

**RESOLUTION NO. 810
CITY OF STAYTON**

**A RESOLUTION APPROVING ASSIGNMENT OF A
CABLE FRANCHISE FROM UVISION, LLC TO WAVEDIVISION VII, LLC**

The City Council of the City of Stayton resolves:

Section 1. Findings.

A. The City of Stayton (City) and Uvision, LLC, a Oregon limited liability company, an affiliate of WBB Communications, LLC (collectively WB) are parties to a Cable Franchise Agreement dated March 7, 2005 (Franchise), pursuant to which the City granted a cable television franchise to WB to construct, maintain and operate a cable television system throughout the City (System).

B. On June 22, 2007, WB entered an Asset Purchase Agreement (APA) in which WB agreed to sell and WaveDivision VII, LLC, a Washington limited liability company, doing business as Wave Broadband (collectively Wave) agreed to purchase substantially all of the assets of WB including the assignment to Wave of the System and the Franchise (Assignment). The Assignment will occur on the date of the closing of the transactions contemplated by the APA (Closing). Wave and WB anticipate Closing will occur on or about November 15, 2007.

C. Section 16.1 of the Franchise provides that neither a cable franchise nor a cable system may be assigned to another person without the approval of the City.

D. On July 11, 2007, WB and Wave submitted an application on FCC Form 394 (Application) in compliance with federal law and in accordance with the requirements of the Franchise and the laws of the City for the assignment of WB franchise to Wave. WB and Wave have requested that the City consent to the Assignment.

E. Wave and WB have agreed to enter into an Assignment of Cable Franchise Consent Agreement in substantially the form set forth as Exhibit A attached and made a part of this Resolution (Consent Agreement) that requires Wave to comply with the terms of the Franchise from and after Closing and to continue to operate the cable system in a manner that benefits residents of City.

Section 2. Qualifications. The Application demonstrates to the satisfaction of the City that Wave has the legal, technical, and financial qualifications to perform under the Franchise.

Section 3. Consent. The City Council accepts the Application and consents to the Assignment effective upon the Closing, subject to Wave and WB executing the Consent Agreement. The City consent to this Assignment is not a waiver or release of any rights the City may have under the Franchise or any separate written agreement with WB for any act or omission arising or accruing prior to Closing.

Section 4. Conditions. The consent to the Assignment granted by this Resolution is effective only on the satisfaction of the following conditions:

- a. Wave and WB must execute the Consent Agreement; and
- b. the Closing must occur before January 31, 2008.

Section 5. Inter-Company Transfers and Financing-Related Actions. Wave may, without obtaining prior consent of the City from time to time: (a) assign or transfer its assets, including the Franchise, provided any assignment or transfer is to a parent or subsidiary of Wave or another entity under direct or indirect control of the parent of Wave; (b) restructure its debt or change the ownership interests among its equity participants or its affiliates; (c) pledge or grant a security interest in its assets, including but not limited to the Franchise, or the equity or other ownership interests in Wave to any lender to secure indebtedness.


Section 6. Compliance with City Requirements. The Franchise, the Consent Agreement and this Resolution were approved and adopted in accordance with all applicable notice and procedure requirements under all laws applicable to the City, and with all applicable notice requirements. They do not conflict with the ordinances, resolutions or other requirements of the City that are presently or previously in effect.

Section 7. Notice of Closing. Wave must notify the City in writing of the effective date of the Closing.

Section 8. Authorization. The Mayor and City Administrator are authorized to execute the Consent Agreement and to take any further action needed to implement the Consent Agreement.

Section 9. Effective Date. This Resolution takes effect immediately upon adoption.

Approved and adopted by the City Council this 5th day of November, 2007.


Virginia L. Honeywell, Mayor


Chris Childs, City Administrator

ATTEST:


Deputy City Recorder

**EXHIBIT A TO RESOLUTION NO. 810
ASSIGNMENT OF CABLE FRANCHISE CONSENT AGREEMENT**

This Assignment of Cable Franchise Consent Agreement (Agreement) is entered by Uvision, LLC , a Oregon limited liability company, and an affiliate of WBB Communications, LLC, a Delaware limited liability company (collectively WB), WaveDivision VII, LLC, a Washington limited liability company, doing business as Wave Broadband (Wave) and the City of Stayton, an Oregon municipal corporation (City).

1. Consent. Subject to the terms and conditions of this Agreement, the City consents to the Assignment. Wave and WB each agree that the City acted on the Application in a timely manner under federal law.

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

2.1. Except as permitted under the Franchise or this Agreement, no action or omission by the City at or before the execution of this Agreement, grants City consent to any future transfer of the Franchise or the System, or change in ownership or control of Wave.

2.2. As a result of the Assignment, the City does not waive any right to compliance by WB with the terms, conditions, requirements and obligations of the Franchise that arose or accrued prior to the Closing.

3. Compliance with Franchise.

3.1. Wave accepts, acknowledges, and agrees to be bound by all terms and conditions of the Franchise and to assume all the duties, liabilities and obligations of the franchisee that arise or accrue after the Closing. Wave further agrees that neither the Assignment nor City consent increase, diminish or otherwise effect Wave's commitments, duties, liabilities and obligations embodied in the Franchise, except as otherwise expressly provided by this Agreement. The foregoing obligations include the obligation under the Franchise for Wave to make its books and records available to the City for inspection in accordance with the terms of the Franchise.

3.2. Wave agrees to comply with all provisions of the Franchise and all provisions of the City Municipal Code and federal and state law to the maximum extent required by law.

3.3. The City is not aware of any breach or default under the Franchise, or any event that could become a default with the passage of time.

4. Obligations of Wave and WB. In consideration of City consent to the Assignment, Wave absolutely, irrevocably and unconditionally agrees that from the Closing and thereafter it will fully and faithfully perform all of the terms, covenants, conditions and

agreements contained in the Franchise subject to Applicable Law. For purposes of this Agreement, "Applicable Law" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction, judgment, decree or other order that has been issued, executed, entered and applicable to the City, either specifically or by reference to a class including the City, by any court of competent jurisdiction or other federal or state department, commission, board or agency. The City releases WB, effective upon the Closing, from all obligations and liabilities (including any guarantee or surety) under the Franchise after Closing.

5. Representations and Warranties.

5.1. Each party represents and warrants that:

A. It has investigated fully whether any benefit or advance will inure to it from the execution of this Agreement, and each party has determined that benefits will inure to it from this Agreement.

B. This Agreement is legal, valid and binding and enforceable in accordance with its terms.

C. It has full right, power and authority to execute and deliver this Agreement, and to perform its obligations, and all corporate or other action necessary to authorize the execution and delivery of this Agreement.

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

5.2. Wave represents and warrants that:

A. Its audited financial statements for the 12 months ended December 31, 2006 delivered to the City as part of the Application are true and correct in all respects, and fairly present the financial position or results of operations, and no material adverse change has occurred in the financial condition of Wave since that date.

B. The Franchise is legal, valid and binding and enforceable in accordance with its terms, subject to Applicable Law.

C. Wave acknowledges and agrees that City consent to the Assignment is made in reliance upon the written information provided by Wave in the Application. The information concerning Wave in the Application is true and accurate, and omits no material information the absence of which would cause the information provided to be materially misleading.

D. At the time of execution of this Agreement Wave is duly organized, validly existing and in good standing under the laws of the state of Washington, and is qualified to do business within the State of Oregon.

5.3. The City represents and warrants that:

A. The Franchise was duly issued to WB, is legal, valid and binding and enforceable in accordance with its terms, subject to Applicable Law, and is in full force and effect.

B. Other than as set forth in this Agreement or the Resolution adopted by the City that incorporates this Agreement there have been no amendments or modifications to the Franchise.

C. It has knowledge of no defaults under the Franchise, and no event has occurred and is continuing that with notice or passage of time could constitute a default under the Franchise.

D. Upon the Closing, the duly authorized franchisee under the Franchise will be Wave.

6. **Renewal.** Except as specifically provided, this Agreement does not effect City authority to enforce the Franchise. This Agreement has no effect on City authority to review, conditionally approve or deny the renewal of the franchise granted to Wave. This includes City authority to review any noncompliance or violation of the Franchise by Wave after Closing or the failure to meet community needs by Wave after Closing, and to conditionally approve or deny a renewal based on any such failure, noncompliance or violation.

7. **Rates.** Wave agrees that the Assignment will not result in an increase in the rate for basic cable service. This does not effect rate increases made in the ordinary course of business in compliance with local, state and federal law that are not caused by the Assignment.

8. **PEG Access Financial Support and Uses of Funds.** Wave agrees that it will continue to make Periodic PEG Access Capital Payments to the extent provided in Section 5.3 (b) of the Franchise and consistent with federal law. Wave agrees that the Periodic PEG Access Capital Payments (PEG Payments) are under the direction and control of the City, and may be used for PEG access purposes, including PEG access equipment (studio and portable production equipment, editing equipment and program playback equipment) or for renovation or construction of PEG access facilities. The City will exercise its sole discretion as to the allocation of such resources among and within the public, educational and governmental functions. Wave agrees that the PEG Payments will not be deemed to be "franchise fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), and such obligations will not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Wave under this Agreement or (ii) part of the Franchise Fees to be paid to the City by Wave under this Agreement.

9. **Franchise Fees.** Wave agrees that it will properly calculate franchise fees in accordance with the Franchise and state and federal law.

10. Transfer Costs. Wave and WB agree to reimburse the City for its reasonable legal costs in reviewing the Application to verify the legal, technical and financial qualifications of Wave to perform under the Franchise, and to prepare the legal documents for approval of the transfer.

11. Enforcement. Any violation of this Agreement is a violation of the Franchise subject to the remedies provided by law or in equity. Any action to interpret or enforce any provision in this Agreement or the Franchise must be brought in a state or federal court of competent jurisdiction in Oregon. The parties agree to be subject to the jurisdiction of Oregon state and federal courts for such purposes. This Agreement is governed by the laws of the State of Oregon.

12. Authority. The persons executing this Agreement certify that they are authorized by the respective party to execute this Agreement and to bind that party.

13. Notices. All notices required or permitted under the Franchise must be delivered in the manner provided in the Franchise, except that the address for the Franchisee is changed to the following:

Wave Broadband
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033
Attention: Steve Weed and Jim Penney

14. Insurance and Performance Guarantees. No later than 30 days after Closing, Wave must provide the City with (1) certificates of insurance and original endorsements evidencing the insurance coverage required under the Franchise, and (2) the performance bond required by the Franchise.

15. Effect on Franchise. This Agreement has no effect on the Franchise except as specifically provided in this Agreement.

16. Counterparts. This Agreement may be executed in several counterparts each of which when so executed is an original copy, and all together constitute an agreement binding on all parties, notwithstanding that all parties may not have signed the same counterpart.

17. Binding Agreement. This Agreement binds and benefits the parties and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. Any purported assignment of this Agreement is void without the express written consent of both other parties.

18. Reliance on Own Judgment. Each party 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, concerning the nature, extent and duration of its rights and claims, and that it has not been influenced in executing this Agreement

by any other party or representative. This Agreement was not drafted by any one party and will not be construed against any party.

19. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the matters addressed. This Agreement may be modified only by written amendments signed by all parties.

20. **Severability.** If any provision of this Agreement is found invalid by a court, then the remainder of the Agreement remains in effect.

City:

CITY OF STAYTON

By: _____
Name Printed: _____
Title: _____
Date: _____

REVIEWED BY:

Thomas Spenser
Special Legal Counsel
Name Printed: Thomas Spenser
Date: 31 October 2007

WB:

UVISION, LLC

By: Wayne Vestal
Name Printed: WAYNE VESTAL
Title: PRESIDENT
Date: 11/1/2007

Wave:

WAVEDIVISION VII, LLC

By: David Hankin
Name Printed: DAVID HANKIN
Title: Vice President and Regulatory Counsel
Date: 10/31/07

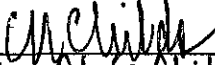
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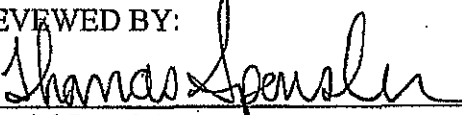
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City:

CITY OF STAYTON

By: 
Name Printed: Chris Childs
Title: City Administrator
Date: 11/15/2007

REVIEWED BY:


Special Legal Counsel
Name Printed: Thomas Spenser
Date: 31 October 2007

WB:

UVISION, LLC

By: _____
Name Printed: _____
Title: _____
Date: _____

Wave:

WAVEDIVISION VII, LLC

By: _____
Name Printed: _____
Title: _____
Date: _____