#2

Alice Lawson/Tony Perez
DoIT Wave Ownership Transfer Correction ORD
September 6, 2012
Version #1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117598

AN ORDINANCE related to cable television; amending Ordinance 123954, which approved the transfer of the controlling interest in WaveDivision Holdings, LLC to Oak Hill Capital Partners III, L.P., to correct clerical errors in that legislation.

WHEREAS, Ordinance 123954 approved the transfer of the controlling interest in WaveDivision Holdings, LLC, parent company of WaveDivision I, LLC, holder of a nonexclusive Seattle cable franchise, to Oak Hill Capital Partners III, L.P., but required that, as a condition of the consent to transfer of control, Oak Hill Capital Partners III, L.P. must accept the conditions of the "Consent Agreement"; and

WHEREAS, the correct entities to accept the conditions of the Consent Agreement are WaveDivision Holdings, LLC and WaveDivision I, LLC; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 1 of Ordinance 123954 is amended as follows:

Section 1. The City, subject to compliance by ((~~OH WDH Holdco, LLC (Holdco)~~)) WaveDivision Holdings, LLC (Wave) and WaveDivision I, LLC (Wave I) with the requirements of Section 2 of this ordinance, approves the transfer of the controlling interest in ((~~WaveDivision Holdings, LLC (Wave)~~)) Wave, parent company of ((~~WaveDivision I, LLC (Wave I)~~)) Wave I, the holder of a cable franchise authorized under Ordinance 122514 (Franchise) as amended and transferred to Wave I under Ordinance 123741, from Sandler Capital Management to Oak Hill Capital Partners III, L.P. (Oak Hill).

Section 2. Section 2 of Ordinance 123954 is amended as follows:

Section 2. The consent granted under this ordinance shall not become effective for any purpose unless and until ((~~Oak Hill~~)) Wave and Wave I accept((~~s~~)) the conditions of the "Consent Agreement" in the form attached as Attachment A and such acceptance is filed with the City Clerk and Office of Cable Communications. Such acceptance shall be in writing, and shall

be and operate as an acceptance of each and every term and condition and limitation contained in this ordinance, Chapter 21.60 SMC, the Franchise, and other applicable agreements.

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

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment A: Attachment A to Ordinance 123954 Cable Franchise Transfer of Control Consent Agreement

ATTACHMENT A
TRANSFER OF CONTROLLING INTEREST OF CABLE FRANCHISE CONSENT AGREEMENT

This Transfer of Controlling Interest 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 and Ordinance 123741, the City and Wave-I are parties to a cable television franchise agreement permitting Wave-I to construct, maintain, and operate a cable television system in certain cable franchise districts in the city ("Franchise").

B. 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. Wave-I is the "Grantee" under the Franchise and Wave Holdings is the "Guarantor" under the Franchise.

C. On May 30, 2012, a Unit Purchase Agreement ("Purchase Agreement") was entered into by and among OH WDH Holdco, LLC a Delaware limited liability company (the "Buyer"), and Sandler Capital Partners V, L.P., SCP V FTE WaveDivision Holdings, L.P., SCP V Germany WaveDivision Holdings, L.P., WaveDivision Capital, LLC, WaveDivision Networks, LLC, WaveDivision Capital, LLC and Steve C. Friedman (collectively, Sellers"), and Wave Holdings.

D. Pursuant to the Purchase Agreement, the Sellers will sell all of their membership interests in Wave Holdings to the Buyer, resulting in a transfer of controlling interest of Wave Holdings. There will be no changes to any of the subsidiaries of Wave Holdings. The current members of the management team of Wave Holdings will continue to manage the company and its subsidiaries. WaveDivision Capital, LLC will become an investor in the Buyer.

E. On or about June 8, 2012, Wave-I and Wave Holdings submitted an FCC Form 394 Application for Franchise Authority Consent to Change of Control or Transfer of Control of Cable Television Franchise and related supplemental materials ("Application") for the City's review in connection with the request for consent to the transfer of Controlling Interest.

F. Section 14 of the Franchise provides that any proposed change of control of the Grantee or Guarantor under the Franchise requires the approval of the City. The transactions contemplated by the Purchase Agreement constitute a "change of control" of the Grantee and Guarantor as defined in Section 14.02 the Franchise.

G. Subsection 21.60.520 of the Seattle Municipal Code ("SMC") provides that an assignment of the Franchise shall be deemed to occur if there is an actual change in control or where ownership of more than fifty percent (50%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom already own fifty percent (50%) or more of the voting stock singly or collectively. The transactions contemplated by the Purchase Agreement also constitute an "assignment" of the Franchise under Subsection 21.60.520 of the ("SMC").

H. For purposes of this Agreement the transactions contemplated by the Purchase Agreement shall hereinafter be referred to as a "Transfer of Controlling Interest" and the City's approval and execution of this Agreement shall constitute the City's approval of both the change of control of the Grantee and Guarantor set forth in Section 14.02 of the Franchise and the assignment of the Franchise set forth in Subsection 21.60.520 of the Seattle Municipal Code.

I. On September 4, 2012, the Seattle City Council passed the ordinance introduced as Council Bill 117538 approving the Transfer of Controlling Interest, and thirty (30) days after the Mayor signed the ordinance introduced as Council Bill 117538 it became effective. The City's approval of the Transfer of Controlling Interest 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 Transfer of Controlling Interest 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 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 Transfer of Controlling Interest 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 17 of this Agreement.

2. **Effective Date.** For purposes of this Agreement, the "Effective Date" shall be the Approval Date so long as the Approval Date is no later than five days after the "Closing Date" as defined in Section 8.1 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 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 (as defined in Section 3.7 of the Franchise), 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 As a result of the Transfer of Controlling Interest, the City does not waive its rights with respect to Wave-I'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 ("SMC"); 4) the 2007 Settlement Agreement; 5) 2011 Consent Agreement between the City, Wave-I and Wave Holdings; and 6) any other applicable agreement (collectively, the "Franchise Documents"), and other Applicable Law, including the City's right to compel Wave-I or its successors in interest to comply with the provisions of the Franchise Documents.

3.3 The City's approval of the Transfer of Controlling Interest shall in no way be deemed a representation by the City that Wave-I or its successors in interest are in compliance with all of Wave-I'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 Wave-I to comply with the terms, conditions, requirements, and obligations set forth in the Franchise Documents and no event has occurred and is continuing that, with the giving of notice or passage of time, or both, could constitute a default thereunder.

4. **Compliance with Franchise.**

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 thereunder. Neither the Transfer of Controlling Interest nor the City's consent thereto shall diminish or otherwise affect 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 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 Neither the Transfer of Controlling Interest nor the City's approval of the Transfer of Controlling Interest shall in any respect relieve Wave-I of responsibility for past acts or omissions, known or unknown, unless expressly stated in this Agreement or otherwise expressly described in writing by the City.

5. **Guaranty.**

5.1 Obligations Guaranteed. In consideration of the City's approval of the Transfer of Controlling Interest, Wave Holdings 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 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) 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 Authority of the City and Wave-I. Wave Holdings agrees that subject only to the provisions of the Franchise 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 Waivers by Wave Holdings. Wave Holdings 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 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; and (e) any defense based upon any statute or rule of law that provides that an offer of performance exonerates a surety..

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 Remedies Cumulative. Except as expressly provided, all rights, power and remedies of the City hereunder are cumulative and not alternative and such rights, powers and remedies are in addition to all rights, powers and remedies given to the City by Applicable Law. 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 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. **Utility Tax and Franchise Fee Obligations**. 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 obligations, fees in support of local access programming and any other fees, taxes or assessments, if any, that Wave-I rightfully owes the City, together with applicable interest (collectively, the "Unpaid Fees"). Wave-I confirms it will calculate Franchise fee and utility tax

payments using the revenue formula prescribed by the City's 2011 Franchise fee and utility tax audit and if underpayments are discovered, Wave-I will true up its calculations and remit prompt payment to the City, together with applicable interest. Wave-I and Wave Holdings hereby agree to comply with all lawful provisions of the Franchise and SMC related to the imposition of utility taxes and franchise fees specifically Section 11 of the Franchise and Chapter 5.48 of SMC. As of the Effective Date, to the best of Wave-I's knowledge and belief, the utility tax required under Chapter 5.48 of SMC and the franchise fee required under Section 11 of the Franchise are lawful and binding upon Wave-I.

7. **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 held by 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 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 Franchise noncompliance or violation.

8. **Basic Cable Service Rate**. The Transfer of Controlling Interest shall not result in an increase in the rate for basic cable service as uniformly applied in the 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 Transfer of Controlling Interest to justify an increase in the rate for basic cable service.

9. **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.

10. **Representations and Warranties**. The City's consent to the Transfer of Controlling Interest is in reliance upon the written information provided by Wave-I and Wave Holdings, as described in the Application and as described in other supplemental information provided by Wave-I and Wave Holdings. 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 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 Wave-I or Wave Holdings set forth in materials submitted to the City in connection with the Application, Wave-I shall provide prompt written notice of any such matter to the City.

11. **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 ("SMC"), 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 ("SMC") 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.

12. **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.

13. **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

14. **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, unless such information is already on file with the City, evidencing the insurance coverage is in accordance with Section 12.2 of the Franchise and Exhibit I to this Agreement.

15. **Security Fund**. Unless such information is already on file with the City, within ten (10) calendar days of the Effective Date, Wave-I shall provide all required security set forth in Section 12.4 of the Franchise.

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

17. **Notice Regarding Closing of Purchase Agreement.** Within five (5) calendar days of the Closing Date, Wave-I shall execute and file this Agreement with the City Clerk and the office of Cable Communications. At such time, all of the pre-conditions and requirements of this Agreement shall be executed, met, or completed, unless otherwise specified herein.

18. **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 Transfer of Controlling Interest.

19. **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, notwithstanding that all Parties may not have signed the same counterpart.

20. **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.

21. **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 Transfer of Controlling Interest of this Agreement is void without the express written consent of the Parties hereto.

22. **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 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.

23. **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.

24. **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: _____
Erin Devoto, Acting Director,
Department of Information Technology

Dated: _____

WAVEDIVISION HOLDINGS, LLC

BY: _____
James A. Penney
Executive Vice President

Dated: _____

WAVEDIVISION I, LLC

BY: _____
James A. Penney
Executive Vice President

Exhibit I

Insurance Requirements for The City of Seattle

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 specifically acknowledges that the limits of liability requirements specified shall neither be construed as a limitation of Grantee'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 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 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 CGL Insurance.

The term "insurance" and "insurer(s)" under Section 12.2 of the Franchise shall apply to self-insurance and self-insurer(s). Should Grantee 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 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 21.9 of the Franchise).

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

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

Legislation Title: AN ORDINANCE related to cable television; amending Ordinance 123954, which approved the transfer of the controlling interest in WaveDivision Holdings, LLC to Oak Hill Capital Partners III, L.P., to correct clerical errors in that legislation.

Summary of the Legislation:
This Council Bill amends Ordinance 123954 to make a technical adjustment to correct the named entities subject to the Consent Agreement, which is Attachment A to Ordinance 123954.

Background:
On September 4, 2012, City Council passed legislation introduced as Council Bill 117538 (Ordinance 123954) approving the transfer of the controlling interest in WaveDivision Holdings, LLC to Oak Hill Capital Partners III, L.P. The legislation, introduced July 30, 2012, named OH WDH Holdco, LLC and Oak Hill as the entities responsible for compliance with a Consent Agreement attached to the legislation. The original Consent Agreement was not finalized at that time, however, and the terms of the final Consent Agreement named WaveDivision I, LLC (Wave I) and WaveDivision Holdings (Wave) as the operating entities subject to its provisions.

This final Consent Agreement was amended to Council Bill 117538 on August 15, 2012, at the Public Safety, Civil Rights and Technology Committee meeting. The text of the original legislation was not reconciled with this final Consent Agreement however, which inadvertently left OH WDH Holdco, LLC and Oak Hill as the named entities subject to the provisions of the Consent Agreement. This Council Bill will establish that all provisions of the Consent Agreement are binding on Wave I and Wave.

Please check one of the following:

__X__ **This legislation does not have any financial implications.**

____ **This legislation has financial implications.**

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** No. The legislation is a technical adjustment to correct a clerical error.

b) **What is the financial cost of not implementing the legislation?** None

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 error must be corrected to ensure the parties subject to the Consent Agreement are named in the legislation as well.

e) **Is a public hearing required for this legislation?** No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No

g) **Does this legislation affect a piece of property?** No

h) **Other Issues:**

List attachments to the fiscal note below: None

City of Seattle
Office of the Mayor

September 11, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am transmitting the attached proposed Council Bill to amend Ordinance 123954 and correct a technical error in the legislation by correcting the named entities subject to the Consent Agreement, which is Attachment A to the Ordinance.

Currently Ordinance 123954 names Oak Hill WDH Holdco, LLC and Oak Hill as the entities required to accept the conditions of the Consent Agreement. However, the final negotiated Consent Agreement accompanying Ordinance 123954 named WaveDivision Holdings, LLC and WaveDivision I, LLC as the parties subject to its conditions.

This correction has no impact on the original legislation other than to reconcile the text between the legislation and its Attachment A (Consent Agreement).

Thank you for your consideration of this legislation. Should you have questions, please contact Erin Devoto, Department of Information Technology, at 233-7937.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov