

1 [Amending the Open Video System Franchise Granted to RCN Telecom Services, Inc.]

2

3 **Ordinance amending the Open Video System Franchise Granted to RCN Telecom**
4 **Services, Inc. in Ordinance No. 210-04 as a condition of the transfer of the franchise to**
5 **Astound Broadband, LLC by amending Sections 1, 34, 46, and 92.**

6 Note: Additions are *single-underline italics Times New Roman*;
7 deletions are *strikethrough italics Times New Roman*.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough normal~~.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Ordinance No. 210-04 granting an Open Video System franchise to RCN
11 Telecom Services, Inc. is amended as follows:

12 Section 1. DEFINITIONS. For purposes of this Franchise, the following terms,
13 phrases, words, abbreviations and their derivations, when capitalized, shall have the
14 meanings given herein. When not inconsistent with the context, words used in the present
15 tense include the future tense; words in the plural number include the singular number; and
16 words in the singular number include the plural number. The words "shall" and "will" are
17 mandatory. "May" is permissive. The use of the term "including," "such as" or words of
18 similar import when following any general term, statement or matter shall not be construed to
19 limit such term, statement or matter to the specific items or matters, whether or not language
20 of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer
21 to all other items or matters that could reasonably fall within the scope of such statement, term
22 or matter. Unless expressly stated otherwise, words not defined herein shall be given the
23 meaning given them in Chapter 11, and if not defined therein, their common and ordinary
24 meaning. To the extent there is any difference between a definition set forth in this Franchise
25 and a definition set forth in Chapter 11, the definition used in this Franchise shall govern.

1 References to governmental individuals or entities refer to those individuals, entities, or their
2 successors in authority. Unless expressly stated otherwise, if specific provisions of law
3 referred to herein are renumbered or amended, then the reference shall be read to refer to the
4 renumbered or amended provision.

5 (a) "Affected Service" shall have the meaning set forth in Section 60(b) below.

6 (b) "Agent," when used with reference to either party to this Franchise, means the
7 members, officers, directors, commissioners, employees, agents, contractors and
8 subcontractors of such party, and their respective heirs, legal representatives, successors and
9 assigns, when acting under this Franchise.

10 (c) "Affiliate," when used in relation to any Person, means another Person who
11 owns or Controls, is owned or Controlled by, or is under common ownership or Control with,
12 such Person.

13 (d) "Analog Channel" means a six (6) Megahertz (MHz) frequency band.

14 (e) "Analog PEG Channel" shall have the meaning set forth in Section 48(a)
15 below.

16 (f) "Applicable Law" means all applicable Federal, State, and City laws,
17 ordinances, codes, rules, regulations and orders, as the same may be amended or adopted
18 from time to time.

19 (g) "Attorneys' Fees and Costs" means any and all attorneys' fees, costs,
20 expenses and disbursements, including, but not limited to, expert witness fees and costs,
21 travel time and associated costs, transcript preparation fees and costs, document copying,
22 exhibit preparation, courier, postage, facsimile, long-distance and communications expenses,
23 court costs and the costs and fees associated with any other legal, administrative or
24 alternative dispute resolution proceeding, fees and costs associated with execution upon any
25 judgment or order, and costs on appeal.

1 (h) "Bandwidth" means the extent of the range of frequencies between minimum
2 and maximum endpoints measured in megahertz (MHz).

3 (i) "Board" means the City's Board of Supervisors.

4 (j) "Board Approval" means the approval of the San Francisco Board of
5 Supervisors by resolution or ordinance, as applicable, and the approval of the Mayor unless
6 the Mayor's disapproval is overridden by the Board of Supervisors. Board approval shall not
7 be deemed to have occurred unless and until the applicable resolution or ordinance becomes
8 effective in accordance with Applicable Law.

9 (k) "Bona Fide Institutional Lender" means any one or more of the following: (1) a
10 savings bank, a savings and loan association, a commercial bank or trust company, an
11 insurance company, a real estate investment trust, or any other Person which, at the time a
12 pledge in trust or mortgage is recorded in favor of such Person, has assets of at least \$500
13 million in the aggregate (or the equivalent in foreign currency), and is regularly engaged in the
14 financial services business; or (2) any special account, managed fund, department, agency or
15 Affiliate of any of the foregoing; or (3) any Person acting in a fiduciary capacity for any of the
16 foregoing. For purposes hereof: (1) acting in a "fiduciary capacity" shall be deemed to include
17 acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement,
18 indenture or other loan document; and (2) a lender, even if not a Bona Fide Institutional
19 Lender, shall be deemed to be a Bona Fide Institutional Lender if, no more than thirty (30) City
20 business days after such loan is consummated, the note(s) or other evidence of indebtedness
21 or the collateral securing the same are assigned to a Person then qualifying as a Bona Fide
22 Institutional Lender.

23 (l) "Cable Drop" shall have the meaning set forth in Section 45 below.

24

25

- 1 (m) "Cable Internet Service" means "Online Computer Services" and "Internet
2 Access," as those terms are defined in Section 65003 of the California Revenue and Taxation
3 Code as of the Effective Date, that are offered using any of Grantee's Facilities in the City.
- 4 (n) "Cable Service" means the one way transmission to Subscribers of video
5 programming or other programming service and Subscriber interaction, if any, required to
6 select or use such video programming or other programming service.
- 7 (o) "Capacity" means the maximum transmission capability of the System. The
8 Capacity for the System can be expressed in terms of bandwidth measured in hertz (cycles
9 per second) between minimum and maximum endpoints.
- 10 (p) "Channel" means both Analog Channels and Digital Channel Equivalents.
- 11 (q) "Chapter 11" means Chapter 11 of the San Francisco Administrative Code, as
12 it may be amended from time to time.
- 13 (r) "City" means the City and County of San Francisco, a municipal corporation of
14 the State of California.
- 15 (s) "City business day" means each Monday through Friday, excluding any day
16 recognized as an official holiday by the City.
- 17 (t) "City Conduit" shall have the meaning set forth in Section 46(a) below.
- 18 (u) "City Deposit" shall have the meaning set forth in Section 52(b) below.
- 19 (v) "C/N" shall have the meaning set forth in Section 48(g)(3) below.
- 20 (w) "Comcast" means Comcast of California II, Inc., the grantee under the cable
21 television franchise granted by the City pursuant to Ordinance No 105-64, or any successor.
- 22 (x) "Communications Project Grant" shall have the meaning set forth in Section
23 44(e) below.
- 24 (y) "Complete Outage" means loss of picture and sound on all Channels to one or
25 more Subscribers.

1 (z) "Construction Sequence Plans" shall have the meaning set forth in Section
2 16(a) below.

3 (aa) "Control" means the power to control the affairs and key decisions of another
4 Person, in whatever manner exercised, whether directly or indirectly.

5 (bb) "CPI-U" means the Consumer Price Index for All Urban Consumers (base
6 years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the
7 United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that
8 the base year differs, the Index shall be converted in accordance with the conversion factor
9 published by the United States Department of Labor, Bureau of Labor Statistics. If the Index
10 is discontinued or revised during the Term, such other government index or computation with
11 which it is replaced shall be used in order to obtain substantially the same result as would be
12 obtained if the Index had not been discontinued or revised. Adjustments in CPI-U shall be
13 calculated by comparing the CPI-U most recently published with the CPI-U in effect on
14 February 1, 2000. If the CPI-U has increased, then the sum or amount payable on the
15 calculation date shall be set by multiplying the sum or payment by a fraction, the numerator of
16 which is the CPI-U as of the calculation date and the denominator of which is the CPI-U in
17 effect on February 1, 2000.

18 (cc) "CPUC" means the California Public Utilities Commission.

19 (dd) "CULCOP" shall have the meaning set forth in Section 6(c) below.

20 (ee) "Demarcation Point" means the point within a building or otherwise designated
21 by the City where Grantee's fiber terminates.

22 (ff) "Deposits" shall have the meaning set forth in Section 52(b) below.

23 (gg) "Digital Channel Equivalent" means the portion of the Capacity of the System
24 required to deliver a digital video Signal, with accompanying audio, meeting or exceeding
25 National Television System Committee ("NTSC") quality standards.

- 1 (hh) “DTIS” means the City’s Department of Telecommunications and Information
2 Services.
- 3 (ii) “DTIS Director” means the Director of DTIS, or his or her designee.
- 4 (jj) “DPW” means the City’s Department of Public Works.
- 5 (kk) “EAS” shall have the meaning set forth in Section 42(h) below.
- 6 (ll) “Effective Date” means October ~~18~~28, 2004.
- 7 (mm) “Eligible Employee” shall have the meaning set forth in Chapter 12-O of the
8 San Francisco Administrative Code.
- 9 (nn) “Excavator” means “Utility Excavator” as defined in Section 2.4.4(s) of the
10 City’s Public Works Code.
- 11 (oo) “Facilities” means any physical element of the System used in connection
12 with, or designed to be used in connection with, the provision of Services or
13 Telecommunication Services, whether or not located in the Public Rights-of-Way, including,
14 without limitation, Hubs, Nodes, the Headend, pedestals, cabinets, ducts and conduits
15 (whether empty or occupied), transformers, equipment, drains, handholds, lines, manholes,
16 poles, power supplies and generators, splice boxes, surface location markers, vaults, tunnels,
17 amplifiers, power guards, coaxial cables, and fiber strands (whether active or dark).
- 18 (pp) “FCC” means the Federal Communications Commission.
- 19 (qq) “Fiber Backbone” means Grantee’s inter-Hub trunking, and shall not include
20 fiber optic or coaxial cable running from Hubs to Nodes or Nodes to buildings.
- 21 (rr) “Fiber Drop” shall have the meaning set forth in Section 44(b) below
- 22 (ss) “Fiber Optic Infrastructure” or “FOI” means the Fiber Strands and Fiber Drops
23 provided by Grantee to the City pursuant to Section 44 below.
- 24 (tt) “Fiber Route” shall have the meaning set forth in Section 8(b) below.
- 25 (uu) “Fiber Strands” shall have the meaning set forth in Section 44(a) below.

1 (vv) "First Source Hiring Agreement" shall have the meaning set forth in Section
2 89(a) below.

3 (ww) "Franchise" means this Ordinance No. 210-04 of the City's Board of
4 Supervisors, as it may be amended from time to time, and all the terms and conditions
5 thereof. "Franchise" shall not mean or include any license or permit required for the privilege
6 of transacting and carrying on a business within the City as required by other ordinances or
7 laws of the City, including, without limitation: (1) any permit, agreement or authorization
8 required in connection with operations on public streets or property such as permits and
9 agreements for placing devices on or in poles, conduits or other structures, whether owned by
10 the City or a private entity, or for excavating or performing other work in or along Public
11 Rights-of-Way; and (2) express or implicit authorization to provide Service to, or install
12 Facilities on, private property without owner consent.

13 (xx) "Grantee" means ~~RCN Telecom Services, Inc.~~ Astound Broadband, LLC, and any
14 lawful permitted successor or assign.

15 (yy) "Gross Revenues" means any and all income, receipts, consideration and
16 other revenue of any kind or nature, including but not limited to the value of goods or services
17 received in-kind or in a barter arrangement, derived by Grantee or any Affiliate from the
18 operation or use of the System to provide Service within the City. The use of the phrase
19 "within the City" does not limit Gross Revenues to those generated solely from operations
20 within the City. Rather, Gross Revenues include any revenues derived in any part through or
21 in connection with the operation of the System, including, but not limited to, such portion as is
22 attributable to the City, in accordance with general accounting principles, of advertising or
23 other revenues generated on a regional or national basis from Grantee's operations both
24 within and outside the City. Gross Revenues include, by way of illustration and not limitation:
25 any amounts or fees collected from Subscribers, regardless of how they are enumerated on

1 the bill, including subscriber fees, capacity fees, usage-based fees, installation fees,
2 disconnection fees, reconnection fees, change-in-service fees, late fees, and administrative
3 fees; revenues derived from other Persons using the System, including without limitation,
4 Lessees, except to the extent such Persons pay a franchise fee to the City for the use of the
5 System; revenues received from programmers for carriage of programming on the System;
6 revenues from rentals or sales of Service-related equipment; advertising revenues; revenues
7 from program guides; revenues from home shopping channels; and any other revenues
8 derived from Grantee's operations in the City. This provision shall be read broadly to prevent
9 the avoidance of franchise fees by Grantee through special billing techniques or bundling of
10 Services, or arrangements with Affiliates. Gross Revenues shall not include: (i) any taxes on
11 Services that are imposed directly on any Subscriber or user by the State, City, or other
12 governmental unit and which are collected by Grantee on behalf of said governmental unit; (ii)
13 actual bad debt write offs to the extent consistent with generally accepted accounting
14 principles consistently applied, provided however, that any part of such bad debt that is written
15 off but subsequently collected shall be included in Gross Revenues; or (iii) amounts paid by a
16 Subscriber but subsequently refunded to the Subscriber. The franchise fee required pursuant
17 to Section 10 below is not such a tax, and Grantee shall not exclude from Gross Revenues
18 amounts collected from Subscribers that are attributable to Grantee's payments of franchise
19 fees to the City or that are designated on Subscriber bills as franchise fees. Gross Revenues
20 shall not be reduced by the amount of any costs or expenses incurred by the Grantee,
21 including but not limited to amounts attributable to the franchise fee.

22 (zz) "Hazardous Material" means any material that, because of its quantity,
23 concentration or physical or chemical characteristics, is deemed by any federal, state or local
24 governmental authority to pose a present or potential hazard to human health or safety or to
25 the environment. Hazardous Material includes, without limitation, any material or substance

1 defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the
2 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as
3 amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California
4 Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed pursuant
5 to Section 25140 of the California Health & Safety Code; any asbestos and asbestos
6 containing materials whether or not such materials are part of any Facilities to be constructed
7 on the Public Rights-of-Way by or on behalf of Grantee, or are naturally occurring substances
8 on, in or about the Public Rights-of-Way, and petroleum, including crude oil or any fraction
9 thereof, and natural gas or natural gas liquids.

10 (aaa) "Headend" means the point in the System where all Signals are collected and
11 formatted for transmission on the System.

12 (bbb) "Hub" means the equipment in the distribution system that receives Signals
13 from the Headend for transmission to a number of Nodes.

14 (ccc) "Hub Area" shall have the meaning set forth in Section 8(a) below.

15 (ddd) "Incremental Labor and Materials Costs" means the actual, out-of-pocket
16 additional labor and materials cost incurred by the Grantee for a specific activity performed for
17 the benefit of the City that Grantee would not have incurred but for the City's request.
18 Incremental Labor and Materials Costs must be supported by appropriate invoices, which may
19 include a certified bill of labor, payroll and/or bill of materials.

20 (eee) "Indemnified Parties" means City, including, but not limited to, all of its boards,
21 commissions, departments, agencies and other subdivisions; all of the Agents of the City, and
22 all of their respective heirs, legal representatives, successors and assigns, and each of them.

23 (fff) "Indemnify" means indemnify, protect, defend, reimburse and hold harmless
24 forever.

25 (ggg) "Local Channel" shall have the meaning set forth in Section 49 below.

1 (hhh) “Local Origination Programming” means Programming produced in San
2 Francisco or containing San Francisco-related content.

3 (iii) “Loss” or “Losses” when used with reference to any Indemnity means any
4 and all claims, demands, losses, liabilities, damages (including foreseeable and
5 unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines,
6 lawsuits and other proceedings, judgments and awards and costs and expenses, (including,
7 without limitation, reasonable Attorneys’ Fees and Costs and consultants’ fees and costs).

8 (ijj) “Material Breach” means a breach of this Franchise that has a substantial
9 and significant effect on the rights or benefits either party to the Franchise has secured
10 pursuant to the Franchise. Material Breach shall include, but not be limited to, those breaches
11 designated as such in this Franchise and in Chapter 11. Additionally, any breach not
12 identified as a Material Breach in this Franchise may become a Material Breach if it occurs
13 frequently or remains uncured for such a length of time that it has a substantial and significant
14 effect of the rights or benefits of either party to this Franchise.

15 (kkk) “Mitigation Measures” shall have the meaning set forth in Appendix 2 below.

16 (III) “Node” means the equipment that receives Signals from a Hub and
17 redistributes the Signals to individual Subscribers.

18 (mmm) “Node Area” shall have the meaning set forth in Section 8(a) below.

19 (nnn) “Normal Business Hours” means a total of sixty (60) hours per week and shall
20 include the hours between 9:00 a.m. and 6:00 p.m. Monday through Friday and 10:00 a.m.
21 and 6:00 p.m. on Saturday. The remaining seven (7) hours shall include some hours after
22 6:00 p.m. during the week.

23 (ooo) “NTSC” shall have the meaning set forth in (gg) above.

24 (ppp) “One Year Construction Plan” shall have the meaning set forth in Section
25 16(a)(1) below.

- 1 (qqq) “PEG Channel” means any Analog Channel or Digital Channel Equivalent
2 designated for transmission of public, educational or governmental audio, video and/or digital
3 Signals pursuant to the requirements of Section 48 below.
- 4 (rrr) “PEG Digital Channel Equivalents” shall have the meaning set forth in Section
5 48(b) below.
- 6 (sss) “PEG Operating Contributions” shall have the meaning set forth in Section
7 47(a) below.
- 8 (ttt) “PEG Signal” means the audio, video, and/or digital Signal generated by a
9 public, educational, or governmental source for transmission over a PEG Channel.
- 10 (uuu) “Person” means any individual, group, company, partnership, association,
11 joint stock company, trust, corporation, society, syndicate, club, business, or governmental
12 entity. Person shall not include the City.
- 13 (vvv) “Pesticide Ordinance” shall have the meaning set forth in Section 88 below.
- 14 (www) “Programming” means any video, audio, text or data coded Signals carried
15 over the System.
- 16 (xxx) “Proposal” shall have the meaning set forth in Chapter 11.
- 17 (yyy) “Public Rights-of-Way” shall have the meaning set forth in Chapter 11.
- 18 (zzz) “Quarterly Meeting” shall have the meaning set forth in Section 17 below.
- 19 (aaaa) “Quarterly Reports” shall have the meaning set forth in Section 16.
- 20 (bbbb) ”Residential Unit” means a residence, whether located in a single family
21 residence, lodging house, apartment building, condominium, cooperative building, or
22 dormitory, or any other type of residential dwelling unit.
- 23 (cccc) “Revocation” means the City’s affirmative act of Terminating this Franchise.
- 24 (dddd) “SAP” shall have the meaning set forth in Section 48(g)(4) below.
- 25

1 (eeee) "Scheduled Appointment" means a scheduled time with a Subscriber for
2 service, installation or disconnection, specified by date, not to exceed a four (4) hour window
3 in which a service representative shall arrive.

4 (ffff) "Security Interest" shall have the meaning set forth in Section 52(a) below.

5 (gggg) "Service" means all of the Services Grantee is permitted to provide under
6 this Franchise pursuant to Section 2(b) below. "Service" shall not include
7 Telecommunications Service unless and until Applicable Law permits local governments to
8 require telephone corporations in California to obtain a local Franchise or pay fair and
9 reasonable compensation for the use of the Public Rights-of-Way in connection with the
10 provision of Telecommunications Service.

11 (hhhh) "Service Interruption" means loss of picture or sound on one or more
12 Channels to one or more Subscribers.

13 (iiii) "Signal" means any electromagnetic or optical energy transmitted over the
14 FOI or over the System from one location to another.

15 (jjjj) "Street Furniture Policy" shall have the meaning set forth in Section 7(b)
16 below.

17 (kkkk) "Subscriber" means the City, except where expressly stated otherwise, and
18 any Person who legally receives any Service from Grantee. "Subscriber" shall include
19 residential, commercial, industrial, public and institutional customers.

20 (llll) "Subscriber Deposit" shall have the meaning set forth in Section 52(b) below.

21 (mmmm) "System" means the totality of Grantee's Facilities owned, constructed,
22 installed, or operated to provide Services or Telecommunication Services in the City.

23 (nnnn) "System Tests" shall have the meaning set forth in Section 35(a) below.

24

25

1 (oooo) "Telecommunications Service" means any service regulated by the CPUC or
2 the FCC as a telecommunications service and provided to customers by Grantee in its
3 capacity as a telephone corporation regulated by the CPUC.

4 (pppp) "Term" shall have the meaning set forth in Section 2(g) below.

5 (qqqq) "Termination" means the conclusion of a Franchise by any means, including,
6 but not limited to, by expiration of its Term, abandonment, or Revocation.

7 (rrrr) "Termination Date" shall have the meaning set forth in Section 60(b)(1)
8 below.

9 (ssss) "Transfer" means any transaction in which: (1) all or a portion of any
10 Facilities or any rights to use or operate Facilities located in the Public Rights-of-Way are sold,
11 conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole
12 or in part, directly or indirectly, by one or more transactions to another Person, whether
13 voluntarily or by operation of law or otherwise; or (2) there is any change, acquisition, or
14 transfer in the identity of the Person in Control of Grantee, or any Person that controls
15 Grantee, including, without limitation, forced or voluntary sale, merger, consolidation, or
16 receivership; or (3) the rights or obligations under the Franchise are sold, conveyed,
17 transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part,
18 directly or indirectly, by one or more transactions to another Person, whether voluntarily or by
19 operation of law or otherwise. It will be presumed, for purposes of clause (2) above, that any
20 transfer or cumulative transfer of a voting interest by a Person or group of Persons acting in
21 concert of twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or
22 any change in the managing general partners of a Grantee is a change of Control. "Transfer"
23 does not include: (1) a lease to a UVPP pursuant to 47 U.S.C. Section 573; (2) the
24 transmission of a commodity or electronic signal using Facilities on a common carrier basis;
25 (3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224,

1 California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in
2 trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a
3 Bona Fide Institutional Lender in connection with a loan or other financing required to secure
4 the construction, operation, or repair of the Facilities (“Loan”) provided that such Loan is
5 subject to the rights and powers of the City pursuant to the Franchise and Applicable Law,
6 including, without limitation, the right of the City to approve any Transfer upon foreclosure.
7 “Transferring” and “Transferee” shall have correlative meanings.

8 (tttt) “Update” shall have the meaning set forth in Section 16(c)(3) below.

9 (uuuu) “UVPP” means an unaffiliated video programming provider, which is any
10 Person who uses capacity on Grantee’s Cable System to deliver Video Service or other
11 communications service to Subscribers and who is not an Affiliate of Grantee.

12 (vvvv) “Video Feeds” shall have the meaning set forth in Section 48(g)(2) below.

13 (wwww) “Video Service” means Cable Service provided over an OVS.

14 (xxxx) “WDS” shall have the meaning set forth in Section 89(a) below.

15 (yyyy) “Amendment Date” means the date that the Board of Supervisors and Mayor
16 approve this ordinance amending Ordinance No. 210-04.

17 Section 34. MONITORING TESTS. Throughout the Term of this Franchise Grantee
18 shall perform all tests necessary to demonstrate compliance with the requirements of this
19 Franchise and Applicable Law, and to ensure that the System components are operating
20 properly. Grantee shall repeat any specified test until identified problems or flaws have been
21 corrected. All tests shall be conducted at Grantee’s expense and in accordance with
22 Applicable Law. Grantee shall conduct tests as follows:

23 (a) Initial acceptance tests on newly constructed or rebuilt Facilities. Successful
24 completion of the first semi-annual FCC proof of performance test for the newly constructed or
25

1 rebuilt Facilities shall constitute the initial acceptance test for that newly constructed or rebuilt
2 portion.

3 (b) Proof of performance tests on the System at least once every six months or as
4 required by FCC rules, whichever is more often, except as and to the extent Applicable Law
5 otherwise limits Grantee's obligation;

6 (c) Special tests when Subscriber complaints indicate tests are warranted; ~~and~~

7 (d) Special tests at DTIS's reasonable request, upon a showing of need.; and

8 (e) Tests to determine compliance with California Public Utilities Commission General
9 Order 95 and the San Francisco Electrical Code: (i) within 30 days of the Amendment Date, Grantee
10 shall hire an independent consultant approved by DTIS to inspect the System to determine whether the
11 System is in compliance with California Public Utilities Commission General Order 95 and the San
12 Francisco Electrical Code; (ii) within 60 days of the Amendment Date, Grantee's independent
13 consultant shall perform the inspection under the direction of DTIS; (iii) within 90 days of the
14 Amendment Date, Grantee shall report the results of the inspection to DTIS; (iv) within 120 days of the
15 Amendment Date, Grantee shall correct any deficiencies in the System found during the inspection; and
16 (v) within 150 days of the Amendment Date, Grantee shall report to DTIS that all of the deficiencies
17 found during the inspection have been corrected or provide reasons why such deficiencies could not be
18 corrected despite Grantee's due diligence. In no event, however, shall Grantee fail to correct all of the
19 deficiencies found during the inspection by December 31, 2007. Grantee's failure to comply with any
20 of the requirements of this subsection shall constitute a Material Breach of this Franchise.

21 Section 46. CITY CONDUIT.

22 (a) Conduit for City's Sole and Exclusive Use. During construction of its System
23 and whenever it places Facilities underground, Grantee, in conjunction with the installation of
24 its own conduit, shall install conduit for the sole, permanent, and exclusive use of the City and
25 without charge to the City ("City Conduit"). The City shall have a right to a minimum of 539

1 linear miles of one (1) two inch (2") conduit or any combination of conduit of equivalent value.
2 Consequently, the City may elect to trade the right to one (1) linear mile of one (1) two inch
3 (2") conduit for .54 (54/100) linear miles of (1) four inch (4") conduit; or .22 (22/100) linear
4 miles of (2) four inch (4") conduits. The City may also elect to have Grantee install additional
5 City Conduit upon payment to Grantee of Incremental Labor and Materials Costs. The DTIS
6 Director shall designate the placement of the City Conduit in the same manner as provided for
7 Fiber Drops in Section 44(f) above. Grantee's failure to provide City Conduit pursuant to this
8 Section shall constitute a Material Breach of this Franchise.

9 (b) Technical Specifications. The City Conduit shall be PVC pipe, shall contain a
10 pull string, and be clearly identified as City Conduit with an exterior marking. At the City's
11 request, the City Conduit may be terminated in specified Grantee-owned "pass-through
12 manholes" located no more than 600 feet apart ("pass-through manholes" are those manholes
13 not designated to contain any type of electronics, or splice closure). In the event the distance
14 between two pass-through manholes exceeds approximately 600 feet, the City may request
15 Grantee to sweep the City Conduit to a location in a sidewalk vault mutually agreed to by
16 Grantee and the City and install a City provided pull-box to provide access to the City Conduit.

17 (c) Access to City Conduit. The City shall have access to the City Conduit upon
18 three (3) City business days' notice to Grantee for scheduled maintenance. In the event of an
19 emergency, the City shall have access to the City Conduit immediately, upon oral or written
20 notice to Grantee.

21 (d) Title to City Conduit. Upon request from the City, Grantee shall execute such
22 documents of title in a form acceptable to the City Attorney as will convey to the City, free and
23 clear of liens and/or adverse claims of title, all right, title, and interest in the City Conduit, or
24 any part thereof.

25

1 (e) Use of City Conduit. Upon reasonable written notice to Grantee, the City, or any
2 City-designated entity, may use the City Conduit for any lawful municipal or public purpose;
3 provided, however, that the City shall not use or permit the use of the City Conduit to provide
4 any services for any non-municipal or non-public purpose that are in competition with services
5 provided by Grantee over its Facilities. The City may solicit bids to provide services using the
6 City Conduit. Grantee shall be invited to respond to any such solicitation.

7 Section 92. GUARANTY. On or before the execution of this amendment to the
8 Franchise by Grantee, ~~RCN Corporation~~ WaveDivision Holdings, LLC, a Delaware limited liability
9 corporation, shall execute and deliver to the City a Guaranty Agreement in the form attached
10 hereto as Appendix 1 (“Guaranty Agreement”). The transfer of ~~T~~his Franchise shall not
11 become effective unless and until the City receives the duly executed Guaranty Agreement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ACKNOWLEDGED AND AGREED TO BY THE PARTIES:

CITY & COUNTY OF SAN FRANCISCO: ASTOUND BROADBAND, LLC:

Approved By:

CHRIS A VEIN
Director, Department of Telecommunications
and Information Services

Signature

Name: _____

Date: _____

Title: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
WILLIAM K. SANDERS
Deputy City Attorney

1 Appendix 1

2 Guaranty Agreement

3
4 THIS GUARANTY AGREEMENT (this "Guaranty") dated as of December , 2006, is
5 made by WAVEDIVISION HOLDINGS, LLC, a Delaware limited liability corporation (the
6 "Guarantor"), to and for the benefit of THE CITY AND COUNTY OF SAN FRANCISCO, a
7 municipal corporation (the "City"). Unless otherwise defined in this Guaranty, all initially
8 capitalized terms used in this Guaranty shall have the meanings given them in the Franchise
9 (as defined in Recital Paragraph A below).

10 THIS GUARANTY is made with reference to the following facts and
11 circumstances:

12 A. The City has granted to Astound Broadband, LLC., a Washington limited
13 liability corporation ("Grantee"), a franchise (the "Franchise") as set forth in Ordinance No.
14 201-04, approved by the City's Board of Supervisors on August 25, 2005, and amended by
15 Ordinance No. ____-07, approved by the Board of Supervisors on _____, 2007.

16 B. Guarantor will derive material financial benefit from the Franchise. As an
17 essential inducement for the City to enter into the Franchise, the Guarantor is entering into
18 this Guaranty, whereby Guarantor agrees to guaranty payment and performance of the
19 obligations of the Grantee under the Franchise.

20 ACCORDINGLY, in consideration of the matters described in the foregoing
21 Recitals, and for other good and valuable consideration, the receipt and sufficiency of which
22 are mutually acknowledged, the Guarantor agrees as follows:

23 1. Guaranty

24 1.1 Guaranty of Obligations. Guarantor unconditionally and irrevocably guarantees
25 to the City the due and punctual payment (and not merely the collectibility) and performance
of the Guaranteed Obligations (as defined in Section 1.2 below), as and when such
Guaranteed Obligations shall become due and/or payable, on the terms provided in this
Guaranty. In addition, Guarantor shall pay, and upon request of City shall promptly reimburse
City for, all costs and expenses (including, without limitation, collection charges and Attorneys'
Fees and Costs, as defined in Section 8.8 below) incurred by the City (collectively, the
"Reimbursement Amount") in connection with the enforcement of the City's rights, powers, or
remedies under this Guaranty, whether or not suit is brought. Any delinquent payment for the
Guaranteed Obligations and the Reimbursement Amount shall be accompanied by interest on
such amounts at the lesser of ten percent (10%) per annum or the maximum amount
permitted by law, from the date due through and including the date of payment of such
amounts (calculated on the basis of a 365-day year for the actual number of days elapsed).
Guarantor's guaranty of payment of the Guaranteed Obligations shall be discharged and
satisfied only as provided in Section 6 below relating to termination of this Guaranty.

1.2 Definition of Guaranteed Obligations. For purposes of this Guaranty,
"Guaranteed Obligations" shall mean the obligation of the Grantee (the "Obligor") to make any

1 payments and timely perform any obligations set forth in the Franchise, including, without
2 limitation, the payment of franchise fees and the completion of the System as set forth in the
3 Franchise.

4 1.3 Acknowledgments by Guarantor. Guarantor acknowledges, confirms, and
5 agrees that: (a) it has received fair and adequate consideration for its execution of this
6 Guaranty; (b) it will derive material financial benefit from the City's execution of the Franchise;
7 (c) the City's agreement to enter into the Franchise and take the actions required in
8 connection therewith is in consideration of, and in reliance upon, the Guarantor's execution
9 and delivery of this Guaranty; and (d) there are no conditions to the full effectiveness of this
10 Guaranty other than those expressly set forth in this Guaranty.

11 1.4 Independent Obligations; Continuing Guaranty. Subject to the provisions of this
12 Guaranty, this Guaranty is a primary and original obligation of Guarantor and is an absolute,
13 unconditional, continuing and irrevocable guaranty of payment and performance.
14

15 2. Indemnity

16 2.1 Indemnity. Guarantor agrees to indemnify, defend and hold harmless the
17 Indemnified Parties from and against any and all liabilities, obligations, losses, damages,
18 penalties, actions, causes of action, judgments, suits, claims, costs, expenses and
19 disbursements of any kind or nature whatsoever (including, without limitation, Attorneys' Fees
20 and Costs as hereinafter defined) arising in connection with any investigative, administrative
21 or judicial proceeding, that may be imposed on, incurred by or asserted against such
22 Indemnified Party, in any manner relating to or arising out of or in connection with the
23 payment or enforcement of this Guaranty (collectively, the "Indemnified Liabilities").
24 Notwithstanding the foregoing, Indemnified Liabilities shall not include liabilities, obligations,
25 losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs,
expenses and disbursements to the extent caused by or resulting from the willful misconduct
or negligence of such Indemnified Party. Guarantor agrees to defend the Indemnified Parties
against any claims that are actually or potentially within the scope of the indemnity provisions
of this instrument, even if such claims may be groundless, fraudulent or false.

26 2.2 Notice. The Indemnified Parties agree to give prompt notice to Guarantor with
27 respect to any suit or claim initiated or threatened against the Indemnified Parties, at the
28 address for notices of Guarantor set forth in this Guaranty, which the Indemnified Party has
29 reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is
30 not given to Guarantor, then Guarantor's liability hereunder shall terminate as to the matter for
31 which such notice is not given, provided that failure to notify the Guarantor shall not prejudice
32 the rights of the Indemnified Party hereunder unless the Guarantor is prejudiced by such
33 failure, and then only to the extent of such prejudice. The Guarantor shall, at its option but
34 subject to the reasonable consent and approval of the Indemnified Party, be entitled to control
35 the defense, compromise or settlement of any such matter through counsel of the Guarantor's
own choice; provided, however, that in all cases the Indemnified Party shall be entitled to
participate in such defense, compromise, or settlement at its own expense. If the Guarantor
shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time

1 following notice from the Indemnified Party alleging such failure, to take reasonable and
2 appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party
3 shall have the right promptly to hire counsel at the Guarantor's sole expense to carry out such
4 defense, compromise or settlement, which expense shall be immediately due and payable to
5 the Indemnified Party upon receipt by the Guarantor of a reasonably detailed invoice therefor.

6 3. Waivers by Guarantor

7 3.1 Waivers. Guarantor waives: notice of acceptance of this Guaranty; notice of the
8 amount of the Guaranteed Obligations; notice of any other fact that might increase the
9 Guarantor's risk; and notice of presentment for payment, demand, protest and notice of
10 protest, notice of dishonor, diligence in collection and notice of nonpayment as to any
11 instrument. Guarantor also waives any and all rights, by statute or otherwise, to require the
12 City to institute suit against the Obligor or to exhaust any of the City's rights, powers or
13 remedies against such Obligor.

14 3.2 Waiver of Subrogation. Upon satisfaction in full of all of the Guaranteed
15 Obligations, Guarantor shall be subrogated to the rights of the City against the Obligor with
16 respect to the Guaranteed Obligations, and the City agrees to take such steps as Guarantor
17 may reasonably request to implement such subrogation (provided that Guarantor shall pay
18 any and all of City's costs and expenses in connection therewith, including, without limitation
19 City's Attorneys' Fees and Costs and provided further that the City shall not incur any liabilities
20 in taking any such steps).

21 4. Consents by Guarantor

22 4.1 Consents; No Discharge of Obligations. Without releasing, discharging,
23 impairing, or otherwise affecting any obligations of Guarantor under this Guaranty or the
24 validity or enforceability of this Guaranty, the City may, by action or inaction, in its sole,
25 absolute and unlimited discretion and without notice to Guarantor: compromise, settle, extend
the time for payment or performance of all or any part of the Guaranteed Obligations; refuse
or fail to enforce all or any portion of the City's rights, powers or remedies under the
Franchise; and deal in all respects with Grantee as if this Guaranty were not in effect;
provided, however, the City shall not have the right by agreement with Grantee otherwise to
increase the Guaranteed Obligations without the Guarantor's prior written consent. It is the
intent of the parties that Guarantor shall remain liable for the payment and performance of the
Guaranteed Obligations and all other obligations guaranteed hereby, notwithstanding any act
or thing that might otherwise operate as a legal or equitable discharge of a surety, except as
specified in the proviso at the end of the preceding sentence.

4.2 Payments to Other Persons. The City shall be under no obligation to marshal
any assets in favor of Guarantor or against, or in payment or performance of, any or all of the
Guaranteed Obligations. If all or any part of any payment to or for the benefit of the City in
respect of the Guaranteed Obligations shall be invalidated, declared to be fraudulent or
preferential, set aside, or required for any reason to be repaid or paid over to a trustee,
receiver or other person (a "trustee") under any insolvency law or any other law or rule of
equity (collectively, "set aside"), to the extent of that payment or repayment, the Guaranteed

1 Obligations (or the part thereof) intended to have been satisfied shall be revived and
2 continued in full force and effect as if that payment had not been made, and Guarantor shall
3 be primarily and jointly and severally liable for that obligation, provided that nothing hereunder
4 shall preclude the Guarantor from obtaining a refund from a trustee.

5 4.3 Additional Rights. This Guaranty is in addition to, and not in substitution for or in
6 reduction of, any other guaranty by Guarantor or any obligation of Guarantor under any other
7 agreement or applicable Law that may now or hereafter exist in favor of the City. The liability
8 of Guarantor under this Guaranty shall not be contingent upon the enforcement of any lien or
9 realization upon the security, if any, the City may at any time possess with respect to the
10 Guaranteed Obligations.

11 4.4 Recourse. The City shall have the right to seek recourse against Guarantor to
12 the full extent provided for in this Guaranty, which right shall be absolute and shall not in any
13 way be impaired, deferred, or otherwise diminished by reason of any inability of the City to
14 claim any amount of such Guaranteed Obligation from Guarantor as a result of bankruptcy or
15 otherwise, including, but not limited to, any limitation on the City's claim from Guarantor under
16 section 502(b)(6) of the United States Bankruptcy Code, as amended (11 U.S.C. §502(b)(6)).
17 No election to proceed in one form of action or proceeding, or against any person, or on any
18 obligation, shall constitute a waiver of the City's right to proceed in any form of action or
19 proceeding or against other persons unless City has expressly waived that right in writing.

20 5. Representations and Warranties of Guarantor

21 5.1 Representations and Warranties. Guarantor represents, warrants and
22 covenants as follows:

23 (a) Valid Existence; Good Standing. Guarantor is a limited liability corporation duly
24 organized and validly existing under the laws of the State of Delaware. Guarantor has all
25 requisite power and authority to own its property and conduct its business as presently
conducted. Guarantor has made all filings and is in good standing in the State of California.

(b) Authority. Guarantor has all requisite power and authority to execute and deliver
this Guaranty and the agreements contemplated by this Guaranty and to carry out and
perform all of the terms and covenants of this Guaranty and the agreements contemplated by
this Guaranty.

(c) No Limitation on Ability to Perform. Neither the Guarantor's articles of
organization or operating agreement, nor the organization documents of any of the
Guarantor's members, nor any other agreement or Law in any way prohibits, limits or
otherwise affects the right or power of the Guarantor to enter into and perform all of the terms
and covenants of this Guaranty. Neither the Guarantor nor any of its members are party to or
bound by any contract, agreement, indenture, trust agreement, note, obligation or other
instrument which could prohibit, limit or otherwise affect the same. No consent, authorization
or approval of, or other action by, and no notice to or filing with, any governmental authority,
regulatory body or any other Person is required for the due execution, delivery and

1 performance by the Guarantor of this Guaranty or any of the terms and covenants contained
2 in this Guaranty. There are no pending or threatened suits or proceedings or undischarged
3 judgments affecting the Guarantor or any of its members before any court, governmental
agency, or arbitrator which might materially adversely affect the enforceability of this Guaranty
or the business, operations, assets or condition of the Guarantor or any of its members.

4 (d) Valid Execution. The execution and delivery of this Guaranty and the
5 agreements contemplated hereby by the Guarantor has been duly and validly authorized by
6 all necessary action. This Guaranty will be a legal, valid and binding obligation of the
7 Guarantor, enforceable against the Guarantor in accordance with its terms. The Guarantor
has provided to the City a written resolution of the Guarantor authorizing the execution of this
Guaranty and the agreements contemplated by this Guaranty.

8 (e) Defaults. The execution, delivery and performance of this Guaranty (i) do not
9 and will not violate or result in a violation of, contravene or conflict with, or constitute a default
10 under (A) any agreement, document or instrument to which the Guarantor or any member is a
11 party or by which the Guarantor's or any member's assets may be bound or affected, (B) any
12 law, statute, ordinance, regulation, or (C) the articles of organization or the operating
agreement of the Guarantor, and (ii) do not and will not result in the creation or imposition of
any lien or other encumbrance upon the assets of the Guarantor or its members.

13 (f) Meeting Financial Obligations. The Guarantor is meeting its current liabilities as
14 they mature; no federal or state tax liens have been filed against it; and the Guarantor is not in
15 default or claimed default under any agreement for borrowed money.

16 5.2 Independent Investigation. Guarantor has performed its own independent
17 investigation as to the matters covered by this Guaranty.

18 The representations and warranties in this Section shall survive any termination of this
19 Guaranty.

20 6. Termination of Guaranty

21 Guarantor's liability under this Guaranty shall be discharged and satisfied, and
22 Guarantor shall be relieved of any and all further obligations under this Guaranty, upon the
23 later of (a) Termination of the Franchise and (b) payment and performance in full of the
24 Guaranteed Obligations together with any and all other amounts payable by Guarantor under
25 this Guaranty (including any Reimbursement Amounts); provided, however, no such event
shall result in termination of this Guaranty unless and until the expiration of any further period
within which a trustee or other similar official in an action under any insolvency law may avoid,
rescind, or set aside any payment of any of the Guaranteed Obligations. Upon Guarantor's
request the City will confirm in writing the fact of termination of this Guaranty if this Guaranty
has terminated.

1 7. Notices

2 A notice or communication under this Guaranty by either party to the other shall be
3 sufficiently given or delivered if dispatched by hand or by certified mail, postage prepaid,
4 addressed as follows:

5 (a) In the case of a notice or communication to the City:

6 Department of Telecommunications and Information Services
7 875 Stevenson Street, 5th Floor
8 San Francisco, CA 94103
9 Attn: OVS Franchise Administrator

10 with a copy to:

11 San Francisco City Attorney's Office
12 City Hall, Room 234
13 San Francisco, CA 94102
14 Attn: Energy and Telecommunications Team Leader

15 (b) And in the case of a notice or communication sent to Guarantor:

16 WaveDivision Holdings, LLC
17 401 Kirkland Park Place, Suite 500
18 Kirkland, WA 98033
19 Attn.: Chief Executive Officer

20 with a copy to:

21 For the convenience of the parties, copies of notice may also be given by telefacsimile.
22 Every notice given to a party hereto, pursuant to the terms of this Guaranty, must state
23 (or must be accompanied by a cover letter that states) substantially the following:

24 (a) the Section of this Guaranty pursuant to which the notice is given and the
25 action or response required, if any;

 (b) if applicable, the period of time within which the recipient of the notice
 must respond thereto;

 (c) if a notice of a disapproval or an objection which requires
 reasonableness, shall specify with particularity the reasons therefor.

 Any mailing address or telefacsimile number may be changed at any time by
giving written notice of such change in the manner provided above at least ten (10) days prior
to the effective date of the change. All notices under this Guaranty shall be deemed given,
received, made or communicated on the date personal receipt actually occurs or, if mailed, on

1 the delivery date or attempted delivery date shown on the return receipt. A party may not give
2 official or binding notice by telefacsimile. The effective time of a notice shall not be affected
3 by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

3 8. General Provisions

4 8.1 Successors and Assigns. This Guaranty is binding upon and will inure to the
5 benefit of the successors and assigns of the City and the Guarantor, subject to the limitations
6 set forth in Section 8.11 below. Where the term "Guarantor," or "City" is used in this
7 Agreement, it means and includes their respective successors and assigns.

8 8.2 Amendments. Except as otherwise provided herein, this Guaranty may be
9 amended or modified only by a written instrument executed by the City and Guarantor.

10 8.3 Waivers. No action taken pursuant to this Guaranty by the City shall be deemed
11 to be a waiver by that party of the Guarantor's compliance with any of the provisions hereof.
12 No waiver by the City of any breach of any provision of this Guaranty shall be construed as a
13 waiver of any subsequent or different breach. No forbearance by the City to seek a remedy
14 for noncompliance hereunder or breach by the Guarantor shall be construed as a waiver of
15 any right or remedy with respect to such noncompliance or breach.

16 8.4 Continuation and Survival of Covenants. Subject to Section 6 above, all
17 covenants by Guarantor contained herein shall be deemed to be material and shall survive
18 any Termination of the Franchise or portion thereof if the obligations thereunder have arisen
19 and are not satisfied before such date.

20 8.5 Governing Law; Selection of Forum. This Guaranty shall be governed by and
21 construed in accordance with the laws of the State of California. As part of the consideration
22 for the Franchise, the Guarantor agrees that all actions or proceedings arising directly or
23 indirectly under this Guaranty may, at the sole option of City, be litigated in courts located
24 within the State of California, and the Guarantor expressly consents to the jurisdiction of any
25 such local, state or federal court, and consents that any service of process in such action or
proceeding may be made by personal service upon the Guarantor wherever the Guarantor
may then be located, or by certified or registered mail directed to the Guarantor at the address
set forth in this Guaranty for the delivery of notices.

8.6 Merger of Prior Agreements. The parties intend that this Guaranty (including all
of the attached exhibits and schedules, which are incorporated into this Guaranty by
reference) and the Franchise shall be the final expression of their agreement with respect to
the subject matter hereof and may not be contradicted by evidence of any prior or
contemporaneous oral or written agreements or understandings. The parties further intend
that this Guaranty shall constitute the complete and exclusive statement of its terms and that
no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes
therefrom) may be introduced in any judicial, administrative or other legal proceeding involving
this Guaranty.

8.7 Interpretation of Guaranty. The section and other headings of this Guaranty and
the table of contents are for convenience of reference only and shall not affect the meaning or
interpretation of any provision contained herein. Whenever the context so requires, the use of
the singular shall be deemed to include the plural and vice versa, and each gender reference

1 shall be deemed to include the other and the neuter. To the extent the recitals contained
2 herein are inconsistent with the operative provisions of this Guaranty, the operative provisions
3 shall control. This Guaranty has been negotiated at arm's length and between persons
4 sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has
5 been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of
6 law (including California Civil Code Section 1654) or legal decision that would require
7 interpretation of any ambiguities in this Guaranty against the party that has drafted it is not
8 applicable and is waived. The provisions of this Guaranty shall be interpreted in a reasonable
9 manner to effect the purposes of the parties and this Guaranty.

10 8.8 Attorneys' Fees and Costs. Should any party institute any action or proceeding
11 in court to enforce any provision hereof or for damages by reason of an alleged breach of any
12 provision of this Guaranty, the prevailing party shall be entitled to receive from the losing party
13 court costs or expenses incurred by the prevailing party including, without limitation, expert
14 witness fees and costs, travel time and associated costs; transcript preparation fees and
15 costs; document copying expenses; exhibit preparation costs; carrier expenses and postage
16 and communications expenses; such amount as a court or other decision maker may adjudge
17 to be reasonable attorneys' fees for the services rendered to the prevailing party in such
18 action or proceeding; fees and costs associated with execution upon any judgment or order;
19 and costs on appeal and any collection efforts (collectively, "Attorneys Fees and Costs"). For
20 purposes of this Guaranty, the reasonable fees of attorneys of the City 's office of the City
21 Attorney shall be based on the fees regularly charged by private attorneys with the equivalent
22 number of years of professional experience in the subject matter area of the law for which the
23 City Attorney's c services were rendered who practice in the City of San Francisco in law firms
24 with approximately the same number of attorneys as employed by the City Attorney's Office.

25 8.9 Severability. Invalidation of any provision of this Guaranty, or of its application
to any Person, by judgment or court order, shall not affect any other provision of this Guaranty
or its application to any other Person or circumstance, and the remaining portions of this
Guaranty shall continue in full force and effect, unless enforcement of this Guaranty as
invalidated would be unreasonable or grossly inequitable under all the circumstances or would
frustrate the purposes of this Guaranty.

8.10 Joint and Several Liability. In the event that Guarantor is comprised of more
than one Person, the obligations of Guarantor hereunder are joint and several.

8.11 Assignment. Guarantor may not assign its rights or obligations under this
Guaranty.

8.12 Counterparts. This Guaranty may be executed in two or more counterparts,
each of which shall be deemed an original, but all of which taken together shall constitute one
and the same instrument.

1 IN WITNESS WHEREOF, Guarantor, being duly authorized, has executed and
2 delivered this Guaranty as of the date first written above.

3 **GUARANTOR**

4 WAVEDIVISION HOLDINGS, LLC, a Washington limited liability corporation

5
6 By: _____
7 Name: _____
8 Title: _____

9 **ACCEPTED AND AGREED:**

10 THE CITY AND COUNTY OF SAN FRANCISCO, a municipal
11 corporation

12 By: _____
13 Name: _____
14 Title: _____

15 **APPROVED AS TO FORM:**

16
17 _____
18 Deputy City Attorney