

The following Ordinance was moved for adoption by Ms. Andrea King and seconded by Mr. Clint Hardy.

PROPOSITION NO. 334

ORDINANCE NO. 836

An Ordinance granting a franchise to Brightspeed of Louisiana, LLC, F/K/A CenturyLink of Louisiana, LLC of Louisiana, on behalf of itself and its operating affiliates (“Brightspeed”) to operate and maintain a telecommunications system (“The System”) on the Town of Welsh, (“The Town”).

The Town hereby ordains that it is in the public interest to grant Brightspeed a Franchise to operate the System pursuant to the terms and conditions contained herein.

SECTION 1. Grant of Franchise. The Town hereby grants to Brightspeed the right, privilege and authority to construct, install, maintain, operate, upgrade, replace, renovate, adjust, protect, support, raise, lower, disconnect, remove and relocate its cables, poles, pedestals, boxes, wires, conduits, conductors, pipes and related appurtenances (“Facilities”) for its System in, under along, over and across the present and future streets, alleys and public ways of the Town (“Public Ways”), for the purpose of providing telecommunication services to the Town’s inhabitants and businesses.

SECTION 2. Acceptance by Brightspeed. Within sixty (60) days after the passage of this Ordinance by the Town, Brightspeed shall file a signed copy thereof with the Town Recorder, otherwise the Ordinance and the rights granted herein shall be null and void.

SECTION 3. Term. The term of this Franchise is two (2) years commencing on the date of Acceptance by Brightspeed as set forth in Section 2, above (the “Initial Term”). This Franchise will automatically renew for 5 successive periods of 1 year each (each 1-year period, a “Renewal Term”), provided however, that either party may terminate this Franchise upon the completion of the Initial Term by providing written notice of its intent to terminate at least thirty (30) days prior to the end of the Initial Term.

SECTION 4. Franchise Fee. Within sixty (60) days after the date of Brightspeed’s Acceptance of this Ordinance and until its expiration, Brightspeed will pay the Town five percent (5%) of Brightspeed’s local exchange access service Gross Revenue. Payment shall be made quarterly within sixty (60) days after the end of each quarter during the Term of this Franchise.

SECTION 5. Records Inspection. Brightspeed shall make available to the Town, upon reasonable advance written notice of no less than sixty (60) days, such information pertinent only to enforcing the terms of this Ordinance in such form and at such times as Brightspeed can reasonably make available. Subject to applicable laws, any information that is provided to the Town and/or that the Town reviews *in camera* is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Any such information provided to the Town shall be immediately returned to Brightspeed following review. The Town will not make copies of such information.

SECTION 6. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the Town shall be nonexclusive, and the Town reserves the right to use the Public Ways for itself or any other entity. The Town’s use, however, shall not unreasonably interfere with Brightspeed’s Facilities.

SECTION 7. Town Regulatory Authority. The Town reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties consistent with applicable federal and state law.

SECTION 8. Indemnification. The Town shall not be liable for any property damage or loss or injury to or death of any person that occurs in the construction, operation or maintenance by Brightspeed of its Facilities. Brightspeed shall indemnify, defend and hold the Town harmless from and against third party claims, demands, liens and all liability or damage of whatsoever

kind on account of Brightspeed's use of the Public Ways. The Town shall: (a) give prompt written notice to Brightspeed of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and (b) permit Brightspeed to assume the defense of such claim, demand, or lien. Brightspeed shall not be subject to liability for any settlement made without its consent. Notwithstanding the other provisions contained herein, Brightspeed shall in no event be required to indemnify the Town for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the Town, its officials, boards, commissions, agents, contractors, and/or employees.

SECTION 9. Insurance Requirements. Brightspeed will maintain in full force and effect for the Term of the Franchise, at Brightspeed's expense, a comprehensive liability insurance policy written by a company authorized to do business in the State of Louisiana, or will provide self-insurance reasonably satisfactory to the Town, protecting it against liability for loss, personal injury and property damage occasioned by the operation of the System by Brightspeed. Such insurance will be in an amount not less than \$1,000,000.00. Brightspeed will also maintain Worker's Compensation coverage throughout the term of this Franchise as required by law.

SECTION 10. Annexation. When any territory is approved for annexation to the Town, the Town shall within ten (10) business days provide by certified mail to Brightspeed: (a) each site address to be annexed as recorded on Town assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the Town's ordinance approving the proposed annexation.

SECTION 11. Plan, Design, Construction and Installation of Brightspeed's Facilities.

11.1 All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

11.2 Brightspeed shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for any required permit from the Town, which permit shall not be unreasonably withheld, conditioned, or delayed. Brightspeed will abide by all applicable ordinances and reasonable rules, regulations and requirements of the Town consistent with applicable law, and the Town may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Brightspeed shall not be obligated to obtain a permit to perform emergency repairs.

11.3 To the extent practical and consistent with any permit issued by the Town, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, renovated or replaced in accordance with applicable and lawful rules, ordinances and regulations of the Town.

11.4 If, during the course of work on its Facilities, Brightspeed causes damage to or alters the Public Way or other public property, Brightspeed shall replace and restore such Public Way or public property at Brightspeed's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration.

11.5 Brightspeed shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the Town. Before installing new underground facilities or replacing existing underground facilities, each party shall first notify the other of such work in accordance with applicable law. In no event will the Town be required to secure Brightspeed's permission or consent to operate or construct in the Town's Public Ways. To the extent practicable under the circumstances, each party may allow the other party, at its own expense, to share a trench for laying its own facilities therein, provided that such action will not unreasonably interfere with the first party's use of the trench or unreasonably delay project completion.

11.6 Nothing in this Ordinance shall be construed to prevent the Town from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect Brightspeed's Facilities, the Town shall give written notice to Brightspeed in accordance with applicable law, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of either Party's Facilities. The two parties

shall work together to ensure that all of their facilities are protected and the project is completed.

11.7 Brightspeed shall not attach to, or otherwise use or commit to use, any pole owned by Town until a separate pole attachment agreement has been executed by the parties.

SECTION 12. Relocation of Facilities.

12.1 Relocation for the Town. Brightspeed shall, upon receipt of advance written notice of not less than one hundred twenty (120) days, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any Brightspeed property located in Public Way when required by the Town consistent with its police powers. Brightspeed shall be responsible for any costs associated with these obligations to the same extent as other users of the respective Public Way and as otherwise required by applicable state or federal law.

12.2 Relocation for a Third Party. Brightspeed shall, at the request of any person holding a lawful permit issued by the Town, protect, adjust, support, raise, lower, temporarily disconnect, relocate or remove any Brightspeed property located in a Public Way, provided that the cost of such action is borne by the person requesting it and Brightspeed is given reasonable advance written notice. In such situation, Brightspeed may also require advance payment. For purposes of this subsection 12.2, "reasonable advance written notice" shall mean no less than thirty (30) days for a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

12.3 Alternative to Relocation. Brightspeed may, after receipt of written notice requesting a relocation of Facilities, submit to the Town written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The Town shall promptly evaluate such alternatives and advise Brightspeed in writing if one or more of the alternatives are suitable. If request by the Town, Brightspeed shall promptly submit additional information to assist the Town in making such evaluation. The Town shall give each alternative proposed by Brightspeed full and fair consideration. In the event the Town ultimately determines that there is no other reasonable alternative, Brightspeed shall relocate the components of the System as otherwise provided herein. Notwithstanding the foregoing, Brightspeed shall in all cases have the right to abandon the Facilities.

SECTION 13. Vegetation Management. Brightspeed shall have the authority to trim trees and other natural growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards. This grant shall in no way impose a duty on Brightspeed; instead, this grant gives permission to Brightspeed should Brightspeed elect to conduct such activities from time-to-time in order to access and maintain its Facilities.

SECTION 14. Renewal. At least one hundred twenty (120) days prior to the expiration of this Franchise, Brightspeed and the Town shall either agree to extend the Term or use best faith efforts to renegotiate a replacement Franchise agreement.

SECTION 15. Revocation of Franchise for Noncompliance.

15.1 In the event that the Town believes that Brightspeed has not complied with the terms of the Franchise, the Town shall informally discuss the matter with Brightspeed. If these discussions do not lead to resolution of the problem, the Town shall notify Brightspeed in writing of the exact nature of the alleged noncompliance.

15.2 Brightspeed shall have thirty (30) days from receipt of the written notice described in subsection 15.1 to either respond to the Town, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the Town of the steps being taken and the projected date that they will be completed.

15.3 In the event that Brightspeed does not comply with subsection 15.2, above, the Town shall schedule a public hearing to address the asserted noncompliance issue. The Town shall provide Brightspeed at least ten (10) days prior written notice of and the opportunity to be heard at the hearing.

15.4 Subject to applicable federal and state law, in the event the Town, after the hearing set forth

in subsection 15.3, determines that Brightspeed is noncompliant with this Ordinance, the Town may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 15.5.

15.5 Should the Town seek to revoke the Franchise after following the procedures set forth above, the Town shall give written notice to Brightspeed. Brightspeed shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the Town may seek revocation of the Franchise at a public hearing. The Town shall cause to be served upon Brightspeed, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the Town shall give Brightspeed an opportunity to state its position on the matter, after which the Town shall determine whether or not the Franchise shall be revoked. Brightspeed may appeal the Town's determination to an appropriate court, which shall have the power to review the decision of the Town *de novo*. Such appeal must be taken within sixty (60) days of the issuance of the Town's determination. The Town may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

15.6 Notwithstanding the foregoing provisions in this Section 15, Brightspeed does not waive any of its rights under applicable law.

SECTION 16. No Waiver of Rights. Neither the Town nor Brightspeed shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

SECTION 17. Transfer of Franchise. Brightspeed's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without notice to the Town, except when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with Brightspeed, or for transfers in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Brightspeed in the Franchise or Facilities in order to secure indebtedness.

SECTION 18. Amendment. Amendments to the terms and conditions contained herein shall be mutually agreed upon by the Town and Brightspeed and formally adopted by the Town Council as an ordinance amendment.

SECTION 19. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have received (a) upon personal delivery or actual receipt thereof or (b) within two (2) business days after such notice is deposited in the United States Mail, postage prepaid, certified, and addressed to the Parties as set forth below:

The Town
Town of Welsh

Brightspeed:
1120 S. Tryon St., Ste. 700
Charlotte, NC 28203

SECTION 20. Publication. In accordance with statute, the Town shall be responsible for publication of this Ordinance, and any amendments thereof. Brightspeed shall be responsible for payment of all necessary and reasonable costs of publication of this Ordinance, and any amendments thereof.

SECTION 21. Severability. If any section, sentence, paragraph, term or provision hereof is for

any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having jurisdiction thereof, or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

Vote by roll call follows:

Yeas: Andrea King, Lawrence Mier, Clint Hardy, Jackie Balmer

Nays: None

Abstaining: None

Absent: Ronnie Hayes

CONSIDERED AND APPROVED THIS ____3rd__ day of __October_____, 2023.

Town of Welsh

Karl Arceneaux, Mayor

ACCEPTED BY BRIGHTSPEED:

BY:_____

TITLE:_____

DATE:_____

ATTEST:

EVA C. KIBODEAUX
Town Clerk

I certify that the foregoing ordinance was presented to the Mayor by me on _____, 2023.

EVA C. KIBODEAUX, CLERK

I acknowledge receipt of the above ordinance from the clerk on _____, 2023.

KARL ARCENEUX, MAYOR

I hereby _____ the ordinance on this _____ day of _____, 2023.

KARL ARCENEUX, MAYOR

I certify the above ordinance was received by me from the Mayor on _____, 2023.

EVA C. KIBODEAUX, CLERK