

## ORDINANCE NO. 1224

### AN ORDINANCE AMENDING ORDINANCE NO. 1155 GRANTING A NON-EXCLUSIVE FRANCHISE TO QUANTUM COMMUNICATIONS AND ALLOWING ASSIGNMENT OF THE FRANCHISE TO LIGHTSPEED NETWORKS, INC.

WHEREAS, pursuant to Prineville Ordinance No. 1155, Quantum Communications, LLC (“Franchisee”) is the duly authorized holder of a franchise (the “Franchise”) issued by the City of Prineville, Oregon, (the “City”) authorizing Franchisee to operate and maintain a telecommunication service system (the “System”) in the City; and

WHEREAS, Franchisee has sold substantially all its assets to LightSpeed Networks, Inc. (“LS Networks”); and

WHEREAS, Franchisee now seeks approval of the assignment of the assets of the System (including Franchisee’s Franchise) to LS Networks, and has requested such approval from the City; and

WHEREAS, LS Networks desires that the Ordinance granting the Franchise be amended; and

WHEREAS, the City has considered and approved the qualifications of LS Networks to hold the Franchise and has agreed with LS Networks on amendments to the Franchise Ordinance; and

WHEREAS, this Ordinance will be conditioned upon LS Networks’ agreement to be bound by the terms of City Ordinance No. 1155;

NOW, THEREFORE, the people of the City of Prineville ordain as follows:

1. The City hereby consents to and approves the assignment of the assets of the System (including the Franchisee’s Franchise) to LS Networks, subject to LS Networks executing an Assumption of Franchise Obligations in a form acceptable to City.
2. LS Networks may only assign, sell, dispose of, or transfer the Franchise or the conduits, cables, and other technical facilities used to provide telecommunication services within the City pursuant to City Ordinance No. 1155.
3. Section 5 of Ordinance No. 1155 is revoked in its entirety.
4. Section 9 of Ordinance No. 1155 shall be amended to read as follows:

#### **Section 9. Franchise Fee.**

1. Company shall pay quarterly to City the sum of three percent (3%) of Company’s gross revenues received from telecommunications service providers who have Franchise agreements with City, which providers re-sell their use of the facilities to third parties within the corporate limits of City, plus seven percent (7%) of Company’s gross revenues received from ultimate consumers of the facilities who

do not re-sell their use of the facilities to third parties within the corporate limits of City and who do not have separate Franchise agreements with City. Company also may, at its option, deduct uncollectible accounts of customers within the corporate limits of City from these gross revenues. The intention of the parties in charging different fees for telecommunications service providers and ultimate consumers is to prevent any end user from paying a permit or franchise fee to City more than once for the same use of the facilities, while at the same time charging a fair amount for the use of City's rights of way.

2. The fee required by this Section shall be due and payable within forty-five (45) days after the end of each March, June, September, and December during the period this Franchise is in effect.
3. With each payment, Company shall furnish City with a written statements under oath, executed by an officer of Company, verifying the amount of gross revenues of Company within City for the quarterly period covered by payment computed on the basis set out in subsection 1. of this Section.
4. City's acceptance of any payments due under this Section shall not be considered a waiver by City of any breach of this Franchise.
5. Section 14 is amended to read as follows:

**Section 14. Franchise Term.** This Franchise is granted for a term of five years beginning July 1, 2016. City agrees to renegotiate in good faith a renewal of this Franchise for a similar term if this Franchise is not in default at its expiration. If the Franchise is not renegotiated or terminated, the Franchise shall continue until terminated by City or Company giving not less than ninety (90) days prior written notice to the other entity.

6. This Ordinance shall be deemed effective: a) thirty (30) days from the date of this Ordinance; or b) upon City's receipt of LS Networks' Assumption of Franchise Obligation in a form approved by City, together with payment for the Franchise fee to be paid pursuant to Section 9 of City Ordinance No. 1155, for the period beginning April 1, 2016, through June 30, 2016, whichever event occurs later.

Passed the by the City Council this \_\_\_\_ day of August, 2016.

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Betty J. Roppe, Mayor

ATTEST:

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Lisa Morgan, City Recorder

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