



Legislation Text

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File #: CB 119090, Version: 1

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**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

AN ORDINANCE relating to cable television; authorizing the Mayor or the Mayor's designee to approve the transfer of control, subject to conditions, of WaveDivision I, LLC; authorizing the Mayor or the Mayor's designee to execute a Cable Franchise Transfer of Controlling Interest Consent Agreement for the purpose of implementing and administering the transfer; and ratifying and confirming certain prior acts.

WHEREAS, WaveDivision I, LLC, a Washington limited liability company, (Wave) operates a cable system in Seattle under a franchise with The City of Seattle (City) authorized under Ordinances 122514 and 123741 (Wave Cable Franchise); and

WHEREAS, Wave and the City have reached mutual agreement on a renewed cable franchise, which is pending City approval as Council Bill 119030 (Proposed Renewed Wave Cable Franchise); and

WHEREAS, Wave's sole member and manager is WaveDivision Holdings, LLC, a Delaware limited liability company (Wave Holdings); and

WHEREAS, Wave Holdings is wholly owned by OH WDH Holdco, LLC, a Delaware limited liability company, which is wholly owned by Wave Holdco, LLC, a Delaware limited liability company (Wave Holdco); and

WHEREAS, on May 18, 2017, Wave Holdco and other entities entered into a Securities Purchase Agreement (Purchase Agreement) that will result in a transfer of the controlling interest in Wave Holdco and Wave Holdco becoming a wholly-owned subsidiary of Radiate HoldCo and an indirect subsidiary on Radiate Holdings, L.P, a Delaware limited partnership (Radiate); and

WHEREAS, on or about June 16, 2017, Wave Holdco and Radiate submitted an FCC Form 394 Application for

Franchise Authority Consent to Change of Control or Transfer of Control of Cable Television Franchise with the City (Application), seeking the City's consent to the proposed transfer of a controlling interest; and

WHEREAS, pursuant to Section 14 of the Wave Cable Franchise, and Seattle Municipal Code (SMC) subsection 21.60.110.A, any sale, transfer, or fundamental corporate change of or in a grantee of a cable franchise, including, but not limited to, a fundamental corporate change in the grantee's parent corporation or entity having a controlling interest in the grantee's assets, requires the approval of the City; and

WHEREAS, the transactions contemplated by the Purchase Agreement constitute a transfer pursuant to SMC 21.60.110.A; and

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

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

WHEREAS, the City has determined that the proposed transfer is not contrary to public interest or federal, state, or local law; and

WHEREAS, Wave and Wave Holdings have agreed to enter into a Cable Franchise Transfer of Controlling Interest Consent Agreement with the City (Consent Agreement), in substantially the form attached to this ordinance as Exhibit A, which requires them to comply with the terms of the Cable Franchise, the Proposed Renewed Wave Cable Franchise, and the proposed letter of agreement negotiated during the cable franchise renewal process (Letter of Agreement), and to otherwise continue to operate the cable system in a manner that benefits the residents of the City; and

WHEREAS, Wave will continue to be the grantee under the Wave Cable Franchise and the Proposed Renewed Wave Cable Franchise and is not seeking any modification of the terms and conditions of the Proposed

Renewed Wave Cable Franchise in connection with the transfer; and

WHEREAS, Wave has agreed to comply fully with all provisions of the Wave Cable Franchise and the Proposed Renewed Wave Cable Franchise, to honor the terms of the Letter of Agreement, and to meet or exceed all applicable and lawful federal, state, and local requirements including, but not limited to, those relating to franchise fees, customer service, and technical standards; and

WHEREAS, the Proposed Renewed Wave Cable Franchise and the Letter of Agreement are attached as Attachments 1 and 2 to the Consent Agreement; and

WHEREAS, Wave Holdings has agreed to guarantee the performance of Wave under the Wave Cable Franchise and the Proposed Renewed Wave Cable Franchise, and will continue to be the guarantor under the Wave Cable Franchise and the Proposed Renewed Wave Cable Franchise; and

NOW, THEREFORE,

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

Section 1. The Mayor, or the Mayor's designee, is authorized to execute the Cable Franchise Transfer of Controlling Interest Consent Agreement (Consent Agreement) in substantially the form attached to this ordinance as Exhibit A, and to take such further action as may be necessary to implement the Consent Agreement.

Section 2. If the transaction or transactions that are the subjects of this ordinance do not close for any reason; or if such transaction or transactions close on terms substantially or materially different from the terms described in the FCC Form 394; or if Wave and Wave Holdings do not accept and comply with each and every condition of the transfer of control required of them respectively as set forth in the Consent Agreement; then the consent provided for in Section 1 shall be null and void, and the City shall be deemed to have disapproved the transfer under the Wave Cable Franchise, the Proposed Renewed Wave Cable Franchise, and federal law, and all remedies under the Wave Cable Franchise and the Proposed Renewed Wave Cable Franchise, and the law shall be available to the City. Within ten days of the Mayor's signature of this ordinance, Wave shall file with

the City Clerk a fully executed Consent Agreement, substantially in the same form as Exhibit A to this ordinance, and shall send a copy of the same to the Director of the Office of Cable Communications.

Section 3. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

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

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2017, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Tim Burgess, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk

(Seal)

Exhibits:

Exhibit A - Cable Franchise Transfer of Controlling Interest Consent Agreement between The City of Seattle and Wave and Wave Holdings

Attachment 1 - City of Seattle Cable Television Franchise Agreement by and between The City of Seattle and WaveDivision I, LLC

Attachment 2 - Letter of Agreement