grantee"), a franchise as set forth in Ordinance No.
9 2014-26, dated October 13, 2014, to own and operate a
10 telecommunications system in Lincoln City, Oregon (the "Franchise");

11
12 **WHEREAS**, Section 18 of Ordinance 2014-26 (Assignment of Franchise)
13 states as follows:
14

15 **SECTION 18.** Assignment of Franchise.
16

17 This franchise shall be binding upon and inure to the benefit of the
18 successors, legal representatives and assigns of the Grantee; but no
19 transfer or assignment of this franchise by merger, consolidation, sale,
20 and assignment or otherwise shall be made unless the City Council of
21 Lincoln City first consents by resolution.
22

23 **WHEREAS**, on June 3, 2016, Grantee and Astound Broadband, LLC
24 ("Assignee") entered into an Asset Purchase Agreement ("Purchase
25 Agreement") for the sale of the assets of Grantee, including the Franchise,
26 to Assignee); and
27

28 **WHEREAS**, Grantee and Assignee submitted via email a letter to Grantor
29 on or about July 18, 2016, requesting Grantor's consent to the assignment
30 and transfer of the Franchise from Grantee to Assignee (the "Consent
31 Request"); and
32

33 **WHEREAS**, Grantee and Assignee represent to Grantor that Assignee
34 possesses the legal, technical and financial qualifications to hold the

1 Franchise and own and operate the telecommunications network
2 authorized by the Franchise; and
3

4 **WHEREAS**, based on the foregoing representation by Grantee and
5 Assignee, Grantor has concluded Assignee meets the legal, technical and
6 financial criteria to hold the Franchise and to operate the
7 telecommunications network.
8

9 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE**
10 **CITY OF LINCOLN CITY, AS FOLLOWS:**
11

12 Section 1. Grantor, City of Lincoln City, hereby consents to the transfer and
13 the assignment of the Franchise from Grantee to Assignee effective upon
14 the closing of the Transaction as contemplated by the Purchase Agreement.
15 A redacted copy of the confidential Purchase Agreement has been provided
16 to Grantor.
17

18 Section 2. Grantor confirms that as of the date of this Resolution: (a) the
19 Franchise was duly issued to Grantee, is valid and enforceable in
20 accordance with its terms, and is in full force and effect; (b) there have been
21 no amendments or modifications to the Franchise; (c) this Consent,
22 contemplated in Ordinance 2014-26 to be approved by Resolution, includes
23 no amendment to the terms of the Franchise approved by Ordinance; (d) to
24 Grantor's knowledge as of the date of this Resolution, there are no defaults
25 under the Franchise, and also to Grantor's knowledge, no event has
26 occurred and is continuing which, with the giving of notice or passage of
27 time, or both, could constitute a default thereunder; and (e) upon the
28 closing of the Transaction, the duly authorized franchisee under the
29 Franchise will be Assignee.
30

31 Section 3. The Ordinance approving the Franchise and this Consent
32 Resolution were and are made, passed and adopted in accordance with all
33 applicable notice and procedure requirements under all laws applicable to
34 Grantor, and with all applicable notice and procedure requirements, and do

1 not conflict with the laws, ordinances, resolutions and other regulations of
2 Grantor, as presently in effect or as the same were in effect at the time the
3 particular action was taken.
4

5 Section 5. Grantor's consent to the assignment of the Franchise to
6 Assignee shall be effective from and after approval by the Grantor.
7 Assignee shall notify the Grantor in writing upon the closing of the
8 Transaction (the "Closing Date").
9


10 Section 6. Grantor releases Grantee, effective upon the Closing Date, from
11 all obligations and liabilities (including any guarantee or surety) under the
12 Franchise related to the period on and after the Closing Date; Grantee
13 remains fully liable for all obligations and liabilities (including any
14 guarantee or surety) under the Franchise for the period of time up to
15 Closing. Grantor agrees that Assignee shall be fully responsible for any
16 obligations and liabilities under the Franchise related to the period on and
17 after the Closing Date.
18

19 Section 7. This resolution shall be effective as of the date of its adoption by
20 the City Council.
21

22 PASSED AND ADOPTED BY THE CITY OF LINCOLN CITY THIS 8th DAY OF
23 AUGUST, 2016.
24

25 
26 Don Williams, Mayor
27

28 ATTEST:

29 
30 _____
31 City Recorder