

**STATE OF WASHINGTON
COUNTY OF JEFFERSON**

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| In The Matter of the Application by |) | |
| WaveDivision I, LLC |) | |
| For a Temporary Nonexclusive Franchise |) | |
| To Construct, Maintain, and Operate |) | Resolution _____ |
| Cable Television and Telecommunication |) | Granting A Temporary |
| Transmission and Distribution Lines |) | Nonexclusive Franchise |
| Together With Poles, Wires, and Other |) | |
| Appurtenances Upon, Over, Along, and |) | |
| Across A Franchise Area Within |) | |
| Unincorporated Jefferson County |) | |

WHEREAS, Broadstripe, LLC, a Delaware limited liability company (Broadstripe), currently provides cable television and telecommunications services within Jefferson County; and

WHEREAS, the cable television franchise issued by Jefferson County to Broadstripe on June 23, 1981 expired on June 23, 2006 and Broadstripe has continued to provide cable television and telecommunications services within Jefferson County pursuant to authority granted by Jefferson County Board of County Commissioners (the Board) under Resolution 75-07; and

WHEREAS, on August 16, 2011, Broadstripe and WaveDivision I, LLC, d/b/a Wave Broadband, (Wave) entered into a Purchase and Sale Agreement with Broadstripe and other related parties for the sale of certain assets of Broadstripe to Wave, including all of Broadstripe’s assets comprising its cable television and telecommunications transmission and distribution system in Jefferson County (the Transaction); and

WHEREAS, the Board desires to negotiate a new cable television and telecommunications franchise (the New Franchise) with Wave containing such terms and conditions as are consistent with Federal statutes and the Jefferson County Code Title 13 Utilities and are mutually agreeable to Wave and the Board; and

WHEREAS, it is in the public interest for Wave to have authority to provide cable television and telecommunications services within Jefferson County pending the negotiation of the New Franchise; and

WHEREAS, the Board desires to grant Wave a temporary nonexclusive franchise (the Temporary Franchise) to install, construct, repair, replace, maintain, relocate, extend, remove, operate, and use cable television and telecommunications transmission and distribution lines together with poles, wires and other appurtenances upon, over, along and within unincorporated Jefferson County; and

WHEREAS, Wave has applied to the Board for the Temporary Franchise; and

WHEREAS, Jefferson County Code (JCC) 13.60 requires cable television and Wave Temporary Franchise

telecommunications providers who occupy County rights-of-way to obtain a franchise from the County pursuant to JCC 13.60 through 13.92 and pay all fees provided therein; and

WHEREAS, JCC Chapters 13.60 through 13.92 specify standards and procedures for granting nonexclusive franchises for cable television and telecommunications providers to occupy County rights-of-way; and

WHEREAS, Wave has registered with the County as per the requirements of JCC Chapter 13.64; and

WHEREAS, the Board finds that granting the Temporary Franchise is consistent with the requirements of JCC Section 13.60 through JCC 13.92 in that:

(a) Wave has the financial and technical ability to fulfill its obligations under a franchise granted by Jefferson County;

(b) Wave has legal standing to be granted a franchise;

(c) Wave will acquire all of Broadstripe's cable television and telecommunications system distribution facilities already located in County rights-of-way;

(d) Granting the Temporary Franchise would not significantly damage or disrupt public or private facilities, improvements, services, travel, or landscaping, provided that there is appropriate planning and provision for installation, maintenance, and repair of Wave's facilities;

(e) The public interest in minimizing the cost and disruption resulting from the presence of Wave's facilities in County rights-of-way can be protected;

(f) Granting the Temporary Franchise will enable Wave to continue to provide cable television and telecommunications services in Jefferson County and not disrupt services to the citizens of the County who subscribe to such services;

(g) Granting the Temporary Franchise will protect the public's health, safety, and welfare;

(h) Granting the Temporary Franchise is consistent with applicable Federal, State, and County laws, regulations, rules, and policies, including RCW 36.55, RCW 80.32, JCC 13.56, and JCC 13.60 through 13.92; and

WHEREAS, pursuant to RCW 36.55 and RCW 80.32, notice was posted in three (3) public places in the County seat at least fifteen (15) days before the hearing date and notice was published once a week for two (2) consecutive weeks in the official County newspaper of record, the last publication being not less than five (5) days before the date fixed for the hearing; and WHEREAS, pursuant to RCW Chapter 36.55 and RCW Chapter 80.32, a hearing on the application was held on the ___ day of _____, 2012; and

WHEREAS, the Board finds that it is in the public interest to grant the Temporary Franchise to Wave;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF JEFFERSON COUNTY that the Temporary Franchise is hereby granted to Wave, hereinafter Grantee, under the following express terms and conditions:

SECTION 1 DEFINITIONS The terms listed below, as used in this Franchise, shall have the meanings given herein. When not inconsistent with the text, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders. The words “shall” and “will” are mandatory, and the word “may” is permissive. Words not otherwise defined shall be given their common and ordinary meaning.

1.1 “Board” means Board of County Commissioners of Jefferson County.

1.2 “County” means Jefferson County, a municipal corporation and political subdivision of the State of Washington, represented by its designated employees, representatives, and agents, including, but not limited to the County Administrator, County Engineer, and their designees.

1.3 “Emergency” means any condition constituting a clear and present danger to life, safety, or property.

1.4 “Engineer” means the County Engineer or designee.

1.5 “Facilities” means, collectively, any and all (i) cable television and telecommunications transmission and distribution systems, including but not limited to, poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors, and vaults and (ii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located above or underground.

1.6 “FCC” means the Federal Communications Commission or such successor regulatory agency having jurisdiction over cable television and telecommunications companies.

1.7 “Franchise” means the grant of rights, privileges, and authority embodied in this Resolution.

1.8 “Franchise Area” means all rights-of-way for County roads, streets, avenues, alleys, and highways located within those portions of the County listed in Attachment A – Wave Service Territory and not within an incorporated city or town, as now or as may hereafter be laid out, platted, dedicated, or improved within the present limits of the County and as such limits may be hereafter extended. The Franchise Area does not include (a) any other County owned or leased properties or easements (i.e., County owned or leased properties or easements unrelated to the roads, streets, avenues, alleys and/or highways described above), including, but not limited to, parks, trails, facilities, or pits, located inside or outside of the boundaries of the County, or (b) Grantee owned or leased properties or easements located inside or outside of the boundaries

of the County.

1.9 “JCC” means the Jefferson County Code, as it now exists or as it is later amended or superseded.

1.10 “MUTCD” means the Manual on Uniform Traffic Control Devices, as adopted by the Washington State Department of Transportation and published by the United States Department of Transportation, Federal Highway Administration, as it now exists or as later amended or superseded.

1.11 “Parties” or “Party” means collectively the County and Grantee, and individually either the County or Grantee.

1.12 “Person” means an individual, entity, corporation, partnership, firm, association, joint venture, or organization of any kind.

1.13 “Public Improvement Project” means any County capital improvement undertaken by the County, including projects listed in the County’s Six-Year Transportation Improvement Program or Annual Construction Program, or the construction, relocation, expansion, repair, maintenance, or removal of any County-owned facility located on, in, over, or under the Franchise Area that is undertaken by the County for parks; roads and/or streets; curbs and/or sidewalks; pedestrian, bicycle, and/or other non-motorized transportation facilities; water systems; sanitary sewer systems; bridges, culverts, and storm drainage facilities; and County-owned fiber optic cable, conduit, or network facilities. A Public Improvement Project will not include any development or other activity requiring the relocation of Grantee's Facilities for the benefit of a Third Party.

1.14 “Third Party” means any Person other than the County and Grantee.

SECTION 2 FRANCHISE

2.1 Grant of Franchise.

2.1.1 Pursuant to the laws of the State of Washington, including, but not limited to, RCW 36.55 and RCW 80.32.010, the County hereby grants to Grantee, subject to and in accordance with the terms and conditions set forth herein, a nonexclusive franchise that grants the right, authority and franchise to install, construct, repair, replace, maintain, relocate, extend, remove, operate, and use Facilities in, upon, over, under, along, through, and across the Franchise Area.

2.1.2 The Franchise granted shall not convey to Grantee any title or ownership interest in the Franchise Area, but shall be deemed a Franchise only to use and occupy the Franchise Area for the limited purposes and term stated herein.

2.1.3 The Franchise granted shall not authorize, excuse, preclude or prohibit Grantee from securing such further easements, leases, permits, or other approvals as may be required or desired to lawfully occupy and use the Franchise Area.

2.1.4 The Parties acknowledge and agree that this Franchise shall not govern, cover, or apply to any Facilities located on Grantee owned or leased properties or easements (whether inside or outside of County rights-of-way, whether granted by a private or public entity, and whether now existing or hereafter acquired) and that such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise.

2.1.5 The Franchise granted shall not be construed as any warranty of title.

2.1.6 No act, event or occurrence shall give Grantee any rights to occupy or use the Franchise Area permanently nor shall operate as an estoppel against the County.

2.1.7 Grantee specifically agrees to exercise its rights within the Franchise Area in accordance with all applicable Federal and State of Washington laws and applicable rules and regulations, as now exist or as later amended or superseded; and all applicable County codes, including, but not limited to, JCC Title 13 Utilities, Division II. Accommodation of Utilities upon Jefferson County Rights-of-Way, Chapter 13.56 and Division III Telecommunications Use of Jefferson County Rights-of-way, Chapters 13.60 through 13.92, resolutions, and ordinances, as now exist or as later amended or superseded; provided, however, in the event of a conflict or inconsistency between any such provisions and this Franchise, the express terms and conditions of this Franchise will govern; provided, further, nothing herein shall be deemed to waive, prejudice, or otherwise limit any right of appeal afforded Grantee by such County codes, resolutions and ordinances.

2.1.8 The express terms and conditions of this Franchise constitute a valid and enforceable contract between the Parties.

2.2 Noninterference. All installation, construction, repair, replacement, maintenance, relocation, extension, removal, operation, and use of Grantee's Facilities performed in, upon, over, under, along, and/or across the Franchise Area shall be done in such a manner as not to interfere with the free passage of pedestrian and/or vehicle traffic therein; the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of the Facilities; the use, maintenance, and repair of existing County facilities and uses within the Franchise Area; or the use, maintenance, and repair of existing utilities, drainage facilities, or other improvements located within the Franchise Area. Grantee's Facilities shall have the same preference in regard to non-County facilities, including, but not limited to, utilities, drainage facilities, or other improvements that are proposed to be installed in the Franchise Area subsequent in time to Grantee's Facilities. Nothing in this **Section 2.2** is intended to or will affect or modify the rights and obligations of the Parties with respect to the relocation of Grantee's Facilities under **Section 4**. All relocations of Grantee's Facilities will be undertaken only subject to and in accordance with the terms, conditions, and requirements set forth in Section 4.

2.3 Drawings. Grantee shall provide the County, upon the County's reasonable request, copies of available drawings in Grantee's possession showing the location of Grantee's Facilities at specific locations within the Franchise Area. As to any such drawings so provided, Grantee does not warrant the accuracy thereof and to the extent the location of the Facilities are shown such Facilities are shown in approximate location. Upon the County's request, in connection

with the design of any County improvement project within the Franchise Area, Grantee shall verify the location of its underground Facilities within the Franchise Area by excavating, including pot holing, at no expense to the County. With respect to any excavations by or on behalf of Grantee or the County within the Franchise Area, nothing herein is intended nor shall be construed to relieve either Party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

2.4 Term of Franchise.

2.4.1 Term of Franchise. This Franchise is granted for a period of six (6) months from the date of the Transaction.

2.4.2 Franchise Acceptance. As an express condition of this Franchise, within sixty (60) days after the adoption of this Franchise by the Board, Grantee shall file with the Clerk of the Board its written acceptance of the Franchise. At the time of filing its written acceptance, Grantee shall reimburse the County for the expenses required to be paid by Grantee under **Section 6.2**, deliver to the County the required evidence of insurance set out in **Section 8**, and make application to the County for the New Franchise. In the event Grantee fails to accept this Franchise in the manner specified above within the said sixty (60) days, this Franchise shall be null and void.

2.4.3 Franchise Extension. This Franchise may be extended, at the sole discretion of the Board, for an additional period not to exceed six (6) months upon the written request of Grantee, such request to be submitted not less than thirty (30) days prior to the expiration of the Temporary Franchise.

2.5 Nonexclusive Franchise. The Franchise granted herein shall be nonexclusive. The County specifically reserves the right to grant at any time such rights, permits, licenses, and/or franchises to Persons to use the Franchise Area for similar or different purposes allowed hereunder as the County deems appropriate, so long as the same does not interfere with Grantee's rights under this Franchise. Subject to this Franchise, Grantee shall not prevent or prohibit the County from constructing, altering, maintaining, or using any portion of the Franchise Area or affect its jurisdiction over any part thereof, the County having full power and authority to make all necessary changes, relocations, repairs, or maintenance of the Franchise Area as the County deems appropriate. Grantee acknowledges that it cannot exclude the County from any portion of the Franchise Area where it uses or occupies that portion of the Franchise Area unless the County expressly agrees to such exclusion in writing.

2.6 Facilities Installed by Prior Franchise. Existing Facilities installed or maintained by Grantee in accordance with prior franchise agreements on public grounds and places within the County (but which are not within the Franchise Area as defined by this Franchise) may be maintained and operated by Grantee at the location where such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the County pursuant to the provisions of any applicable County codes, ordinances, regulations, standards, procedures, and/or permits, as now exist or as later amended or superseded.

SECTION 3 PERFORMANCE OF WORK

3.1 Permit Required.

3.1.1 Work by Grantee within the Franchise Area shall conform to the requirements of the applicable codes, ordinances, and standards, including JCC 13.56 and JCC 13.60 through 13.92; provided, however, in the event of a conflict or inconsistency between any such requirements and this Franchise, the express terms and conditions of this Franchise will govern and control.

3.1.2 Prior to commencing any work within the Franchise Area, Grantee shall apply for and receive a utility permit from the County pursuant to the requirements of JCC 13.56.

3.1.3 Work by Grantee shall comply with the utility permit and plans. The County may order removal at Grantee's expense of work that does not comply with the permit or plans.

3.1.4 Grantee is solely responsible for the performance and completion of work authorized by a utility permit that is issued to Grantee.

3.2 Emergency Response and Repairs.

3.2.1 In the event of an emergency or the need for unexpected repair, Grantee may commence such emergency response or repair as required by the circumstances, provided that Grantee shall notify the County in writing before commencing the work or within twenty-four (24) hours, if advance notice is not practicable. In the event that Grantee conducts emergency response or repairs under this section, Grantee shall make application for an utility permit as soon as practicable, but in no event (unless waived by the County) later than thirty (30) days from the emergency event.

3.2.2 In the event any of Grantee's Facilities within the Franchise Area are in a condition such that, in the reasonable opinion of the Engineer, an Emergency is created, Grantee upon request of the Engineer shall expeditiously and at its own expense repair the Facilities and correct the emergency condition.

3.3 Restoration. After installation, construction, relocation, maintenance, removal, repair, or replacement of any of Grantee's Facilities within the Franchise Area, Grantee at its expense shall expeditiously restore the Franchise Area and any County property within the Franchise Area that may have been disturbed or damaged by such work to at least the same condition as they were in immediately prior to any such work. The County shall have final approval of the condition of the Franchise Area after restoration pursuant to the provisions of applicable County codes, ordinances, regulations, standards, and procedures as now exist or as later amended or superseded; provided, however, nothing herein shall be deemed to waive, prejudice, or limit any right of appeal afforded by such codes, ordinances, regulations, standards, or procedures. Grantee or its agent shall contact the County for inspection upon completion of work.

3.4 Refuse and Debris. Grantee shall promptly remove and properly dispose of refuse

and debris resulting from any of Grantee's work within the Franchise Area. Grantee shall remove refuse and debris on a regular basis during the work day to keep all travel ways clear. Should Grantee's work last for more than one day in a particular part of the Franchise Area, all refuse and debris shall be removed prior to leaving the site at the end of the work day, to the extent feasible in light of the work being undertaken by Grantee .

3.5 Financial Security. The County may require Grantee to post financial security, as determined by the County, to ensure satisfactory completion of construction, including, but not limited to, restoration of the Franchise Area following the completion of Grantee's work therein. At the County's discretion, Grantee may provide and maintain a single on-going financial security covering multiple permits in lieu of individual surety.

3.6 Monuments. All survey monuments that are disturbed, displaced, or destroyed by Grantee in its performance of any work under this Franchise shall be referenced and restored by Grantee, as per Chapter 332-120 WAC, as from time to time amended, and all pertinent Federal, State and County standards and specifications.

3.7 Workmanlike Manner. All work performed by Grantee within the Franchise Area shall be done in accordance with adopted County codes, ordinances, regulations, standards, and procedures, together with the laws of the State of Washington, all as now exist or as later amended or superseded in a thorough, professional, and workmanlike manner.

3.8 Traffic Control. Grantee's activities within the Franchise Area and activities within the Franchise Area conducted by Grantee's agents or by Third Parties under a Jefferson County permit issued to Grantee shall conform to the latest edition of the Manual on Uniform Traffic Control Devices, the requirements of JCC 13.56.460 Traffic Control, and approved traffic control plans. It shall be the responsibility of Grantee to ensure compliance. Grantee shall be liable for any damages resulting from Grantee's failure to provide adequate traffic control.

SECTION 4 RELOCATION OF FACILITIES FOR PUBLIC IMPROVEMENT PROJECTS

4.1 Grantee at its own expense shall relocate its Facilities existing within the Franchise Area as necessary to accommodate Public Improvement Projects, in accordance with and subject to the terms and conditions set forth in this **Section 4**. The County acknowledges that Grantee's ability to relocate its Facilities within the Franchise Area to accommodate Public Improvement Projects may be constrained due to the need to acquire property rights or long lead time items or to other conditions beyond Grantee's control. In order to reasonably accommodate Grantee's constraints, while recognizing the County's authority to manage the Franchise Area and responsibility to construct Public Improvement Projects within the County's funding and scheduling constraints, the Parties will at all times work cooperatively and in good faith with the goal of ensuring that relocations of Grantee's Facilities within the Franchise Area that are required to accommodate Public Improvement Projects are planned, scheduled, and completed promptly and with due regard to the interests and constraints of both Parties.

4.2 In order to assist Grantee in planning for Public Improvement Projects that may

require relocation of Grantee's Facilities within the Franchise Area, the County shall:

- a. Provide Grantee with a copy of the Jefferson County Six Year Transportation Improvement Program within thirty (30) days of its adoption by the Board;
- b. Provide Grantee each year with a copy of the Jefferson County Annual Construction Program within thirty (30) days of its adoption by the Board;
- c. Meet with Grantee at Grantee's request during the first quarter of each year to discuss Public Improvement Projects in the Annual Construction Program that may require relocation of Grantee's Facilities; and
- d. Provide Grantee with written notice and thirty percent (30%) complete plans for Public Improvement Projects that may require relocation of Grantee's Facilities within thirty (30) days of their preparation.

4.3 Whenever the County undertakes a Public Improvement Project that requires relocation of Grantee's Facilities within the Franchise Area, the County shall, within a reasonable time prior to the commencement of the Public Improvement Project and in any event not less than one hundred twenty (120) days prior to the commencement of the Public Improvement Project, provide Grantee written notice of the required relocation and reasonable plans, specifications, and schedule for the Public Improvement Project. Within thirty (30) days of receipt of the notice, plans, specifications, and schedule, Grantee shall provide the County with a proposed schedule to relocate its Facilities within the Franchise Area that will accommodate the County's schedule for the Public Improvement Project.

4.4 Subject to compliance by the County with the terms of this **Section 4** and to the maximum extent provided by law, Grantee shall reimburse the County for any and all costs, expenses, and/or damages that are legally required to be paid by the County to its Third Party contractor(s) as a direct result of a delay in meeting the schedule for a Public Improvement Project, but only if, as, and to the extent the delay is directly caused by Grantee's breach of its obligations under this **Section 4**.

4.5 If an emergency arises that immediately endangers the property or life of any individual or poses a threat to public safety or welfare that requires the relocation of Grantee's Facilities within the Franchise Area, the County shall give Grantee notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the County, Grantee shall relocate the affected Facilities as soon as reasonably practicable at Grantee's expense.

SECTION 5 REMOVAL OF FACILITIES

5.1 In the event Grantee permanently ceases use of any of its Facilities within the Franchise Area, Grantee shall, within one hundred eighty (180) days after such permanent cessation of use or such additional time as is agreed to between the Parties, remove such Facilities at its sole cost and expense, except as set forth in **Section 5.2**.

5.2 With the express written consent of the Engineer, the Grantee may leave such

Facilities in place subject to the conditions set forth in this **Section 5.2**. The Engineer's consent shall not relieve the Grantee of the obligation and/or costs to subsequently remove or alter such Facilities at the County's request, in which case the Grantee shall perform such work at no cost to the County in accordance with this **Section 5**.

5.3 The obligations contained in this **Section 5** shall survive the expiration, revocation or termination of this Franchise.

SECTION 6 RIGHTS AND POWERS RESERVED TO THE COUNTY

6.1 Franchise Fee.

6.1.1 During the term of the Temporary Franchise, Grantee shall pay a franchise fee to the County in an amount equal to five percent (5%) of Grantee's Gross Revenues (as such term is defined in **Section 6.1.2**) derived from the operation of its cable television distribution system in Jefferson County. The franchise fee shall be payable, in arrears, on a quarterly basis on or before the thirtieth (30th) day of each January, April, July and October. Any franchise fee not paid as specified herein shall be subject to a twelve percent (12%) annual interest rate from the date due until paid.

6.1.2 Gross Revenues. As used herein, the term Gross Revenues means any and all receipts and revenues received directly or indirectly from the provision of cable television service over the cable system including, but not limited to, revenues such as local and national advertising and Home Shopping Channel revenues and installation fees, except transactions related to real property receipts by Grantee, any taxes on services furnished by Grantee imposed on any customer or used by any governmental unit, agency or instrumentality and collected by Grantee for such entity, and net uncollectable debts are not considered as revenue in this definition.

6.1.3 Each franchise fee payment shall be accompanied by a financial report showing Grantee's gross revenues included in the franchise fee computation.

6.1.4 The County shall have the right, upon no less than ten (10) working days notice, to audit Grantee's records for the purpose of ascertaining Grantee's gross revenues. In the event that an audit results in a determination that Grantee has underpaid any franchise fee, Grantee shall pay the underpaid amount and interest owed within thirty (30) days. In the event that an audit results in a determination that Grantee has underpaid any franchise fee by more than five percent (5%), Grantee shall also reimburse the County for its reasonable audit expenses not to exceed two thousand dollars (\$2,000). Any audit shall be subject to reasonable confidentiality requirements consistent with Grantee's confidentiality obligations under applicable law.

6.2 County Expenses. As provided for in JCC 13.88, the County will recover from the Grantee the administrative expenses incurred by the County that are related to (a) developing and approving this Temporary Franchise and the New Franchise, (b) processing permit applications, reviewing plans, and inspecting construction, and (c) preparing a detailed statement pursuant to Chapter 43.21C RCW. The expenses related to (a) above shall include staff wage and benefit and indirect expenses as determined by the County, the expense to publish and post legal notices of

the public hearing required for this Franchise by RCW 36.55.040, and the expense to record this Franchise with the Jefferson County Auditor as required by RCW 36.55.080.

6.3 Damage to Grantee's Facilities. The County shall not be liable for any damage to or loss of any of Grantee's Facilities within the Franchise Area as a result of or in connection with any emergency removal or relocation, public works, public improvements, construction, excavation, grading, filling, mowing, or work of any kind in the Franchise Area by or on behalf of the County or any entity under contract with the County, except for damage or loss caused by the negligence or willful misconduct of the County or anyone acting for or on behalf of the County. The foregoing, however, is not intended to, and will not in any way, limit the County's liability for any breach by the County of this Franchise.

SECTION 7 INDEMNIFICATION AND HOLD HARMLESS

7.1 In addition to and distinct from the insurance requirements of this Franchise, Grantee shall indemnify, defend, and hold harmless the County, its elected and appointed officers, officials, employees, representatives, and agents (collectively referred to as the "Indemnitees") from any and all Third Party claims, demands, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including all costs and attorneys fees, made against the Indemnitees on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of Grantee, its agents, representatives, employees, lessees, contractors, or subcontractors in exercising the rights granted to Grantee under this Franchise.

7.2 In the event any such claim or demand is presented to or filed with the County that causes the County to choose to invoke its rights under this **Section 7**, the County shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand as it pertains to Grantee's responsibility to indemnify, defend, and hold harmless the Indemnitees. In the event any suit or action is begun against the County based upon any such claim or demand, the County shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Grantee's responsibility to indemnify, defend, and hold harmless the Indemnitees.

7.3 In any and all claims against the Indemnitees by any officer, employee, representative, or agent of the Grantee, its contractors, subcontractors, or lessees, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this **Section 7** shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Grantee, its contractors, subcontractors, or lessees under worker's compensation acts, disability benefit acts, or other employee benefit acts. It is further specifically understood that, solely to the extent required to enforce the indemnification provided herein, Grantee waives its immunity under Chapter 51 RCW Industrial Insurance; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought directly against Grantee by any of its employees. This waiver has been mutually negotiated by the Parties and is authorized by RCW 4.24.115. Grantee acknowledges that the County would

not enter into this Franchise without this waiver thereof.

7.4 Inspection or acceptance by the County of any work performed by Grantee shall not be grounds for avoidance by Grantee of any of its obligations under this **Section 7**.

7.5 Said indemnification and hold harmless obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

7.6 In the event of liability for damages arising out of bodily injury to Persons or damages to property or business caused by or resulting from the concurrent negligence of Grantee and the County, Grantee's liability hereunder shall apply only to the extent of negligence attributable to the Grantee, its agents, employees, representatives, lessees, contractors, and subcontractors.

7.7 The provisions of this **Section 7** shall survive the expiration or termination of this Franchise. Further, all provisions of this **Section 7** shall apply to the successors, assigns, and lessees of Grantee.

SECTION 8 INSURANCE

8.1 Grantee Insurance. Grantee shall procure and maintain for the duration of this Franchise the following insurance:

- a. Commercial General Liability insurance and, if necessary, Umbrella Liability insurance, which will cover bodily injury, property damage, and any other exposure which can be reasonably identified as potentially arising from Grantee's activities within the Franchise Area. The limit of liability shall not be less than two million dollars (\$2,000,000) per person and one million dollars (\$1,000,000) property damage. The County, its elected and appointed officers, officials, employees, agents, and representatives shall be named as additional insureds with respect to activities occurring within the Franchise Area. Coverage shall be comprehensive with respect to the Grantee's activities within the Franchise Area and shall include completed operations, collapse, explosions, and underground hazards.
- b. Business Automobile Liability insurance for owned, non-owned, and hired vehicles with limits of not less than one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per occurrence.
- c. Workers' Compensation insurance as required by Chapter 51 RCW and Employers Liability Coverage with a limit of not less than one million dollars (\$1,000,000) per occurrence.
- d. The insurance policies required by this **Section 8** shall be maintained at all times by Grantee. Grantee shall notify the County at least forty-five (45) days before it cancels a policy. Grantee shall be obligated to replace or renew a canceled or expiring policy and show proof in the form of a certificate of insurance at least twenty (20) days before the expiration or cancellation of the existing policy(s).

- e. Grantee shall furnish the County with properly executed certificates of insurance or a signed policy endorsement, which shall clearly evidence all insurance required in this **Section 8.1**. The certificates will, at a minimum, list the limits of liability and coverage.
- f. Grantee or its agent will provide a copy of any and all insurance policies specified in this Franchise upon request of the County.
- g. The insurance limits mandated for any insurance coverage required by this Franchise are not intended to be an indication of limits of exposure nor are they limitations on liability or indemnification.
- h. Excepting Workers Compensation Insurance, the County shall be named on all policies as an additional insured. Grantee's insurance shall be in all circumstances primary to the insurance available to the County.

8.2 Self-Insurance. In lieu of the insurance requirements set forth in **Section 8.1**, Grantee may self-insure against such risks in such amounts, subject to good utility practice. Grantee shall provide the County with reasonable written evidence that the Grantee maintains such self-insurance.

8.3 The obligations contained in this **Section 8** shall survive the expiration, revocation or termination of this Franchise for a period of one (1) year or for as long as Grantee's Facilities remain within the Franchise Area, whichever is longer. Further, all provisions of this **Section 8** shall apply to the successors, assigns, and lessees of Grantee.

SECTION 9 LIMITATION OF LIABILITY

9.1 The County's administration of this Franchise shall not be construed to create the basis for any liability on the part of the County, its elected and appointed officers, officials, agents, employees, and representatives for any injury or damage from the failure of Grantee to comply with the provisions of this Franchise; for any injury or damage arising from the failure of Grantee to comply with or follow a directive, order, or instruction of the FCC, any hearing officer or administrative law judge, and/or a court of competent jurisdiction; by reason of any plan, schedule, or specification review, inspection, notice and order, permission, or other approval or consent by the County; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the County; or for the accuracy of plans submitted to the County.

SECTION 10 CUSTOMER SERVICE

10.1 Grantee shall comply with the Federal Communications Commission's Cable Television Operator Customer Service Standards, Title 47 CFR, Section 76.309 related to cable system operator office hours and telephone availability; installations, outages, and service calls; and communications between operators and customers. These standards are contained in Attachment B – Customer Service Standards. No less than thirty (30) days prior to the expiration of this Temporary Franchise, Grantee shall provide to the County a report describing its compliance with the customer service standards.

10.2 The County will consider the customer service report, subscriber calls regarding customer service received by the County during the franchise term, and public hearing testimony regarding Grantee's customer service compliance when deciding whether to grant the New Franchise.

SECTION 11 TECHNICAL STANDARDS

11.1 Grantee shall comply with the Federal Communications Commission's Technical Standards, Title 47 CFR, Section 76.601, 76.605, and 76.609. No less than thirty (30) days prior to the expiration of this Temporary Franchise, Grantee shall provide to the County a report describing the results of its most recent performance test.

11.2 The County will consider the performance test report when deciding whether to grant the New Franchise.

SECTION 12 DISPUTE RESOLUTION

12.1 The Parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions.

12.2 Resolving Disputes through Negotiation. The Parties agree to use their best efforts and good faith negotiations to resolve disputes arising out of or related to this Franchise. To that end the parties shall engage in the following dispute resolution process should any such disputes arise:

- a. Level One: The Engineer or his designee shall meet with the Grantee's municipal liaison or his designee to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fifteen (15) business days after the referral of that dispute to Level One, either party may refer the dispute to Level Two as described herein.
- b. Level Two: The County Administrator or his designee shall meet with Grantee's designated representative to discuss and attempt to resolve the dispute in a timely manner.

12.3 In the event a dispute is referred to Level Two but is not resolved at Level Two within fifteen (15) business days after that referral, then either Party may invoke the rights provided to them by **Section 13** or institute a legal proceeding in any court and/or with governmental agency having jurisdiction over the dispute.

12.4 No provision of this Franchise shall be deemed to bar the right of either Party to seek or obtain judicial relief from a violation of any provision of this Franchise; nor to bar or otherwise limit the right of either Party to recover monetary damages for such violations by the other Party or to seek and obtain judicial enforcement of the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

SECTION 13 TERMINATION OF FRANCHISE

13.1 Default by Grantee. If Grantee materially breaches any term or condition of this Franchise, the County may terminate this Franchise in accordance with **Section 13.2**. Upon termination of the Franchise, all rights of Grantee hereunder shall cease.

13.2 Procedure. The County may terminate this Franchise if Grantee materially breaches any term or condition of this Franchise and fails to cure such breach in all material respects within sixty (60) days after Grantee's receipt of written demand by the County to so comply. Prior to terminating the Franchise, the County shall give the Grantee at least ten (10) days written notice of a regularly scheduled meeting of the Board of County Commissioners at which meeting the Board intends to formally revoke or terminate the Franchise. At such meeting, the Board shall consider a report from the Engineer regarding the Franchise breach and hear any Person desiring to be heard on the Franchise termination. If the Board determines that Grantee's breach justifies revocation or termination of the Franchise, the Board may pass a resolution declaring that the Franchise is revoked or terminated.

13.3 Extension of Cure Period. If any breach of this Franchise by Grantee cannot be corrected with due diligence within the sixty (60) day period specified in **Section 13.2** due to events beyond Grantee's control, then the County may extend the time within which Grantee may so comply for an additional period or periods not to exceed thirty (30) days so long as Grantee commences promptly and diligently to effect such compliance.

13.4 Force Majeure. A Party shall not be deemed in breach or default of any provisions of this Franchise when earthquake, flood, storm or other natural disaster, civil emergency, any failure or delay in the performance by the other Party or a Third Party who is not an employee, agent or contractor of the affected Party, or other such circumstances beyond such Party's control (a "Force Majeure Event") prevent performance or compliance. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by the Force Majeure Event.

13.5 Dispute Resolution. Neither Party may invoke or rely upon the terms and obligations of this **Section 13** (except for the Force Majeure rights in **Section 13.4**) until such time as the Dispute Resolution procedure listed in **Section 12** has been utilized by the aggrieved Party.

SECTION 14 ASSIGNMENT OF FRANCHISE

14.1 Assignment. Grantee may not assign or otherwise transfer its rights, privileges or authority under this Franchise without the prior written authorization and approval of the County. Any assignment or transfer of any interest in this Franchise shall not be approved by the County or be effective until the assignee or transferee becomes a signatory to this Franchise, assuming all rights and obligations hereunder and agreeing to perform the terms and conditions under this Franchise.

14.2 Binding on Successors. All provisions, conditions, regulations, and requirements

herein contained shall be binding upon the successors and assigns of Grantee and all privileges as well as all obligations and liabilities of Grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever Grantee is mentioned.

14.3 Notwithstanding the terms and conditions of **Section 14.1**, Grantee may, without obtaining prior consent of the County, from time to time: (a) assign or transfer its assets, including the Franchise, provided however, that such assignment or transfer is to a parent or subsidiary of Wave or another entity under direct or indirect control of the parent of Wave; (b) restructure its debt or change the ownership interests among its equity participants or replace its equity participants, in whole or in part, and/or its affiliates; (c) pledge or grant a security interest in its assets, including but not limited to the Franchise, or of interests in Wave, to any lender(s) for purposes of securing indebtedness.

SECTION 15 INCORPORATION/ANNEXATION

15.1 City or Town. If any portion of the Franchise Area covered by this Franchise is incorporated into the limits of any city or town, this Franchise shall terminate as to any such portion within the corporate limits of such city or town and the County shall be released of its obligations under this Franchise as to the portion incorporated. This Franchise shall continue as to all of the Franchise Area not incorporated into a city or town.

SECTION 16 NON-WAIVER OF RIGHTS

16.1 The excuse or forgiveness of performance or waiver of any provision(s) of this Franchise shall not constitute a waiver of such provision(s) or future performance or prejudice the right of the waiving Party to enforce any of the provisions of this Franchise at a subsequent time.

SECTION 17 GOVERNING LAW AND VENUE

17.1 Governing Law. This Franchise has been and shall be construed as having been made and executed within the State of Washington. The Parties stipulate that this Franchise shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

17.2 Venue. Any action at law, suit in equity, or judicial proceeding arising out of this Franchise shall be instituted and maintained only in any of the courts of competent jurisdiction in Jefferson County, Washington or as provided for in RCW 36.01.050.

SECTION 18 NOTICES

18.1 Notices. Any notices required or permitted to be given under this Franchise shall be deemed properly served when deposited with the United States Postal Service, postage paid, addressed to the Party to receive same.

Notice to the County shall be sent to:
Public Works Director
Jefferson County Public Works Department
623 Sheridan Street
Port Townsend, WA 98368

Notice and billings to Grantee shall be sent to:
James A. Penney, Executive Vice President
WaveDivision I, LLC
401 Kirkland Parkplace
Kirkland, WA 98033

Grantee shall promptly notify the County of any change in the notice or billing addresses.

SECTION 19 SEVERABILITY AND SURVIVABILITY

19.1 If a court of competent jurisdiction holds any part, term, or provision of this Franchise to be illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected and the Parties' rights and obligations shall be construed and enforced as if the Franchise did not contain the particular provision held to be invalid. The invalidity of any portion of this Franchise shall not abate, reduce or otherwise affect any consideration or other obligation required of either Party or any grant of right to either Party.

19.2 The headings of the sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

19.3 The terms and conditions contained in this Franchise that by their sense and context are intended to survive the expiration or termination of this Franchise shall so survive.

SECTION 20 AMENDMENT TO FRANCHISE

20.1 This Franchise may be amended by mutual written agreement of the Parties (which specifically states that it is an amendment to this Franchise) upon compliance with the requirements of RCW 36.55.

SECTION 21 ENTIRE AGREEMENT

21.1 Entire Agreement. The Parties agree that this Franchise is the complete expression of the terms and conditions hereunder and cannot be changed orally, but only by an instrument in writing executed by the Parties. Upon the adoption date of this Franchise and acceptance of the Franchise by Grantee, all prior franchises between the County and Grantee, or its predecessors in interest, for cable television and/or telecommunications services shall be deemed repealed. Any oral or written representations or understandings not incorporated herein are specifically excluded.

APPROVED AND ADOPTED this _____ day of _____, 2012.

**JEFFERSON COUNTY
BOARD OF COMMISSIONERS**

John Austin, Chair

Phil Johnson, Member

David W. Sullivan, Member

ATTEST:

APPROVED AS TO FORM:

Raina Randall
Deputy Clerk of the Board

David Alvarez
Deputy Prosecuting Attorney

**Wave Temporary Franchise
Attachment A – Wave Service Territory**

| <u>Township</u> | <u>Range</u> | <u>Sections</u> |
|------------------------|---------------------|--|
| 25 North | 1 West | 2 – 5 |
| 25 North | 2 West | 2 – 11, 14 – 17, 21, 28 - 32 |
| 26 North | 1 West | 1 – 3, 5 – 7, 9 – 12, 14 – 16, 18, 19, 21 – 23, 27 – 29, 32 – 35 |
| 26 North | 2 West | 2, 11, 13, 23 - 25 |
| 27 North | 1 East | 2 – 9, 16 – 20 |
| 27 North | 1 West | 1 – 20, 22 – 32, 34 – 36 |
| 27 North | 2 West | 1 – 4, 9 – 16, 21 – 28, 36 |
| 28 North | 1 East | 4 – 10, 15 – 23, 25 – 35 |
| 28 North | 1 West | 1 – 36 |
| 28 North | 2 West | 1 – 4, 9 – 16, 21 – 28, 33 – 36 |
| 29 North | 1 East | 3 – 10, 16 – 19, 29 – 33 |
| 29 North | 1 West | 1 – 36 |
| 29 North | 2 West | 1 – 4, 9 – 16, 21 – 28, 33 – 36 |
| 30 North | 1 East | 17, 18, 20, 28, 29, 32, 33 |
| 30 North | 1 West | 4 – 9, 16 – 22, 26 – 35 |
| 30 North | 2 West | 1, 12, 13, 23 - 25, 27, 28, 33 – 36 |
| 31 North | 1 West | 31 – 33 |

**Wave Temporary Franchise
Attachment B – Customer Service Standards**

**Wave Temporary Franchise
Attachment B – Customer Service Standards**

JEFFERSON COUNTY, WASHINGTON

ACCEPTANCE OF RESOLUTION NO. _____

The undersigned, WaveDivision I, LLC (Wave), a Delaware limited liability company, hereby wholly accepts Jefferson County Resolution No. _____ Granting A Nonexclusive Temporary Franchise which was adopted by the Jefferson County Board of Commissioners on the _____ day of _____, 2012 and provides that:

Jefferson County, Washington grants , Inc. the right, privilege, authority, and franchise to install, construct, repair, replace, maintain, relocate, extend, remove, operate, and use Facilities in, upon, over, under, along, through, and across the Franchise Area pursuant to the terms of the Franchise Agreement.

This Acceptance of the Temporary Franchise is unconditionally made without reservation and is expressly part of the Franchise Agreement, which is hereby incorporated by reference. Wave hereby accepts all of the rights and privileges of the Temporary Franchise subject to all of the terms, conditions, duties, and obligations provided therein.

IN TESTIMONY WHEREOF said Wave has caused this written Acceptance to be executed in its name by its undersigned authorized signer, thereunto duly authorized on the _____ day of _____, 2112.

WaveDivision I, LLC

By: _____

Print Name: _____

Title: _____

STATE OF WASHINGTON

ss.

COUNTY OF _____

I certify that I know or have satisfactory evidence that _____, known to be the _____ of WaveDivision I, LLC is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was duly authorized to execute the instrument on behalf of the corporation, and acknowledged it to be the free and voluntary act of such party for the uses and purposes herein described.

GIVEN under my hand and official seal this _____ day of _____, 2012.

Notary Public in and for the State of Washington residing at _____.
My commission expires _____, _____.