



# City of Seattle

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## Department of Information Technology

Bill Schrier, Director and Chief Technology Officer

November 3, 2011

To: Honorable Councilmembers, Seattle City Council

From: Bill Schrier, Chief Technology Officer  
Department of Information Technology

Subject: Transfer of Broadstripe LLC Franchise to Wave-I LLC

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### I. Introduction

On August 26, 2011, WaveDivision I, LLC (“Wave I”) and Broadstripe LLC (“Broadstripe”) filed an application Form 394<sup>1</sup> with the Office of Cable Communications (“OCC”) requesting approval of the transfer of Broadstripe assets to Wave-I. Under federal law, the City of Seattle (“City”) has 120 days from the date of a completed transfer application to approve, approve with conditions, or deny the transfer. If the City fails to act within the specified 120 period, by operation of law, the City will be deemed to have consented to the transfer. Consistent with this requirement the City’s decision regarding the transfer request must be effective by December 24, 2011. Council is expected to vote on the transfer request on November 21, 2011. A public hearing is required before Council can take final action on the transfer request and one has been scheduled for November 9, 2011 at 1:00 p.m. in Council Chambers. To assist the Council in rendering its decision and pursuant to the Cable Communications Ordinance (SMC 21.60), the OCC provides this report in which we recommend Council approval of the transfer, subject to specific conditions and commitments that address certain issues set forth below and that protect the City’s interests. Those conditions are incorporated into the proposed consent agreement accompanying the draft transfer legislation provided by the Department of Information of Technology (DoIT) under separate cover.

### II. Background

On October 1, 2007, the City passed and adopted Ordinance 122514, granting to Millennium Digital Media Systems, LLC d/b/a Broadstripe, a cable television franchise agreement permitting Broadstripe to construct, maintain, and operate a cable television system in certain cable franchise districts in the city (“Franchise”). Section 14 of the Franchise and Subsection 21.60.520 of the Seattle Municipal Code provide that neither a cable franchise nor a cable system operated thereunder may be transferred to another person without the approval of the City. The transactions contemplated by a Purchase Agreement between Wave-I and Broadstripe constitute a “Transfer” as that term is defined in the

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<sup>1</sup> Form 394 is the Federal Communications Commission form operators use to request local jurisdictions’ consent to acquisitions, mergers, and in this case transfer of control of the local franchisee or any of its parent corporations.

Franchise. Broadstripe has been in Chapter 11 bankruptcy proceedings since January 2009 and the purchase of Broadstripe's assets by Wave-I is being conducted under the auspices of the bankruptcy court. The bankruptcy court is expected to approve the sale of Broadstripe's assets to Wave-I after Wave-I has secured all the regulatory approvals, such as the Seattle transfer approval.

#### About Broadstripe:

Broadstripe provides cable service, high speed Internet, and digital telephony service (voice over IP or VOIP services) in Washington, Michigan and Maryland. Broadstripe is headquartered in St. Louis, MO, with a regional office in Tukwila, Washington. Broadstripe's cable system in Seattle passes approximately 44,000 residences. In its latest annual report submitted to the OCC, Broadstripe indicates that it served approximately 11,000 subscribers in Seattle, almost 3,000 fewer than in 2006. Broadstripe serves various parts of Seattle including: the Central Cable Television Franchise District, which includes the Central Area, Beacon Hill and Rainier Valley, ("Central District") and parts of Capitol Hill and Queen Anne. Broadstripe is Seattle's only franchised cable provider in most of the Central Cable Television Franchise District (Comcast does serve a small portion of the area). Both Broadstripe and Comcast compete in the Central Business Franchise District and parts of Capitol Hill and Queen Anne.

#### About Wave-I:

Wave-I is a privately held company and wholly-owned subsidiary of WaveDivision Holdings, LLC ("Wave"), which is a Delaware limited liability company that was formed on November 6, 2002. Wave-I was formed as a limited liability company in the State of Washington. Wave and its affiliates serve approximately 328,000 cable, high-speed data and phone customers in California, Oregon and Western Washington. Wave is headquartered in Kirkland, Washington, where its corporate offices are co-located with its call center (which houses over 120 call agents) and its 24x7 network operations center. Wave also has 22 regional offices or retail stores in its service areas, including Port Orchard, La Conner, and Port Angeles, WA, Woodburn, and Canby, OR, San Mateo and Concord, CA, and West Sacramento and Rocklin, CA. According to the filed FCC Form 394, Wave was formed in 2002 for the purpose of acquiring, developing and operating superior broadband systems in major markets on the West coast. Wave acquired and began operating several groups of cable systems within the state of Washington in 2003, primarily in Kitsap County, Snohomish County, and in areas along the Olympic peninsula. In 2005, Wave acquired and began operating systems in the San Francisco Bay area where it provides services under the name of Astound Broadband, and in 2007, Wave acquired and began operating systems near Portland, OR.

### **III. Description of Transaction**

In its written response to the City's questions, Wave-I indicates that at the closing of this transaction, Broadstripe will sell and convey all of its assets in its Pacific Northwest cable systems to Wave-I. There will be no intermediate companies or additional steps as in 2006, when Wave first attempted to purchase the Broadstripe (then Millennium) assets. The closing of this transaction is conditioned on the closing of two other transactions involving Broadstripe's assets in the States of Maryland and Michigan. We expect those closings to occur contemporaneously with the closing of the Pacific Northwest cable systems.

### **IV. Standard and Scope of the Review**

The transfer of franchises and cable system assets are governed by federal and local laws, and by any terms pertaining to transfers included in a franchise agreement between a cable operator and the local franchise authority.

#### Federal Law:

Federal law relating to cable franchise transfers provides mostly procedural requirements. The grounds for determining whether to grant consent or deny the transfer request are governed primarily by local law.

#### Seattle Law:

SMC 21.60 sets forth specific procedures the City must follow when there is a transfer of control of one of the City's cable franchises. The procedures include notice requirements, a public hearing, preparation and introduction of an ordinance to Council and restrictions on Council's ability to act on the proposed transfer until 30 days after the legislation has been introduced.

A cable franchise may not be sold, transferred, leased, assigned or disposed of in whole or in part without prior approval of the City expressed by ordinance, and then only under such conditions as the City may prescribe. *See* SMC 21.60.520. The City may not unreasonably refuse a request to transfer a franchise. *Id.* To obtain Council approval, the proposed assignee must demonstrate financial responsibility and the ability to comply with the provisions of SMC Chapter 21.60 (Cable Communications Ordinance), as determined by the Council, and must agree to comply with all provisions of SMC Chapter 21.60. *Id.*

SMC 21.60 et seq. requires the City to treat a transfer request procedurally as a grant or franchise renewal. SMC 21.60 also requires the OCC to provide Council with a report on the prospective franchisee. Accordingly, this report is designed to provide Council with the information it will need to make an informed decision on the transfer request. The OCC retained consultants to provide some of the legal, technical, financial and other information contained in this report. The work includes a financial review of Wave-I and a franchise fee audit of Broadstripe. Outside counsel and the City's Law Department reviewed the Form 394 and provided an analysis of the transfer and Wave's corporate structure. Additionally the OCC retained a cable engineer to determine the extent to which Broadstripe had completed the remediation work identified in the inspection and correction agreement negotiated between Broadstripe and the OCC in May 2010. We include information about Wave's technical qualifications and their plans for infrastructure improvements. This report also includes call data regarding Broadstripe from the OCC database since Broadstripe received its new franchise in late 2007.

#### Broadstripe Franchise:

Under Section 14.1(B) (2) of the Broadstripe Franchise, the City may inquire into the qualifications of the prospective franchisee. Similar to the granting of a franchise, the City may consider such things as: 1) the applicant's proposed quality of service; 2) the applicant's experience and character, and background of the management and owners; 3) the cable system's technical and performance quality; and 4) the applicant's ability to abide by the terms and requirements of the franchise. *See* SMC 21.60.260.

The OCC relied upon the documents and information listed below to evaluate the Broadstripe-Wave-I transfer:

- FCC Form 394 filed by Broadstripe and Wave. The FCC requires cable companies seeking franchise transfers to file an FCC Form 394 with local regulators (where local rules require franchise authority consent). Form 394 discloses information about past adverse findings, financial qualifications, technical qualifications, and the transferee's background, experience and character.
- Financial and economic data and projections, and other specific information provided in response to requests generated by the OCC.
- Reports from financial consultant Ashpaugh and Sculco, CPAs PLC, including:

- 1) An analysis of financial data provided Wave - I (Attachment A); and
- 2) An audit of franchise fee payments made to the City by Broadstripe from January 1, 2006 through December 31, 2010.

- Report from legal consultant Brian Grogan of Moss & Barnett (Attachment B).
- Telephone interviews with local franchise authorities in Washington, Oregon and California where Wave operates cable systems.
- Technical Audit performed by Kramer.Firm Inc.
- Telephone interviews with executives from Wave I and Broadstripe.
- Data from OCC database.
- Information based on OCC compliance audit of Broadstripe.

This report describes our assessment of Wave I's legal, financial and technical qualifications, executive experience, and willingness and ability to meet or exceed the requirements set forth in SMC Chapter 21.60 and Broadstripe's Franchise. In addition, our review includes results of our compliance audit of Broadstripe including, among other things, a financial audit of franchise fee payments made by Broadstripe, a technical spot check of Broadstripe's cable system to determine the extent of its remediation efforts required under an agreement with the OCC, a review of customer inquiries received by the OCC pertaining to Broadstripe and an assessment existing deficiencies in Broadstripe's performance under the franchise, related agreements and applicable law. It also provides information from reference checks conducted by the Office of Cable Communications with officials in other cities where Wave holds franchises and provides services.

## **V. Analysis**

### **A. Legal Qualifications**

The legal qualification standard relates primarily to the analysis of whether the transferee (Wave-I) has the appropriate authorization for the consummated transaction and is authorized to operate and control the cable system and franchise serving the City. The applicable standard of review is that the City's consent shall not be unreasonably withheld.

According to the attached legal analysis by the City's outside Counsel Brian Grogan of Moss and Barnett:

The proposed Assignee, Wave-I, is a Washington limited liability company and proposes to conduct business under the trade name Wave Broadband. Wave-I's sole member and manager is WaveDivision Holdings, LLC, a Delaware limited liability company ("Wave Holdings"). Wave Holdings is also the sole member and manager of seven (7) other active limited liability companies that own and operate cable, data and phone networks. See attached organizational structure chart provided by Wave-I as part of FCC Form 394.

Wave-I was issued a Certificate of Formation by the Secretary of State of the State of Washington on November 4, 2002 and remains in good standing as of the date of this report. WaveDivision was formed on November 6, 2002 and remains in good standing as of the date of this report according to the State of Delaware.

Based on the November 2, 2011 report prepared by Mr. Garth Ashpaugh, "Review of Transfer of Cable Television Franchise from Broadstripe to WaveDivision I, LLC," we recommend that the City's consent to the proposed transfer be conditioned on the provision of a guaranty from Wave Holdings. This guaranty should require Wave Holdings to irrevocably and unconditionally guaranty the full and faithful performance by Wave-I of all of the terms, covenants, conditions and agreements contained in the Franchise.

Mr. Grogan concludes that:

Based upon our review of the proposed Assignment described in the Application, we see no basis for the City to deny the Assignment based on a lack of legal qualifications of Wave-I. We recommend that the City condition its approval of the Assignment on an acceptable guaranty from WaveDivision. The City should further condition approval of the Assignment on Wave-I's commitment to comply with all terms of the Franchise and assume any liability of Broadstripe under the Franchise as more fully described in the attached Consent Agreement.

#### B. Financial

The OCC has retained Ashpaugh & Sculco CPAs, PLC ("A&S") to prepare a financial analysis of Wave to determine what effect, if any, the assumption of Broadstripe's assets will have on Wave's financial health and its ability to meet its franchise obligations and other commitments to the City. A&S has extensive experience analyzing the financial workings of cable operators and has prepared a report summarizing its findings. From its review of the data obtained, A&S makes the following relevant observations:

- Wave's consolidated financial information (actual and forecast) seems consistent with stand-alone financial data and operating results of Broadstripe which show declines in cable television subscribers and revenue.
- Wave-I forecasts growth in revenues in its data, voice and commercial lines of business and growth in video in 2013-2015. The growth in data, voice and commercial is driven by growth in number of customers and in revenue per customer, while the growth in video revenues is driven primarily by increases in prices for services.
- Wave-I has forecast expenses to remain relatively flat and A&S believes that Wave has under-forecast expenses for programming that continue to increase at about 7% to 10% per year.
- Wave-I shows projected reductions in debt associated with the Northwest region that is supported by consistent levels of cash flow in 2011 and 2012 and significant increases in 2013-2015.
- WaveDivision Holdings, LLC and Subsidiaries will be subject to a large refunding of debt required in 2014. In response to the City's request concerning repayment of this debt, Wave I stated:

*Between now and the maturity dates, Wave will make quarterly payments as called for under the amortization schedule contained within Wave's credit agreement. In addition Wave has made, and will continue to make, additional principal payments over and above those required by the amortization schedule. All principal repayments are funded by cash generated through ongoing operations. In addition and as is typical in the cable television industry, Wave has the ability to refinance its outstanding debt with a number of different lenders with which Wave has existing relationships.*

The analysis of A&S has not identified anything that would contradict Wave's response.

Finally, A & S concludes:

The forecast financials of Wave-I support that it is financially capable of meeting the requirements of the franchise with the City. The financials rely on growth in video, data, voice and commercial revenues that seems consistent with operators of this size. They also rely on little or no growth in expenses. Should this revenue growth not occur or occur in a lesser fashion than anticipated, financial concerns could arise. Any increase in expenses could also put additional financial pressure on Wave I.

As noted A&S concludes that Wave-I is financially capable of meeting the requirements of the franchise. However, based on the foregoing concerns A&S (as our legal consultant) recommends that the City require a performance guarantee from Wave-I's parent company, WaveDivision Holdings, LLC.

### C. Technical Qualifications.

Any cable operator wanting to assume a franchise in Seattle must demonstrate that it has the requisite technical expertise to operate a cable system and to meet the technical and safety requirements of the FCC and the City. As noted earlier, Wave has operated cable systems in Washington, Oregon and California since 2003 and appears to have sufficient technical expertise to operate a cable system in accordance with federal and local laws and regulations. Wave-I has agreed to abide by the terms of the Franchise and the Seattle Municipal Code, which include requirements to comply with applicable technical and safety codes and regulations.

Wave-I indicates that it is planning several capital improvements to the system being purchased from Broadstripe. Specifically, Wave-I notes that it will integrate the current Broadstripe service areas in Seattle and King County into Wave's existing distribution network, which provides services to Wave's customers in Washington, Oregon and California. Wave-I intends to construct a fiber optic ring connecting Broadstripe's current headend to its headend in Port Orchard. Once established, this fiber loop will increase reliability of the network by providing redundant paths for signal delivery and result in fewer outages, increased signal quality, and the ability for Wave-I to offer an updated video on demand (VOD) product. Wave-I expects to complete this integration approximately six months after closing. At such time the current Broadstripe headend will serve as a local hub. Following this integration Wave-I will upgrade areas of Broadstripe's system that do not meet Wave-I's requirements for signal quality. Wave-I then intends to upgrade its high speed data service to DOCSIS 3.0, the same specification employed by Comcast. This upgrade will allow Wave-I to provide 50 Mbps Internet service to its Seattle customers. The current top speed advertised by Broadstripe is "up to" 15 Mbps.

According to Wave-I these planned upgrades will result in better services and reliability for its Seattle subscribers. It says that subscribers should see an immediate improvement in the quality of their high speed Internet service. Additionally, once current subscribers are connected to the master headend located in Port Orchard, Wave-I will be able to launch additional high-definition channels and enhanced video-on-demand (VOD) services. Improvements in video service including VOD are expected to be completed approximately 12 months following closing. Customer service calls will be handled by Wave I's call center in Kirkland, WA. In addition to improved customer response time, Wave-I expects to also improve the quality of customer service while focusing on its goal to provide a first response resolution to customer problems.

Wave-I has committed to curing deficiencies in the Broadstripe system that were identified in the City's technical audit. This information is covered in more detail below.

### D. Ownership and Management

Wave is controlled by the Sandler V Partnerships which hold 90% of Wave's Class A Membership Units. The Sandler V Partnerships include three separate Delaware limited partnerships which are commonly managed as a private equity fund by Sandler Capital Management, an entity which specializes in private and public investments in the media, communications and entertainment industries and related businesses. Steve Weed, Wave CEO, and Steve Friedman, Wave COO, are also part owners of Wave. Wave I's senior management team, consisting of four members, has a combined 92 years of cable industry experience. Wave-I has stipulated that no adverse finding has been made by any court or administrative body in any civil, criminal or administrative proceeding with respect to the revocation, suspension or involuntary transfer of any authorization to provide video programming services, including cable television services.

Wave-I indicates that in addition to the senior management team it will have a full complement of local managers and technical staff responsible for managing and operating the cable system. The majority of the current management team will continue to manage the day to day operations.

Wave-I customers will be served by Wave's call center in Kirkland. The call center will be open Monday through Friday from 7:30 AM to 8:00 PM, Saturday from 8:00 AM to 5:00 PM and Sunday, 9:00 AM to 1:00 PM. Their network operation team located at the same Kirkland offices will monitor system performance 24x7. Additionally technical service representatives will be available 24x7.

Mr. Weed was the former COO of Millennium Digital Media ("MDM"). Prior to that he worked for Summit Communications Inc. ("Summit") and also served as President of the NW Region when Summit was sold to Millennium in 1999. He departed Millennium in 2002 to form Wave. During Mr. Steve Friedman, Wave-I COO similarly worked with Mr. Weed at Summit and then Millennium. He joined Wave in March 2003. During Mr. Weed's and Mr. Friedman's tenure with Summit and Millennium, the companies were cited by the OCC for serious franchise violations including:

- 1) The illegal installation of cable facilities and provisioning of cable services to customers in areas of the city where Summit and Millennium did not have a franchise granted by the City (a violation of SMC 21.60 and federal law). Attempts by the OCC to resolve this issue were often frustrated and long delays ensued.
- 2) Millennium's failure to build out its cable facilities according to the requirements in the competitive franchise it was awarded.

We note that ultimately these issues were resolved to the City's satisfaction. In its written responses to the City Wave-I indicates that it intends to fully comply with all franchise agreement provisions and to meet or exceed all operational requirements of the City. Wave I has also indicated that it does not seek any modification to the term of any conditions of service or operations of the system as set forth in the current franchise. In addition, Wave's parent company, WaveDivision Holdings, LLC, has agreed to ensure that the transferee Wave-I meets all of its obligations.

Wave and its affiliate companies have operated for many years in other cities and counties in Western Washington, Oregon and California. OCC staff contacted some of these jurisdictions to determine the level of satisfaction with Wave's services, and to uncover any current issues involving the company. OCC spoke with staff from: San Francisco, CA, San Mateo, CA, Port Orchard, WA, Bremerton, WA, Skagit County, WA, and Clackamas County, OR. In all cases representative from these jurisdictions reported no known issues or areas of chronic complaints with the company. Some of the people contacted were personal users of Wave services and reported being very satisfied with the services and level of technical and customer support provided by Wave.

#### E. OCC Compliance Audit

In addition to determining the technical, legal and financial qualifications of Wave, the transfer provides the City with an opportunity to correct performance deficiencies by Broadstripe. While the transfer request cannot be denied arbitrarily, the City need not approve a transfer that would have an adverse effect upon it and can place conditions on the transfer to protect the City's interests. The City should not be expected to grant the transfer unless outstanding performance deficiencies are remedied. In the event that such remedies cannot be secured prior to the transfer, the City must receive a commitment from Wave-I to assume Broadstripe's obligations to correct any problems. Wave-I has agreed. As part of its compliance audit the OCC arranged for a franchise fee and technical audit and conducted a review of complaints received by the OCC pertaining to Broadstripe since it acquired its new franchise in October 2007.

#### Technical Audit:

In 2009 the City retained the services of Kramer.Firm Inc. to conduct a technical audit of the Broadstripe system with a focus on identifying the specific technical reasons why a disproportionate number of Broadstripe subscribers complained to the OCC about slow Internet speeds and poor television reception. Kramer.Firm Inc. has performed technical audits of cable systems for approximately 600 local governments for 30 years. The audit discovered a widespread problem with the cable drops (the wire that connects to the home from the utility poles). According to Kramer.Firm:

*“Our observation of the cable signals and pictures on the main plant system make it clear that the drop cables are the key source of the subscriber complaints regarding picture reliability and Internet speed impairments.”*

Specifically, the consultant found that these drops were old and over time many had lost some of the protective shielding required to block ambient radio frequency emissions from interfering with signals being delivered to the premise. In addition to contributing to a decrease in technical quality, many of the drops were in violation of the National Electrical Code (NEC). To resolve the technical quality problems and achieve compliance with their franchise, Broadstripe entered into an agreement with the City to inspect the drops to each premises, repair drops where necessary, and bring its system into compliance with code. The work under the agreement is to be completed by May 2012.

In October 2011 the OCC again retained Kramer.Firm to assess Broadstripe's progress. Unfortunately, the consultant found that a lot of work still needed to be done fixing the deficient drops and bringing the cable system up to code. The consultant estimated that it will take at least another year to complete the work as specified in the agreement between the City and Broadstripe. The OCC recommends that the transfer be conditioned on Wave-I assuming this responsibility.

#### Franchise Fee Audit:

The OCC retained A&S to conduct an audit of franchise fee payments paid to the City by Broadstripe from January 1, 2006 through December 31, 2010. We will receive the results of the audit within the next couple of weeks. If there is an underpayment of franchise fees Broadstripe or Wave-I have committed to pay those funds to the City.

#### OCC Data

The following table provides information on the calls to the OCC about Broadstripe Service since Broadstripe received its new franchise in October 2007. We include this information to provide Council with a sense of the problems experienced by Broadstripe subscribers since the new franchise was awarded in 2007. The data can also serve to provide a benchmark by which to assess Wave performance going forward. We note that complaints about Internet service and picture quality are trending downwards.

Sum of # Incidents						Grand Total
	Q4-2007	2008	2009	2010	Thru Q2-2011	
Nature of Call	Broadstripe	Broadstripe	Broadstripe	Broadstripe	Broadstripe	
Billing/Late Fees	4	23	51	35	11	124
Cable Discount	2	53	17	38	8	118
Channel Line-up		3	4	5	3	15
Comments		25	25	33	9	92
Customer Service	1	2	34	8	5	50
Installations		2	20		1	23
Internet Service		18	50	26	8	102
Long Holds		2	6		1	9
Miscellaneous	3	12	9	7	3	34
Picture Quality/Reception/Programming	4	3	9	27	5	48
Rates/Taxes		7		1		8
Service Outage	4	3	20	12	2	41
Service Provider/New Cable Service	1	6	9	12	4	32
<b>Grand Total</b>	<b>19</b>	<b>159</b>	<b>254</b>	<b>204</b>	<b>60</b>	<b>696</b>

## VI. Conclusion

Based on our analysis Wave-I appears to have sufficient legal, financial, and technical qualifications to warrant City approval of the transfer of Broadstripe's Franchise to Wave-I. As required, Wave-I will comply with the franchise and Seattle Municipal Code requirements and will agree to resolve any outstanding compliance issues. The OCC therefore recommends that Council approve the transfer of the franchise to Wave-I subject to the conditions outlined herein and further delineated in the consent agreement that accompanies draft legislation submitted by DoIT. If the City were to deny the transfer we would be left with a bankrupt operator that would lack the financial resources to maintain the network and improve service.

Importantly, the consent agreement does not relieve Broadstripe of liability under the Franchise. However, because Broadstripe is in bankruptcy, both Wave-I and its parent, Wave Holdings, agree to assume all current and future commitments, duties, liabilities and obligations of Broadstripe under the Franchise. Moreover, the consent Agreement requires that Wave-I must comply with all provisions of the Franchise and Wave Holdings is required to guaranty performance by Wave-I.

In addition to these obligations, as noted above there are several pending compliance issues which the City is attempting to resolve with Broadstripe prior to the anticipated closing date of the Assignment, December 31, 2011 ("Closing"). If Broadstripe is unable to complete performance prior to Closing, Wave-I must insure compliance with the Franchise by meeting specified obligations in the Consent Agreement. These issues include the following:

1. **Franchise Fees and Utility Taxes:** Wave-I must remit to City full payment for any past due franchise fees, cable utility taxes, fees in support of local access programming and any other fees, taxes or assessments, if any, which Broadstripe rightfully owes the City, together with applicable interest.
2. **Internet Tax:** If Broadstripe fails to complete remittance of un-refunded Internet Tax collections prior to Closing, Wave-I must remit payment to the City in the amount up to \$150,000 in settlement of all issues related to the collection of the Internet Tax by Broadstripe.
3. **Needs Ascertainment:** In the event that Broadstripe fails to complete a Franchise required needs ascertainment prior to Closing, Wave-I must reimburse the City for its reasonable documented out-of-pocket expenses incurred, in an amount not to exceed \$50,000.
4. **High Definition Channel:** - No later than March 1, 2012, Wave-I must provide High Definition (HD) channel capacity for the Seattle Channel at channel 121.
5. **Technical Verification:** If Broadstripe is unable to complete a verification of a technical cure plan in place with the City, Wave-I must reimburse the City for all costs and expenses associated with hiring an outside technical consultant to verify that previously documented technical deficiencies have been cured.
6. **System Improvements following Assignment:** Within eighteen (18) months following the Closing, Wave-I will:
  - A) Integrate the current Broadstripe service areas in the City and King County into Wave Holdings' existing distribution network in Washington (which links to Wave Holdings' distribution networks in Oregon and California).
  - B) Upgrade the portions of the Broadstripe cable system in the City to 750 MHz capacity;
  - C) Upgrade the video product offerings in the City to include greater HD and VOD services in the City;
  - D) Upgrade the broadband data product offerings in the City to include a 50 Mbps (downstream) service; and
  - E) Launch commercial phone service in the City.
7. **Impact on Renewal and Rates:** The Assignment will not have any effect on any authority the City may have to renew the franchise nor shall it result in an increase in the rates for basic cable service as uniformly applied throughout the City – franchise area.
8. **Local Office:** Wave-I must maintain at least one (1) local office or assume the Pay Station Agreement by and between the City of Seattle Department of Neighborhoods, Comcast of Washington IV, Inc., Comcast of Washington I, Inc., and Broadstripe.
9. **Reimbursement of City Costs** - Wave-I must fully reimburse the City for all costs and expenses related to the financial and technical audit of Broadstripe, including applicable consultant and attorneys' fees related to the City's approval of the Assignment.

We note that some areas of Seattle served by Broadstripe, particularly the Central District, Rainier Valley, are home to many lower- income residents, who currently pay the highest cable prices in the Seattle but often receive less in terms of service offerings and service quality. We also understand that this community has endured a low level of investment in cable communications infrastructure for many years and that there is a lot of pent up frustration over this situation. There is always some concern that a

smaller cable operator like Wave-I will be unable to match the technological sophistication of large cable operators such as Comcast and that consequently residents in areas, where Wave-I remains the sole cable provider will continue to have fewer and less innovative service options.

We appreciate that Wave has indicated that it intends to upgrade the existing cable system in Seattle and ensure that all of our citizens have access to the latest services. While the OCC cannot guarantee that Wave-I's efforts will result in the stated improvements and greater subscriber satisfaction, we are cautiously optimistic that Wave-I will be able to significantly improve technical and service quality in relation to Broadstripe. We base this conclusion on the following:

- 1) Wave-I will be injecting about \$15 Million in capital improvements to the Northwest system. We expect a significant portion of that amount to be spent in Seattle;
- 2) Wave-I will provide the technical improvements outlined in this report and specified in the consent agreement;
- 3) The company has a proven record of purchasing underperforming cable systems and retooling them to provide more advanced technical services; and
- 4) Wave is a local company with headquarters in Kirkland Washington. OCC staff has visited the customer service and network operations center in Kirkland and found both to be state of the art.

We will provide Council periodic updates on improvements made to the network by Wave-I.

cc: Jennifer Devore, CBO  
Erin Devoto, DoIT  
Tony Perez, DoIT  
Alice Lawson DoIT  
Brenda Tate, DoIT  
Jennifer Merkel, Law  
John Groh, Law

Attachments:

- 1) Financial Review from Ashpaugh and Sculco
- 2) Legal Report from Moss and Barnett