

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 9-11-17

AGENDA ITEM:	
Consent to Transfer of Wave Cable Franchise	
PREPARED BY:	DIRECTOR APPROVAL:
Colin Olivers	
DEPARTMENT:	
Legal	
ATTACHMENTS:	
Proposed Ordinance	
BUDGET CODE:	AMOUNT:
N/A	
SUMMARY:	
<p>WaveDivision I, LLC (“Wave”) has a City franchise to operate a cable television system. Ordinance No. 2993. Wave is being acquired by Radiate Holdings LP (“Radiate”). Wave and Radiate have requested that the City consent to the transfer of control. Following the transfer, Wave will continue to operate within the City under the ownership and indirect control of Radiate.</p> <p>Wave and Radiate have provided the information required by the City’s franchise, federal law, and FCC regulations. City staff have reviewed the legal, technical, and financial qualifications of Radiate. Staff has concluded that the City should consent to the transfer of control. Because Wave will continue to exist and operate, just under a new corporate umbrella, staff expects that the City will continue to have a positive working relationship with Wave.</p> <p>The proposed ordinance is similar to one used by the City to consent to the transfer of Verizon Northwest’s franchise to Frontier Communications in 2009, Ordinance No. 2791. The proposed ordinance provides the City’s consent while still preserving any rights the City may have under the existing franchise.</p>	

RECOMMENDED ACTION: Adopt the proposed ordinance consenting to transfer of control of Wave’s cable television system franchise to Radiate Holdings LP.
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CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

**AN ORDINANCE APPROVING, WITH CONDITIONS, TRANSFER OF
ULTIMATE CONTROL OF A FRANCHISEE FROM WAVE HOLDCO,
LLC TO RADIATE HOLDCO, LLC.**

WHEREAS, the City of Marysville (the “City”) has granted a cable television franchise (“Franchise”) to WaveDivision I, LLC, a Washington limited liability company (the “Franchisee”);

WHEREAS, the Franchisee is a wholly-owned subsidiary of WaveDivision Holdings, LLC, a Delaware limited liability company, which is in turn a wholly-owned subsidiary of Wave Holdco, LLC, a Delaware limited liability company (“Wave Parent”); and

WHEREAS, on May 18, 2017, Radiate HoldCo, LLC, a Delaware limited liability company (“Radiate HoldCo”) controlled by Radiate Holdings, L.P., a Delaware limited partnership (“Radiate Parent”) and Wave Parent entered into a definitive securities purchase agreement pursuant to which Radiate to acquire Wave Parent from its current owners (the “Transfer”); and

WHEREAS, upon completion of the Transfer, Franchisee will become an indirect wholly-owned subsidiary of Radiate Parent and, as a result, control of the Franchisee will be transferred from Wave Parent to Radiate Parent; and

WHEREAS, following the Transfer, Franchisee will continue to hold and be responsible for the performance of the Franchise; and

WHEREAS, Radiate Parent and Wave Parent have filed FCC Form 394 with the City and have provided the City with all information regarding the Transfer required by applicable law (collectively, the “Application”); and

WHEREAS, the City has relied upon the Application and supplemental written information provided by Radiate Parent and Wave Parent; and

WHEREAS, on September 11, 2017, and September 25, 2017, the City Council held a public meeting to review the Transfer request; and

WHEREAS, the City has reviewed the Application and has determined that (i) Radiate Parent meets the legal, technical, and financial criteria to become the owner of Wave Parent and the indirect owner of the Franchisee, and (ii) the Transfer is in the best interests of the City;

WHEREAS, the City is willing to consent to the Transfer, subject to the closing of the Transfer between Radiate Parent and Wave Parent and the appropriate approvals by the Washington State Utilities and Transportation Commission and federal regulatory entities; and

WHEREAS, Franchisee has agreed to continue to unconditionally accept the terms of existing Franchise and to comply with any other agreements existing between the Franchisee and the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. The City hereby consents to the Transfer in accordance with the terms of applicable law, subject to and contingent upon the following conditions:

- a. In all respects and without exception, Franchisee agrees to continue to abide by all terms of the existing Franchise and acknowledges that the transfer of control will not affect, diminish, impair, or supersede the binding nature of the Franchise and any other valid ordinances, resolutions, and agreements applicable to the operation of the cable system in the City and Franchisee shall continue to meet its obligations under the Franchise. Franchisee agrees that subject to the Franchise, that Franchisee shall comply with all lawful and applicable provisions related to cable service of Chapters 5.70 and 5.71 of the Marysville Municipal Code, as amended, and all related applicable federal and state laws, and lawful orders, contracts, agreements, commitments, side letters, Franchise amendments, and regulatory actions.
- b. The City's consent to the transfer of control shall not be construed to constitute a waiver or release of any rights the City or the Franchisee may have now or in the future under federal, state, or local law, the Franchise, or any separate written agreements between the parties. Franchisee shall remain responsible for any and all Franchise requirements (including but not limited to payment of Franchise fees and other amounts due under the Franchise, and indemnification of the City as provided in the Franchise) and non-compliance issues under the Franchise or any obligation that may now exist or may later be discovered to have existed during the term of the Franchise, even if prior to the closing of this Transfer.
- c. The Transfer between Radiate Parent and Wave Parent shall be substantially and materially consistent with the Application and the supplemental information provided by Radiate Parent and Wave Parent.

SECTION 2. In the event that the Transfer which is the subject of this Ordinance does not close for any reason; or in the event the approval is not granted by the Washington State Utilities and Transportation Commission, if such approval is required, and appropriate federal regulatory entities, or in the event that the Transfer closes on terms substantially or materially different from the terms described in the Application and supplemental written information provided by Radiate Parent and Wave Parent that is relied upon by the City; or Franchisee does not accept each and every condition of the transfer of control required of it as set forth in this

Ordinance; then the consent provided for herein shall be null and void, and the City shall be deemed to have disapproved the transfer of control under the Franchise and federal law, and all remedies under the Franchise and applicable laws shall be available to the City. In the event the Transfer does not close before November 25, 2017, Radiate Parent and Wave Parent will provide notice of that event to the City and provide an update on the reasons for such a delay in closing or notice of the termination of the Transfer.

SECTION 3. By consenting to the transfer of control, the City does not waive or release any rights of the City in and to the streets as provided by state law and the Marysville Municipal Code, nor does the City waive or release any claim or issue of non-compliance it may have, known or unknown, now or in the future, against the Franchisee or any successor in interest to the Franchisee.

SECTION 4. The City shall not amend, revoke, or otherwise alter this Ordinance without providing reasonable prior notice to the Franchisee.

SECTION 5. If any section, sentence, clause, or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

SECTION 6. This Ordinance shall take effect and be fully in force five (5) days after publication of the attached approved summary thereof consisting of the title.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2017.

CITY OF MARYSVILLE

By _____
JON NEHRING, MAYOR

Attest:

By _____
APRIL O'BRIEN, DEPUTY CITY CLERK

Approved as to from:

By _____
JON WALKER, CITY ATTORNEY

Date of publication: _____
Effective Date (5 days after publication): _____