## STAFF REPORT

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| **Agenda Item:** | 9 | **Name:** | Andrew Kim |
| **Proposed No**.: | 2021-0165 | **Date:** | June 8, 2021 |

**SUBJECT**

An ordinance approving the transfer of indirect control of cable franchise 5602 (Wave Broadband) from Radiate Holdings, L.P., to Stonepeak Associates IV, LLC.

**SUMMARY**

The Federal Cable Act (47 U.S.C. Section 521, et seq.) in accordance with regulations and orders issued by the Federal Communications Commission (FCC) authorize local governments to negotiate franchise agreements with cable television providers. The county has franchise agreements with two cable companies, Comcast and Wave Broadband, regarding their use of rights-of-way to provide cable television service to customers in unincorporated areas of the county.

On January 4, 2021, in accordance with federal law and its franchise agreement with the county, Wave Broadband notified the county of its proposed transfer of ownership from Radiate Holding L.P. to Stonepeak Associates IV, LLC. As required by federal law and King County Code, the proposed ordinance would approve the indirect transfer of franchise agreement 5602 for Wave Broadband from the prior owner to the new owner. The county’s Office of Cable Communications has reviewed the proposed change in ownership and determined that the new owner is “legally, technically and financially capable” of continuing franchise agreement 5602 and has recommended approval of the transfer of ownership.

In accordance with federal law, Wave Broadband and the county mutually agreed to a date of June 30, 2021 for the county’s decision on the transfer of ownership. As a result, council would need take action on the proposed ordinance at today’s committee meeting to meet the timeline or else the transfer of ownership would be approved automatically as a matter of federal law.

Lastly, council staff has prepared striking amendment S1 to make technical corrections.

**BACKGROUND**

**Cable Companies in Unincorporated King County.** The Federal Cable Act (47 U.S.C. Section 521, et seq.) in accordance with regulations and orders issued by the Federal Communications Commission (FCC) authorize local governments to negotiate franchise agreements with cable television providers.

The county has franchise agreements with two cable companies, Comcast and Wave Broadband, regarding their use of rights-of-way to provide cable television service to customers in unincorporated areas of the county. The agreement with Comcast was signed in July 2014 and will expire in July 31, 2024.[[1]](#footnote-1) The agreement with Wave Broadband was signed in September 2013 and will expire in July 31, 2023.[[2]](#footnote-2)

Comcast has approximately 49,000 subscribers (customers) in unincorporated King County, mostly near the boundaries of incorporated cities and on Vashon Island. Wave has approximately 1,000 subscribers and serves unincorporated King County near the towns of Carnation, Duvall, and Woodinville.

**K.C.C. Chapter 6.27A (Cable Communications).** K.C.C. Chapter 6.27A includes provisions related to cable communications in unincorporated King County, particularly requirements related to cable franchises and the responsibilities of the Office of Cable Communications, which is a division of the Department of Information Technology (KCIT). However, it should be noted that these code provisions were established in 1991[[3]](#footnote-3) and have not kept up to date with changes to federal law related to cable communications. Washington State laws (RCW Chapter 35.99 and Chapter 36.55) provide some guidance related to use of rights-of-way for franchises and cable television service, however, federal guidelines preempt all state and local laws on major provisions related to cable franchises.

As per K.C.C. 6.27A.020.D., Comcast and Wave Broadband must pay the county a franchise fee equal to 5% of the franchisee's gross revenues for the use of the public rights-of-way or roads to lay their cable and provide cable TV service to subscribers in unincorporated King County. Federal law allows cable companies to pass on this fee to their customers. The fee revenues are deposited into the county’s General Fund to support the Office of Cable Communications. The county anticipates approximately $5.6 million of fee revenues for the 2021-2022 Biennial Budget.

**Franchise 5602.** The initial 10-year franchise was granted to Summit Cablevision L.P. Summit, which was taken over by Millennium L.L.C. that later became known as Broadstripe Communications. Summit’s initial ten-year franchise expired on October 11, 2009 and was extended to October 11, 2011 pursuant to Ordinance 16772[[4]](#footnote-4). The purpose of this extension was to give Broadstripe Communications time to reorganize or find a buyer because it was operating in Chapter 11 bankruptcy.

In 2012, Wave Broadband bought Broadstripe Communications which was under the supervision of a bankruptcy court. On October 8, 2012, the council approved transfer of the ownership of the franchise by adopting Ordinance 17430.[[5]](#footnote-5)

In December 2012. Wave Broadband and the county began negotiations on a successor franchise agreement. Negotiations resulted in a new agreement that was similar to the prior agreement. On September 23, 2013, the council approved the new agreement via Ordinance 17670[[6]](#footnote-6). As mentioned previously, the agreement would expire on July 31, 2023.

In June 2017, the Office of Cable Communications received a Federal Communications Commission (FCC) Form 394 notifying the county that Wave Holdco, LLC, the parent company of Wave Broadband was to become a wholly-owned subsidiary of Radiate Holdco, LLC, controlled by Radiate Holdings, L.P. On December 11, 2017, the council adopted Ordinance 18629[[7]](#footnote-7) to approve the transfer of indirect control of franchise 5602 to Radiate Holdings, L.P.

**ANALYSIS**

**Proposed Ordinance Summary.** On January 4, 2021, in accordance with federal law and its franchise agreement with the county, Wave Broadband notified the county of its proposed transfer of ownership from Radiate Holding L.P. to Stonepeak Associates IV, LLC. In accordance with an October 31, 2020 Agreement and Plan of Merger, Stonepeak Associates IV, LLC, a Delaware limited liability company, will assume indirect control of Radiate Holdings, L.P., and its subsidiaries, including Wave Broadband. Once completed, Stonepeak Associates IV, LLC, itself will be indirectly owned and controlled by separate business entities that are ultimately owned and controlled by Stonepeak Infrastructure Partners. Wave Broadband will continue to remain an indirect, wholly owned subsidiary of Radiate Holdings, L.P.

The transfer of ownership results in a transfer or change of control of Wave Broadband as defined in both Section 4 of Wave’s franchise agreement and King County Code Section 6.27A.010.CC and therefore requires county approval by ordinance, subject to the foregoing provision in federal law. K.C.C. Section 6.27A.010.CC. defines a "transfer" in part to mean "*any transaction in which an ownership or other interest in a franchisee is transferred from one person to another person so that control of the franchisee is transferred, or the rights held by the franchisee under a franchise agreement are transferred or assigned, in whole or in part, to another person.*"

The proposed ordinance would approve the indirect transfer of franchise agreement 5602 for Wave Broadband from Radiate Holdings, L.P. to Stonepeak Associates IV, LLC.

**County Requirements Related to Franchise Transfer.** K.C.C. Section 6.27A.050.E includes requirements for application for a franchise transfer. It states that "*[a]n application for approval of a transfer of a franchise must contain, at minimum, information regarding the applicant's technical and financial ability to construct and operate the system and a statement that the proposed transferee will comply with the transferor's franchise agreement, this chapter, the cable rules and applicable law*."

The Office of Cable Communications retained an independent consultant to evaluate the financial qualifications of Stonepeak Associates IV, LLC and related business entities involved in the sales transaction. The Office of Cable Communications stated that the consultant concluded that Stonepeak Associates IV, LLC, has the financial capability to provide the needed funding to support the franchise.

Secondly, as stated in the application, Wave Broadband’s cable system will continue to be operated by Wave Broadband’s existing technical and operational personnel. As a result, the Office of Cable Communications has determined that Stonepeak Associates IV, LLC has the technical ability to construct and operate the cable system for franchise 5602.

Lastly, the Office of Cable Communication states that upon completion of the transfer of ownership, Wave Broadband will continue to hold cable franchise 5602 and will also continue to provide cable service to county customers without interruption. Moreover, Wave Broadband has no changes planned to the current terms and conditions of service or operations of the cable system.

Based on its evaluation of the information in FCC Form 394 and the conclusions of the financial consultant, the Office of Cable Communications recommends approval of the transfer of control of franchise 5602 from Radiate Holdings, L.P., to Stonepeak Associates IV, LLC.

**Timeline and Public Hearing Notice.** Under federal law, 47 U.S.C. Section 537, the county has 120 days to act on the request for transfer after receipt of a completed application unless an agreement is reached to extend the date. If action is not taken during this period, as may be extended by the parties, the transfer is deemed approved as a matter of federal law. The 120-day period for action was to end on May 4, 2021, however, the county and Wave Broadband reached an agreement to extend the date to June 30, 2021. The council would need to take action on the proposed ordinance at today’s committee meeting and expedite to the June 15th Council meeting to meet this deadline.

K.C.C. Section 6.27A.030.G requires public notice of the proposed ordinance as required by RCW 36.55.040, which states:

“On application being made to the county legislative authority for franchise, it shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting notices in three public places in the county seat of the county at least fifteen days before the day fixed for the hearing. The county legislative authority shall also publish a like notice two times in the official newspaper of the county, the last publication to be not less than five days before the day fixed for the hearing. The notice shall state the name or names of the applicant or applicants, a description of the county roads by reference to section, township and range in which the county roads or portions thereof are physically located, to be included in the franchise for which the application is made, and the time and place fixed for the hearing.”

A copy of the public notice published in the Seattle Times for a June 15th public hearing is included as Attachment 5 to this staff report.

**AMENDMENT**

Council staff has prepared striking amendment S1 to correct references to King County Code and make other technical corrections.

**INVITED**

* Chris Jaramillo, Cable Communications Manager, KCIT-Office of Cable Communications
* Tom Kuffel, Senior Deputy Prosecuting Attorney, Prosecuting Attorney’s Office

**ATTACHMENTS**

1. Proposed Ordinance 2021-0165
2. Striking Amendment S1
3. Transmittal Letter
4. Fiscal Note
5. Copy of Public Hearing Notice
1. Ordinance 17846, enacted July 24, 2014. [↑](#footnote-ref-1)
2. Ordinance 17670 adopted September 23, 2013. [↑](#footnote-ref-2)
3. Ordinance 10159, enacted November 22, 1991. [↑](#footnote-ref-3)
4. Enacted March 22, 2010. [↑](#footnote-ref-4)
5. Enacted October 12, 2012. [↑](#footnote-ref-5)
6. Enacted September 23, 2013. [↑](#footnote-ref-6)
7. Enacted December 14, 2017. [↑](#footnote-ref-7)