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CB 117306

Tony Perez / Martha Lester
DoIT Wave Transfer ORD
November 16, 2011 October 6, 2011
Version #12 #10

ORDINANCE _____

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AN ORDINANCE related to cable television; authorizing the Chief Technology Officer to execute an Assignment of Cable Franchise Consent Agreement for the purpose of implementing and administering the transfer of control, subject to conditions, of the nonexclusive franchise agreement authorized by Ordinance 122514 and held by Broadstripe, LLC, to WaveDivision I, LLC, a wholly-owned subsidiary of WaveDivision Holdings, LLC; and ratifying and confirming prior acts.

WHEREAS, Broadstripe, LLC (Broadstripe) provides cable services within the city of Seattle (city) pursuant to the nonexclusive franchise agreement authorized by Ordinance 122514, as amended (Franchise); and

WHEREAS, on August 16, 2011, Broadstripe and WaveDivision I, LLC (Wave-I), entered into a Purchase and Sale Agreement whereby Broadstripe agreed to sell and convey all of its assets and cable system facilities within the city that Broadstripe owns and operates pursuant to the Franchise; and

WHEREAS, pursuant to Section 14 of the Franchise and SMC 21.60.520, the Franchise may not be transferred without prior consent of The City of Seattle (City), as expressed by ordinance; and

WHEREAS, pursuant to 47 U.S.C. section 537, the City has 120 days to act upon a request for approval of a transfer after receipt of a completed application unless an agreement is reached to extend the date; and

WHEREAS, Broadstripe and Wave-I filed with the City a Federal Communications Commission Form 394, Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise (Application) on August 26, 2011, as subsequently supplemented by Wave-I; and

WHEREAS, the City, through its Office of Cable Communications, requested additional information necessary to evaluate the Application; and

WHEREAS, the City has received information sufficient to make a determination regarding the Application; and

WHEREAS, Wave-I is not seeking any modification of the terms and conditions of the Franchise in connection with the transfer and agrees to comply fully with all Franchise provisions and to meet or exceed all applicable and lawful federal, state, and local requirements including, but not limited to, those relating to franchise fees, customer service, and technical standards; and

1 WHEREAS, Wave-I provided evidence of financial responsibility and its ability to comply with
the Franchise and SMC Chapter 21.60; and

2 WHEREAS, the proposed transfer is not contrary to public interest or federal, state, or local law;
3 and

4 WHEREAS, Wave-I agrees to enter into the Assignment of Cable Franchise Consent Agreement,
5 which requires Wave-I to comply with the terms of the Franchise, among other things,
6 and to otherwise continue to operate the cable system in a manner that benefits the
residents of the city; NOW, THEREFORE,

7
8 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

9 Section 1. The Chief Technology Officer is authorized to execute the Assignment of
10 Cable Franchise Consent Agreement (Consent Agreement) substantially in the form attached as
11 Attachment A, thereby approving the transfer of control of the nonexclusive franchise agreement
12 authorized by Ordinance 122514 (Franchise) and held by Broadstripe, LLC, to WaveDivision I,
13 LLC, a wholly-owned subsidiary of WaveDivision Holdings, LLC, subject to the terms and
14 conditions contained in the Consent Agreement; and to file the fully-executed Consent
15 Agreement with the City Clerk and the Office of Cable Communications ~~within ten days after~~
16 ~~the Mayor's signature on this ordinance~~; and to take such further action as may be necessary to
17 effect the Franchise transfer, consistent with the Consent Agreement.

18
19 Section 2. In the event the Franchise transfer does not occur, or in the event the transfer
20 occurs on substantially or materially different terms from those terms described in the Federal
21 Communications Commission Form 394, Application for Franchise Authority Consent to
22 Assignment or Transfer of Control of Cable Television Franchise, or in the event
23 WaveDivision I does not accept each and every condition of the transfer required of it as set
24 forth in the Consent Agreement, the consent provided herein shall be null and void, and the City
25 shall be deemed to have disapproved the transfer under the Franchise and federal law.

1 Section 3. Any acts consistent with and prior to the effective date of this ordinance are
2 ratified and confirmed.

3 Section 4. This ordinance shall take effect and be in force 30 days from and after its
4 approval by the Mayor, but if not approved and returned by the Mayor within ten days after
5 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.
6

7 Passed by the City Council the ____ day of _____, 2011, and
8 signed by me in open session in authentication of its passage this ____ day of
9 _____, 2011.
10

11 _____
12 President of the City Council

13 Approved by me this ____ day of _____, 2011.
14

15 _____
16 Michael McGinn, Mayor
17

18 Filed by me this ____ day of _____, 2011.
19

20 _____
21 City Clerk
22

23 (Seal)

24 Attachment A: Assignment of Cable Franchise Consent Agreement
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**ATTACHMENT A
ASSIGNMENT OF CABLE FRANCHISE
CONSENT AGREEMENT**

This Assignment of Cable Franchise Consent Agreement ("Agreement") is entered into effective as of the Effective Date (as defined in Section 2. below), by and between WaveDivision I, LLC, a Washington limited liability company ("Wave-I"), WaveDivision Holdings, LLC, a Delaware limited liability company ("Wave Holdings") and the City of Seattle, a Washington municipal corporation ("City"), each of which may be referred to individually as a "Party" and collectively referred to as the "Parties".

RECITALS

A. As authorized by Ordinance 122514, the City and Millennium Digital Media Systems, L.L.C. d/b/a Broadstripe, LLC ("Broadstripe") are parties to 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").

B. On August 16, 2011, Broadstripe (and its affiliates) and Wave-I entered into a Purchase and Sale Agreement ("Purchase Agreement") whereby Broadstripe agreed, among other things, to sell and convey all of its assets and cable system facilities within the City that Broadstripe owns and operates pursuant to the Franchise (the "Cable System") to Wave-I ("Assignment").

C. Wave-I's sole member and manager is Wave Holdings and Wave Holdings is the sole member and manager of seven (7) other active limited liability companies that own and operate cable, data and phone networks.

D. 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 the Purchase Agreement constitute a "Transfer" as that term is defined in the Franchise.

E. On or about August 26, 2011, Broadstripe and Wave-I submitted FCC Form 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise (the "Application") for the City's consent to the Assignment. Following the receipt of additional information requested by the City, the City deemed the Application complete on _____.

F. On _____, November 21, 2011, the Seattle City Council adopted passed the ordinance introduced as Council Bill _____ (Ordinance _____) 117306 approving the Assignment, and thirty (30) days after the Mayor signed Ordinance _____ the ordinance introduced as Council Bill 117306 it became effective. The City's approval of the Transfer through the Assignment is subject to execution and filing of this Agreement by Wave-I. The date on which Wave-I files the executed Agreement shall be the Approval Date.

AGREEMENT

1. **Consent.** Subject to the terms and conditions of this Agreement, the City consents to the Assignment as specified in the Application. The City acted on the Application in a timely manner under Applicable Law. For purposes of this Agreement, “Applicable Law” shall mean any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order ~~which that~~ has been issued, executed, entered and deemed applicable to City, either specifically or by reference to a class including City, by any court of competent jurisdiction or other federal or state department, commission, board or agency, as any of the same may be amended from time to time. The City’s consent to the Assignment shall be null and void and the City shall be deemed to have acted to reject the Application, if a duly authorized officer or agent of Wave-I fails to deliver the notice required pursuant to Section ~~2322~~ of this Agreement.

2. **Effective Date.** For purposes of this Agreement, the “Effective Date” shall be the later of: 1) the Approval Date; or 2) the “Closing Date” as defined in Section 4.1 of the Purchase Agreement.

3. **Reservation of Rights.** The City reserves all rights not otherwise expressly granted in this Agreement. In particular, and without limitation:

~~3.1~~ 3.1 — Neither this Agreement, nor any other action or omission by the City at or before the execution of this Agreement, shall be construed to grant the City’s consent to any future transfer of the Franchise or the ~~cable system~~ Cable System, or change in ownership or control of Wave-I, or to mean that the City’s consent to any future transaction that is required by the Franchise is otherwise not required.

~~3.2~~ 3.2 — As a result of the Assignment, the City does not waive its rights with respect to Broadstripe’s compliance with the terms, conditions, requirements, and obligations set forth in: 1) the Franchise; 2) the May 10, 2010 Inspection and Correction Agreement between Broadstripe and the City (“Correction Agreement”); 3) Title 21, Chapter 21.60, of the Seattle Municipal Code; 4) the 2007 Settlement Agreement; and 5) any other applicable agreement (collectively, the “Franchise Documents”), and other Applicable Law ~~or agreement~~, including the City’s right to compel Broadstripe or its successors in interest to comply with the provisions of the Franchise Documents.

The “2007 Settlement Agreement” means the agreement resulting from the 2007 Broadstripe change of control proceeding executed by the City on October 28, 2007 and executed by Broadstripe on October 18, 2007. All of the provisions of the 2007 Settlement Agreement are enforceable against Wave-I with the following exceptions:

1) Section 3.A is modified to delete the following sentence: *This lower- priced tier shall have an initial price of \$19.99 and will be comprised of approximately 30 channels*; 2) The obligations in Section 3.D shall be satisfied in full by Wave-I if Wave-I remits to the City \$40,000 within thirty (30) days after the Closing Date; and 3) Sections 3.F, 3.G, 3.H, 3.I, and 3.K have been fully satisfied and are no longer applicable.

The City's approval of the Assignment shall in no way be deemed a representation by the City that Broadstripe or its successors in interest are in compliance with all of Broadstripe's obligations under the Franchise Documents; provided, however, other than the matters of non-compliance expressly set forth in this Agreement the City, following due inquiry, is not presently aware of any default by Broadstripe to comply with the terms, conditions, requirements, and obligations set forth in the Franchise Documents and no event has occurred and is continuing ~~which~~^{that}, with the giving of notice or passage of time, or both, could constitute a default thereunder. If prior to the Effective Date the City becomes aware of any matters that may be a default by Broadstripe under the terms, conditions, requirements, and obligations set forth in the Franchise Documents, the City shall provide prompt written notice of any such matter to Broadstripe, Wave-I and Wave Holdings specifying with reasonable particularity the nature of such matter of default and the City's proposed cure of same. The City will look initially to Broadstripe for full performance of all the obligations under the Franchise Documents that existed or accrued prior to and on the Effective Date and the City will look initially to Wave-I for full performance of all the obligations under the Franchise Documents ~~from and~~ after the Effective Date.

4. Compliance with Franchise.

4.1.4.1 As of the Effective Date, Wave-I accepts, acknowledges, and agrees to be bound by all terms and conditions of the Franchise Documents and to assume all current and future commitments, duties, liabilities and obligations of Broadstripe thereunder. Neither the Assignment nor the City's consent thereto shall diminish or otherwise affect Broadstripe's or Wave-I's commitments, duties, liabilities, or obligations embodied in the Franchise Documents, except as may be specifically provided for and described herein.

4.2.4.2 As of the Effective Date, Wave-I shall comply with all provisions of the Franchise Documents. Furthermore, Wave-I is bound by and shall comply with all Applicable Law.

4.3.4.3 Neither the Assignment nor the City's approval of the Assignment shall in any respect relieve Broadstripe of responsibility for past acts or omissions, known or unknown, unless expressly stated in this Agreement or ~~as~~ otherwise expressly described in writing by the City.

5. Guaranty.

5.1.5.1 Obligations Guaranteed. In consideration of the City's approval of the Assignment, Wave Holdings hereby absolutely, irrevocably and unconditionally guarantees the full and faithful performance by Wave-I of all of the terms, covenants, conditions and agreements contained in the Franchise Documents and this Agreement subject to Applicable Law.

5.2.5.2 Representations and Warranties. Wave-I and Wave Holdings hereby represent and warrant that:

A. Wave Holdings has investigated fully whether any benefit or advance will inure to Wave Holdings by reason of the execution of this Agreement, and has determined that a direct or indirect benefit will inure to Wave Holdings by reason of the execution of this Agreement.

B. This Agreement is a legal, valid and binding agreement of Wave-I and Wave Holdings that is enforceable in accordance with its terms, subject to Applicable Law.

C. The Franchise is legal, valid, binding and enforceable against Wave-I in accordance with its terms, subject to Applicable Law.

D. Wave-I and Wave Holdings each has the full right, power and authority to execute and deliver this Agreement, and to perform the undertakings contained herein and the transactions contemplated hereby, and all corporate or other action necessary to authorize the execution and delivery of this Agreement, and the performance of the undertakings contained herein and the transactions contemplated hereby, have been taken.

E. Except as expressly provided herein and except for the approval of the Bankruptcy Court administering Broadstripe's Chapter 11 proceeding, no approval, consent, exemption or other action by, or notice to or filing with, any governmental or public body or authority is required in connection with the execution, delivery, performance and enforcement of this Agreement.

5.3.5.3 Authority of the City and Wave-I. Wave Holdings hereby agrees that subject only to the provisions of the Franchise which that have been agreed to by Wave-I, the City and Wave-I may in such manner, upon such terms and at such times as the City and Wave-I mutually agree and deem best and without notice to Wave Holdings: (a) alter, modify, compromise, accelerate, extend or change the time or manner for the performance of any obligation hereby guaranteed, or otherwise change any term of the Franchise; or (b) add any one or more guarantors or endorsers. Unless in a writing signed by the City and Wave Holdings, no exercise or nonexercise by the City of any right given it by this Agreement, no dealing by the City with Wave-I or any other guarantor, endorser or any other person, and no change, impairment, release or suspension of any right or remedy of the City shall in any way affect any of the obligations of Wave Holdings hereunder. If the City has now exculpated or hereafter

exculpates Wave-I from liability in whole or in part other than in a writing signed by Wave-I and/or Wave Holdings, such exculpation and agreement shall not affect the obligations of Wave Holdings under this Agreement, it being understood that Wave Holdings' obligations hereunder are independent of the obligations of Wave-I and are to be construed as if no such non-written exculpation or non-written agreement had been given to Wave-I by the City. In any action by the City to enforce this Agreement against Wave Holdings, Wave Holdings shall bear the burden of establishing the existence and terms of such a written exculpation of Wave-I or Wave Holdings by the City.

5.4.5.4 Waivers by Wave Holdings. Wave Holdings hereby expressly waives and relinquishes any and all defenses to enforcement of this Agreement in accordance with its terms including without limitation (a) any right to require the City, as a condition precedent or concurrent to enforcement of this Agreement, to proceed against Wave-I or any other person or to pursue any other right or remedy in the City's power before proceeding against Wave Holdings; (b) notice of the acceptance of this Agreement by any person; (c) demand, notice of default or nonpayment, presentment, protest, and all other notices of any kind to which Wave Holdings might otherwise be entitled in connection with this Agreement, including, but not limited to, notice of the existence, creation or incurring of any new or additional obligations or of any action or nonaction on the part of Wave-I; (d) any defense based upon an election of remedies by the City or any other act, actions, or failure to act by or on behalf of the City which that destroys or otherwise impairs the subrogation rights of Wave Holdings or the right of Wave Holdings to proceed against Wave-I for reimbursement, or both, including any defense available to Wave Holdings to a deficiency judgment arising from the destruction of Wave Holdings' subrogation rights; (e) any defense based upon any statute or rule of law which that provides that an offer of performance exonerates a surety; (f) any defense arising because of the City's election, participation or lack of participation in any proceeding instituted by Broadstripe, Wave-I or Wave Holdings under the federal Bankruptcy Code, or the Application or Section 1111(b)(2) of the federal Bankruptcy Code of 1978, as amended; and (g) any defense under Section 364 of the federal Bankruptcy Code of 1978, as amended; it being agreed by Wave Holdings that the failure of the City to exercise any rights or remedies it has or may have against Wave-I shall in no way impair the obligation of such Agreement and that the liability of Wave Holdings hereunder is and shall be direct and unconditional.

5.5.5.5 Independent Investigation by Wave Holdings. Wave Holdings understands and agrees that Wave Holdings is fully responsible for being and keeping informed of the financial condition of Wave-I and of all circumstances bearing on the risk of nonperformance of any obligations hereby guaranteed.

5.6.5.6 Remedies Cumulative. Except as expressly provided, all rights, power and remedies of the City hereunder shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to the City by Applicable Law. This The guaranty required by Section 5.1 of this

Agreement is in addition to and exclusive of the guaranty of any other guarantor of any obligations of Wave-I to the City.

5.7.5.7 Actions. The obligations of Wave Holdings hereunder are independent obligations of Wave Holdings and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Wave Holdings, whether or not Wave-I is joined therein or a separate action or actions are brought against Wave-I. The City may maintain successive actions for other defaults by Wave-I or Wave Holdings. This Agreement may be enforced by an action against Wave Holdings, without the necessity of joining in such action any other Wave Holdings obligations guaranteed hereby. The City's rights hereunder shall not be exhausted by exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations the performance of which are hereby guaranteed, have been fully performed.

6. **Audit.** Within thirty (30) days of the Effective Date, Wave-I shall remit to City full payment for all past due Franchise fees, cable utility tax fees obligations, fees in support of local access programming and any other fees, taxes or assessments, if any, ~~which that~~ Broadstripe rightfully owes the City, together with applicable interest (collectively, the "Unpaid Fees"). Wave-I shall also fully reimburse the City for all costs and expenses related to the financial audit of Broadstripe, including applicable consultant and attorneys' fees (the "Audit Fee"). The City shall provide Wave-I a copy of the report prepared by the City's financial consultant, Garth Ashpugh, and any City-prepared reports, as evidence of the outstanding amount Unpaid Fees and Audit Fees due the City. On the City's receipt of the Unpaid Fees and the Audit Fee all obligations with respect to any past due fees, taxes or assessments under the Franchise prior to January 1, 2011 (collectively, the "Franchise-Related Payment Obligations") shall be extinguished and the City hereby irrevocably releases and forever relinquishes any and all claims against Broadstripe, Wave-I and Wave Holdings, and each of their officers, directors, members, shareholders, affiliates, subsidiaries, agents, attorneys, employees, predecessors, successors and assigns, whether presently known or unknown, ~~which that~~ the City ever had, now has or hereafter can, shall or may have ~~for~~, with respect to the Franchise-Related Payment Obligations.

7. **Resolution of Internet Tax Fees.** Due to a change in Federal law, effective July 1, 2008 the City ceased collecting a 6% Telecommunications Utility Tax on cable companies for revenues generated from the sale of cable modem service ("Internet Tax"). Broadstripe continued to collect the Internet Tax from subscribers in the City after July 1, 2008. The City demanded, and Broadstripe agreed, that Broadstripe must stop collecting the Internet Tax and must return the Internet Taxes collected after July 1, 2008, back to affected subscribers. Broadstripe has undertaken a good faith refund program designed to remit substantially all of the Internet Tax back to affected subscribers. The City maintains that Broadstripe's collection of the Internet Tax after July 1, 2008 and failure to remit the Internet Tax collected back to the impacted subscribers constitutes a violation of the Franchise, an allegation that Broadstripe disputes. In the event that Broadstripe fails to complete the remittance of un-refunded Internet Tax collections prior to the Effective Date, to resolve this issue and avoid a franchise violation proceeding and the payment of damages to the City,

Wave-I shall, within thirty (30) days of the Effective Date, remit payment to the City in the amount of One Hundred Forty-Seven Thousand Dollars and 00/100s (\$147,000) in settlement of all issues related to the collection of the Internet Tax by Broadstripe.

8. **Ascertainment.** Section 5.4 of the Franchise requires ~~the grantee to~~ that every three (3) years Broadstripe conduct, at ~~grantee's~~Broadstripe's sole cost and expense, an ascertainment of the: 1) community's views regarding cable services; 2) cable-related needs and interests of the community; and 3) preferences of subscribers within the Franchise service area (collectively the "Ascertainment"). The Ascertainment must be developed jointly with the City and must be conducted by an independent, non-affiliated entity and include a statistically valid telephone survey. Failure to conduct the Ascertainment is deemed a material breach of the Franchise and would subject ~~the grantee~~Broadstripe to termination proceedings pursuant to Section 19.1 (4) of the Franchise. In the event that Broadstripe fails to complete the 2011 Ascertainment prior to the Effective Date in accordance with the terms of Section 5.4 of the Franchise, to resolve this issue and avoid a franchise violation proceeding and the payment of damages to the City, Wave-I shall, within thirty (30) days of the Effective Date, reimburse the City for its reasonable documented out-of-pocket expenses incurred, in an amount not to exceed Fifty Thousand Dollars and 00/100s (\$50,000), to satisfy the 2011 Franchise obligation to perform and complete the Ascertainment.

9. **Seattle Channel in HD channels for PEG.** On or before January 1, 2012, or as soon as reasonably practicable thereafter, but in no event later than March 1, 2012, Wave-I shall provide High Definition (HD) channel capacity for the Seattle Channel, a local government programming channel. The HD channel location for the Seattle Channel shall be channel 121.

10. **Technical Compliance.** ~~Wave-I shall comply with all provisions of the Correction Agreement. The City understands that completion of the requirements contained in the Correction Agreement may not be completed prior to the Effective Date and, accordingly, the City specifically reserves the right to compel Wave-I to correct Franchise violations including the technical deficiencies identified in the Correction Agreement. Wave-I shall cooperate with, and make available all required technical personnel and related facilities to, the outside technical consultant hired by the City to verify completion of the cure obligations contained in the Correction Agreement. Wave-I shall reimburse the City for all costs and expenses associated with such outside technical consultant including attorneys' fees. Wave-I's failure to correct the technical deficiencies or take corrective action as required under the Correction Agreement shall be considered a material breach of the Franchise subject to the remedies provided therein.~~

10.1 As part of the City's due diligence related to the proposed Assignment, the City retained Jonathan Kramer of Kramer.Firm, Inc. ("Kramer"), to conduct an inspection of the Broadstripe physical plant system within the City to determine if Broadstripe had complied with all provisions of the Correction Agreement. In October, 2011 Kramer issued to the City a report titled: Cable System Follow-Up Inspection of Broadstripe Cable Communications ("Technical Report"). The Technical Report concludes that Broadstripe failed to meet the conditions of the

Correction Agreement. The National Electric Code (“NEC”) and National Electric Safety Code (“NESC”) violations referenced in the Correction Agreement and the Technical Report (“Cable System Violations”) must be cured as a condition of the City’s approval of the Assignment. In particular, the Technical Report concludes:

A. Broadstripe’s process of taking down overhead cable drops resulted in a portion of the drop cable still being attached to the power mast in violation of the NEC and NESC in most every location where Broadstripe removed an overhead cable drop.

B. Broadstripe did not remove on-building wiring where it had removed the overhead drop attempting to shift the burden for NEC workmanship and grounding code violations and other hazards to the resident.

C. At the present rate of progress, it could take one year or longer to complete all Correction Work as defined in Section 10.2 below.

Kramer estimates that the work to be performed by Broadstripe to cure the Cable System Violations is approximately Six Hundred Thousand Dollars (\$600,000). This amount includes resolution of NEC and NESC violations for both active subscribers and inactive addresses.

10.2 If the work required to cure the Cable System Violations (“Correction Work”) is not completed by Broadstripe prior to the Effective Date, Wave-I shall complete the Correction Work no later than December 31, 2012. Consistent with Section 3.2 of this Agreement, Wave-I shall assume any and all liability for the Cable System Violations and Correction Work consistent with the terms of the Franchise. Wave-I shall cooperate with the City and make available all required technical personnel and related facilities to the City, and to Kramer, to verify that the Correction Work has been completed. Periodic technical inspections by Kramer, as directed by the City, will be required in addition to a final inspection by Kramer to verify the completion of Correction Work.

10.3 Wave-I shall reimburse the City for any and all costs and expenses associated with Kramer and any applicable attorneys' fees, costs and other expenses. Such fees, costs and expenses include those incurred by the City for Kramer’s Technical Report; any fees, costs and expenses incurred by the City for work by Kramer prior to the Effective Date; and costs and expenses incurred by the City thereafter until final verification that all Correction Work has been completed. Wave-I's failure to complete the Corrective Work as required under the Correction Agreement and the Technical Report shall be considered a material breach of the Franchise subject to the remedies provided therein.

11. System Improvements. Within eighteen (18) months following the Effective Date, Wave-I will: 1) 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); 2) upgrade those portions of the Broadstripe ~~cable system~~ Cable System in the City that are not capable of 750 MHz capacity, to 750 MHz capacity; 3) upgrade the video product offerings in the City to include greater HD and VOD (Video on Demand) services in the City; 4) upgrade the broadband data product offerings in the City to include a 50 Mbps (downstream) service; and 5) launch commercial phone service in the City.

12. **Renewal.** Except as specifically provided herein, this Agreement shall not have any effect on the City's authority to enforce Wave-I's compliance with the Franchise Documents following the Effective Date. Further, this Agreement shall not have any effect on any authority the City may have to review, conditionally approve or deny the renewal of the Franchise transferred to Wave-I. The City expressly reserves its rights to conduct a complete renewal proceeding pursuant to 47 U.S.C. § 546, or other Applicable Law including but not limited to, conducting a complete review of Wave-I's compliance with, and performance under, the Franchise and any other obligation Wave-I may have under Applicable Law, beginning from the Effective Date through the end of ~~each~~ the Franchise term, November 10, 2017, and including, without limitation, any Franchise term extensions thereto up to and including during the Franchise renewal process, and to conditionally approve or deny a renewal based on any ~~such failure,~~ Franchise noncompliance, or violation.

13. ~~Rates-~~ **Basic Cable Service Rate.** The Assignment shall not result in an increase in the rate for basic cable service as uniformly applied in the ~~geographical~~ service area covered by the Franchise, consistent with Applicable Law. Nothing shall prohibit rate increases made in the ordinary course of business in compliance with Applicable Law. Wave-I shall not rely upon an increase in debt service or in debt service coverage, if any, that results from the Assignment to justify an increase in ~~rates~~ the rate for basic cable service.

14. **Local Office.** As a condition of this Agreement, Wave-I shall maintain at least one (1) local office as required by Applicable Law. Wave-I's assumption of the Pay Station Agreement ("Pay Station Agreement") signed July 6, 2011, and effective January 1, 2012, by and between the City of Seattle Department of Neighborhoods, Comcast of Washington IV, Inc., Comcast of Washington I, Inc., and Broadstripe shall serve as an acceptable substitute for a local office.

15. **Representations and Warranties.** The City's consent to the Assignment is in reliance upon the written information provided by Wave-I and Broadstripe, as described in the Application and as described in other supplemental information provided by Wave-I and Broadstripe. Wave-I represents and warrants that the Application insofar as it applies or relates to Wave-I and the additional information and representations contained therein with respect to Wave-I are true and accurate in all material respects, and that no material information is omitted, the absence of which would cause the Application and ~~Information~~ information to be materially misleading. Wave-I also represents and warrants that Wave-I is validly existing and in good standing under the laws of the State of Washington and qualified to do business within the State of Washington and the City. If prior to the Effective Date Wave-I becomes aware of any material misrepresentation by Broadstripe set

forth in materials submitted to the City by Broadstripe in connection with the Application, Wave-I shall provide prompt written notice of any such matter to the City.

16. **Enforcement.** Any breach of this Agreement shall be deemed a breach of the Franchise subject to the remedies provided in the Franchise Agreement or the Seattle Municipal Code, as well as other remedies provided by other Applicable Law or in equity. Any action to interpret or enforce any provision in this Agreement, the Franchise or the Seattle Municipal Code may only be brought in a court of competent jurisdiction in the State of Washington, and the parties agree to be subject to the jurisdiction of Washington state and federal courts, located in King County, for such purposes. This Agreement shall be governed by the law of the State of Washington.

17. **Authority.** Each of the persons executing this Agreement represents that he or she is authorized by the respective Party to execute this Agreement and to bind that party.

18. **Notices.** All notices required or permitted under the Franchise Documents shall be delivered in the manner provided in Section 21.9 of the Franchise, except that the address for the "Grantee" thereunder is hereby changed to the following:

WaveDivision I, LLC
Attn: Steve Weed, CEO, and Jim Penney, EVP
401 Kirkland Park Place, Suite 500
Kirkland, WA 98033

19. **Insurance.** Prior to the earlier of the Effective Date or the commencement of any activity whatsoever relating to the operation of the Cable System, Wave-I shall provide the City with certificates of insurance and original endorsements evidencing the insurance coverage is in accordance with Section 12.2 of the Franchise and Exhibit I to this Agreement.

20. **Security Fund.** Within ten (10) calendar days of the Effective Date, Wave-I shall provide all required security set forth at ~~section in~~ Section 12.4 of the Franchise.

21. **Effect on Franchise.** This Agreement shall have no effect on the Franchise except as specifically provided in this Agreement.

22. **Notice Regarding Closing of Purchase Agreement.** Within five (5) calendar days of the ~~Effective~~Closing Date, Wave-I shall ~~notify~~execute and file this Agreement with the City of ~~Clerk and the pending execution~~Office of the Assignment by Wave-I ~~Cable Communications~~. At such time, all of the pre-conditions and requirements of this Agreement, if and to the extent such requirements as provided herein or in related Assignment documents are to be executed, met, or completed prior to the Effective Date, shall be executed, met, or completed, unless otherwise specified herein.

23. **Reimbursement for Out of Pocket Expenses.** Within twenty days of the date of request by the City, Wave-I shall reimburse the City, or at the direction of the City the City's consultants and attorneys directly, for all reasonable documented (in a manner

reasonably acceptable to the Parties) out of pocket expenses incurred by the City, including all reasonable fees, costs and expenses incurred by the City for outside consultants and attorneys, related to the Assignment.

24. **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute an agreement binding on all Parties hereto, notwithstanding that all Parties may not have signed the same counterpart.

25. **Voluntary Agreement.** This Agreement is freely and voluntarily entered into by each Party, without any duress or coercion, and after each Party has had an opportunity to consult with its counsel. Each Party has carefully and completely read all of the terms and provisions of this Agreement. It is understood and agreed by the City and Wave-I that neither this Agreement nor anything herein shall be deemed to be an admission or confession of any liability whatsoever or any breach of the terms of the Franchise or violation of SMC 21.60.520. If this Agreement should be found to be unenforceable by a court of competent jurisdiction, the Parties shall have all rights under Applicable Law to pursue any and all remedies available.

26. **Binding Agreement.** This Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. This Agreement shall be effective only upon the execution of this Agreement by all Parties hereto. Any purported assignment of this Agreement is void without the express written consent of the Parties hereto.

27. **Reliance on Own Judgment.** Each of the Parties represents that in executing this Agreement it relied solely on its own judgment, belief, and knowledge, and upon the advice and recommendations of its own independently selected counsel and consultants, concerning the nature, extent, and duration of its rights and obligations, and that it has not been influenced in executing this Agreement by any of the other Parties hereto or by any person representing them. This Agreement shall not be deemed to have been drafted by any individual Party and shall not thereby be construed against any Party.

28. **Severability.** If any section, sentence, paragraph, term, or provision of this Agreement is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision of this Agreement, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

29. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. This Agreement may only be modified by a written amendment signed by all Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as their free and voluntary acts and deeds.

Dated: _____

CITY OF SEATTLE

BY: _____
William Schrier, Chief Technology Officer

Dated: _____

WAVEDIVISION HOLDINGS, LLC

BY: _____
Steven B. Weed, CEO

Dated: _____

WAVEDIVISION I, LLC

BY: _____
_____, CEO

Dated: _____

REVIEWED BY:

Brian T. Grogan, Moss & Barnett
Legal Counsel to the City of Seattle

Exhibit I

Insurance Requirements for The City of Seattle

~~Grantee~~Wave-I shall maintain on file with the City evidence of insurance coverage satisfactory to the City with minimum coverage and limits of liability specified below; with respect to the scope of such coverage, ~~Grantee~~Wave-I specifically acknowledges that the limits of liability requirements specified shall neither be construed as a limitation of ~~Grantee's~~Wave I's liability nor shall they be construed to inure to the benefit of any insurer by serving as a limitation or maximum of any insurer's limits of liability that would otherwise apply.

~~Grantee~~Wave-I shall maintain:

(A) Commercial general liability insurance (including premises, products and completed operations, contractual, independent contractors, employers/stop gap and personal/advertising injury liability) that shall not exclude XCU/Subsidence perils or any similar perils ("CGL Insurance");

(B) Automobile liability insurance covering owned, non-owned, leased and hired vehicles; and

(C) Workers Compensation insurance in compliance with the Revised Code of Washington Title 51 ("Industrial Insurance").

The minimum limits of liability to be maintained for CGL and automobile liability insurance shall be five million dollars (\$5,000,000) combined single limit each occurrence bodily injury and property damage (except, with respect to CGL Insurance, five million dollars (\$5,000,000) each accident/disease employers/stop gap liability and five million dollars (\$5,000,000) each offense personal/advertising injury).

The City shall by designated additional insured endorsement or blanket additional insured endorsement or policy wording be covered as an additional insured for the total corporate limits of liability maintained by ~~Grantee~~Wave-I for CGL Insurance and automobile liability insurance whether such limits are primary, excess, contingent or otherwise. Such additional insured status shall be primary and non-contributory with any insurance maintained by the City, and in a form acceptable to the City.

Insurance coverage shall be maintained with insurers acceptable to the City and shall not be cancelable without mailing notice of cancellation to the City not less than thirty (30) days (ten (10) days as respects cancellation for non-payment of premium) prior to the actual date of such cancellation.

Certification of insurance shall be in a form and with such content that is acceptable to the City and shall include an actual copy of the designated additional insured endorsement or blanket additional insured endorsement or policy wording documenting that the City is covered as an additional insured under ~~Grantee's~~Wave-I's CGL Insurance.

The term “insurance” and “insurer(s)” under this Section 12.2 of the Franchise shall apply to self-insurance and self-insurer(s). Should Grantee Wave-I maintain self-insurance (except that subject to a deductible endorsement provision that specifies that the nonpayment of deductible amounts by the named insured shall not relieve the insurer from payment of claims), it shall disclose to the City in writing details of such self-retained limit(s). Should such self-insurance not be fronted by an insurance company, Grantee Wave-I shall issue a letter to the City stating that it will cover the City as an additional insured for the required coverages as if a commercial insurance policy applied and will specify how and to whom a tender of claim should be directed.

Certification of insurance, notice of cancellation and any other written communication under Section 12.2 of the Franchise shall be addressed to:

The City of Seattle
Risk Management Division
700 5th Avenue, Suite 4350
P.O. Box 94669
Seattle, WA 98124-4669
riskmanagement@seattle.gov
Fax: (206) 615-0065

with a copy to the Seattle Department of Information Technology, Office of Cable Communications (*see* address in Section 21.89 of the Franchise).

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Information Technology	Tony Perez/386-0070	Jennifer Devore/615-1328

Legislation Title: AN ORDINANCE related to cable television; authorizing the Chief Technology Officer to execute an Assignment of Cable Franchise Consent Agreement for the purpose of implementing and administering the transfer of control, subject to conditions, of the nonexclusive franchise agreement authorized by Ordinance 122514 and held by Broadstripe, LLC, to WaveDivision I, LLC, a wholly-owned subsidiary of WaveDivision Holdings, LLC; and ratifying and confirming prior acts.

Summary of the Legislation: This Council Bill authorizes a transfer of control of the cable franchise held by Broadstripe L.L.C. (“Broadstripe”) to WaveDivision I LLC (“Wave”), a cable operator headquartered in Kirkland, Washington. Additionally, the legislation authorizes the Chief Technology Officer to enter into a Consent Agreement for the purpose of resolving outstanding franchise compliance issues with Broadstripe. The transfer of the franchise is subject to execution of the Consent Agreement, which protects the City’s interests by requiring, among other things, full payment of franchise fees and cable utility taxes, a performance guaranty from Wave’s parent company, and an obligation from Wave to assume all of Broadstripe’s liabilities, comply with all the terms of the franchise and applicable law, and reimburse DoIT for its costs in administering the transfer request.

Background: Broadstripe provides cable services in certain areas of Seattle neighborhoods, including the Central District, Beacon Hill, downtown Seattle, and parts of Capitol Hill and Queen Anne, pursuant to a nonexclusive franchise agreement authorized by Ordinance 122514. Approximately 15,000 cable and Internet subscribers are served by Broadstripe.

On January 2, 2009, Broadstripe filed for protection under Chapter 11 of the federal Bankruptcy Code. The sale of Broadstripe’s assets to Wave is being conducted under the auspices of the bankruptcy court. On August 16, 2011, Broadstripe and Wave entered into a Purchase and Sale Agreement whereby Broadstripe agreed to sell to Wave the cable system within the City that Broadstripe owns and operates pursuant to the Franchise.

In accordance with SMC 21.60.520, the City may not unreasonably refuse a request to transfer a franchise. Council must make a decision to approve the transfer, approve it with conditions, or deny the transfer within 120 days or the request shall be deemed granted pursuant to federal regulations unless an agreement is reached to extend the date. Legislation on this transfer must be effective by December 24, 2011.

To obtain Council approval, the proposed assignee (Wave) must demonstrate, among other things, financial responsibility and the ability to comply with the provisions of SMC Chapter



21.60 (Cable Communications Ordinance) and the franchise. The Office of Cable Communications, with the help of legal, financial, and technical consultants, is conducting review and analysis of the transfer and will recommend approval with conditions upon satisfactory completion of the review.

Please check one of the following:

This legislation does not have any financial implications.
 (Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

This legislation has financial implications.
 (If the legislation has direct fiscal impacts (e.g., appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" Section. Please delete the instructions provided in parentheses at the end of each title and question.)

The Legislation may result in payments to the City from the reimbursement of the City's transfer-related costs, reimbursement for any ascertainment survey conducted by the City or the recovery of any underpaid franchise fees. That amount is to be determined by October 31, 2011. Any reimbursements for costs incurred would go to the DoIT operating fund; any franchise fees collected would be placed in the Cable Fund with the rest of the franchise fee revenue. Any revenues not anticipated would be appropriated in future legislation.

Appropriations:

(This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation please provide details in the Appropriation Notes section below. If the appropriation is not supported by revenue/reimbursements, please confirm that there is available fund balance to cover this appropriation in the note section.)

Fund Name and Number	Department	Budget Control Level*	2011 Appropriation	2012 Anticipated Appropriation
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Appropriations Notes:

Anticipated Revenue/Reimbursement Resulting from this Legislation:

(This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.)

Fund Name and Number	Department	Revenue Source	2011 Revenue	2012 Revenue
TOTAL				

Revenue/Reimbursement Notes:

Recovery of any underpaid franchise fees would be revenue to the Cable Television Franchise Subfund (00160). Reimbursement of any City costs associated with the franchise transfer or ascertainment survey would be revenue to DoIT Fund (50410), from which expenses were paid.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

(This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.)

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2011 Positions	2011 FTE	2012 Positions*	2012 FTE*
TOTAL							

* 2012 positions and FTE are total 2012 position changes resulting from this legislation, not incremental changes. Therefore, under 2012, please be sure to include any continuing positions from 2011.

Position Notes: There will be no positions created as a result of this legislation.

N/A

Do positions sunset in the future?

N/A

Spending/Cash Flow:

(This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.)

Fund Name & #	Department	Budget Control Level*	2011 Expenditures	2012 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Spending/Cash Flow Notes:

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

No.

b) What is the financial cost of not implementing the legislation? If this legislation is not



implemented, the City will not be able to resolve the issues listed in the Consent Agreement, e.g. potential collection of financial obligations found in franchise fee audit.

- c) **Does this legislation affect any departments besides the originating department?**
No.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None. The transfer could occur without Council approval, but that would negate the City's opportunity to place conditions on the transfer that will benefit customers and protect the City's interests.
- e) **Is a public hearing required for this legislation?** Yes. A Public Hearing on the proposed transfer is required by SMC 21.60.250 and has been scheduled for November 9, 2011, at 1:00 p.m. in Council Chambers.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** Yes. SMC 21.60.270 (D) requires publication of the proposed legislation for ten consecutive press days at the expense of the applicant (Wave). SMC 21.60.270 (D) also requires the Ordinance to be published once in the official newspaper of the City at Wave's expense within three days after the same shall have become law.
- g) **Does this legislation affect a piece of property?** No.
- h) **Other Issues:** At present we do not know the amount of money that will accrue to DoIT as a result of the Legislation. The amount of the funds will be determined after the City has completed its audit of Broadstripe franchise fee payments during 2006-2010 and once we know the full amount that Wave and Broadstripe will pay DoIT to reimburse its costs associated with administering the transfer request.



City of Seattle
Office of the Mayor

October 11, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes a conditional transfer of the cable franchise held by Broadstripe LLC to WaveDivision-I LLC and authorizes the Chief Technology Officer to enter into a Consent Agreement. The Consent Agreement provides provisions designed to protect the City's interests, such as resolving any underpayment of past franchise fees and cable utility taxes to the City and assuring completion of a cure plan to bring the Broadstripe system into compliance with applicable codes.

The franchise agreement that Broadstripe currently holds with the City of Seattle provides cable television services in neighborhoods that include the Central District, Beacon Hill, downtown Seattle and parts of Capitol Hill and Queen Anne. In January 2009 Broadstripe filed for protection under Chapter 11 of the Bankruptcy Code. The sale of Broadstripe's assets to Wave is being conducted under the auspices of the bankruptcy court.

Wave has indicated that it will abide by all terms of the franchise and applicable law and invest significant capital to provide technical upgrades to the network serving Seattle residents. This should result in improved service and reliability for customers in the franchise area.

Thank you for your consideration of this legislation. Should you have questions, please contact Bill Schrier at 684-0633.

Sincerely,


Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

