

**CITY OF SILVERTON**  
**ORDINANCE**  
**16-07**

**AN ORDINANCE OF THE SILVERTON CITY COUNCIL APPROVING A NON-EXCLUSIVE CABLE FRANCHISE TO WAVEDIVISION VII, LLC TO OPERATE A CABLE SYSTEM AND REPEALING ORDINANCE NO. 00-123 (CHARTER CABLE FRANCHISE)**

**WHEREAS**, the City Council adopted Ordinance No. 00-123, effective November 6, 2000, granting to Falcon Cable Systems Company II, LP, d/b/a Charter Communications (“Charter”) the authority to install, construct, operate and maintain a cable communications system within the City for a period of 10 years, with a 5 year extension (the “Franchise”); and

**WHEREAS**, Charter subsequently assigned all of its right, title and interest in the Franchise to WaveDivision VII, LLC, a Washington limited liability company, (“Wave”) and Wave thereby became the franchisee under the Franchise; and

**WHEREAS**, the City and Wave have been engaging in informal renewal negotiations in accordance with Section 626(h) of Title VI of the Communications Act of 1934, as amended; and

**WHEREAS**, Wave’s Franchise with the City was to expire on November 7, 2015, but the parties have agreed to extend the Franchise, retroactive to November 7, 2015, to allow renewal negotiations to conclude and to avoid a lapse in the Franchise; and

**WHEREAS**, the City and Wave have reached agreement on the terms of a new cable franchise; and

**WHEREAS**, the City Council finds it is in the public interest to grant a franchise on the terms and conditions contained in this Ordinance and to repeal Ordinance 00-123.

**NOW, THEREFORE, THE CITY OF SILVERTON ORDAINS AS FOLLOWS:**

**Section 1. Grant of Non-Exclusive Franchise**

There is hereby granted a nonexclusive Franchise to WaveDivision VII, LLC to operate and maintain a cable system for a period of ten (10) years.

**Section 2. Definitions.**

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meanings given herein. The word “shall” is always mandatory and not merely directory.

- A. “Cable Act” shall mean the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996.

- B. "Cable Service" shall mean (a) the one way transmission to subscribers of video programming or other programming service; and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- C. "Cable System" or "System" shall mean a facility, consisting of a set of closed transmission paths and associated Signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Right of Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (4) an open video system that complies with federal statutes; or (5) any facilities of any electric utility used solely for operating its electric utility systems.
- D. "City" shall mean the City of Silverton, Oregon.
- E. "Council" shall mean the governing body of City of Silverton, Oregon.
- F. "Franchise" shall mean the authorization to operate a cable television system, including all mutual rights, duties and obligations of the Franchisee and the City as contained in this agreement.
- G. "Franchisee" shall mean WaveDivision VII, LLC, its successor or any affiliated company in accordance with the provisions of this Franchise.
- H. "Gross Revenues" shall mean revenues derived from the operation of the Cable System to provide Cable Service within the City consistent with the provisions of federal law, including, but not limited to, basic service monthly fees from all accounts, pay television fees per program, audio-visual signals, installation, connection and reconnection fees, interest plus penalty charges, advertising and other revenues received from the operation of the Cable System in the City. "Gross Revenues" shall also include all revenues received by the Franchisee attributable to the operation of the Franchise such as commissions, royalties or other monies from programming providers or advertisers, including, without limitation, home shopping networks. "Gross Revenues" shall not be double counted for purposes of calculating franchise fees. "Gross Revenues" shall not include uncollected amounts, provided that recoveries of such amounts shall be included in "Gross Revenues" during the period collected.
- I. "Public Rights of Way" shall include, but are not limited to, streets, bridges, sidewalks, trails, paths, public utility easements, and all other public ways in the City, including the subsurface under and air space over these areas, excluding parks and parkways, but only to the extent of the City's right, title, interest, or authority to grant a Franchise to occupy and use such streets and easements for Cable System facilities.

- J. "Subscriber" shall mean any person who is lawfully receiving any Cable Service provided by Franchisee by means of, or in connection with, the Cable System.

**Section 3. Grant of Authority.**

- A. The Franchisee shall be given the privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over, and under the Public Rights of Way a Cable System for the provision of Cable Service in the City. The Franchise grants only the authority to construct, erect, operate, and maintain a Cable System for the provision of Cable Service in the City, and does not authorize, prohibit or otherwise apply to the provision of non-Cable Services or use of the Public Rights of Way to provide non-Cable Services.
- B. The "Effective Date" of this Franchise shall be April 6, 2016, unless Franchisee fails to file an unconditional written acceptance of this Franchise substantially in the form set forth in Exhibit A and post the security required hereunder by Section 25 within forty-five (45) days of the Effective Date, unless the time for acceptance is extended by the City. In the event acceptance does not take place or the security is not posted as required hereunder, this Franchise shall be voidable at the reasonable discretion of the City, and any and all rights of Franchise to own or operate a Cable System within the Franchise Area under the express terms of this Franchise shall be of no force or effect.

The Franchisee shall raise or lower wires or equipment upon the reasonable request of any third person, including any person holding a building permit. Expenses associated with raising and lowering the wires or equipment shall be paid by the person requesting the same (except in cases where Franchisee is required to bear the costs under other provisions of this Franchise) and the Franchisee may require advance payment. The Franchisee shall be entitled to require that it be given up to ten (10) days advance notice by the person requesting the movement.

**Section 4. Consent to Transfer.**

A This Franchise shall not be sold, leased, mortgaged, assigned, or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold, or transferred, either in whole or part, nor shall title hereto, either legal or equitable, nor any right, interest, or property herein pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the prior consent of the City expressed by ordinance or resolution, provided that such consent shall not be unreasonably withheld, delayed or conditioned. The granting of such consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained herein shall be deemed to prohibit (i) the mortgage, pledge, or assignment of this Franchise and the tangible assets of the System for the purpose of financing the acquisition of equipment for the construction and operation of the system, without the City's consent, but any such mortgage, pledge, or assignment shall be subject to the rights of the City hereunder or (ii) any assignment to an entity controlled by or under common control with Franchisee; provided that Franchisee shall provide the City with no less than thirty (30) days prior written notice of the events described in

(i) or (ii). The Franchisee, upon any sale, lease, assignment, mortgage, or other transfer of this Franchise or any of the rights or privileges hereunder shall, within sixty (60) days thereafter, file with the City Manager a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment, or transfer certified and sworn to as correct by the Franchisee. Every such sale, lease, mortgage, assignment, or transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and shall have no effect unless Franchisee shall within sixty (60) days after the same shall have been made, file such certified copy as required.

B Franchisee and the proposed assignee or transferee of the Franchise or system shall provide and certify the following information to the City not less than one hundred and twenty (120) days prior to the proposed date of transfer:

1. Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
2. All information required of a cable franchise applicant pursuant SMC 12.44.350 with respect to the proposed transferee or assignee;
3. Any other information reasonably required by the City.

C. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the Cable System, and the City may grant its consent as described in subsection A with reasonable conditions related to these qualifications and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise.

D. Any transfer or assignment of this Franchise or the Cable System without prior approval of the City pursuant to this Section shall be void and is cause for termination of the Franchise as provided in Section 34.

#### **Section 5. Description of Cable Services.**

The Franchisee shall meet or exceed the programming and channel capacity requirements set forth in this Franchise. Beginning as of the Effective Date, Franchisee's Cable System shall provide minimum of 860 MHz capability, capable of providing at least 200 channels to all subscribers.

#### **Section 6. Compliance with Applicable Laws.**

Franchisee, shall, at all times during the term of this Franchise, be subject to and comply with all applicable laws, including the lawful exercise of the police power by the City and such reasonable regulation as the City shall hereafter provide.

**Section 7. Compliance with FCC Regulations.**

Franchisee shall comply with all applicable rules and regulations of the Federal Communications Commission. Copies of all petitions, applications and communications submitted by the Franchisee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect of any matters directly affecting Cable System operations authorized pursuant to the Franchise, shall be submitted to the City upon written request.

**Section 8. Compliance with Electrical Standards.**

Construction and maintenance of the transmission and distribution system, including house connections, shall be in accordance with the provisions of the National Electrical Safety Code, National Electrical Code, and such safety codes as now exist or which may be established in the future. In the event of a conflict among safety codes, the strictest standard shall apply.

**Section 9. Franchise Requirements for Other Franchise Holders.**

In the event that City grants one (1) or more franchise(s) or similar authorization(s) for the construction, operation and maintenance of any Cable System in the Public Rights of Way, and such franchise or similar authorization contains material provisions imposing lesser or more favorable obligations on the new entrant than are included in the material provisions of this Franchise, Franchisee may petition the City for a modification of this Franchise. The Franchisee shall be entitled, with respect to said lesser or more favorable obligations, to such modification(s) of this Franchise as maybe determined to be necessary to insure fair and equal treatment, to the extent required by law, by this Franchise and other franchises or similar authorizations; however, nothing in this Section shall be construed to compel the City to limit the introduction of new technologies within the City.

**Section 10. Service Territory.**

- A. The Franchise shall include the entire area of the City. Franchisee's Cable System shall be capable of providing Cable Service to all potential subscribers requesting Cable Service within the incorporated limits of the City, and Franchisee shall extend its Cable System to serve additional potential subscribers in any unserved areas of the City as of the Effective Date of this Franchise whenever the number of unserved homes passed by such extension would exceed twenty-five (25) homes per mile.
- B. Where the length of a drop required to serve an individual resident would exceed 150 feet, the subscriber served by such drop cable shall pay the cost of installing a feeder cable to a point where the Subscriber will receive a signal without degradation of picture quality or reliability.

**Section 11. Customer Service.**

- A. Franchisee shall comply with applicable federal, state and local laws for the protection of privacy of cable subscribers.

- B. Except as otherwise specifically set forth herein, Franchisee shall comply with the customer service standards set forth in Section 76.309 of the Federal Communications Commission's rules and regulations, as such may be amended from time to time. The City reserves the right to enforce such standards consistent with the terms of this Franchise and applicable law.
- C. Franchisee shall render efficient repair service, and interrupt service only for good cause and for the shortest time possible. A toll-free telephone number shall be maintained so that complaints and repair requests may be received by Franchisee at any time. All non-emergency service requests and complaints shall be responded to within five (5) days of receipt. All emergencies and/or system outages will be responded to within twenty-four (24) hours.
- D. Franchisee shall by appropriate means, as subscribers are connected or reconnected to the system, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address and toll-free telephone number of the Franchisee.

**Section 12. Subscriber Information.**

- A. Franchisee shall provide in plain language and in an easily readable format written comprehensive information to all subscribers. The information shall be provided at least annually and upon customer request, and shall include the following:
  - 1. The procedure for investigation and resolution of subscriber service complaints.
  - 2. Programming services and rates for such services.
  - 3. Service termination procedures.
  - 4. Converter/subscriber terminal equipment policy
  - 5. Refund policy.
- B. At the City's written request, Franchisee shall provide a copy of any proposed subscriber information packet to the City for review and comment prior to the use of such an information packet.
- C. Franchisee shall notify each of its Subscribers, at least annually and in writing, of its billing practices. The notice shall describe Franchisee's billing practices including, but not limited to, the following: frequency of billing, time periods upon which billing is based, advance billing practices, security deposit requirements, charges for late payments or returned checks, payments required in order to avoid account delinquency, availability of credits for service outages, procedures to be followed to request service deletions, including the notice period a Subscriber must give to avoid liability for such services, and procedures to be followed in the event of a billing dispute. Prior to changing one of its billing practices, Franchisee shall notify all affected Subscribers of the change and include a description of the changed practice. Notices under this Section may be made consistent with standard industry practices for providing such notices.
- D. The Subscriber bill shall contain the following information presented in plain language and format:
  - 1. Name of Franchisee and telephone number.

2. The period of time over which each chargeable service is billed including prorated periods as a result of establishment and termination of services.
  3. The date on which individually chargeable services were rendered.
  4. Each rate or charge levied.
  5. The amount of the bill for the current billing period, separate from any balance due.
  6. Any applicable credits on the date which they were applied.
  7. The balance due.
  8. The date on which payment is due from the Subscriber.
  9. Franchisee's mailing address for sending payments and office address for payment of bills in person.
- E. All late fees will be assessed and applied in a manner consistent with Oregon law.
- F. There shall be no charge for termination or disconnection of any service, except as may be agreed to by the Subscriber in accord with standard industry practices.
- G. Refunds to Subscribers shall be made or determined in the following manner:
1. If Franchisee fails, upon written request by a subscriber, to provide any service then being offered by Franchisee, Franchisee shall refund within thirty (30) days of a request for refund by the Subscriber, all deposits or advance charges paid for such service by said subscriber. This provision does not alter Franchisee's responsibility to Subscribers under any separate contractual agreement or relieve Franchisee of any other liability.
  2. If any subscriber terminates any monthly service because of failure of Franchisee to render the service in accordance with this Franchise, Franchisee shall refund, within thirty (30) days, the Subscriber's pro rata share of the charges paid by the Subscriber for the services not received. This provision does not relieve Franchisee of liability established in other provisions of this Franchise.
  3. If any Subscriber terminates, for any reason not set forth above, any monthly service prior to the end of a prepaid period longer than one month, a prorated portion of any prepaid Subscriber service fee more than one month, using the number of unexpired prepaid days as a basis, shall be refunded to the Subscriber within thirty (30) days by Franchisee. This provision does not relieve Franchisee of liability established in other provisions of this Franchise.

### **Section 13. Refund for Outages.**

The Franchisee shall, upon request, provide a refund to Subscribers for any outages or service disruptions that exceed four (4) hours. The refund may be in the form of a credit on the next statement provided to the Subscriber. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill.

### **Section 14. Community Programming.**

- A. Franchisee shall continue to provide one (1) local access PEG (Public, Education, Government) channel throughout the term of this Franchise. Franchisee shall, at

Franchisee's expense and free of charge to the City, provide and maintain existing upstream links to enable character generated, pre-recorded, and live cablecasts between the Silverton City Council Chambers and Franchisee's headend facility to enable the distribution of PEG access programming to Subscribers on the PEG channels. The channel shall broadcast in high definition digital format as soon as reasonably practicable, but not later than December 31, 2017.

- B. Franchisee shall make a second local PEG access channel available to the City in the event the current PEG access channel is utilized during any eight (8) consecutive weeks for non-repeated or duplicated locally scheduled programming eighty percent (80%) of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 AM to 11:00 PM. The City's use of a character generator shall count toward the eighty percent (80 %) threshold. Such second channel shall broadcast in standard definition digital format (and may be broadcast in high definition in Franchisee's sole discretion).
- C. For the first one hundred twenty (120) days after the formal acceptance of this franchise by Franchisee, Franchisee shall contribute Fifteen Cents (\$0.15) per subscriber per month to support PEG access. After such 120-day period, the Franchisee shall contribute Twenty-Five Cents (\$0.25) per subscriber per month to support PEG access. These amounts shall be payable to the City on a quarterly basis due no more than forty-five (45) days following the end of the period. The contribution shall be used for PEG access-related capital improvements and equipment or any other purpose permitted by the Cable Act. The Franchisee acknowledges and agrees that, to the extent these funds are used consistent with the Cable Act, such funds are not franchise fees for purposes of the Cable Act and may not be deducted from or offset the franchise fee payment required in Section 16 of this Franchise. The Franchisee shall have the right, at its discretion, to pass through these amounts to subscribers in a manner consistent with federal law.

#### **Section 15. Service to the City.**

The Franchisee shall provide and maintain one free connection of basic cable service to all public buildings, and to all public and parochial primary and secondary schools located in the City. The cost of any internal wiring shall be borne by the institution. Such connections shall be provided at such times as service can be provided from the Franchisee's existing distribution plant. If a distribution plant extension of the system is required which imposes an undue economic hardship, the Franchisee shall have the right to petition the City for relief from the service commitments of this Section. Service shall be provided to newly constructed City facilities under the same terms and conditions and as soon as practical, but in no event later than two (2) years from the date of occupancy. Pursuant to this Section, Franchisee shall provide, throughout the term of the Franchise, a fiber link, or, at its discretion, equivalent dedicated capacity on its system, for the purpose of connecting the Silverton City Hall to the Silverton Fire Station. Associated costs may be recovered from subscribers in a manner consistent with



applicable federal law. The City acknowledges that the value of providing the services described in this Section will be deducted from franchise fees owed to the City pursuant to Section 16 of this Franchise; provided that Franchisee acknowledges that the value of the fiber link described in this Section and the value of any maintenance of the fiber link performed by Franchisee will not be deducted from the franchise fees owed to the City pursuant to Section 16 of this Franchise.

**Section 16. Fee to the City.**

- A. The Franchisee shall pay to the City, for the privilege of operating a cable system under this Franchise, five percent (5%) of its Gross Revenues. Such percentage shall be payable to the City on a quarterly basis due no more than forty-five (45) days following the end of the period.
- B. The City shall have the right to inspect, subject to reasonable confidentiality restrictions to comply with applicable Subscriber privacy laws, for up to three (3) previous years, the Franchisee's records showing its Gross Revenues or otherwise relevant to the calculation of the franchise fee. No acceptance of any payout by the City shall be construed as a release of or an accord or satisfaction of any claim the City might have for further or additional sums payable under the terms of this Franchise.
- C. The Franchisee shall furnish to the City, with each payment of compensation required by this Section, a statement showing the amount of Gross Revenue of the Franchisee within the City for the period covered by the payment computed on the basis set out in this Franchise. Late franchise fee payments will be subject to late fees calculated on the basis of nine percent (9%) per annum of the amount past due.

**Section 17. Conditions on Street Use.**

The Franchisee shall comply with all applicable provisions of the Silverton Municipal Code related to construction in and use of the Public Rights of Way and location or relocation of the Franchisee's Cable System, including SMC 12.44.120-12.44.330, as such provisions may be amended from time to time.

**Section 18. Notice of Changes.**

The Franchisee shall give City thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

**Section 19. Termination or Abandonment of Franchise.**

Upon any termination of this Franchise, whether before the expiration of the Franchise or upon expiration, or by any abandonment of the Franchise by Franchisee, all equipment installed or used by Franchisee shall be removed by the Franchisee at Franchisee's expense and the property

upon which said equipment was used restored by Franchisee to the condition it was in before installation or use by Franchisee.

**Section 20. Non-enforcement by the City.**

The Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance.

**Section 21. Periodic Review and Evaluation Sessions.**

To help achieve a continued advanced and modern Cable System, the following evaluation provisions will apply:

- A. The City reserves the right to adopt rules and regulations controlling the procedures as set forth below and subjects for review and evaluation sessions. In the absence of any City action taken to exercise these rights, Franchisee shall be subject to at least the procedures and subjects described in this Section.
- B. The City may require, at its sole discretion, review and evaluation sessions within thirty (30) days of the second, fourth, sixth, and eighth anniversary dates of the acceptance of this Franchise. Topics which may be discussed at any review and evaluation session include, but are not limited to, channel capacity, system performance, programming, local programming, municipal uses of cable, subscriber complaints, judicial rulings, FCC rulings and any other topics the City or Franchisee deem relevant.
- C. During a review and evaluation session, Franchisee shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may request in writing.
- D. If at any time before or during such a session, the City determines that reasonable evidence exists of inadequate system performance, the City may require Franchisee or an independent third-party to perform tests and analysis directed toward such suspected inadequacies. Any costs, fees and expenses of such independent third party shall be paid by the City. The Franchisee shall fully cooperate with the City in performing such testing.

**Section 22. Future Cable Services and System Modifications.**

- A. To assure that Franchisee's Cable System continues to reflect advances in cable systems technology and services generally throughout the term of the Franchise, the City and Franchisee agree to utilize Cable Systems in the following communities as basis for comparison. The comparison communities (also referred to as the "Comparison Group") shall be:

Lincoln City  
Newport  
Tillamook

Monmouth  
Hood River  
Independence  
Mt. Angel  
Jefferson  
Dallas  
The Dalles

B. The City and Franchisee agree that, should four (4) or more communities in the Comparison Group (hereinafter, the “Comparison Sub-Group”) have cable systems that offer Cable Services which materially exceed the services provided on Franchisee’s Cable System, the City, after notice and opportunity for the Franchisee to comment and subject to applicable law, may require Franchisee to provide additional cable Services to meet the average provided by the Comparison Sub-Group. The Franchisee shall complete any modification required to meet the Comparison Sub-Group average within six (6) months of receipt of the City’s written request.

C. If any request made pursuant to (B) above would require a substantial new investment of funds in the Cable System, Franchisee may request an appropriate extension of the Franchise term. If the City and Franchisee cannot agree upon the duration of the extension, and Franchisee otherwise is unwilling to comply with the City’s request, the City, after a public hearing, and with at least thirty (30) days written notice to Franchisee, may shorten the existing Franchise term so that the term will expire not less than thirty-six (36) month after the City’s notification to Franchisee of the City’s intent to shorten the term.

**Section 23. Right to Inspect Books.**

The Franchisee shall keep current and accurate books of account for the purpose of determining the amounts due the City under this Franchise. The City may inspect the books of account any time during business hours, upon provision of reasonable notice, and may audit the books from time to time, subject to reasonable restrictions to comply with applicable law regarding Subscriber privacy. The Franchisees shall keep the books of account at an office within the City, or make such books of account available within the City, or at such other location agreed upon by the City. In the event that the audit discloses Franchisee's underpayment of non-disputed franchise fees in an amount greater than three percent (3%), as measured on a quarterly basis, Franchisee shall pay for the cost of the audit, not to exceed \$10,000. The City may require periodic reports from the Franchisee relating to its operations and revenue within the City.

**Section 24. Reports and Records.**

- A. At the City’s written request, within ninety (90) days after the close of the Franchisee’s fiscal-year, Franchisee shall file with the City the following reports pertaining to the Franchise area:
1. Total number of subscribers at the end of the fiscal year.
  2. Number of miles of cable added, deleted or abandoned in the system during the Year.

3. Summary of other additions to the system in terms of increased channel capacity or technological improvements made during the year.
  4. Outline of plans for expansion and improvement of the system in the next fiscal year.
  5. A summary of the service requests received.
  6. Any other information which may be reasonably required by the City for its performance of duties.
- B. Copies of Reports. Copies of all petitions, applications, and communications submitted by the Franchisee to the Federal Communications Commission or any other federal or state regulator, commission, or agency having jurisdiction in respect to any matters relating specifically to operation of the Cable System authorized pursuant to this Franchise shall also be submitted to the City at its written request.
- C. Within thirty (30) days of a written request from the City, Franchisee shall make available or provide copies of any of its books and records that the City determines are reasonably necessary to evaluate Franchisee's compliance with any provision of the Franchise or applicable law. Subject to the limits of the Oregon Public Records Law, the City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Franchisee makes the City aware of such confidentiality at the time it provides the books or records. Franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law.
- D. Cost of Reports. The cost of preparing and furnishing to the City the records and reports required by this section shall be borne by the Franchisee.

**Section 25. Performance Bond.**

- A. At the time this Franchise is accepted, to the extent Franchisee has not already done so, Franchisee shall furnish proof of the posting of a faithful performance bond running to the City with good and sufficient surety approved by the City, in the penal sum of Five Thousand Dollars (\$5,000.00) as security for the faithful performance by it of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Franchisee of any claim, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System.
- B. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of this Section.
- C. The Franchisee may substitute a letter of credit, assignable to the City, in a form acceptable to the City, in lieu of a performance bond.

D. If Franchisee fails to pay to the City any amounts due and unpaid; or fails to repay to the City any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Franchisee in connection with this Franchise; or fails, after thirty (30) days' notice by the City of such failure to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may then draw upon the bond or letter of credit, in accordance with those procedures set forth above.

G. In addition to any other remedies provided herein, penalties for violations of this Franchise are set forth below. As a result of any acts or omissions by the Franchisee pursuant to the Franchise, the City may charge to and collect from the bond or letter of credit any penalty amount assessed as provided above. The rights reserved to the City with respect to the bond or letter of credit are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such bond or letter of credit shall affect any other right the City may have.

#### **Section 26. Permit and Inspection Fees.**

Nothing in this Franchise shall be construed to limit the right of the City to require the Franchisee to pay the standard fees charged by the City for any of the activities covered by such fees or charges, as now in effect or hereafter amended.

#### **Section 27. Limitation of Franchising Authority Liability.**

In any court proceeding involving any claim against the City, or any official, member, employee, or agent of the City, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Franchise, any relief, to the extent such relief is required by any other provision of federal, State, or local law, shall be limited to injunctive relief and declaratory relief. The Franchisee agrees, by accepting this Franchise, that all applicable requirements have been fully met and that the process of awarding this Franchise and content herein are consistent with federal, state and local laws and regulations.

#### **Section 28. Penalties.**

Subject to requirement of prior notice and opportunity to cure as set forth in Section 29 below, for violations of this Franchise occurring without just cause, the City may, at its discretion and in addition to any other remedies provided herein, assess penalties against Franchisee as follows:

- A. For failure to provide data, documents, reports or information required by this Franchise or reasonably requested in writing by the City, the penalty shall be One Hundred Dollars (\$100.00) per day.
- B. For failure to comply with any provision of this Franchise, for which a penalty is not otherwise specifically provided, the penalty shall be One Hundred Dollars (\$100.00) per day.
- C. For failure to adhere to other material provisions of this Franchise, the penalty shall be Two Hundred Dollars (\$200) per day for each provision not fulfilled.

- D. For failure to comply with reasonable written requests of the City related to service to Subscribers, the penalty shall be Fifty Dollars (\$50) per day for each request.

**Section 29. Procedure for Imposition of Penalties.**

A. Whenever the City finds that Franchisee has violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Franchisee informing it of such violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford Franchisee an opportunity to remedy the violation. Franchisee shall have thirty (30) days subsequent to receipt of the notice in which to correct the violation before the City may assess penalties or resort to the performance bond. Franchisee may, within ten (10) days after receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Franchisee to the City shall specify with reasonable particularity the matters disputed by Franchisee.

B. The City shall hear Franchisee's dispute at its next regularly or specially scheduled meeting, or such other meeting as agreed to by the parties. The City shall supplement the decision with written findings of fact. If after hearing the dispute the claim is upheld by the City, Franchisee shall have twenty (20) days from such a determination to remedy the violation or failure. At any time after that twenty (20) day period, the City may draw against the performance bond or assess against the letter of credit all penalties due it. Franchisee shall be liable for full payment of all penalties imposed under this Section, whether or not sufficient sums remain in the performance bond or letter of credit to pay the penalties.

**Section 30. Acceptance of Franchise.**

Within 30 days after the Effective Date of this Franchise, Franchisee shall file with the City Recorder an executed original Franchise, signed by a person authorized to bind Franchisee, which shall constitute acceptance of every term and condition of this Franchise.

**Section 31. Notices.**

Any notices to be sent to the parties hereto shall be sent to the following addresses, unless either party notifies the other in writing of another address:

City of Silverton  
306 South Water Street  
Silverton, OR 97381

Wave  
Attn: Executive Vice President, Business and Legal Affairs  
401 Parkplace Center, Suite 500  
Kirkland, WA 98033

**Section 32. Commercial Impracticability.**

Franchisee has examined the requirements of this Franchise thoroughly and the acceptance hereof constitutes a representation that it has the financial and technical ability to carry out its obligations hereunder. As of the Effective Date of this Franchise, all services and requirements anticipated by this Franchise are commercially practicable. In the event that Franchisee seeks to relieve itself of any such service or requirement on grounds of "commercial impracticability" pursuant to 47 U.S.C. 545, there shall be a refutable presumption that such service or requirement is commercially practical if Franchisee offers a comparable commercial service in at least three comparable West Coast cable systems (excluding test areas), in terms of subscribers and population demographics,

**Section 33. Emergency Use of Facilities.**

In the case of any emergency or disaster, the Franchisee shall upon request of the City, make available its facilities for emergency use in a manner consistent with applicable law and regulations during the emergency or disaster.

**Section 34. Forfeiture of Franchise.**

- A. In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right to terminate and cancel this Franchise and all rights and privileges of the Franchisee hereunder in the event that the Franchisee:
1. Violates any material provision of this Franchise as determined by the City or any rule, order, or determination of the Council made pursuant of this Franchise, except where such violation, other than Subsection 2 below, is without fault or through excusable neglect;
  2. Becomes bankrupt; insolvent, unable or unwilling to pay its debts, is adjudged bankrupt;
  3. Attempts to evade any of the provisions of this Franchise or practices any fraud or deceit upon the City.
- B. Such termination and cancellation shall be by Ordinance duly adopted after thirty (30) days written notice to the Franchisee and shall in no way affect any of the City's rights under this Franchise or any provisions of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact shall be made by the Council or its representative. Before this Franchise may be terminated and canceled under this Section, the Franchisee must be provided with an opportunity to be heard before the Council and an opportunity to cure any condition leading to termination or cancellation. If the Franchisee has corrected the condition leading to termination or cancellation within the thirty (30) days written notice of termination or cancellation, or, if such correction requires more than thirty (30) days, has begun to correct any such condition, this Franchise shall remain in effect.

- C. Prevention or delay of any performance under the Franchise due to circumstances beyond the control of Franchisee or City including, but not limited to, natural disaster, employee strikes or war shall not be deemed noncompliance with or a violation of this Franchise.

**Section 35. Equal Employment Opportunity Compliance.**

Franchisee shall comply at all times with applicable federal, state and local laws and all executive and administrative orders relating to nondiscrimination, equal employment and affirmative action.

**Section 36. Severability.**

If any Section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid, unconstitutional or unenforceable, such portion shall be deemed a separate, distinct and independent provision and such holding shall not effect the validity of the remaining portions hereof.

**Section 37. Integration.**

This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations and warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby. This is an integrated agreement.

**Section 38. Rate Regulation.**

To the extent that federal or state law or regulation may now or as the same may hereafter be amended to, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by the Franchisee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC.



**Section 39. Repeal of Prior Franchise Ordinance.**

Upon the effective date of this Ordinance, Ordinance 00-123 shall be repealed in its entirety and of no further force or effect.

**Section 40.** This ordinance shall be effective upon and from 30 days of adoption.

Ordinance adopted by the City Council of the City of Silverton, this 7<sup>th</sup> day of March 2016.



\_\_\_\_\_  
Mayor, City of Silverton  
Rick Lewis

ATTEST  


\_\_\_\_\_  
City Manager/Recorder, City of Silverton  
Bob Willoughby

**EXHIBIT A**  
**ACCEPTANCE**

Bob Willoughby  
City Manager  
306 S Water St  
Silverton, Oregon 97381

This is to advise the City of Silverton, Oregon that WaveDivision VII, LLC (the "Grantee") hereby unconditionally accepts the terms and provisions of Ordinance No.16-07, passed by the City Council on March 7, 2016 (the "Franchise") granting a Franchise to Grantee. The Grantee agrees to abide by each and every term and condition of the Franchise.

**WAVEDIVISION IIV, LLC**

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

**This Acceptance was received by the City of Silverton on \_\_\_\_\_, 2016.**

\_\_\_\_\_  
Bob Willoughby

Bob,

Attached is the final version of the franchise. In addition to the changes shown in the last draft, I caught an issue with numbering that has been fixed.

With respect to changes in the franchise, we used the existing franchise as the basis for the negotiations. I updated a few provisions before sending it to Wave, but it is still quite similar to the current agreement. Among the changes are:

- **Term**: The existing franchise had a 10 year term with a 5 year extension. The new franchise has a 10 year term with no provision for extension. (The parties could nevertheless agree to extend if, at the end of the term, the franchise is still acceptable to both parties.)
- **Transfer of Franchise**: This section has been updated to reflect changes in FCC regulations related to the City's authority to review proposed transfers of the cable system. It also expressly states that Wave does not need City approval prior to assigning the franchise to an affiliated entity. The existing franchise does not expressly cover assignments to affiliates.
- **System Capacity**: The existing franchise required Wave to be able to provide at least 78 analog channels, and required an upgrade of the cable system to meet this requirement. The new franchise requires a capacity of at least 200 channels. No system upgrade is required in the new franchise.
- **Service Territory**: Wave is currently, and will continue to be, required to provide cable service throughout the City. However, the existing agreement requires Wave to extend service to unserved areas only when there are at least 40 homes per mile. The new franchise requires Wave to extend service when there are at least 25 homes per mile, which will increase the likelihood that service will be extended because areas can be less densely populated than under the existing agreement before Wave is required to extend service.
- **PEG Channels**: The existing agreement initially provided for 1 PEG channel, and the City was to get a second channel after the cable system upgrade Wave was required to do. While the upgrade was completed, the City was not provided with the second channel. In the new franchise, Wave must continue to provide 1 PEG channel, and provide a second channel when the first channel meets certain minimum programming standards. We believe the current PEG channel use exceeds those standards and thus the City should get the second PEG channel. Further, in the new franchise, Wave must show the current PEG channel in high definition no later than December 31, 2017.
- **PEG Financial Support**: The existing franchise provided for a \$15,000 upfront grant and \$0.15/month/subscriber paid to the City for capital costs related to PEG. The new franchise does not include an upfront grant, but requires Wave to pay \$0.25/month/subscriber for PEG capital costs.
- **Service to Public Buildings**: Wave will continue to provide basic cable service to all public buildings, and to all public and parochial primary and secondary schools located in the City, as is required under the existing franchise. However, Wave will now be able to deduct the value of those services from its franchise fee payment as permitted by FCC regulations.

Please let me know if you need anything else.

Thanks,

Nancy

NANCY L. WERNER

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