

EXHIBIT A
CABLE FRANCHISE TRANSFER OF CONTROLLING INTEREST
CONSENT AGREEMENT

This Cable Franchise Transfer of Controlling Interest Consent Agreement (“Agreement”) is entered into effective as of the Effective Date (as defined in Section 2. below), by and between WaveDivision I, LLC, a Washington limited liability company (“Wave”), WaveDivision Holdings, LLC, a Delaware limited liability company (“Wave Holdings”), and the City of Seattle, a Washington municipal corporation (“City”), each of which may be referred to individually as a “Party” and collectively referred to as the “Parties.”

RECITALS

A. As authorized under City of Seattle Ordinances 122514 and 123741, the City and Wave are parties to a cable television franchise agreement permitting Wave to construct, maintain, and operate a cable television system in the City.

B. Wave and the City have reached mutual agreement on a renewal franchise (“Franchise”), attached hereto as Attachment 1, and a letter of agreement regarding additional public benefits (“Letter of Agreement”), attached hereto as Attachment 2. Together, these documents are referred to herein as the “Franchise Documents.” The Franchise Documents are pending approval by the Seattle City Council under the Ordinance introduced as Council Bill 119030, and will become effective thirty (30) days after such approval is granted.

C. Wave’s sole member and manager is Wave Holdings.

D. 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”).

E. 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. There will be no changes to any of the subsidiaries of Wave.

F. On or about June 19, 2017, Wave Holdco and Radiate Holdings, L.P., a Delaware limited partnership (“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.

G. Section 14 of the Franchise and Subsection 21.60.110.A of the Seattle Municipal Code (“SMC”) provide that 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.

H. The transactions contemplated by the Purchase Agreement constitute a “Transfer” as that term is defined in Subsection 21.60.110.A of the SMC, and shall hereinafter be referred to as a “Transfer.”

I. Wave (as grantee) and Wave Holdings (as guarantor) have agreed to honor the terms and conditions of the Franchise Documents should they be approved by the City.

J. On September __, 2017, the Seattle City Council passed the ordinance introduced as Council Bill _____ approving the Transfer, and thirty (30) days after the Mayor signed the ordinance introduced as Council Bill _____ it became effective. The City’s approval of the Transfer is subject to execution and filing of this Agreement by Wave. The date on which Wave files the executed Agreement with the City Clerk shall be the Approval Date.

AGREEMENT

1. **Consent.** Subject to the terms and conditions of this Agreement, the City consents to the Transfer as specified in the Application. The City acted on the Application in a timely manner under Applicable Law. For purposes of this Agreement, “Applicable Law” shall mean any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order that has been issued, executed, entered and deemed applicable to City, either specifically or by reference to a class including City, by any court of competent jurisdiction or other federal or state department, commission, board or agency, as any of the same may be amended from time to time. The City’s consent to the Transfer shall be null and void and the City shall be deemed to have acted to reject the Application, if a duly authorized officer or agent of Wave fails to deliver the notice required pursuant to Section H of this Agreement.

2. **Effective Date.** For purposes of this Agreement, the “Effective Date” shall be the Approval Date so long as the Approval Date is no later than five (5) days after the “Closing Date” as defined in Section 1.02 of the Purchase Agreement.

3. **Reservation of Rights.** The City reserves all rights not otherwise expressly granted in this Agreement. In particular, and without limitation:

3.1 Neither this Agreement, nor any other action or omission by the City at or before the execution of this Agreement, shall be construed to grant the City’s consent to any future transfer of the Franchise or the Cable System, or change in ownership or control of Wave, or to mean that the City’s consent to any future transaction that is required by the Franchise is otherwise not required.

3.2 As a result of the Transfer, the City does not waive its rights with respect to Wave’s compliance with the terms, conditions, requirements, and obligations set forth in the Franchise Documents; Title 21, Chapter 21.60, of the Seattle Municipal Code; and any other applicable agreement and other Applicable Law, including the City’s right to compel Wave or its successors in interest to comply with the provisions of the Franchise Documents.

3.3 The City's approval of the Transfer shall in no way be deemed a representation by the City that Wave or its successors in interest are in compliance with all of Wave's obligations under the Franchise Documents; provided, however, other than the matters of non-compliance expressly set forth in this Agreement the City, following due inquiry, is not presently aware of any default by Wave to comply with the terms, conditions, requirements, and obligations set forth in the Franchise Documents and no event has occurred and is continuing that, with the giving of notice or passage of time, or both, could constitute a default thereunder.

4. **Compliance with Franchise Documents.**

4.1 Wave accepts, acknowledges, and agrees to continue to be bound by all terms and conditions of the Franchise Documents. Neither the Transfer nor the City's consent thereto shall diminish or otherwise affect Wave's commitments, duties, liabilities, or obligations embodied in the Franchise Documents, except as may be specifically provided for and described herein.

4.2 Wave shall comply with all provisions of the Franchise Documents.

4.3 Neither the Transfer nor the City's approval of the Transfer shall in any respect relieve Wave of responsibility for past acts or omissions, known or unknown, unless expressly stated in this Agreement or otherwise expressly described in writing by the City.

5. **Guaranty.**

5.1 Obligations Guaranteed. In consideration of the City's approval of the Transfer, Wave Holdings absolutely, irrevocably and unconditionally guarantees the full and faithful performance by Wave of all of the terms, covenants, conditions and agreements contained in the Franchise Documents and this Agreement subject to Applicable Law.

5.2 Representations and Warranties. Wave Holdings and Wave hereby represent and warrant that:

(A) Wave has investigated fully whether any benefit or advance will inure to Wave by reason of the execution of this Agreement, and has determined that a direct or indirect benefit will inure to Wave by reason of the execution of this Agreement.

(B) This Agreement is a legal, valid and binding agreement of Wave and Wave Holdings that is enforceable in accordance with its terms, subject to Applicable Law.

(C) The Franchise is legal, valid, binding and enforceable against Wave and Wave Holdings, in accordance with its terms, subject to Applicable Law.

(D) Wave and Wave Holdings each has the full right, power and authority to execute and deliver this Agreement, and to perform the undertakings contained herein and the transactions contemplated hereby, and all corporate or other action necessary to authorize the execution and delivery of this Agreement, and the performance of the undertakings contained herein and the transactions contemplated hereby, have been taken.

(E) No approval, consent, exemption or other action by, or notice to or filing with, any governmental or public body or authority is required in connection with the execution, delivery, performance and enforcement of this Agreement.

6. **Utility Tax and Franchise Fee Obligations.** Within thirty (30) days of the Effective Date, Wave shall remit to the City full payment for all past due franchise fees, cable utility tax obligations, fees in support of local access programming and any other fees, taxes or assessments, if any, that Wave rightfully owes the City, together with applicable interest (collectively, the “Unpaid Fees”). Wave shall also fully reimburse the City for all costs and expenses related to the financial audit of Wave and for costs incurred by the City for legal review, including all applicable consultant and attorneys’ fees (the “Transfer Review Costs”), within twenty (20) days of receipt of an invoice from the City therefor.

7. **Technical Compliance.** Wave acknowledges that the violations delineated in the June 2017, System Technical Review of the Seattle, Washington Wave Franchise Area report (“Report”) submitted by CBG Communications (“CBG”) are representative samplings of the types of code violations found in Wave’s cable system and are not intended as a definitive list of all violations in Wave’s cable system. The City acknowledges receipt of certification from Wave that it has cured the violations identified in the Report and acknowledges that some of the violations identified by CBG and attributed to Wave may in fact had been found on a competitor’s cable system. Notwithstanding, Wave shall implement an ongoing technical inspection and correction program to ensure that its cable system is at all times substantially in compliance with applicable codes, including relevant NESC and NEC provisions and shall share such plan with the City and provide updates on such plan to the City upon request.

8. **Technological Currency.** Wave shall maintain its cable system at a high level of performance and continue to invest adequate funds in the Seattle cable system to ensure that it achieves a reasonable level of technical parity, in terms of advanced services, quality and options, to that provided by other franchised operators in the City.

9. **Renewal.** Except as specifically provided herein, this Agreement shall not have any effect on the City’s authority to enforce Wave’s compliance with the Franchise Documents following the Effective Date. Further, this Agreement shall not have any effect on any authority the City may have to review, conditionally approve or deny the renewal of the Franchise held by Wave. The City expressly reserves its rights to conduct a complete renewal proceeding pursuant to 47 U.S.C. § 546, or other Applicable Law including but not limited to, conducting a complete review of Wave’s compliance with, and performance under, the Franchise and any other obligation Wave may have under Applicable Law, beginning from the Effective Date through the end of the Franchise term, November 10, 2027, and including, without limitation, any Franchise term extensions thereto up to and including during the Franchise renewal process, and to conditionally approve or deny a renewal based on any Franchise noncompliance or violation.

10. **Basic Cable Service Rate.** The Transfer shall not result in an increase in the rate for basic cable service as uniformly applied in the service area covered by the Franchise, consistent with Applicable Law. Nothing shall prohibit rate increases made in the ordinary course of business in compliance with Applicable Law. Wave shall not rely upon an increase in debt

service or in debt service coverage, if any, that results from the Change of Control to justify an increase in the rate for basic cable service.

11. **Representations and Warranties.** The City's consent to the Transfer is in reliance upon the written information provided by Wave, Wave Holdco, and Radiate, as described in the Application and as described in other supplemental information provided by Wave, Wave Holdco and Radiate. Wave and Wave Holdings each represent and warrant that the Application and the additional information and representations contained therein are true and accurate in all material respects, and that no material information is omitted, the absence of which would cause the Application and information to be materially misleading. If prior to the Effective Date Wave becomes aware of any material misrepresentation by Wave Holdco or Radiate set forth in materials submitted to the City in connection with the Application, Wave shall provide prompt written notice of any such matter to the City.

12. **Enforcement.** Any breach of this Agreement shall be deemed a breach of the Franchise subject to the remedies provided in the Franchise Agreement or the Seattle Municipal Code, as well as other remedies provided by other Applicable Law or in equity. Any action to interpret or enforce any provision in this Agreement, the Franchise or the Seattle Municipal Code may only be brought in a court of competent jurisdiction in the State of Washington, and the parties agree to be subject to the jurisdiction of Washington state and federal courts, located in King County, for such purposes. This Agreement shall be governed by the law of the State of Washington.

13. **Authority.** Each of the persons executing this Agreement represents that he or she is authorized by the respective Party to execute this Agreement and to bind that party.

14. **Notices.** All notices required or permitted under the Franchise Documents shall be delivered in the manner provided in Section 20.9 of the Franchise.

15. **Insurance.** Prior to the earlier of the Effective Date or the commencement of any activity whatsoever relating to the operation of the Cable System, Wave shall provide the City with certificates of insurance and original endorsements, unless such information is already on file with the City, evidencing the insurance coverage is in accordance with Section 12.2 of the Franchise.

16. **Security Fund.** Unless such information is already on file with the City, within ten (10) calendar days of the Effective Date, Wave shall provide the required performance bond and security fund set forth in Sections 12.4 and 12.5 of the Franchise.

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

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

19. **Reimbursement for Out of Pocket Expenses.** Within twenty (20) days of the date of request by the City, Wave shall reimburse the City, or at the direction of the City the City's consultants and attorneys directly, for all reasonable documented (in a manner reasonably acceptable to the Parties) out of pocket expenses incurred by the City, including all reasonable fees, costs and expenses incurred by the City for outside consultants and attorneys, related to the Transfer.

20. **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute an agreement binding on all Parties, notwithstanding that all Parties may not have signed the same counterpart.

21. **Voluntary Agreement.** This Agreement is freely and voluntarily entered into by each Party, without any duress or coercion, and after each Party has had an opportunity to consult with its counsel. Each Party has carefully and completely read all of the terms and provisions of this Agreement. It is understood and agreed by the City and Wave that neither this Agreement nor anything herein shall be deemed to be an admission or confession of any liability whatsoever or any breach of the terms of the Franchise or violation of SMC 21.60.110. If this Agreement should be found to be unenforceable by a court of competent jurisdiction, the Parties shall have all rights under Applicable Law to pursue any and all remedies available.

22. **Binding Agreement.** This Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. This Agreement shall be effective only upon the execution of this Agreement by all Parties hereto. Any purported transfer of this Agreement is void without the express written consent of the Parties hereto.

23. **Reliance on Own Judgment.** Each of the Parties represents that in executing this Agreement it relied solely on its own judgment, belief, and knowledge, and upon the advice and recommendations of its own independently selected counsel and consultants, concerning the nature, extent, and duration of its rights and obligations, and that it has not been influenced in executing this Agreement by any of the other Parties or by any person representing them. This Agreement shall not be deemed to have been drafted by any individual Party and shall not thereby be construed against any Party.

24. **Severability.** If any section, sentence, paragraph, term, or provision of this Agreement is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision of this Agreement, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

25. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. This Agreement may only be modified by a written amendment signed by all Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as their free and voluntary acts and deeds.

Dated: _____

CITY OF SEATTLE

BY: _____
Michael Mattmiller, Chief Technology Officer

Dated: _____

WAVEDIVISION I, LLC

BY: _____
Jim Penney, EVP

Dated: _____

WAVEDIVISION HOLDINGS, LLC

BY: _____
_____, CEO