ORDINANCE NO. 1347

AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CANBY AND WAVEDIVISION VII, LLC AND DECLARING AN EMERGENCY.

WHEREAS, on April 8, 1999, the City of Canby granted a twelve year franchise to North Willamette Telecom, effective May 7, 1999 (the "Franchise"). The Franchise was subsequently assigned to Willamette Broadband, LLC in 2001, and the City approved the transfer to WaveDivision VII, LLC, a Washington limited liability company, doing business as Wave Broadband ("Wave") in 2007; and

WHEREAS, the Franchise was to expire on May 7, 2011, and the parties agreed to extend the term through June 6, 2011, to allow additional time to reach agreement on a longer term extension of the agreement; and

WHEREAS, the City and Wave did not intend to allow the franchise to expire without extension, but the City inadvertently did not extend the Franchise while discussions about the longer term extension continued; and

WHEREAS, the City and Wave have agreed to extend the term of the Franchise to expire on March 4, 2017, which is consistent with the expiration date of the cable franchise agreement the City granted to a competitive cable service provider in the City, Canby Telephone Association; and

WHEREAS, the City and Wave have agreed to amend the Franchise to reflect the new expiration date and to address several other issues; and

WHEREAS, the City finds it is in the public interest to amend the Franchise as set forth in this Ordinance, and that such amendment be effective as of June 6, 2011, to ensure that Wave has a continuous franchise from the City; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City of Canby hereby amends the Franchise with Wave as follows, with all other provisions, terms and conditions of the Franchise remaining unchanged and in full force and effect except as expressly stated herein:

A. All references in the Franchise to "Grantee," "Franchisee," or "North Willamette Telecom" shall mean WaveDivision VII, LLC.

B. Section 1.1 of the Franchise shall read as follows: "The City of Canby, Oregon (hereafter Grantor) is authorized to and by this Franchise agreement does grant to WaveDivision VII, LLC (hereafter Grantee) a nonexclusive Franchise through March 4, 2017, revocable as provided herein, to construct, operate and maintain a cable communications system in the City."

C. The phrase "for a 12-year period" shall be deleted from the first sentence of Section 3.1 of the Franchise.

D. The first sentence of the first paragraph of Section 3.3 of the Franchise shall be deleted in its entirety and replaced with the following: "Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be through March 4, 2017, at which time the franchise shall expire and be of no force and effect."

E. The phrase "twelve (12) year" shall be deleted from the first sentence of the second paragraph and from the last sentence of the last paragraph of Section 3.3 of the Franchise.

F. The phrase "and continuing throughout its term," shall be deleted from the first sentence of Section 6.5(c) (i) of the Franchise. After the first sentence of Section 6.5(c)(i), the following sentence shall be added: "No sooner than November 1, 2011, Grantee shall provide two percent (2%) of its gross revenues as support for PEG access capital costs. Grantee shall provide two percent (2%) of its gross revenues through October 31, 2013. Commencing on November 1, 2013 and through the remaining term of the Franchise, Grantee shall provide one-percent (1%) of its gross revenues as support for PEG access capital costs." After the first paragraph in Section 6.5(c)(i), the following paragraph shall be added: "Notwithstanding the previous paragraph, in the event of a change in federal law that permits the Grantor or its Designated Access Provider to use the support set forth in this Section 6.5(c)(i) for non-capital costs without such support being treated as a franchise fee, Grantee shall, no sooner than November 1, 2013 or within sixty (60) days of the effective date of the change in law, as applicable, provide a total of two percent (2%) of its gross revenues as capital and non-capital support for PEG access through the remaining term of the Franchise."

G. The following paragraph shall be added at the end of Section 6.5(c)(ii) of the Franchise: "Commencing on November 1, 2014, Grantor shall cause Canby Telephone Association, a competitive cable service provider in the City, to contribute eight hundred sixty two dollars ($862.00) per month to Grantor's Designated Access Provider (the "DAP") and such amount shall be paid directly to the DAP by Canby Telephone Association. It is Grantee's intent to enter into an agreement with the DAP pursuant to which the DAP will forward to Grantee all rent contributions paid by Canby Telephone Association through March 4, 2017. Grantor and Grantee agree that this amount represents one half (1/2) of the rent for the portion of the access facility occupied by Grantor's DAP as of June 6, 2011 (which is approximately eighty-seven

percent (87%) of the leased space, the remainder of which is used by the Grantee). In the event that the rent for the leased space changes during the term of this Agreement pursuant to the terms of a valid lease agreement between Grantee and the owner of the leased space, then Grantor shall cause Canby Telephone Association to contribute to the DAP one half (1/2) of the adjusted rental amount for the portion of the access facility occupied by the DAP. Grantor and Grantee further agree that if the DAP's proportionate use of the access facility increases or decreases by five percent (5%) or more, the payments required under this Paragraph from Canby Telephone shall be increased or decreased in proportion to the change. Grantor's obligation to require Canby Telephone Association to make the payment set forth in this paragraph shall cease if Canby Telephone Association ceases to provide cable service in the City or if the DAP stops using the access facility.

H. Section 9.1 of the Franchise shall be deleted in its entirety and replaced with the following: "The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Cable Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Cable Act."

Section 2. The amendments to the Franchise set forth in this Ordinance shall take effect as of June 6, 2011, provided that Wave files with the City its written acceptance of the amendments, in the form attached hereto as Exhibit A, by the effective date of this Ordinance. If Wave fails to timely file its written acceptance, this Ordinance shall be null and void and the Franchise will be of no further force or effect.

Section 3. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to ensure uninterrupted cable service, an emergency is hereby declared to exist and this Ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 5, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, October 19, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2nd Avenue in Canby, Oregon.

Kimberly Scheafer

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of October, 2011, by the following vote:

YEAS 6 NAYS 0

Randy Carson

Randy Carson
Mayor

ATTEST:

Kimberly Scheafer

Kimberly Scheafer, CMC
City Recorder

EXHIBIT A

ACCEPTANCE

City Administrator
City of Canby
P.O. Box 930
Canby, Oregon 97013

The undersigned, WaveDivision VII, LLC, does hereby accept the amendments to its Franchise with the City of Canby as set forth in Ordinance No.1347, approved at first reading on October 5, 2011, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise as amended, subject to applicable federal, state and local law. This acceptance is conditioned upon passage and approval of Ordinance No. 1347 by the City of Canby at second reading on October 19, 2011.

WAVEDIVISION VII, LLC

BY: _____

TITLE: Executive Vice President

DATE: October 7, 2011