ORDINANCE NO. 4255

AN ORDINANCE of the City Council of the City of Kent, Washington, approving the indirect change of control of Astound Broadband, LLC d/b/a Wave with conditions and establishing an effective date.

RECITALS

A. On April 7, 2015, the City of Kent (the “City”) adopted Ordinance No. 4144 granting a nonexclusive telecommunications franchise to Astound Broadband, LLC d/b/a Wave (the “Franchisee”) to operate a telecommunications system (the “System”) within the city limits of the City of Kent, with an effective date of April 15, 2015 (the “Franchise”); and

B. Franchisee is a wholly-owned, indirect subsidiary of Wave Holdco, LLC, a Delaware limited liability company (“Wave Parent”); and

C. On May 18, 2017, Radiate HoldCo, LLC, a Delaware limited liability company (“Radiate HoldCo”), Wave Parent, and WaveDivision Holdings, LLC, a Delaware limited liability company controlled by Wave Parent, entered into a definitive agreement pursuant to which Radiate HoldCo will acquire Wave Parent from its current majority owners (the “Transaction”); and
D. Radiate HoldCo is a wholly-owned, indirect subsidiary of, and is controlled by, Radiate Holdings, L.P. a Delaware limited partnership (“Radiate Parent”); and

E. As a result of this Transaction, Radiate Parent will acquire ownership of Wave Parent and control of the Franchisee; and

F. Section 28 of the Franchise requires that the Franchisee receive the consent of the City for any indirect change of control including such indirect change of control that will occur as a result of this Transaction; and

G. The consent of the City to the indirect change of control that will occur as a consequence of the closing of the Transaction shall not constitute a waiver or release of any rights the City or Franchisee may have under the Franchise; and

H. The City Council deems it to be in the public interest to grant the requested consent; NOW THEREFORE,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Consent. The City hereby consents to the indirect change of control that will occur as a consequence of the closing of the Transaction and in accordance with the terms of applicable law, subject to and contingent on the fulfillment of the conditions set forth in Section 2.

SECTION 2. - Section 1 of this Ordinance is contingent on the fulfillment of the following condition: Radiate Parent shall acknowledge that the indirect change of control will not affect, diminish, impair or supersede the binding nature of the Franchise and any other ordinances,
resolutions, and agreements, if any, applicable to the operation of the System in the City. Further, Radiate Parent shall acknowledge that the Franchisee shall remain responsible for any and all non-compliance issues, if any, under the Franchise and any other ordinances, resolutions, and agreements, if any, applicable to the operation of the System in the City that may have arisen prior to or that may arise contemporaneous with or after the closing of the Transaction.

SECTION 3. – Following the indirect change of control and the City’s receipt of the written acknowledgement from Radiate Parent required by Section 2, the Franchise shall remain in full effect through the remainder of the Franchise term. The Transaction and the City’s consent to the indirect change of control do not modify the terms of the Franchise. Franchisee remains responsible for any obligations and liabilities under the Franchise. The City’s consent to the indirect change of control shall not be construed to constitute a waiver or release of any rights the City may have now or in the future under federal, state or local law, the Franchise, or any separate written agreements, if any, between the City and the Franchisee that relate to the Franchise.

SECTION 4. – By consenting to this indirect change of control, the City expressly reserves and does not waive or release any rights of the City in and to the rights-of-way as provided by state law and the Kent Municipal Code, nor does the City waive or release any claim or issue of non-compliance it may have, known or unknown, now or in the future related to the Franchise.

SECTION 5. – Written acknowledgement as provided in Section 2 has been filed by Radiate Parent with the City Clerk. If any of the construction and completion bonds, security funds or insurance are amended as a result of the indirect change of control, then Franchisee shall file with the City Clerk such revised bonds, security funds or evidence
of insurance within sixty (60) days of the date of the closing of the Transaction.

**SECTION 6.** To the best of the City’s knowledge and belief, there are no existing facts or circumstances that with or without the giving of notice or the passage of time, or both, would constitute a default of any term or condition of the Franchise.

**SECTION 7.** **Severability.** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 8.** **Corrections by City Clerk or Code Reviser.** Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

**SECTION 9.** **Effective Date.** This ordinance shall take effect and be in force five days after its publication as provided by law.

*SUZETTE COOKE, MAYOR*

Date Approved 10/17/17

KIMBERLY A. KOMOTO, CITY CLERK

ATTEST:

Date Adopted 10/17/17

Date Published 10/20/17
APPROVED AS TO FORM:

[Signature]

TOM BRUBAKER, CITY ATTORNEY
STATEMENT OF ACKNOWLEDGEMENT

WHEREAS, the City Council of the City of Kent, Washington, has acknowledged the pending transaction (the “Transaction”) between Wave Holdco, LLC, WaveDivision Holdings, LLC (“Wave”), the parent companies of Astound Broadband d/b/a Wave (“Franchisee”), and Radiate Holdco, LLC, a wholly-owned, indirect subsidiary of Radiate Holdings, L.P. (“Radiate”) and has consented to the resulting indirect change of control of the Franchisee, the holder of the telecommunications franchise (the “Franchise”) issued by the City to the Franchisee as Ordinance No. 4144.

NOW, THEREFORE, Radiate, hereby acknowledges said Franchise and all the terms and conditions thereof, and files this, its written acknowledgement of the indirect change of control of the Franchisee.

Radiate hereby acknowledges that the indirect change of control will not affect, diminish, impair or supersede the binding nature of the Franchise and any other ordinances, resolutions, and agreements, if any, applicable to the operation of the System in the City. Radiate hereby agrees that, Franchisee will comply with the Franchise, and remain subject to the Franchise, the Kent Municipal Code and all applicable federal and state laws, lawful orders, contracts, agreements, commitments, and regulatory actions. Radiate affirms that all bonds, security funds and insurance required by the Franchise remain in full effect and in place. Further, Radiate acknowledges that the Franchisee shall remain responsible for any and all non-compliance issues, if any, under the Franchise and any other ordinances, resolutions, and agreements, if any, applicable to the operation of the System in the City that may have arisen prior to or that may arise contemporaneous with or after the closing of the Transaction.

This Statement of Acknowledgement is contingent upon the consummation of the Transaction.

IN TESTIMONY WHEREOF, Radiate, has caused this written Statement of Acknowledgement to be executed in its name by its duly authorized officer on this 16th day of August, 2017.

RADIATE HOLDINGS, L.P.

By: __________________________
Name Printed: Jeffrey Kramp
Title: EVP, Secretary & General Counsel

August 16, 2017
STATE OF New Jersey ss.
COUNTY OF Mercer ss.

I certify that I know or have satisfactory evidence that Jeffrey D'Amico is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the 16th August of 2017, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 8/16/17

LISA A. PALLADINO NOTARY PUBLIC STATE OF NEW JERSEY MY COMMISSION EXPIRES FEB. 18, 2021

Printed: Lisa Palladino
Notary Public in and for State of New Jersey
My appointment expires: 2/18/21

Received by the City of Kent on 8/17, 2017

By: Kimberly Komoto
City Clerk, Kimberly Komoto