

REPORT

To the Honorable Mayor and City Council
From the City Manager

January 8, 2007

Subject

Consideration of a Resolution Establishing Conditions for the Approval of a Transfer of a Cable TV Franchise from RCN Telecom Services Inc. to Astound Broadband LLC

Recommendation

Adopt the attached resolution which establishes the conditions for the approval of a transfer of a Cable Television Franchise from RCN Telecom Services Inc. to Astound Broadband LLC.

Adopt the attached resolution authorizing the assigning of encroachment agreements.

Background

In August of 2000, the City Council approved a Cable TV franchise agreement with RCN Telecom Services (RCN) to provide Cable TV services to the residents of the City of Redwood City.

On September 21, 2006, Redwood City received notice that the assets and franchises of RCN were being sold to Astound Broadband LLC (Astound). Astound is a video provider that has been active in the Contra Costa County area (Concord, Walnut Creek, Contra Costa County unincorporated areas) as well as in the Pacific Northwest. They are based in Kirkland, Washington with an office in the East Bay. The other agencies comprising the San Mateo County Telecommunications Authority (SAMCAT) received this notice at approximately the same time.

Under Federal Law and the terms of the City's non-exclusive Cable TV franchise with RCN, each franchising agency has the right to review the proposed transfer of the franchise to Astound. The 9 agencies in San Mateo County worked through SAMCAT to review the proposed transfer. Michael Friedman of Telecommunications Management Corporation (TMC) was retained by the agencies to perform this review.

The review by TMC resulted in a 35 page analysis of the proposed transfer. In summary, TMC notes that any transfer of the Cable TV Franchise from RCN to Astound should include an agreement between Astound and the City which continues the terms of the franchise (and any amendments and encroachment agreements). TMC also recommends that Astound cover the cost of the transfer review process, that it activate the third and fourth PEG channels that Redwood City is entitled to under the existing franchise by December 31, 2007, and that the attached agreement be signed by Astound.

Staff concurs with the TMC report and has worked with TMC and SAMCAT to prepare the

attached agreement and resolution which embody these conditions. Staff also feels that it is in the City's interest to continue the relationship with RCN and its successor company as it represents continued choices for Cable TV services for residents of Redwood City. Finally, staff notes that City officials in Contra Costa County give Astound high marks for their customer service and marketing and indicate that their presence in Redwood City and the San Mateo County market would be a plus. For all of these reasons, staff recommends Council approval of the attached resolution and agreement with Astound.

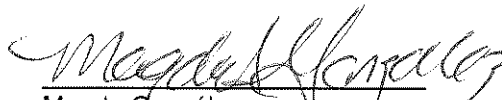
Alternative


1. Accept the Staff Report and adopt the attached Resolution Establishing Conditions for the Approval of a Transfer of a Cable TV Franchise from RCN Telecom Services Inc. to Astound Broadband LLC;
2. Provide the Staff with alternative direction.

Fiscal Implications

Adoption of this resolution will have no budget impact on the City.


Malcolm Smith
Public Communications Manager


Magda González
Assistant to the City Manager


Ed Everett
City Manager

Attachments

Resolution of the City Council Establishing Conditions for the Approval of a Transfer of a Cable TV Franchise from RCN Telecom Services Inc. to Astound Broadband LLC

Resolution of the City Council Assigning Two Encroachment Agreements

Exhibit A – Change of Ownership Consent Agreement

“Evaluation of Request to Transfer Control of Cable and OVS System Franchises” Report from Telecommunications Management Corporation

RESOLUTION NO. 2007-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDWOOD CITY, CALIFORNIA, ESTABLISHING CONDITIONS FOR THE APPROVAL OF A TRANSFER OF OWNERSHIP OF A CABLE TELEVISION FRANCHISE FROM RCN TELECOM SERVICES, INC. TO ASTOUND BROADBAND, LLC.

WHEREAS, RCN Telecom Services, Inc. ("Franchisee") owns and has a franchise to maintain a cable system ("System") in the City of Redwood City ("City"); and

WHEREAS, Franchisee has a franchise to provide cable service in the City pursuant to the terms of a cable system franchise ("Franchise") granted to Franchisee on August 14, 2000, effective August 28, 2000, and subsequently amended on September 16, 2004; and

WHEREAS, Franchisee and Astound Broadband, LLC ("Astound" or "Transferee") are parties to an asset purchase agreement ("Purchase Agreement") pursuant to which the System and the Franchise are to be transferred to Astound; and

WHEREAS, on September 21, 2006, the City received an F.C.C. Form 394 requesting a transfer of the Franchise from Franchisee to Transferee; and

WHEREAS, the City has one hundred twenty (120) days from the receipt of a complete F.C.C. Form 394 to act upon the transfer request or the request automatically is deemed to have been approved; and

WHEREAS, the one hundred twenty (120) day review period expires on January 19, 2007, since the FCC Form 394 was received by the City on September 21, 2006; and

WHEREAS, the Franchise cannot be transferred or assigned without the City Council's consent; and

WHEREAS, federal regulations permit the City to evaluate the legal, technical and financial qualifications of Transferee to operate the Franchise; and

WHEREAS, the legislative history of the Federal Cable Television Consumer Protection and Competition Act of 1992 (the “1992 Cable Act”) further indicates that Congress intended that local franchising authorities consider such information as the effect of the transfer or sale on rates and subscriber services and the Transferee's plans for expanding or eliminating services to subscribers when assessing an application for transfer of a cable system franchise; and

WHEREAS, the United States Court of Appeals for the Ninth Circuit, in a case involving the County of Santa Cruz, California and Charter Communications, found that local cable franchising authorities should be afforded broad deference in legislative acts in their role as stewards of the public good; and

WHEREAS, the City, as steward of the public good, believes that the transfer of ownership will be in the best interest of its residents and potential System subscribers provided the transfer is conditioned in order to safeguard the interests of its residents and potential System subscribers; and

WHEREAS, the City desires to proceed with the proposed transfer on the terms and conditions set forth herein.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF REDWOOD CITY, AS FOLLOWS:

Section 1. The City hereby consents to the transfer of ownership, subject to the following conditions:

1. Astound Broadband, LLC, the Transferee, is owned and controlled as indicated in Exhibit A, Figure 1 attached hereto. To the extent required by Section 2.5 of the Cable Television Franchise between the City and RCN, any change of ownership or control of Transferee from the ownership and control indicated in Exhibit A shall be subject to prior City review and consent.
2. The City expressly reserves any and all rights that it may possess under the Franchise and applicable law with respect to any non-compliance issues on the part of Franchisee, whether known or unknown, which exist prior to the effective date of this transfer and Transferee reserves any and all rights and defenses with respect to any such non-compliance issues.

In reserving such rights, the City confirms that the Franchisee is materially in compliance with the provisions of the Franchise and there exists no fact or circumstance known to the City which constitutes, or which, with the passage of time or the giving of notice or both, would constitute a material default or breach under the Franchise or would allow the City to cancel or terminate the rights hereunder, except upon the expiration of the full term of the Franchise.

3. The transfer is expressly contingent upon Transferee reimbursing the City for the consultant's costs incurred in the processing of the request for transfer, not to exceed the maximum amount of \$20,000 indicated in the "Change of Ownership Consent Agreement" attached to this Resolution as Exhibit A. Said reimbursement shall be provided within thirty (30) calendar days of Franchisee's receipt of an itemized invoice detailing the consultant's costs.
4. All terms of the Franchise agreement remain in full force and effect, including all terms contained in City of Redwood City actions dated September 16, 2004 (Amendment #1) amending and clarifying certain terms of the Franchise.
5. The Franchise agreement allows the City to require Franchisee to provide up to two (2) additional Public, Educational and Governmental ("PEG") access channels. These two (2) PEG access channels will be in addition to the two (2) PEG access channels currently provided. Transferee agrees to activate and provide one additional PEG access channel by not later than April 20, 2007. This access channel may be located on Transferee's digital service tier. No sooner than twenty four months after the incumbent cable operator implements a third PEG channel and following receipt of one hundred twenty (120) days advance written notice, the Transferee shall provide a fourth PEG channel. This channel may be located on Transferee's digital tier of service. Transferee shall not be required to carry the third and fourth PEG Channels on the Basic Service tier until Transferee converts its entire System to a digital format.
6. Transferee shall evidence acceptance of these conditions by signing a copy of the "Change of Ownership Consent Agreement," in substantially the same form as attached to this Resolution as Exhibit A, containing the conditions provided to Transferee and submitting the same to the City Clerk within sixty (60) calendar days of this approval.

If Transferee fails to submit a signed copy of the "Change of Ownership Consent Agreement" to the City Clerk within said sixty (60) day period, or otherwise refuses to accept the conditions placed on the proposed transfer set forth herein,

consent to the transfer shall be automatically withdrawn, effective the date of adoption of this Resolution, and the request to transfer shall be deemed denied.

Section 2. Other than with respect to the condition made in Section 1.2 above, if any sentence, clause, phrase or portion of any condition imposed in Section 1 hereof if for any reason held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining conditions placed on this transfer.

The City Council of the City of Redwood City hereby declares that it would have adopted this Resolution and each and every condition set forth in Section 1 hereof separately, irrespective of the fact that one or more of these conditions may be declared invalid or unenforceable.

Section 3. This Resolution shall be deemed effective for the purposes of the transfer upon adoption by the City Council.

Section 4. Subject to the reservation of rights of Section 1.2 above, the City hereby releases Franchisee, effective upon the consummation of the transaction contemplated in the Purchase Agreement (the "Closing Date") from all obligations and liabilities under the Franchise that accrue on or after the Closing Date. Franchisee shall remain responsible for all obligations and liabilities under the Franchise that accrue up to the Closing Date. Transferee shall be responsible for any obligations and liabilities under the Franchise that accrue on or after the Closing Date.

Section 5. The City Clerk shall certify to the adoption of this resolution and shall cause the same to be processed in the manner required by law, and shall transmit a certified copy of this Resolution and Exhibit A hereto to Franchisee, Transferee and Guarantor.

PASSED AND APPROVED AND ADOPTED this ___ day of _____ 2007.

RESOLUTION NO. 2007-____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF REDWOOD CITY ASSIGNING TWO ENCROACHMENT AGREEMENTS
BY AND BETWEEN THE CITY OF REDWOOD CITY AND RCN TELECOM
SERVICES, INC., (RCN), TO ASTOUND BROADBAND LLC (ASTOUND)**

WHEREAS, on or about May 24, 1999 and August 28, 2000, the City of Redwood City and RCN entered into two encroachment agreements whereby RCN was provided the right to construct, install and maintain fiber optic network facilities within the public right-of-way within Redwood City; and

WHEREAS, RCN has notified the City of Redwood City that it has agreed to sell its Bay Area cable, telephone and broadband operations to ASTOUND and request that it be permitted to assign its rights pursuant to the encroachment agreements to Astound; and

WHEREAS, pursuant to section 17 of the encroachment agreements, assignment of the encroachment agreements requires the explicit prior written approval of the City of Redwood City; and

WHEREAS, the City desires to approve the assignment of the encroachment agreements from RCN to ASTOUND.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
REDWOOD CITY, AS FOLLOWS:**

1. RCN shall be entitled to assign the encroachment agreements entered into on or about May 24, 1999 and August 28, 2000, by and between the City of Redwood City and RCN to ASTOUND.
2. The encroachment agreements of May 24, 1999 and August 28, 2000, shall be binding on ASTOUND and any successors and assigns and shall be disclosed to any future assignee.
3. ASTOUND shall, in writing, unconditionally acknowledge and assume RCN's duties and obligations under the May 24, 1999 and August 28, 2000 encroachment agreements, which acknowledgement shall be effective as of the date of the assignment, or each of the encroachment agreements shall be subject to termination.

PASSED AND APPROVED AND ADOPTED this __ day of _____ 2007.

**EXHIBIT A
CHANGE OF OWNERSHIP CONSENT AGREEMENT**

Section 1

Terms used in this Change of Ownership Consent Agreement shall be as defined in Resolution No. 2007-_____.

Section 2

The City hereby consents to the transfer described in City Resolution No. _____, subject to the following conditions:

1. Astound Broadband LLC, the Transferee, is owned and controlled as indicated in Figure 1 attached hereto. To the extent required by Section 2.5 of the Cable Television Franchise between the City and RCN, any change of ownership or control of Transferee from the ownership and control indicated in Figure 1 shall be subject to prior City review and consent.
2. The City expressly reserves any and all rights that it may possess under the Franchise and applicable law with respect to any non-compliance issues on the part of Franchisee, whether known or unknown, which exist prior to the effective date of this transfer and Transferee reserves any and all rights and defenses with respect to any such non-compliance issues.

In reserving such rights, the City confirms that the Franchisee is materially in compliance with the provisions of the Franchise and there exists no fact or circumstance known to the City which constitutes, or which, with the passage of time or the giving of notice or both, would constitute a material default or breach under the Franchise or would allow the City to cancel or terminate the rights hereunder, except upon the expiration of the full term of the Franchise.

3. The transfer is expressly contingent upon Franchisee reimbursing the City for the consultant's costs incurred in the processing of the request for transfer, not to exceed the maximum amount of \$20,000 indicated in this Change of Ownership Consent Agreement. Said reimbursement shall be provided within thirty (30) calendar days of Transferee's receipt of an itemized invoice detailing the consultant's costs.
4. All terms of the Franchise agreement remain in full force and effect, including all terms contained in City of Redwood City actions dated September 16, 2004 (Amendment #1) amending and clarifying certain terms of the Franchise..
5. The Franchise agreement allows the City to require Transferee to provide up to two (2) additional Public, Educational and Governmental ("PEG") access channels. These two (2) PEG access channels will be in addition to the two (2)

PEG access channels currently provided. Transferee agrees to activate and provide one additional PEG access channel by not later than April 20, 2007. This access channel may be located on Transferee's digital service tier. No sooner than twenty four months after the incumbent cable operator implements a third PEG channel and following receipt of one hundred twenty (120) days advance written notice, the Transferee shall provide a fourth PEG channel. This channel may be located on Transferee's digital tier of service. Transferee shall not be required to carry the third and fourth PEG Channels on the Basic Service tier until Transferee converts its entire System to a digital format.

6. Transferee shall evidence acceptance of these conditions by signing a copy of this "Change of Ownership Consent Agreement," and submitting the same to the City Clerk within sixty (60) calendar days of the Closing Date. If Transferee fails to submit a signed copy of this "Change of Ownership Consent Agreement" to the City Clerk within said sixty (60) day period, or otherwise refuses to accept the conditions placed on the proposed transfer set forth herein, consent to the transfer shall be automatically withdrawn, effective the date of adoption of City of Redwood City Resolution No. ____, and the request to transfer shall be deemed denied.

Section 3

Other than with respect to the promise made in Section 2(3) above, if any sentence, clause, phrase or portion of any condition imposed in Section 2 hereof if for any reason held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining conditions placed on this transfer. The City Council of the City of Redwood City hereby declares that it would have entered into this "Change of Ownership Consent Agreement" and each and every condition set forth in Section 2 hereof separately, irrespective of the fact that one or more of these conditions may be declared invalid or unenforceable.

Section 4

Subject to the reservation of rights of Section 2(2) above, the City hereby releases Franchisee, effective upon the consummation of the transaction contemplated in the Purchase Agreement (the "Closing Date") from all obligations and liabilities under the Franchise that accrue on or after the Closing Date. Franchisee shall remain responsible for all obligations and liabilities under the Franchise that accrue up to the Closing Date. Transferee shall be responsible for any obligations and liabilities under the Franchise that accrue on or after the Closing Date.

Section 5

This Agreement shall be effective upon the Closing Date at which time Franchise and System ownership shall have transferred from Franchisee to Transferee.

“City”
City of Redwood City

“Transferee”
Astound Broadband, LLC

Barbara Pierce, Mayor

By: _____

Its: _____

Date: _____

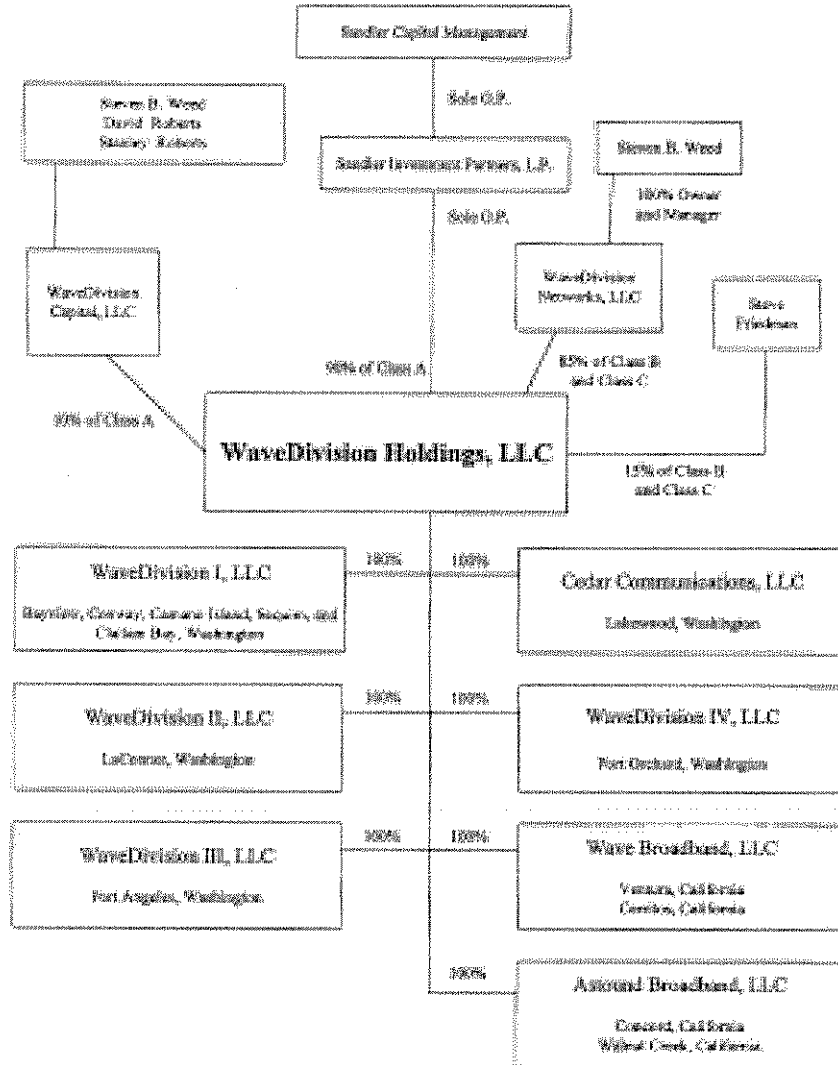
Attest:

Patricia Howe, City Clerk

Approved as to Form:

Stan Yamamoto, City Attorney

Exhibit A – Figure 1



Exhibits to F.C.U. Form 504
City of Hayward, California
September 23, 2006

Comments on key provisions of the Asset Purchase Agreement are as follows:

- The definitions in Section 1.1 (page 16) include target numbers for video, voice and high speed subscriber numbers (page 16). If the targets are not met, the sale price may be adjusted. It is noted that not all subscribers take all services, so the total number of subscribers may be larger than that for any single service.
- Section 2.3 (page 22) indicates that the purchase price is \$45,000,000. With press reports of 18,000 subscribers, this would be \$2,500 per subscriber. The purchase price is subject to adjustment for changes in working capital items, changes in the number of subscribers, and pre-closing capital costs.
- Section 2.9 (page 28) indicates that the seller will form a limited liability company that will receive the sale assets which will then be transferred to Astound. Technically, this is an additional transfer step not listed in the Form 394. However, such a “flow through” type entity that simultaneously receives and transfers assets is not uncommon in these types of transactions.
- Section 5.4(f) (page 51) requires the purchaser to make available to the local franchising authorities (LFA) accurate and complete information regarding the purchaser as the LFA may require.
- If the sale is cancelled due to receipt of a superior competing proposal, the seller will pay a \$2,000,000 termination fee to the purchaser (Section 7.4(b), page 63).
- Section 3.5 of the Seller Disclosure Schedule provides profit and loss statements for the RCN San Francisco area operations for calendar 2005 and the first six months of 2006. The statements are marked “confidential and proprietary.” The EBITDA (Earnings before Interest, Taxes, Depreciation and Amortization) for both periods are positive.

Also included in the statements (but not provided here due to the stated confidential nature) are gross margins for each of the three categories of service. This information may be of interest to the local franchising authorities.

- Exhibit 7 includes financial statements for WaveDivision Holdings, LLC and subsidiaries for calendar 2004, 2005 and the first six months of 2006. These documents also are marked “confidential.” The most recent documents indicate a positive EBITDA as well as a positive cash flow.
- Section 3.10(c) of the Seller Disclosure Schedule indicates that RCN currently is working with Redwood City to amend the cable franchise to permit RCN to pass through all PEG capital contributions to subscribers.
- Section 3.19(a) of the Seller Disclosure Schedule lists the following subscriber data as of June 30, 2006

	Voice	Video	Data
South San Francisco	2,959	2,804	2,346
Daly City & Broadmoor Vlg.	1,729	1,720	1,445
San Mateo	6,083	5,217	4,975
Redwood City	1,977	1,784	1,629
San Francisco	3,297	3,082	3,256
Burlingame	875	715	675
Total	16,920	15,322	14,326

In a conversation with a representative of Astound (Craig Heiting), it was explained that the 18,000 subscriber count used in press releases represent distinct subscribing units, meaning that some customers may not take all services.

- Exhibit 3 contains the following statement:

“Astound Broadband, LLC, does NOT seek any modification to the term or any condition of service or operations of the system as set forth in the current franchise. Astound Broadband, LLC intends to fully comply with all franchise provisions and to meet or exceed all federal, state, and local operations requirements.”
- Exhibit 6 indicates that Astound Broadband is registered with the California Secretary of State to transact business in California. A search of the www.ss.ca.gov website confirmed this claim.

- Available financial resources are provided in Exhibit 7. The transferee's financial qualifications are discussed in D. below.
- For e-mail subscribers, RCN will provide those who maintain "rcn.com" e-mail addresses as of the closing date with 30 months of continued operation using the rcn.com domain. Astound will reimburse RCN for the period beginning 180 days following the closing and continuing through the remainder of the 30-month continuation period.

D. Transferee Qualifications

(1) Financial Qualifications

Appendix F contains the information provided in Exhibit 7 of the Form 394 which relates to WaveDivision's financial qualifications that was not identified as confidential.

The following statement is included in the Exhibit:

"As the parent of Astound Broadband, LLC, WaveDivision Holdings, LLC has financial commitments, both debt and equity, subject to customary conditions, to consummate the transactions described herein and to provide adequate working capital to meet the system's needs for the foreseeable future. Equity funding for WaveDivision Holdings, LLC, is provided by its owners, WaveDivision Capital, LLC and the Sandler V Partnerships. WaveDivision Holdings, LLC has secured senior secured credit facilities from Wells Fargo bank (and a participating syndicate of lenders that currently includes Bank of America, N.A., CIT Lending Services Corporation, Fleet National Bank, General Electric Capital Corporation and Harris Nesbitt Financing, Inc.)."

The debt is structured in three components:

- a \$25,000,000 Revolver Loan
- a \$75,000,000 Term Loan A
- a \$65,000,000 Term Loan B

The Revolver and Term Loan A mature in 2012, while Term Loan B matures in 2013. The dates that the loans were issued are not stated.

So long as no default has occurred, and WaveDivision is in compliance with all covenants, the company has the right to increase the loan commitments by an aggregate amount of up to \$100,000,000.

The confidential financial statements appear to indicate that all of the proceeds of Term Loans A and B have been drawn upon. Thus, the capital for a new acquisition, such as the RCN asset, would have to come either from new Members' Equity or, more likely, by requesting an increase in the debt commitments or a combination of both. Since up to \$100,000,000 additional capital is available from the debt sources, WaveDivision appears to have adequate financial capability to acquire and operate this system. However, this assumes that these funds are not now, or will not be at some future time, committed to other possible acquisitions.

Even though adequate acquisition funds may be available, a more pertinent question is the specific funding that will be made available for additional construction within the current RCN communities. As noted above, in 2004 RCN was relieved of certain obligations to construct, with corresponding remedies essentially shortening the term of the agreement if construction was not completed by specified dates. These concessions were agreed to during the time that RCN's parent company was in bankruptcy. It may be appropriate to discuss with Astound whether the transfer is the time to consider re-establishing the franchise construction schedules.

(2) Technical Qualifications

Exhibit 8 of the Form 394 contains information on WaveDivision key personnel. The individuals described are part of the company's overall management team, and include:

Steve Weed	Chief Executive Officer
Steve Friedman	Chief Operating Officer
Wayne Schattenkerk	Chief Financial Officer
Jim Penney	Executive Vice President, Business and Legal Affairs
Dave Dein	Vice President, Broadband
Angela Higham	Vice President, Marketing
Chris Sommers	Vice President, Finance
Paul Koss	Vice President, Kirkland Operations

While the individuals have significant experience in the cable industry, no information is provided as to personnel that would be involved directly in the operation of each local system.

Section 3.13(a) of the Seller Disclosure Schedule (referenced in Section 5.9 "Transferred Employees" of the Asset Purchase Agreement) lists the RCN

employees who will be offered employment with Astound. The employees are located in RCN's Redwood City, San Francisco and San Mateo offices.

Based on WaveDivision's current cable operations, the company appears qualified to operate the RCN system. It is unclear whether the existing resources will be able to provide a system build-out that is desired by the communities, but is not currently a contractual obligation.

The review provided by this report of the Form 394 does not include a "due diligence" review that might be performed by contacting cognizant individuals in a number of communities where Astound/WaveDivision provides service. Such a review might help to determine the perceived relationships the company has with the local franchising authority and customers, along with the ability to meet contractual obligations and deliver enhanced services.

(3) Legal Qualifications

No legal barrier is seen to object to Astound's assumption of the RCN agreements, and its subsequent operation of the cable and OVS agreements. The Form 394, page 4, question 3, states that the transferee is "duly qualified to transact business in the State or other jurisdiction in which the system operates." As noted above, Astound Broadband is registered with the California Secretary of State to transact business in California

E. Compliance with Existing Agreements

SAMCAT has indicated that it is not aware of any RCN non-compliance with the requirements of the existing agreements.

III. SIGNIFICANT ISSUES

A number of significant issues require merit comment with regard to the requested transfer.

A. System Build-Out

As has been noted, in 2004 RCN was relieved of certain obligations during the time that its parent company entered into bankruptcy. Although Astound has indicated that it is not requesting any changes to the current agreements (as amended), the SAMCAT communities may wish to discuss with Astound the possibility of reinstating some of the obligations that were modified, including system construction timetables.

B. Activation of PEG Access Channels

The RCN agreements contain an obligation that RCN (or its successor) is obligated to provide up to two additional Public, Educational and Governmental (PEG) access channels to match the number of channels provided by the incumbent cable operator (Comcast). TMC has been informed that the SAMCAT communities are planning on asking for the activation of these channels. According to the terms of the existing agreements, the cable operator will have up to 180 days to make the channels available.

The SAMCAT communities may wish to use the transfer as an opportunity to establish a date specific for the activation of these channels by RCN or its successor.

C. Available Financial Resources

As noted above in Section II.D(1), the parent of Astound (WaveDivision) appears to have adequate financial capability to acquire and operate this system. However, it would prudent for the SAMCAT communities to confirm that the funds that appear to be available for the RCN operations have not been committed for other purposes.

There also is a reasonable question as to whether the currently available financial resources are sufficient to fund additional system construction in the area, and whether Astound has any intentions to commit to additional system build-out.

D. Potential Impact on Subscribers

The transfer of the franchises to Astound may have both a positive and negative impact. The positive impact may be that Astound completes the construction of the system that was postponed during the resolution and

aftermath of the RCN Corp. bankruptcy. The system construction, however, could be a disruptive activity for local residents, although any such disruption would be short term.

It has been fairly clear for some time that RCN no longer had the interest and/or the ability to provide additional system construction throughout the communities where it had obtained agreements. Only five of the nine SAMCAT communities with agreements have any RCN subscribers. If any construction expansion takes place, the subscribers with a choice of providers may well find this to be a significant benefit.

E. Reservation of Rights

Even if it appears that RCN is in substantial compliance with the terms of the current franchise, there could be some contingent liabilities that are not immediately apparent, such as past underpayment of franchise fees. Since the transfer consent request contains timetables that are primarily for the convenience of the transferor and transferee, if the franchise authorities accommodate these timetables, it should not be expected to waive its rights to achieve compliance. Consequently, a reservation of rights, as part of the transfer consent resolution, appears to be appropriate. This reservation of rights can include the obligation of Astound/WaveDivision, the transferee, to correct any prior franchise non-compliance, known or unknown, at the time of the transfer.

F. Reimbursement of Costs

Section 2.5(f) of the Belmont, Burlingame, Millbrae, Redwood City and San Carlos agreements with RCN contains an obligation for each City to have its costs associated with the transfer review reimbursed. Similar obligations may exist in the other agreements as well.

Since the transfer is for the benefit of the RCN and Astound, and there is a contractual obligation for reimbursement, no reason is seen for the SAMCAT communities not to have their out-of-pocket costs paid by RCN (the current "Grantor").

III. CONCLUSIONS

Based on the foregoing evaluation, the following conclusions are reached:

- (1) Astound Broadband, LLC, with the resources of its parent, WaveDivision Holdings, LLC, appears to be legally qualified to acquire and operate the cable system in the SAMCAT communities. The financial qualifications may be acceptable if certain assurances can be provided as part of the transfer agreement.
- (2) The SAMCAT communities have 120-days from the date the completed Form 394 was submitted to act on the transfer request, or the approval is deemed to have been granted. If the Forms were received on September 20, 2006, the deadline for taking action is January 18, 2007.
- (3) Significant issues for the SAMCAT communities as part of this process may include:
 - The re-establishment of system construction obligations that had been modified in 2004 in response to the RCN Corp. bankruptcy.
 - The establishment of a date specific for the activation of the two additional PEG access channels.
 - A reservation of rights with regard to contingent liabilities (e.g., the correct payment of franchise fees) that may not be immediately apparent.
- (4) The SAMCAT communities should be reimbursed for their costs in processing the transfer application.

APPENDIX A
FORM 394 COVER LETTER
(SAMPLE)

RCN Telecom Services, Inc.
196 Van Buren St., Suite 300
Henderson, VA 20170
Attention: Richard Ramball

Astound Broadband, LLC
401 Kirkland Park Place, Suite 500
Kirkland, WA 98033
Attention: Jim Penney

Final-Delivered

September 20, 2006

Mr. Terry Belanger
Interim City Manager
City of Belmont
One Twin Pines Lane
Belmont, CA 94002

Re: *Request for Assignment of Franchise – City of Belmont, California*

Dear Mr. Belanger:

RCN Telecom Services, Inc. ("RCN") is pleased to announce that it has reached an agreement with Astound Broadband, LLC ("Astound"), a wholly-owned subsidiary of WaveDivision Holdings, LLC ("Wave Holdings"), for Astound to buy the cable system serving the City. Wave Holdings has been in business since 2002 and through its operating subsidiaries, including Astound, currently serves approximately 155,000 cable TV, high-speed Internet and telephone customers in western Washington, southern California and the East Bay area.

We request the City's consent to the assignment of the cable television franchise from RCN to Astound. In support of our request, enclosed is a completed and signed Federal Communications Commission Form 394, "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise", together with the exhibits thereon. We believe the enclosed materials establish that Astound satisfies the requisite legal, technical and financial qualifications outlined under federal law and provide you with the information necessary to make a conclusive determination on our request for the assignment of the franchise to Astound.

The FCC Form 394 is being filed with the City today, September 20, 2006; therefore, the 120-day time limit for franchise authority consideration of an assignment request pursuant to 47 CFR § 76.502 will expire on January 18, 2007.

We look forward to working with you to obtain swift approval of our request for the City's consent. Of course, please do not hesitate to contact us if you have questions. Astound's and RCN's contact persons are listed in the Form 394 submission materials.

Sincerely,

RCN Telecom Services, Inc.

Astound Broadband, LLC

By: Richard Ramball
Richard Ramball, SVP, Strategic &
External Affairs

By: Jim Penney
James A. Penney, Executive Vice
President, Business and Legal Affairs

APPENDIX B
120-DAY LIMITATION ON TRANSFER ACTION

**FRANCHISE TRANSFER PROVISIONS
OF FEDERAL LAW AND FCC REGULATIONS**

**United States Code Annotated
Title 47. Telegraphs, Telephones, and Radio Telegraphs
Chapter 5--Wire or Radio Communication
Subchapter V-A--Cable Communications
(Cable Communications Policy Act of 1984 as amended)
§617 [47 USC 537]
Sales of Cable Systems**

A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

**Code of Federal Regulations
Title 47--Telecommunication
Chapter I--Federal Communications Commission
Subchapter C--Broadcast Radio Services
Part 76--Cable Television Service**

§76.502 Time limits applicable to franchise authority consideration of transfer applications

(a) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.

(b) A franchise authority that questions the accuracy of the information provided under paragraph (a) must notify the cable operator within 30 days of the filing of such information, or such information shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(c) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

The Report of the House Committee on Energy and Commerce (June 29, 1992) contains the legislative history of Congressional intent with regard to the 1992 Cable Act. The portion of the Report addressing Section 617 (Sales of Cable Systems) states:

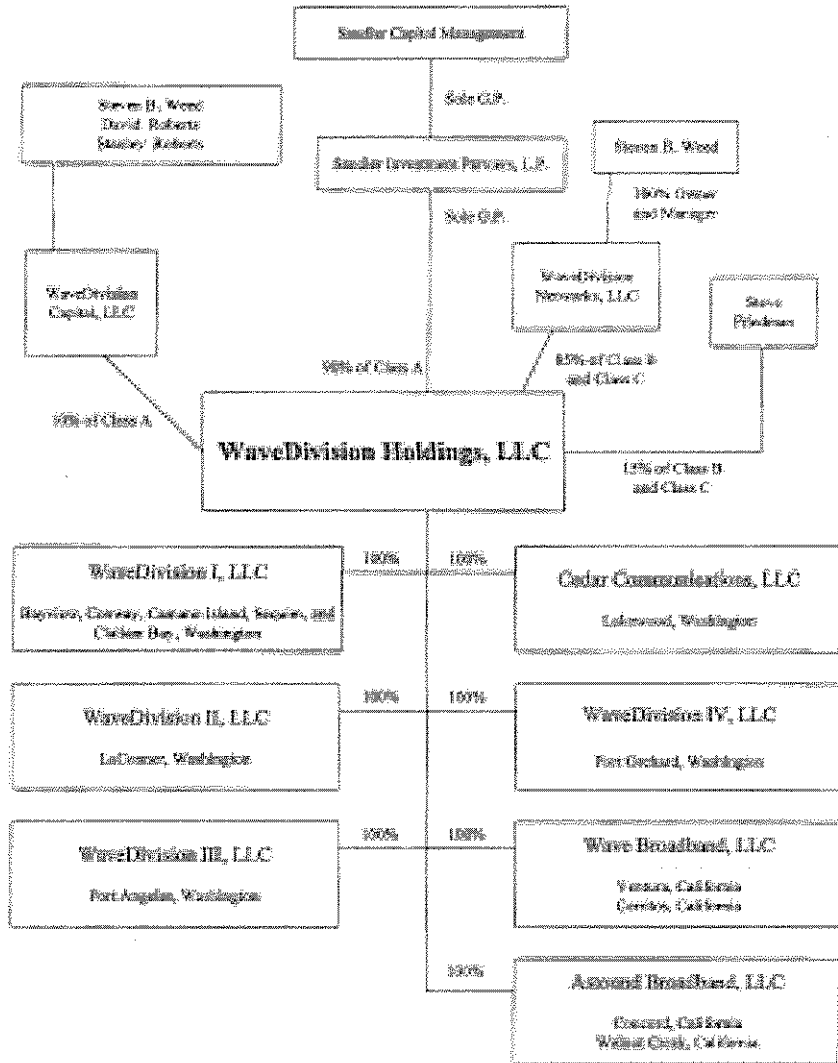
"The Committee intends that the FCC Regulations will be designed to ensure that every franchising authority receive the information required to begin an evaluation of a request for approval of a sale or transfer. Such information may include detailed financial information showing the effect of the transfer or sale on rates and services, the contracts and agreements underlying the sale or transfer; information concerning the legal, financial and technical qualifications of the

transferee, and information concerning the transferee's plans for expanding (or eliminating) services to subscribers. This amendment is not intended to limit, or give the FCC the authority to limit, local authority to require cable operators provide additional information or guarantees with respect to a cable sale or transfer."

Section 18 of Conference Report for the 1992 Cable Act dealing with Section 626 ("Renewal") also addresses transfer considerations:

"The conferees have deleted sections 11(c) and 11(d)(2) of the Senate bill which provide that a franchising authority has the right to consider the quality of service provided by the cable operator throughout the franchise term. The conferees believe that franchising authorities have the duty and authority now to consider the quality of the cable operator's service throughout the franchise term. This provision was removed out of concern that it would be applied where a new cable operator acquires a franchise from the operator who initially entered into the franchise agreement during the pendency of the franchise period. As the franchising authority has the power to approve such a transfer, it should address any deficiencies in the service of the original franchisee at the time of the transfer." (emphasis added)

APPENDIX C
WAVEDIVISION ORGANIZATIONAL INFORMATION



APPENDIX D
TOP 25 MULTICHANNEL PROVIDERS

<http://www.multichannel.com/index.asp?layout=nocclamp&articleid=CA6350325>

25 Largest Multichannel Providers

The top 25 cable and satellite platform serve nearly two-thirds of all U.S. multichannel homes.

RANK/COMPANY	SUBSCRIBERS
1. Comcast Corp.	21,495,000
2. DirecTV Group Inc.	15,388,000
3. EchoStar Communications Corp.	12,265,000
4. Time Warner Cable	11,039,000
5. Charter Communications Inc.	5,913,000
6. Cox Communications Inc.	5,400,000
7. Adelphia Communications Corp.	4,928,000
8. Cablevision Systems Corp.	3,065,716
9. Advance/Newhouse Communications	2,200,000
10. Mediacom Communications Corp.	1,422,000
11. Insight Communications Co.	1,306,700
12. Suddenlink Communications	1,300,000
13. Cable One Inc.	695,464
14. AT&T Inc.	491,000
15. RCN Corp.	365,000

RANK/COMPANY	SUBSCRIBERS
16. WideOpenWest LLC	357,000
17. Bresnan Communications	290,689
18. Service Electric Cable TV Inc.	266,360
19. Atlantic Broadband	252,658
20. Armstrong Cable Services Inc.	228,500
21. Midcontinent Communications	194,912
22. Pencor Services	181,100*
23. Knology Holdings Inc.	177,546
24. Northland Cable Television Inc.	150,500*
25. Buckeye Cable	143,754

* Estimate from Kagan Research.

SOURCE: Subscriber counts collected from companies or *Multichannel News* articles, except as noted, and are the most recent available. They do not include pending deals, such as the sale of Adelphia Communications Corp. to Time Warner Cable and Comcast Corp.

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APPENDIX E

FCC FORM 394, EXHIBIT 5
OWNERSHIP INFORMATION

Exhibit 5-A

Section II, Item 2 – Information Concerning the Assignee

The proposed assignee is Astound Broadband, LLC, a Washington limited liability company ("Astound"). Astound is a wholly-owned subsidiary of WaveDivision Holdings, LLC, a Delaware limited liability company. WaveDivision Holdings, LLC is currently owned by (i) WaveDivision Capital, LLC, (ii) Sandler Capital Partners V, L.P., SCP V FTE WaveDivision Holdings, L.P. and SCP V Germany WaveDivision Holdings, L.P., or their affiliates (collectively, the "Sandler V Partnerships"), (iii) WaveDivision Networks, LLC, and (iv) Steve Friedman.

The current capital interests of the Class A Units of WaveDivision Holdings, LLC are owned in the following percentages:

WaveDivision Capital, LLC – 10%
Sandler V Partnerships – 90%

WaveDivision Networks, LLC currently owns 85% of the Class B Units and Class C Units of WaveDivision Holdings, LLC, and Steve Friedman currently owns 15% of the Class B Units and Class C Units of WaveDivision Holdings, LLC, which are subject to a vesting schedule. The holders of the Class B Units and Class C Units are entitled to share in distributions of the Company after the holders of the Class A Units have received distributions equal to their initial capital contributions plus a specified return thereon. The holders of the Class B Units and Class C Units are not entitled to vote to appoint any managers to the Management Committee of WaveDivision Holdings, LLC.

WaveDivision Holdings, LLC is managed by a three person Management Committee. The holders of a majority of the Class A Units appoint two managers and the third manager is the individual then serving as the Chief Executive Officer of the Company. The Management Committee currently consists of Steven Wood, Michael Marocco and David Powers. Steven Wood is the Chief Executive Officer of WaveDivision Holdings, LLC. Steve Friedman is the Chief Operating Officer of WaveDivision Holdings, LLC.

The following information pertains to Astound Broadband, LLC:

- | | |
|--|--|
| a. Name and principal place of business: | Astound Broadband, LLC
401 Kirkland Park Place, Suite 500
Kirkland, WA 98033 |
| b. Citizenship: | U.S. (a Washington limited liability company) |

- c. Relationship to assignee: Astround Broadband, LLC is the proposed assignee
- d. Number of Shares: N/A
- e. Number of Votes: N/A
- f. Percentage of Votes: N/A

The following information pertains to WaveDivision Holdings, LLC:

- a. Name and principal place of business: WaveDivision Holdings, LLC
401 Kirkland Park Place, Suite 500
Kirkland, WA 98033
- b. Citizenship: U.S. (a Delaware limited liability company)
- c. Relationship to assignee: Parents (Sole Member and Manager)
- d. Number of Shares: 100%
- e. Number of Votes: 100%
- f. Percentage of Votes: 100%

The following information pertains to Steven Wood, the Chief Executive Officer of WaveDivision Holdings, LLC:

- a. Name and principal place of business: Steven Wood
401 Kirkland Park Place, Suite 500
Kirkland, WA 98033
- b. Citizenship: U.S.
- c. Relationship to assignee: Chief Executive Officer
- d. Number of Shares: N/A
- e. Number of Votes: N/A
- f. Percentage of Votes: N/A

The following information pertains to the members of WaveDivision Holdings, LLC:

1. WaveDivision Capital, LLC
 - a. Name and principal place of business: WaveDivision Capital, LLC
461 Kirkland Park Place, Suite 300
Kirkland, WA 98033
 - b. Citizenship: U.S. (a Washington limited liability company)
 - c. Relationship to assignor: Equity owner in WaveDivision Holdings, LLC
 - d. Number of Shares: 3,277,777 Class A Units
 - e. Number of Votes: N/A
 - f. Percentage of Votes: N/A

2. Sandier V Partnerships
 - a. Name and principal place of business: Sandier Capital Partners V, L.P.
SCP V FTE WaveDivision Holdings, L.P.
SCP V Germany WaveDivision Holdings, L.P.
767 Fifth Avenue, 45th Floor
New York, NY 10153
 - b. Citizenship: U.S. (Delaware limited partnerships)
 - c. Relationship to assignor: Equity owner in WaveDivision Holdings, LLC
 - d. Number of Shares: 29,500,000 Class A Units
 - e. Number of Votes: N/A
 - f. Percentage of Votes: N/A

3. WaveDivision Networks, LLC

- a. Name and principal place of business: WaveDivision Networks, LLC
401 Kirkland Park Place, Suite 500
Kirkland, WA 98013
- b. Citizenship: U.S. (a Washington limited liability company)
- c. Relationship to assignor: Equity owner in WaveDivision Holdings, LLC
- d. Number of Shares: 850,000 Class B Units
850,000 Class C Units
- e. Number of Votes: N/A
- f. Percentage of Votes: N/A

4. Steve Friedman

- a. Name and principal place of business: Steve Friedman
401 Kirkland Park Place, Suite 500
Kirkland, WA 98013
- b. Citizenship: U.S.
- c. Relationship to assignor: Equity owner in WaveDivision Holdings, LLC
- d. Number of Shares: 150,000 Class B Units
150,000 Class C Units
- e. Number of Votes: N/A
- f. Percentage of Votes: N/A

Further information regarding WaveDivision Capital, LLC:

WaveDivision Capital, LLC is a Washington limited liability company. It was formed in January 2003 and is qualified to do business in the State of Washington. It is a for profit company and in good standing. Steven Wood is the Manager and CEO of WaveDivision Capital, LLC. Holders of more than 5% of the equity interests of WaveDivision Capital, LLC, are: Steven Wood, David Roberts and Stanley Roberts.

Further information regarding Sandler Capital Partners V, L.P., SCP V FTE WaveDivision Holdings, L.P. and SCP V Germany WaveDivision Holdings, L.P.:

The Sandler V Partnerships are three Delaware limited partnerships that are commonly managed as a private equity fund by Sandler Capital Management, which specializes in both public and private investments in the media, communications and entertainment industries and related businesses. The first of the Sandler V Partnerships was formed in 2000 as Sandler Capital Management's fifth set of private equity funds, with aggregate capital commitments of approximately \$685 Million. The sole general partner of the three Sandler V Partnerships is Sandler Investment Partners, L.P., whose sole general partner is Sandler Capital Management.

Sandler Capital Management and its affiliated entities have managed public and private investments in the media-communications and entertainment industries since 1980. The Management Committee of Sandler Capital Management is comprised of Michael Marocco, John Kormick and Andrew Sandler. Sandler Capital Management has made numerous investments, both publicly and privately, in domestic and international cable television companies. Sandler also invests in technology companies that serve the cable television industry. Sandler has strong relationships with major cable television MBOs.

Further information regarding WaveDivision Networks, LLC:

WaveDivision Networks, LLC is a Washington limited liability company. It was formed in December 2001 and is qualified to do business in the State of Washington. It is a for-profit company and in good standing. Steven Weed is the sole owner and Manager of WaveDivision Networks, LLC.

Further information regarding Steve Friedman:

Steve Friedman is the Chief Operating Officer of WaveDivision Holdings, LLC.

APPENDIX F
FINANCIAL QUALIFICATIONS

Exhibit 7

Section III, Item 3 – Astound’s Financial Qualifications

Attached as Exhibit 7-A are the Consolidated Financial Statements of WaveDivision Holdings, LLC and subsidiaries for years ended December 31, 2005 and 2004, audited by Moss Adams, LLP.

Attached as Exhibit 7-B are the Consolidated Financial Statements of WaveDivision Holdings, LLC and subsidiaries for the six months ended June 30, 2006, prepared by management.

As the parent of Astound Broadband, LLC, WaveDivision Holdings, LLC has financial commitments, both debt and equity, subject to customary conditions, to consummate the transactions described herein and to provide adequate working capital to meet the system’s needs for the foreseeable future. Equity funding for WaveDivision Holdings, LLC, is provided by its owners, WaveDivision Capital, LLC and the Sandler V Partnerships. WaveDivision Holdings, LLC has secured senior secured credit facilities from Wells Fargo Bank (and a participating syndicate of lenders that currently includes Bank of America, N.A., CIT Lending Services Corporation, Fleet National Bank, General Electric Capital Corporation and Harris Western Financing, Inc.).

A summary of the principal terms and conditions of WaveDivision Holdings, LLC’s current \$165,000,000 senior secured credit facility is outlined in the table below:

<u>Terms</u>	<u>Details</u>
Amount:	\$15.0 million Revolving Facility \$75.0 million Term Loan A Facility \$65.0 million Term Loan B Facility
Maturity:	Revolving and Term Loan A Facilities: 2012 Term Loan B Facility: 2013
Incremental Facility:	So long as no default or event of default has occurred and is continuing and Wave is in pro forma compliance with all covenants, Wave will have the right (subject to the consent of any lender) to increase the aggregate commitments under the credit facilities by an aggregate amount of up to \$100,000,000

Terms	Details
Security:	First priority, perfected security interest in substantially all tangible and intangible real, personal and mixed property of Wave, all guarantors, and their respective present and future subsidiaries and 100% of the stock (or other equity interests) of their respective subsidiaries.
Guarantors:	All existing and future direct and indirect subsidiaries of Wave.
Primary Financial Covenants:	The maximum leverage ratio will not exceed 6.00:1.00, with step-downs over the life of the facility.

**SAN MATEO COUNTY
TELECOMMUNICATIONS AUTHORITY**

**EVALUATION OF REQUEST
TO TRANSFER CONTROL OF
CABLE AND OVS SYSTEM FRANCHISES**

October 2006

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I. INTRODUCTION

A. Scope

The San Mateo County Telecommunications Authority (SAMCAT) is a joint powers agency whose member municipalities have joined together to deal with cable system and telecommunications regulation.

At present, the SAMCAT member jurisdictions include:

- County of San Mateo
- City of Belmont
- City of Brisbane
- City of Burlingame
- Town of Colma
- City of Daly City
- City of Foster City
- City of Half Moon Bay
- Town of Hillsborough
- City of Millbrae
- City of Pacifica
- Town of Portola Valley
- City of Redwood City
- City of San Bruno
- City of San Carlos
- City of San Mateo
- City of South San Francisco
- Town of Woodside.

Nine of the eighteen SAMCAT jurisdictions have an agreement with RCN Telecom Services, Inc. (RCN) to provide video services. Seven of the nine have cable franchise agreements while the other two have Open Video System (OVS) agreements. The communities with RCN agreements are as follows:

- County of San Mateo – OVS Agreement
- City of Belmont – Cable Agreement
- City of Burlingame – Cable Agreement
- City of Daly City – Cable Agreement
- City of Millbrae – Cable Agreement
- City of Redwood City – Cable Agreement
- City of San Carlos – Cable Agreement
- City of San Mateo – Cable Agreement
- City of South San Francisco – Cable Agreement

On September 20 and 21, 2006, the above indicated SAMCAT members received a request from RCN to transfer each agreement to Astound Broadband, LLC (Astound) a wholly-owned subsidiary of WaveDivision Holdings, LLC (WaveDivision). The request letter was accompanied by a completed Federal Communications Commission Form 394, which is the form officially designated as "Application for Franchise Authority Consent to Transfer Control of Cable Television Franchise." The Form 394 provides specific information to local franchise authorities to assist them in evaluating the transfer request.

On behalf of its members, SAMCAT has retained Telecommunications Management Corp. (TMC) to evaluate the requested transfer. TMC's evaluation is provided in this report.

The Forms 394 are dated September 20, 2006 and September 21, 2006. It is not clear whether the Forms were received on the dates indicated above, although the letter accompanying each Form states that the documents were hand delivered on the date of the letter (see sample in Appendix A). The receipt date is of some significance, since the 1992 Cable Act requires a local franchising authority to take action on a franchise within 120 days (see Appendix B). Consequently, if September 20, 2006 is used as the starting date, the deadline for taking action would be January 18, 2007.

It should also be noted that the 120-day deadline depends on the receipt of "such information as is required in accordance with Commission regulations and by the franchising authority" (emphasis added). Consequently, if a franchising authority requests relevant information regarding the transfer and does not receive it, or the operator fails to provide all franchise-required transfer documentation, the deadline for review may be extended. Many cable operators dispute this position, however, and claim that the 120-day period cannot be "tolled."

In any event, as Appendix B indicates, the deadline can be extended if both parties agree to the extension.

B. Background

In 1999 and 2000, the nine agreements were executed by the RCN communities to introduce competitive with the incumbent cable operator and telephone service provider. RCN currently provides video, voice and data services to subscribers in five of the communities (Burlingame, Daly City, Redwood City, San Mateo and South San Francisco).

The agreements contain the following language (extracted from Section 2.5 of the San Carlos agreement):

"Franchise Non-Transferable

(a) Grantee shall not sell, transfer, lease, assign or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the Franchise or any of the rights or privileges herein granted, without the prior consent of the Council, which consent shall not be unreasonably denied, withheld or delayed; provided, however, that the prior written consent of the Council shall not be required for an intracorporate or intracompany transfer from one wholly-owned subsidiary to another wholly-owned subsidiary. Any attempt to sell,

transfer, lease, assign or otherwise dispose of the Franchise without the consent of the Council shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation or by assignment of any right, title or interest in the Cable System, or use of the Cable System as collateral in order to secure indebtedness shall not be considered a transfer for the purposes of this Section.

(b) The requirements of Subsection (a) shall apply to any change in control of Grantee. The word "control" as used herein includes majority ownership, and actual working control in whatever manner exercised. In the event that Grantee is a corporation, prior consent of the Council shall be required where ownership or control of more than twenty-five percent (25%) of the voting stock of the Grantee is acquired by a Person or group of Persons acting in concert, none of whom own or control the voting stock of the Grantee as of the effective date of the Franchise, singularly or collectively.

(c) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the Franchise property of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said Franchise property. Such notification shall be considered by Grantor as notice that a change in control or ownership of the Franchise has taken place and the provisions under this Section governing the consent of Grantor to such change in control or ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the Grantee and/or the proposed transferee complete an application in accordance with Federal Communications Commission Form 394 or equivalent. An application shall be submitted to Grantor not less than one hundred twenty (120) days prior to the proposed date of transfer. The transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of the Franchise. If the Franchisee is then in compliance with the requirements of the Franchise, and the legal, financial and technical qualifications of the applicant are satisfactory, the Grantor shall consent to the transfer of the Franchise. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after

receiving such request, Grantor's consent to such transfer shall be deemed given. The consent of the Grantor to such transfer shall not be unreasonably denied or delayed.

(e) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the Franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the Cable System, in the event of a Grantee default of its financial obligations. Further, said financial institution shall also agree in writing to continue Cable Service and comply with all Franchise requirements during the term the financial institution exercises control over the System.

(f) Upon transfer, Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with the transfer of the Franchise including without limitation, costs of administrative review, financial, legal and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication costs and document preparation expenses. Any such reimbursement shall not be charged against any Franchise Fee due to Grantor during the term of the Franchise."

In 2004, RCN's parent (RCN Corp.) filed for bankruptcy. As a consequence of the bankruptcy, RCN requested and received amendments to its existing agreements. Amendments were primarily provided with regard to the schedule for completing construction within each community, with the franchise term reduced for each month that the original deadline was not met. Changes were also made with regard to potential liquidated damages for franchise breaches, and a Multi-Jurisdictional Fiber (MJF) Network involving strands of fiber optic cables connecting facilities in Belmont, Millbrae, Redwood City and San Carlos.

Since the amendments in 2004, it is TMC's understanding that RCN has not performed any significant new system construction.

II. EVALUATION OF PROPOSED TRANSFER

In any franchise transfer, a number of considerations must be taken into account, including the following:

- Whether the transferor has been, and currently is, in compliance with the requirements of the existing franchise.
- Whether the transferee agrees to comply with the requirements of the existing franchise, or wishes to change any of the franchise terms.
- Whether the transferee is legally, financially and technically qualified to operate the cable system.
- What impact the transfer may have on cable subscribers and the franchising municipality (e.g., the impact upon subscriber rates, quality of service or degree of competition in the community).
- What conditions, if any, the franchisor can legitimately impose upon the transfer.

These issues are reviewed in this report.

In contrast, a franchise renewal opens up for discussion and negotiation all aspects of a new agreement.

A. Transferor and Transferee

The FCC Form 394 lists the transferor of the franchise as:

RCN Telecom Services, Inc.
196 Van Buren Street, Suite 300
Herndon, Virginia 20170
Telephone: (202) 424-8408
Contact Persons: Richard Ramlall, David Hankin and Jean L. Kiddoo

The transferee is listed as:

Astound Broadband, LLC
401 Kirkland Park Place, Suite 500
Kirkland, Washington 98033
Telephone: (425) 576-8200
Contact Persons: James A. Penny and Craig Heiting.

Astound Broadband, LLC is a Washington Limited Liability Company. The sole member and manager of Astound is WaveDivision Holdings, LLC.

WaveDivision also is the sole member and manager of seven other active limited liability companies that own and operate cable companies, as indicated in Appendix C.

WaveDivision currently operates cable systems in a number of communities in the Seattle, Washington area and in California in Contra Costa County, Ventura County and the City of Cerritos. The communities served include the following:

Washington State (Greater Seattle)

Callam County
Island County
LaConner
Port Angeles
Sequim
Shelter Bay Community, Inc.
Skagit County
Snohomish County
Stanwood
Swinomish Indian Tribal Community
Whatcom County
Port Orchard
Bremerton
Mason County
Kitsap County

Northern California

Concord
Walnut Creek
Contra Costa County

Southern California

Ventura (City)
Ventura County
Cerritos.

In total, there are approximately 155,000 cable television, high-speed Internet and telephone subscribers in these communities. Most of the franchises were acquired, rather than constructed, since WaveDivision was formed in 2002 “for the purpose of acquiring, developing and operating, through its operating subsidiaries, superior broadband systems in major markets on the west coast.”¹

¹ Form 394, Exhibit 8.

Appendix D lists the 25 largest multichannel providers as of earlier this calendar year by number of video subscribers. This list includes both cable operators and satellite service providers. Although WaveDivision is not listed (some of its 155,000 subscribers may not be video subscribers), with the addition of the subscribers proposed to be acquired from RCN, and the fact that Adelphia's subscribers have been acquired by Comcast and Time Warner, WaveDivision likely will become a top 25 provider.

For comparison, RCN is number 15 on the list, while Comcast is number 1.

B. Transferee Ownership Structure

Appendix E contains Exhibit 5 of the Form 394, which describes the ownership structure of Astound Broadband, LLC, the proposed transferee, and its parent WaveDivision Holdings, LLC.

As indicated, 90% of the Class A stock of WaveDivision is held by Sandler V Partnerships, an investment firm specializing in the media, communications and entertainment industries. The remaining 10% of the Class A stock is held by WaveDivision Capital, LLC, whose owners of more than 5% equity interests are listed as Steven Weed, David Roberts and Stanley Roberts.

In addition to the Class A shares, there are also Class B and Class C shares, which carry certain limitations. The Class B and Class C shareholders are entitled to share in distributions only after the Class A shareholders have received distributions equal to their initial capital contributions, plus a specified return thereon.

WaveDivision Networks, LLC, which is 100%-owned by Steven Weed, holds 85% of the Class B and Class C shares. Steve Friedman² holds the remaining 15% of the Class B and Class C shares. Mr. Weed is the Chief Executive Officer (CEO) of the transferee, and Mr. Friedman is the Chief Operating Officer (COO).

C. Acquisition Details

A copy of the "Asset Purchase Agreement" between RCN Telecom Services, Inc. and Astound Broadband, LLC dated August 17, 2006, was included with the Form 394. The document has not been redacted, and includes all details of the transaction.

² Steve Friedman is not known to be related to Michael Friedman of Telecommunications Management Corp.