

ORDINANCE NO. 2018-1118

AN ORDINANCE OF THE CITY OF STEVENSON AFFIRMING AND AUTHORIZING THE MAYOR TO ENTER INTO A CABLE TELEVISION FRANCHISE BY AND BETWEEN THE CITY OF STEVENSON AND WAVEDIVISION I, LLC, A WASHINGTON LIMITED LIABILITY COMPANY LOCALLY KNOWN AS WAVE

WHEREAS, the City of Stevenson (the "City") originally granted a cable television franchise ("Franchise") to Summit Communications, Inc. ("Summit") under that certain Cable TV Franchise Ordinance passed in regular session on September 15, 1994;

WHEREAS, by Resolution No. 159 dated November 15, 1998, the City consented to the transfer of the Franchise from Summit to Millennium Digital Media Systems, LLC, which changed its name to Broadstripe, LLC ("Broadstripe");

WHEREAS, on November 17, 2011, the City consented to the transfer of the Franchise from Broadstripe to WaveDivision I, LLC ("Wave");

WHEREAS, despite the expiration of the Franchise on January 31, 2012, on August 24, 2017 the City approved a reinstatement and extension of the Franchise until the earlier of February 28, 2018, or the date on which the City and Wave agreed on a new franchise. The City and Wave have continued to operate under the terms and conditions of the Franchise during the extension, and are not aware of any defaults on the part of either party under the terms and conditions of the Franchise; and

WHEREAS, a draft of the Franchise Ordinance was introduced at a regular Council meeting on February 15, 2018, more than five days ago.

WHEREAS, this ordinance adopts the new franchise agreement attached hereto and by this reference fully incorporated herein.

WHEREAS, the entry into a cable television franchise is for the benefit of public health, safety and welfare.

Now, therefore, the City Council of the City of Stevenson do ordain as follows:

Section 1: The cable television franchise by and between the City and Wave is hereby approved and the Mayor is authorized to enter into the Cable Television Franchise Agreement, Exhibit "1".

Section 2: If any provision of the attached Cable Television Franchise Agreement and/or this ordinance, and/or the Master Franchise Ordinance (Ordinance Number 896) is determined to be invalid or unenforceable, the remaining provisions of this ordinance and/or the Cable Television

Franchise Agreement attached hereto and/or the Master Franchise Ordinance shall remain in force and effect.

Section 3: This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as required by law.

PASSED in regular session this 19th day of April, 2018.

Scott Anderson, Mayor

Leana Johnson, Clerk/Treasurer

Approved as to form:

Kenneth B. Woodrich, City Attorney

EXHIBIT 1
ORDINANCE NO. 2018-1118

CABLE TELEVISION FRANCHISE

This Cable Television Franchise ("Franchise") is entered into this ____ day of _____ 2018, by and between the City of Stevenson, Washington, a municipal corporation, (hereinafter "City") and WAVEDIVISION I, LLC (hereinafter "Grantee"). The City and Grantee are sometimes referred to hereinafter collectively as the "parties."

WHEREAS, the City has reviewed Grantee's performance under the prior franchise and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the City and its citizens, and has determined that Grantee's plans for operating and maintaining its Cable System are adequate; and

WHEREAS, the public has had adequate notice and opportunity to comment on this Franchise during a public proceeding; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of state-of-the-art cable communications service, the high technical capability and reliability of a cable system in the Franchise Area, the availability of local programming and quality customer service; and

WHEREAS, diversity in Cable Service is an important policy goal and Grantee's Cable System should offer a broad range of programming services; and

WHEREAS, flexibility to respond to changes in technology and Subscriber interests within the Cable Service market should be an essential characteristic of this Franchise; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain a Cable System within the boundaries of the City.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Grantee do hereby agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 "Affiliate" with respect to Grantee means any corporation or business entity controlled by or under direct common control with Grantee.

1.2 "Basic Service" means a separately available tier of service that includes, at a minimum, the retransmission of local television broadcast signals in fulfillment of 47 U.S.C. Sections 534 and 535 and public, educational and governmental access programming.

1.2 "Cable Operator" means any Person, including Grantee, who provides Cable Service over the Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is(are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.3 "Cable Service" means the one-way transmission to Subscribers of video programming, or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming.

1.4 "Cable System" shall mean Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided within the Franchise Area.

1.5 "City" means the City of Stevenson, Washington, a municipal corporation.

1.6 "FCC" means the Federal Communications Commission or its lawful successor.

1.7 "Franchise" means this document, a contractual agreement, and any amendments and modifications thereto executed between the City and Grantee, containing the specific provisions of the authorization granted to operate a Cable System in the City.

1.8 "Franchise Area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.9 "Grantee" shall have the meaning set forth in the preamble of this Franchise.

1.10 "Gross Revenues" means the revenue derived by Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Gross Revenues include but are not limited to fees received from Subscribers for Basic Service, Premium Service, installation fees, equipment rental fees, advertising sales revenues net of commissions due to advertising agencies that arrange for the advertising buy, and revenues from program guides. Gross Revenue shall not include home shopping revenue, refundable deposits, bad debt, late fees, investment income, nor any taxes, fees or assessments imposed or assessed by any governmental authority, including but not limited to

franchise fees.

1.11 "PEG" means a channel designated for public, educational and government use.

1.12 "Person" means any individual, partnership, association, joint stock company, trust, corporation, or governmental entity, but shall not mean the City.

1.13 "Premium Service" means video programming service other than Basic Service for which Subscribers are charged a periodic (including per-program) fee.

1.14 "Right-of-Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public Right-of-Way, including, but not limited to, utility easements, dedicated utility strips, or Right-of-Way dedicated for compatible uses now or hereafter held by the City in the Franchise Area, which shall entitle Grantee to the use thereof for the purpose of installing, operating, repairing, upgrading and maintaining the Cable System. Right-of-Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel or for utility or public service use dedicated for compatible uses.

1.15 "State" means the State of Washington.

1.16 "Subscriber" means any Person who lawfully receives Cable Service provided by Grantee by means of the Cable System and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive Franchise authorizing Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Right-of-Ways within the Franchise Area, and for that purpose to install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Right-of-Way such wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment and use existing poles as may be necessary or appurtenant for the deployment of Cable Services over the Cable System. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in the provisions of this Franchise.

(B) Grantee, through this Franchise, is granted the right to operate its Cable System using the Right-of-Ways within the Franchise Area. Subject to federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to any ordinance, regulation, resolution or other enactment of the City,

except within the lawful exercise of the City's police power. In the event of a conflict between the municipal code and this Franchise, this Franchise shall control. Grantee has the right to challenge any City ordinance or regulation that conflicts with its rights under this Franchise. Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety and welfare of the public, and Grantee agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

(C) Grantee guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of Grantee offering Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Franchise.

2.2 Duration

The term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be Fifteen (15) years from the effective date of this Franchise, unless extended or terminated as hereinafter provided.

2.3 Effective Date

The effective date of this Franchise shall be five (5) days after publication following the adoption of this Franchise by the City's City Council.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, permits or licenses granted by the City to any Person to use any City property for any purpose whatsoever, including the right of the City to use the same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Right-of-Ways for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for cable systems as the City deems appropriate.

2.5 Effect of Acceptance

By accepting the Franchise, Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce this Franchise; (2) agrees that it will not oppose the City's intervening, to the extent that the City is legally entitled to do so, in any legal or regulatory proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every lawful provision of this Franchise; and (4) agrees that it will not raise any claim that the Franchise was not granted pursuant to process and procedures consistent with applicable law.

2.6 Competitive Equity

(A) Grantee acknowledges and agrees that the City reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, the City agrees that it shall amend this Franchise to include any material more favorable terms or conditions that it

makes available to the new entrant within ninety (90) days of Grantee's request, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; system build-out requirements; security instruments; PEG access and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the City which, in the reasonable opinion of Grantee, contains more favorable or less burdensome terms or conditions than this Franchise, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions in a manner mutually agreed upon by City and Grantee.

(B) In the event an application for a new cable television franchise is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon Grantee by registered or certified mail or via nationally recognized overnight courier service.

(C) In the event that a multichannel video programming distributor provides video service to the residents of the City under the authority granted by federal or State legislation or other regulatory entity, Grantee shall have a right to request Franchise amendments that relieve Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petition shall: (1) indicate the presence of such competitor; (2) identify the basis for Grantee's belief that certain provisions of this Franchise place Grantee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The City shall not unreasonably withhold consent to Grantee's petition.

SECTION 3. FRANCHISE FEES AND FINANCIAL CONTROLS

3.1 Franchise Fees

As compensation for the use of the City's Rights-of-Way, Grantee shall pay as a franchise fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues, pursuant to 47 U.S.C. § 542. Accrual of such franchise fees shall commence as of the effective date of this Franchise.

3.2 Payments

Grantee's franchise fee payments to the City shall be computed quarterly for the preceding quarter. Each payment shall be due and payable no later than thirty (30) days after the end of the preceding quarter, after which time interest will accrue. The quarters shall end respectively on the last day of March, June, September and December. Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form that includes a breakdown by category of Grantee's Gross Revenues and the computation of the payment amount subject to the confidentiality provisions of Section 7.2 below.

3.3 Acceptance of Payment

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Audits

Upon forty-five (45) days prior written notice and no more than once per calendar year, the City shall have the right to conduct an independent audit of Grantee's records necessarily related to the enforcement of this Franchise and to recompute any amounts determined to be payable under this Franchise. If Grantee cooperates in making all relevant records available to the City, the City will attempt to complete each audit within six (6) months. The audit period shall be no greater than the previous three (3) years, unless the City has information relating to previous years beyond the three (3) years which raises doubt as to the accuracy of payments made under this or previous franchises in which case an additional three (3) years may be audited; provided that in no case shall a particular year be audited more than once. Any undisputed amounts due to the City as a result of the audit shall be paid within sixty (60) days following written notice to Grantee by the City, which notice shall include a copy of the audit findings. If the audit shows that franchise fees have been underpaid by five percent (5%) or more in any calendar year, Grantee shall pay the cost of the audit in an amount not to exceed five thousand dollars (\$5,000) per year being audited for a maximum of 3 years. If Grantee disputes all or part of the audit findings, then the parties shall meet in an attempt to resolve the matter. If the parties are unable to resolve the matter, then either of the parties may, but is not required to, refer that matter to mediation. Each party shall bear one-half of the costs and expenses of the mediation proceedings.

3.5 Late Payments and Underpayments

In the event any payment due the City under Section 3.2 is not timely made or an underpayment in an otherwise timely payment is discovered as a result of an audit under Section 3.4, Grantee shall pay, in addition to the amount due, interest at the maximum allowed rate as provided under State law, from the payment due date until the City receives the payment.

3.6 Maximum Franchise Fees

The parties acknowledge that, at present, applicable federal law limits the City to collecting a franchise fee of five percent (5%) of Gross Revenues in a 12-month period.

3.7 Additional Commitments Not Franchise Fees

Unless required by applicable law, no term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay franchise fees. Although the total sum of franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not franchise fees, nor are they to be offset or credited against any franchise fee payments due to the City, nor do they represent an increase in franchise fees to be

passed through to Subscribers, unless so provided by applicable law.

3.8 Tax Liability

The franchise fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use, utility, occupation and other taxes.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable law or to delegate that power and right, or any part thereof, to the extent permitted under law, to any agent in the sole discretion of the City.

4.2 Rate Regulation

All rates, fees, charges, deposits and associated terms and conditions to be imposed by Grantee or any affiliated Person for any Cable Service as of the effective date shall be in accordance with applicable law.

SECTION 5. INDEMNIFICATION AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold harmless the City, City Council, and any of the City's officers, officials, boards, commissions, agents and employees acting in an official capacity from any action, claim, damage, loss, liability, cost or expense, including court costs and attorneys' fees and expenses, arising from the death of or injury to any Person, casualty or accident to equipment or property, and all other damages arising out of, or by reason of, any construction, operation, maintenance or removal of the Cable System, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee, its agents or employees, except for injuries and damages caused by the sole negligence of the City.

(B) Procedures and Defense. The City shall give Grantee written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim to Grantee, which defense shall be at Grantee's expense.

(C) Other Counsel. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall select additional counsel with no conflict with the City.

5.2 Insurance Requirements

(A) Grantee shall maintain on file with the City evidence of insurance coverage consistent with the minimum coverage and limits of liability specified below; as respects 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 cap of any insurer's limits of liability that would otherwise apply.

(B) Grantee shall maintain:

(1) 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");

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

(3) 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 one million dollars (\$1,000,000) combined single limit each occurrence bodily injury and property damage (except, with respect to CGL Insurance, one million dollars (\$1,000,000) each accident/disease employers/stop gap liability and one million dollars (\$1,000,000) each offense personal/advertising injury).

(C) 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.

(D) Insurance coverage shall not be cancelable without mailing notice of cancellation not less than thirty (30) days prior to the actual date of such cancellation.

5.3 Bonds

(A) Grantee shall provide to the City a faithful performance bond in the initial amount of fifty thousand dollars (\$50,000) and obtain additional bonds on a project specific basis as required by the municipal code.

(B) Grantee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance

by Grantee, or limit the liability of Grantee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2 Subscriber Privacy

Grantee will comply with privacy rights of Subscribers in accordance with federal, State and local laws.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

The City shall have access to, and the right to inspect, any books and records of Grantee and its Affiliate that is providing Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise at Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. The City may, in writing, request copies of any such records or books that are not identified as proprietary or confidential, and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to the City at the sole expense of Grantee, which access may be made electronically. If the requested books and records are too voluminous, or identified as proprietary and confidential, or for security reasons cannot be copied or removed, then the City shall inspect them at Grantee's business office.

7.2 Confidentiality

Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any Affiliate that is not providing Cable Service in the Franchise Area. The City agrees to keep confidential any proprietary or confidential books or records of Grantee to the extent permitted by law. Grantee shall be responsible for clearly and conspicuously identifying the records as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential or proprietary and how it may be treated as such under State or federal law. The Grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or State privacy law. For purposes of this Section, the terms "confidential or proprietary " include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules,

or other information that is reasonably determined by the Grantee to be competitively sensitive. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential or proprietary, the City shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the Person demanding access to such information within five (5) business days.

7.3 Maps and Records Required

Grantee shall provide to the City upon request:

(A) A route map that depicts the general location of the Cable System facilities placed in the Right-of-Ways. The route map shall identify Cable System facilities as aerial or underground. The route map shall denote which cables are fiber optic. The route map is not required to depict cable types, number of cables, electronic equipment, and service lines to individual Subscribers. Grantee shall also provide, if requested, an electronic version, in industry standard format, of the aerial/underground facilities in relation to a Right-of-Way centerline reference to allow the City to add this information to Skamania County's geographic information system program;

(B) A copy of all FCC filings which relate to the operation of the Cable System in the Franchise Area; and

(C) A list of Grantee's Cable Services, rates and channel line-up.

Grantee may, alternatively, satisfy any of the above requirements by providing any of the required maps and records listed above on Grantee's web site or by directing the City to the location of the materials in Grantee's public files made available at the web site of the Federal Communications Commission.

7.4 Annual Reports

Upon request by the City no later than thirty (30) days prior to the end of the first quarter of any year, Grantee shall submit to the City a written report thirty (30) days after the end of such quarter, which shall include the following information:

(A) A Gross Revenue statement for the preceding fiscal year and all deductions and computations for the period, and such statement shall be reviewed by a certified public accountant, who may also be the chief financial officer or controller of Grantee;

(B) A summary of the previous year's activities regarding the development of the Cable System, including, any technological changes occurring in the Cable System and the number of Subscribers for each class of Cable Service;

- (C) A description of planned construction, if any, for the current year; and
- (D) A summary of Subscriber complaints received in the previous year.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall offer to all Subscribers a diverse selection of broad categories of video programming services; provided that the selection of particular video services within any particular category shall be wholly within the discretion of Grantee.

8.2 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, trap or filter to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Such devices, traps or filters will be provided at no charge to the Subscriber, unless otherwise provided by federal law.

SECTION 9. ACCESS

9.1 PEG Channels

- (A) As of the effective date of this Franchise, the Grantee is providing one (1) PEG channel to the City.
- (B) Under the terms of this Franchise, the Grantee shall continue to make available a total of one PEG channel to the City for PEG programming.

9.2 Control and Connectivity of Access Channels

- (A) The City may authorize a governmental or non-profit entity as a “Designated Access Provider” to control, operate and manage the use of the PEG channel. The City or its designee may formulate rules for the operation of the PEG channel, consistent with this Franchise.
- (B) As of the effective date of this Franchise, Grantee shall maintain all existing fiber optic return line(s) to facilitate the City's current PEG connectivity to Grantee's facilities.

9.3 Location and Quality of Access Channels

- (A) The PEG Channel provided to Subscribers under this Franchise shall be included by Grantee within the Cable Services subject to applicable law.
- (B) Grantee shall transmit the PEG channel in the quality and format provided by the City, provided that such quality and format is also made available by Grantee with respect to the commercial channels that deliver programming on the Cable System. The Grantee shall provide,

repair and replace the necessary equipment within Grantee's facilities in order to carry the PEG signal and to deliver it from Grantee's network to Subscribers.

(C) Grantee shall provide as much notice as possible but not less than sixty (60) days advance written notice to the City prior to any relocation of the PEG Channel. In connection with the movement of the PEG Channel, Grantee shall provide a bill message on subscriber's bills informing them of the new channel placement.

9.4 Access Capital Contribution RESERVED

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to the other provisions of this Franchise, Grantee may perform all construction in the Right-of-Ways for any facility needed for the maintenance, operation or extension of Grantee's Cable System.

10.2 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All equipment shall be durable and installed and maintained in accordance with good engineering practices and comply with applicable law.

10.3 Movement of Facilities During Emergencies

In the event an emergency posing a threat to public safety or welfare requires the relocation of Grantee's facilities within the Franchise Area, the City shall give Grantee notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, Grantee shall endeavor to respond as soon as reasonably practicable to relocate the affected facilities. In emergencies where public or private health or safety is endangered and Grantee does not respond to the City's notice in a reasonable time given the emergency, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee.

10.4 One Call

Grantee shall, at its own expense, participate in the call before you dig program required under State law.

10.5 Permits Required

Prior to doing any work in a Right-of-Way or other public property (with the exception of installations or general maintenance that involves no construction and with no disruption to the use of a Right-of-Way or other public property, Grantee shall apply for, and obtain, in advance, appropriate permits from the City. As part of the permitting process, the City may impose such conditions as are necessary for protecting any structures in such Right-of-Ways, and for providing

for the proper restoration of such Right-of-Ways and to protect the public and the continuity of pedestrian or vehicular traffic. Grantee shall pay all generally applicable fees for the requisite City permits.

10.6 Emergency Permits

In the event that emergency repairs are necessary, Grantee may initiate such emergency repairs, and, if necessary, shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.7 Compliance with Applicable Codes

(A) **City Codes.** Grantee shall comply with all generally applicable City codes regarding the construction and use of the Right-of-Ways.

(B) **Regulations and Safety Codes.** Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) standards.

10.8 Least Interference

Work in a Right-of-Way, or on other public property, shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and City residents. Grantee's Cable System shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the Right-of-Way by, or under, the City's authority. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.9 Poles & Undergrounding Requirements

(A) If all of the wires and lines of electric and telephone service providers in any given area within the Franchise Area are now or in the future placed underground, Grantee shall place its Cable System distribution cables underground. In any part of the Franchise Area where the wires and lines of the electric and telephone service providers are both aerial and underground, Grantee shall have the discretion to construct, operate, and maintain all of its distribution cables, or any part thereof, aerially or underground. In areas where the electric and telephone service providers wiring is aerial, Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. Nothing in this subsection shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as power supplies, or pedestals.

(B) This Franchise does not grant, give or convey to Grantee the right or privilege to install its facilities in any manner on poles or equipment of the City or of any other Person.

10.10 Restoration of Property

(A) If in connection with the construction, operation, maintenance, upgrade, repair or replacement of the Cable System, Grantee disturbs, alters, or damages any public property, Grantee agrees that it shall at its own cost and expense pay for any damage and replace and restore any such property to a condition reasonably comparable to the condition existing immediately prior to the disturbance.

(B) Grantee shall warrant any restoration work performed by or for Grantee in a Right-of-Way or on other public property for one (1) year, unless a longer period is required by the municipal code or any generally applicable ordinance or resolution of the City. If restoration is not satisfactorily and timely performed by the Grantee, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

10.11 Movement of Cable System Facilities

(A) Relocation at Request of City. Upon thirty (30) days prior written notice to Grantee, City shall have the right to require Grantee to relocate any part of the Cable System within the Right-of-Way when the safety, health or welfare of the public requires such change, and the expense thereof shall be paid by Grantee. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days written notice to Grantee. Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the Right-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Right-of- Way. If public funds are available to any Person using such Right-of-Way for the purpose of defraying the cost of any of the foregoing, Grantee may make application for such funds.

(B) In the case of relocation projects where the City hires and designates an independent contractor to accommodate and coordinate the conversion of overhead utilities within a City capital improvement project, if Grantee decides to participate in the joint trench opportunity then Grantee shall pay to the City the Grantee's portion of trench costs, including excavation and other associated costs, trench bedding, and backfill commensurate with Grantee's proportionate share of trench usage. However, notwithstanding anything to the contrary set forth herein, if bids from the City's contractor for placement of Grantee's conduits and vaults/pedestals in the supplied joint trench, in the reasonable estimation of Grantee, are not acceptable, Grantee shall have the option to utilize contractor(s) of its choice to complete the required work. The City's contractor shall coordinate with Grantee's contractor(s) to provide reasonable notice and time to complete the placement of

Grantee's facilities in the supplied joint trench.

10.12 Movement of Cable System Facilities for Others

(A) If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder(s) or any facilities-based entity authorized to provide Cable Services or comparable video programming within the franchise area without a franchise granted by the City, Grantee shall, after at least thirty (30) days advance written notice, take action to effect the necessary changes requested by the responsible entity, as long as, the other Person pay for Grantee's time and material costs associated with the project and Grantee is issued a permit for such work by the City.

(B) Grantee shall, upon reasonable prior written request of any Subscriber or City residence, relocate its aerial distribution cable facilities underground, as long as, the responsible Person pays for Grantee's time and material costs associated with the project and Grantee is issued a permit for such work by the City.

(C) In the event an underground conversion of cable facilities is required as part of the street improvement condition(s) of a new land use development, not associated with a City capital improvement project, this Franchise shall in no way limit Grantee's right to recoup all time and material costs associated with the underground conversion of the Cable System from the Person responsible for the project.

(D) At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder.

10.13 Tree Trimming

Grantee shall have the authority to conduct pruning and trimming for access to Cable System facilities in a Right-of-Way. All such trimming shall be done at Grantee's sole cost and expense. Grantee shall be responsible for and indemnify and defend City for any damage caused by such trimming.

SECTION 11. CABLE SYSTEM ARCHITECTURE/TECHNICAL STANDARDS

11.1 Subscriber Network

Prior to the effective date of this Franchise, Grantee has upgraded its Cable System to a fiber-to-the-node Cable System architecture. Active and passive devices are capable of passing a minimum of 625 MHz. The Cable System is capable of delivering high quality signals that meet or exceed FCC technical quality standards. Over the term of this Franchise, the Grantee will maintain the Cable System in a manner consistent with, or in excess of these specifications.

11.2 Emergency Alert

Grantee shall provide an operating emergency alert system in accordance with and at the time

required by the provisions of State and federal laws, including FCC regulations.

11.3 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal technical standards, as they may be amended from time to time, regardless of the transmission technology utilized.

11.4 Cable System Performance Testing

(A) Grantee shall perform on its Cable System all technical tests presently or hereafter required by the FCC.

(B) Upon request, all required FCC technical performance tests may be witnessed by representatives of the City.

(C) Grantee shall maintain written records of its Cable System tests performed for a period of three (3) years. Upon request, copies of such test results will be provided to the City.

SECTION 12. SERVICE EXTENSION AND SERVICE TO PUBLIC BUILDINGS

12.1 Service Availability

(A) Subject to the density provisions described in Section 12.1 (B) below and accessibility, Cable Service shall be made available in the entire Franchise Area. If such availability does not now exist in the Franchise Area, Grantee shall complete such construction and wiring and be in a position to offer Cable Service to all residents within six (6) months of such availability. Other areas subsequently annexed shall be provided with Cable Service within twelve (12) months.

(B) Distribution Line Extension Charges. Grantee must make Cable Service available to every Residential Dwelling Unit within the Franchise Area where the minimum density is at least twenty-five (25) Dwelling Units per strand mile, or increment thereof, in areas served by overhead facilities and fifty (50) Dwelling Units per mile in areas served by underground facilities; provided that Grantee shall not be required to extend its distribution network more than one-half (0.5) miles in order to reach such areas. The Grantee may elect to provide Cable Service to areas not meeting the above density, location or proximity standards and charge the requesting resident(s) user(s) for the line extension on a time and material cost basis.

(C) Extraordinary Installation Charges. All residents requesting Cable Service and living within one hundred twenty-five (125) aerial feet of existing cable distribution or trunk lines shall have the cable installed at the prevailing published installation rate. In the event a request is made for service and the residence is more than one hundred twenty-five (125) aerial feet from an existing cable distribution or trunk line, such installation shall be completed on a time and material cost basis for that portion of the service line extending beyond one-hundred twenty-five (125) feet.

12.2 Connection of City and Other Public Facilities

Grantee has voluntarily made available, without charge, a standard installation one outlet of Basic Services to the following public buildings within the Franchise Area: Wind River Middle School, Stevenson High School, City Hall, Skamania Emergency Medical Services, Stevenson Fire Department, Carson Fire Department, Stevenson Elementary School, Skamania County Sheriff's Department, and Carson Elementary School. Grantee will continue to make available without charge, as long as it is economically feasible, such Basic Services at the locations as they exist at the date of this Franchise. In the event that one of these public entities moves within the Franchise Area, Grantee shall cease providing Basic Services at the old location and, if the installation to the new location does not exceed one hundred twenty-five (125) aerial feet from Grantee's Cable System. If the installation at the new location exceeds 125 feet, Grantee shall provide the Basic Services to the new location if the City or other agency agrees to pay the incremental cost of such installation in excess of one hundred twenty-five (125) feet or a necessary distribution line extension of the Cable System, including the cost of such excess labor and materials. The recipient of the service will secure any necessary right of entry. The Cable Service will not be used for commercial purposes, and the outlets will not be located in jail cells or areas open to the public, except for one outlet may be located in City Hall that will be used by the public for viewing City selected programming. The City will take reasonable precautions to prevent any use of Grantee's Cable System in any manner that results in inappropriate use, loss or damage to the Cable System. If additional outlets of Cable Service are needed in such buildings, only Grantee is authorized to complete the Cable Service expansion to support the outlet installation(s) and the building occupant will pay the standard installation fees. No other Cable Service fees shall be owed in connection with additional outlets; provided that the City or other public agency shall be responsible for paying for any additional equipment required to receive the Cable Service at the additional outlets.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Non-Material Franchise Violations

(A) If the City believes that Grantee has failed to perform any non-material obligation under this Franchise, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

- (1) respond to the City, contesting the City's assertion that a default has occurred, and request a meeting in accordance with subsection (B), below; or
- (2) cure the default; or
- (3) notify the City that Grantee cannot cure the default within thirty (30) days, because of the

nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or denies the default and requests a meeting in accordance with subsection (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues and the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than fifteen (15) business days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, Grantee and the City may agree on a plan and schedule to cure the default. Absent such agreement, the City shall order Grantee to correct or remedy the default or breach within thirty (30) days or within such other reasonable timeframe, beyond thirty (30) days as the City shall determine. In the event Grantee does not cure the default within such time to the City's reasonable satisfaction, the City may:

- (1) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or
- (2) Pursue any other legal or equitable remedy available under this Franchise or applicable law.

(D) The determination as to whether a non-material violation of this Franchise has occurred shall be within the discretion of the City. Any such determination by the City must be in writing and must be based upon findings that include Grantee's submissions, provided that any such determination may be subject to appeal to the City Council or review by a court of competent jurisdiction under applicable law.

13.2 Material Franchise Violations

(A) The City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in any of the following circumstances:

- (1) If Grantee willfully fails, under normal operating conditions, for more than three (3) days to provide continuous and uninterrupted Cable Service;
- (2) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or
- (3) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(B) Prior to forfeiture or termination of the Franchise, the City shall give written notice to Grantee of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance. Grantee shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection and provide any explanation. In the event the City has not received a timely and satisfactory response from Grantee, it may then seek a termination of the Franchise in accordance with this subsection.

(C) The City Council shall conduct a public hearing to determine if revocation of the Franchise is warranted.

(1) At least thirty (30) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the City Council shall hear any Persons interested therein; and provide that Grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

(2) A verbatim transcript shall be made by a court reporter of such proceeding and the cost shall be paid jointly by both parties.

(3) Within thirty (30) days after the close of the hearing, the City Council shall issue a written decision regarding the revocation and termination of the Franchise.

(D) Grantee shall be bound by the City Council's decision to revoke the Franchise unless an appeal to a court of competent jurisdiction is filed within thirty (30) days of the date of the City Council's decision.

(F) Grantee and the City shall be entitled to such relief as the court may deem appropriate.

13.3 Termination

If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(A) Require Grantee to maintain and operate its Cable System on a month-to-month basis under the terms hereof until a new cable operator is selected, up to a maximum of three (3) months and without any obligations of service quality or system build-out; or

(B) Purchase Grantee's Cable System in accordance with federal law.

13.4 Alternative Remedies

No provision of this Franchise shall be deemed to bar the City from seeking appropriate judicial

relief. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the either party to recover damages, as allowed under applicable law, or to seek and obtain judicial enforcement of either party's obligations, injunctive relief or mandate, or any other remedy at law or in equity. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

13.5 Effect of Abandonment

If Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may obtain an injunction, or operate the Cable System, or designate another entity to operate the Cable System temporarily until Grantee restores service under conditions acceptable to the City, or until the Franchise is revoked and a new franchisee is selected by the City. If the City operates the Cable System, or designates another entity to operate the Cable System, Grantee shall reimburse the City or the City's designee, as applicable, for all reasonable costs and expenses incurred. If Grantee permanently abandons its entire Cable System (namely, for a period of one [1] year or more), then, at the City's sole discretion, such Cable System may become the property of the City, and Grantee shall then submit to the City a bill of sale and other conveyance documents, to be approved in advance by the City Attorney, transferring ownership of such property to the City.

SECTION 14. FRANCHISE RENEWAL

Any renewal of this Franchise shall be governed by and comply with applicable federal law, as amended.

SECTION 15. FRANCHISE TRANSFER

Neither Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Grantee. Within thirty (30) days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Notices

Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

Grantee's address shall be:

WaveDivision I LLC
401 Parkplace Center, Suite 500
Kirkland, WA 98033
Attention: General Counsel

With a copy to:

WaveDivision Holdings, LLC
c/o RCN
650 College Road East, Ste, 3100
Princeton, NJ 08540
Attn: Regulatory Department

WaveDivision Holdings, LLC
c/o RCN
105 West First Street
South Boston, MA 02127
Attn: Regulatory Department

City's address shall be:

City of Stevenson
7121 E. Loop Road
PO Box 371
Stevenson, WA 98648
Attention: City Clerk/Treasurer

With a copy to:

Kenneth B Woodrich PC
City Attorney
Via email to ken@woodrich.com

16.2 Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or

hereafter available to the City.

16.3 Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

16.4 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16.5 Authority to Amend

This Franchise may be amended at any time by mutual written agreement between the parties.

16.6 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with federal and State laws and any applicable rules, regulations and orders of the FCC, as such now exist, are later amended or subsequently adopted. Except as to the material terms of this Franchise Agreement, this Franchise shall be governed, construed and enforced in accordance with generally applicable City ordinances as such now exist, are later amended or subsequently adopted.

16.7 Captions

The captions and headings of this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provision of this Franchise.

16.8 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other. Further, Grantee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City.

16.9 Cooperation

The parties recognize that it is in their mutual best interests for the Cable System to be operated as efficiently as possible. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Franchise.

16.10 Waiver

The failure of the City at any time to require performance by Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same, nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.11 Severability

If any Section, subsection, paragraph or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

16.12 Entire Agreement

This Franchise and Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties.

16.13 Force Majeure

Grantee will not be held in violation under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement relating thereto, where such noncompliance or alleged violation occurred or was caused by circumstances reasonably beyond the ability of Grantee to control. This includes war or riots, civil disturbances, floods or other natural catastrophes, labor stoppages or slowdowns not attributable to Grantee's employees, or power outages exceeding back-up power supplies, and work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached as well as verifiable unavailability of materials and/or qualified labor to perform the work necessary.

Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the provisions of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

16.14 Attorneys' Fees

If any action or suit arises in connection with this Franchise (excluding Franchise renewal proceedings), the court shall determine which party shall be entitled to recover all of its reasonable attorneys' fees, costs and expenses in connection therewith, in addition to such other relief as the court may deem proper.

[Signatures appear on next page]

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Stevenson, Washington, this 19th day of April, 2018.

CITY OF STEVENSON, WASHINGTON

Scott Anderson, Mayor

Leana Johnson, Clerk/Treasurer

Approved as to form:

Kenneth B. Woodrich, City Attorney

Accepted and approved this ___ day of _____, 2018.

WAVEDIVISION I, LLC

By: _____
Its: _____

Attest:

By: _____
Its: _____