



Legislation Details (With Text)

File #: CB 120043 **Version:** 1 **Name:** CB 120043
Type: Ordinance (Ord) **Status:** Passed
In control: City Clerk

On agenda: 4/26/2021
Final Action: 4/30/2021 **Ord. No.** Ord 126321

Title: 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.

Sponsors: Alex Pedersen

Indexes:

Attachments: 1. Ex A - Corporate Guaranty, 2. Ex B - Cable Franchise Transfer of Controlling Interest Consent Agreement, 3. Summary and Fiscal Note, 4. Summary Att A - Application Review Report, 5. Summary Att A Att A - Legal Review, 6. Summary Att A Att B - Financial Review, 7. Presentation, 8. Signed Ordinance 126321, 9. Affidavit of Publication

Date	Ver.	Action By	Action	Result
4/30/2021	1	City Clerk	attested by City Clerk	
4/30/2021	1	Mayor	returned	
4/30/2021	1	Mayor	Signed	
4/28/2021	1	City Clerk	submitted for Mayor's signature	
4/26/2021	1	City Council	passed	Pass
4/21/2021	1	Transportation and Utilities Committee	pass	Pass
4/19/2021	1	City Council	referred	
4/15/2021	1	Council President's Office	sent for review	
4/6/2021	1	City Clerk	sent for review	
4/6/2021	1	Mayor	Mayor's leg transmitted to Council	

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 125403 and 125430 (“Wave Cable Franchise”); and

WHEREAS, Wave is a wholly owned subsidiary of 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, Wave Holdco is an indirect wholly owned subsidiary of Radiate Holdings, L.P. (“Radiate”); and

WHEREAS, on October 31, 2020, the current ownership of Wave (Radiate and its affiliates) entered into an Agreement and Plan of Merger with Stonepeak Associates IV, LLC, a Delaware limited liability company (“Applicant”) and certain of its affiliates (the “Merger Agreement”); and

WHEREAS, as a result of the transactions contemplated by the Merger Agreement (“Transactions”), Radiate will be an indirect wholly owned subsidiary of the Applicant; and

WHEREAS, on December 9, 2020, counsel for Radiate and the Applicant provided to the City’s Information Technology Department an FCC Form 394 and associated exhibits (“Application”), which seeks consent to the proposed transfer of control of Wave to the Applicant; and

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

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

WHEREAS, pursuant to 47 U.S.C. § 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 (“Consent Agreement”) with the City, in substantially the form attached to this ordinance as Exhibit B, which requires them to comply with the terms of the Cable Franchise 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 is not seeking any modification of the terms and conditions of the Wave Cable Franchise in connection with the transfer; and

WHEREAS, the Applicant has agreed to use its best efforts to comply with all provisions of the Wave Cable Franchise 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, in its review of the Application, the City has determined that it is prudent and advisable to secure from the Applicant a corporate guaranty to ensure that, following completion of the Transactions, Wave will continue to possess the requisite financial qualifications to own, operate, and maintain the system; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City hereby consents to and approves the transfer of control of WaveDivision I, LLC subject to Stonepeak Associates IV, LLC (“Applicant”) delivering to the City a corporate guaranty executed by

Radiate HoldCo, LLC, a Delaware limited liability company, a copy of which is attached hereto as Exhibit A.

Section 2. 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 B, and to take such further action as may be necessary to implement the Consent Agreement.

Section 3. 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 provided to the City’s Information Technology Department on December 9, 2020; 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 of this ordinance shall be null and void, and the City shall be deemed to have disapproved the transfer under the Wave Cable Franchise and federal law, and all remedies under the Wave Cable Franchise and the law shall be available to the City.

Section 4. 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 B to this ordinance, and shall send a copy of the same to City’s Office of Cable Communications.

Section 5. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 6. 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 _____, 2021, and signed by me in open session in authentication of its passage this ____ day of _____, 2021.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Exhibit A - Corporate Guaranty

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