

1 [Transfer of Open Video System Franchise.]

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3 **Resolution approving with certain conditions the transfer to Astound Broadband, LLC.**  
4 **of the open video system franchise granted to RCN Telecom Services, Inc.**

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6 WHEREAS, RCN Telecom Services, Inc. (“RCN”) operates as the Grantee of an open  
7 video system (“OVS”) franchise granted and approved by the Board of Supervisors and the  
8 Mayor of the City and County of San Francisco (“City”) on August 25, 2004 by Ordinance  
9 Number 210-04; and

10 WHEREAS, RCN has entered into an agreement with Astound Broadband, LLC  
11 (“Astound”) under which Astound is to purchase various assets of RCN including the OVS  
12 franchise; and

13 WHEREAS, Section 4 of the OVS franchise and Section 11.14 of the San Francisco  
14 Administrative Code require City approval of such a transfer; and

15 WHEREAS, on September 28, 2006, RCN filed an application with the Clerk of the  
16 Board seeking the City’s approval to transfer the OVS franchise to Astound; and

17 WHEREAS, the Department of Telecommunications and Information Services (“DTIS”)  
18 filed a report with the Board recommending that the Board approve the transfer provided that  
19 Astound agree to certain conditions including a proposed amendment to the OVS franchise,  
20 which report and proposed OVS franchise amendment are on file with the Clerk of the Board  
21 of Supervisors in File No. \_\_\_\_\_ and hereby declared to be a part of this resolution as if set  
22 forth fully herein; and

23 WHEREAS, RCN has constructed a conduit for the City as a condition of the OVS  
24 franchise; and

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1           WHEREAS, as required under the OVS franchise, the City can require RCN to grant  
2 the City permanent access to the conduit; and

3           WHEREAS, DTIS has informed the Board DTIS has received reports that RCN may  
4 have installed certain facilities to provide service under the OVS franchise in a manner that  
5 does not comply with certain state or City requirements; and

6           WHEREAS, the City has an obligation to ensure that RCN's facilities be inspected and  
7 any deficiencies corrected in order to protect the public health, safety, and welfare; and

8           WHEREAS, in support of its transfer application, and to show that it is financially  
9 qualified to operate the OVS franchise, Astound provided the Board with a consolidated  
10 financial statement from its parent WaveDivision Holdings, LLC ("WaveDivision"), which  
11 consolidated financial statement includes Astound and other WaveDivision subsidiaries.

12           WHEREAS, RCN Corporation, the parent of RCN, previously guaranteed the  
13 performance by RCN of its obligations under the OVS franchise; and

14           WHEREAS, the City desires to ensure that WaveDivision similarly guarantees the  
15 performance by its subsidiary Astound; now, therefore, be it

16           RESOLVED, That the Board of Supervisors of the City and County of San Francisco,  
17 pursuant to Section 4 of the OVS franchise and Section 11.14 of the San Francisco  
18 Administrative Code, hereby approves the transfer of the OVS franchise from RCN to  
19 Astound, subject to the following conditions:

20           CONDITION 1: That Astound, agrees, by countersigning below, that it consents to the  
21 OVS franchise amendment, and further agrees that it will duly execute and deliver to the City  
22 the OVS franchise amendment after it is enacted by the Board.

23           CONDITION 2: That WaveDivision agrees, by countersigning below, that it consents to  
24 the OVS franchise amendment and to guarantee the performance thereunder, and further  
25 agrees that it will duly execute and deliver the guaranty to the City.

1           FURTHER RESOLVED, That should either Astound or WaveDivision refuse to accept  
 2           the above conditions, the Board of Supervisors of the City and County of San Francisco,  
 3           pursuant to Section 4 of the OVS franchise and Section 11.14 of the San Francisco  
 4           Administrative Code, hereby disapproves the transfer of the OVS franchise from RCN to  
 5           Astound.

6   ACCEPTED AND AGREED:  
 7   ASTOUND BROADBAND, LLC  
 8   By: \_\_\_\_\_  
 9   Name: \_\_\_\_\_  
 10   Title: \_\_\_\_\_

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 12   WAVEDIVISION HOLDINGS, LLC  
 13   By: \_\_\_\_\_  
 14   Name: \_\_\_\_\_  
 15   Title: \_\_\_\_\_

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