

Ordinance No. 119295

Council Bill No. 112489

AN ORDINANCE related to cable television; authorizing the Mayor to approve the transfer of franchises held by Summit Communications, Inc. to Summit Cablevision LP, and the subsequent purchase of a controlling interest in Summit Cablevision LP by Millennium Digital Media Systems, L.L.C.

CF No. _____

| | |
|---|---|
| Date Introduced: <u>11-30-98</u> | |
| Date 1st Referred: <u>11-30-98</u> | To: (committee) <u>Public Safety</u> |
| Date Re - Referred: | To: (committee) <u>Health & Technology</u> |
| Date Re - Referred: | To: (committee) |
| Date of Final Passage: <u>12-14-98</u> | Full Council Vote: <u>9-0</u> |
| Date Presented to Mayor: <u>12-15-98</u> | Date Approved: <u>12-17-98</u> |
| Date Returned to City Clerk: <u>DEC 21 1998</u> | Date Published: <u>12-22-98</u> T.O. <u>✓</u> F.T. <u>✓</u> |
| Date Vetoed by Mayor: | Date Veto Published: |
| Date Passed Over Veto: | Veto Sustained: |

The City of Seattle - Legislative Department
Council Bill/Ordinance sponsored by: Pooler

Committee Action:

PSH & T Comm. 12/2/98 2-0 Pass w/o A
12-7-98 Full Council - Hold
12-14-98 Full Council: Passed As Am

This file is complete and ready for presentation to Full Council. Committee:

Law Department

Law Dept. Review

OMP
Review

City Clerk
Review

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The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Podimowski
Councilmember

Committee Action:

PS&T Comm. 12/2/98 2-0 Pass w/o Recommendation
12-7-98 Full Council - Hold 1 week
12-14-98 Full Council: Passed As Amended 9-0

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review

OMP
Review

City Clerk
Review

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Indexed

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author/tld
Document5
12/14/98
V #2

ORDINANCE 119295

AN ORDINANCE related to cable television; authorizing the Mayor to approve the transfer of franchises held by Summit Communications, Inc. to Summit Cablevision LP, and the subsequent purchase of a controlling interest in Summit Cablevision LP by Millennium Digital Media Systems, L.L.C.

WHEREAS, Summit Communications, Inc. provides cable service in Seattle to subscribers in the Central Cable Television Franchise District pursuant to Seattle City Ordinance No. 118361 (passed on November 4, 1996), and in the TCI-1 franchise area pursuant to Ordinance No. 117955 (passed on December 18, 1995) (collectively, the "Franchise Agreements"); and

WHEREAS, Summit has entered into a purchase and sale agreement with Millennium Digital Media Systems, L.L.C. ("Millennium"), dated July 2, 1998, providing for the transfer of all of the assets of the cable system, including all of the rights and obligations under the Franchise Agreements, to Summit Cablevision LP ("LP"), and further providing for the subsequent acquisition of all of Summit's interest in LP by Millennium; and

WHEREAS, under the Franchise Agreements, Summit must obtain the City's consent before it may transfer its Seattle cable assets to LP and Millennium; and

WHEREAS, Summit and Millennium, on September 9, 1998, filed with the City an FCC Form 394, requesting the City's consent to transfer its Seattle cable assets to LP and Millennium; and

WHEREAS, the City, through its Office of Cable Communications, pursuant to its authority under SMC Ch. 21.60 (the Cable Communications Ordinance), the Franchise Agreements and federal law has requested information from Summit and Millennium necessary to evaluate that request; and

WHEREAS, Summit and Millennium have supplied certain information as requested, via correspondence and attachments dated October 12, 1998, November 9, 1998, November 12, 1998 and November 16, 1998; and

WHEREAS, Millennium states that it is not seeking any modification of the terms and conditions of the Franchise Agreements in connection with this transfer; and

WHEREAS, Millennium and LP state their intent to comply fully with all franchise provisions and to meet or exceed all applicable federal, state and local operation requirements, including but not limited to those relating to rebuild and buildout requirements, customer service standards, Internet access, franchise fees, PEG obligations, and system's technical standards; and

WHEREAS, Millennium and Summit's policies regarding access to its cable communications system for the purpose of delivering high speed Internet services may be affected by the overall assessment of industry policies on this issue that is presently being conducted at the national and local levels; and

WHEREAS, Millennium has given evidence of financial responsibility, and its ability to comply with the relevant provisions of the Franchise Agreements and SMC 21.60; and

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Document5
12/14/98
V #2

1 WHEREAS, the proposed transfer is not contrary to the public interest; Now, Therefore,
2

3 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:
4

5 Section 1. The Mayor is authorized to approve the transfer of the franchises to operate a
6 cable system in the TCI-1 and Central District franchise areas from Summit Communications, Inc. to
7 Summit Cablevision LP, and the subsequent purchase of a controlling interest in LP by Millennium
8 Digital Media Systems, L.L.C., and the granting by LP and Millennium of security interests and liens
9 in their tangible and intangible property, including in all rights, powers and privileges under the
10 Franchise Agreements, for the purpose of financing the acquisition of equipment and the acquisition,
11 construction and operation of the cable system, subject to the following conditions.

12 a. Millennium and LP shall comply with all requirements of Seattle Municipal
13 Code 21.60, Franchise Ordinances Nos. 118361 and 117955, and all related applicable orders,
14 contracts, agreements, commitments, side letters and regulatory actions.

15 b. Millennium and LP shall take steps to ensure a continued local management
16 presence within King County by maintaining management level positions in network administration,
17 customer service and support, construction engineering, and high speed data services, and support
18 staff sufficient to fulfill all franchise responsibilities.

19 c. Millennium acknowledges that the issue of open access to its high speed cable
20 modem services by Internet and On-Line service providers is currently being assessed at the national
21 and local levels. To protect the City's role in that assessment, Millennium agrees that unreasonable
22 restrictions on open access to the cable system may, at the City's discretion, constitute an occurrence
23 that shall be grounds for the City to reopen the franchise agreements under Section 20 of the Franchise
24 Agreements, but only to the extent permitted under federal law.

25 d. Millennium agrees to assume responsibility for any and all non-compliance
26 under the Franchise Agreements that may now exist or may later be discovered to have existed during
27 the terms of the Franchise Agreements, even if prior to the closing of this transaction.

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12/14/98
V #2

1 e. Millennium agrees to comply fully with all franchise provisions and to meet
2 or exceed all applicable federal, state and local requirements, including but not limited to those
3 relating to franchise fees and taxes, rebuild and buildout requirements, customer service standards,
4 Internet access, PEG obligations, and the system technical standards.

5 f. Millennium agrees that within thirty days of the completion of this transfer, it
6 will submit an updated corporate organization chart identifying the roles of the current Summit
7 managers in the new Millennium organization.

8 Section 2. This consent to transfer granted under this ordinance shall not become
9 effective for any purpose unless and until Millennium accepts the conditions of this ordinance and
10 such acceptance is filed with the City Clerk and Office of Cable Communications. Such acceptance
11 shall be in writing, shall be in a form and substance approved by the City Attorney, and shall be and
12 operate as an acceptance of each and every term and condition and limitation contained in this
13 ordinance, SMC Ch. 21.60, or in the Franchise Agreements, or otherwise specified as provided in this
14 section.

15 Section 3. In the event that the transaction or transactions which are the subjects of this
16 ordinance do not close for any reason, or in the event that such transaction or transactions close on
17 terms substantially and materially different from the terms described in the FCC Form 394 and
18 subsequent information provided to the City by Summit and Millennium and relied upon by the City,
19 then the consent provided for in Section 2 shall be null and void.

20 Section 4. Any acts consistent with and prior to the effective date of this Ordinance are
21 hereby ratified and confirmed.

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author/tld
Document5
12/14/98
V #2

1 Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its
2 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
3 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
4

5 Passed by the City Council the 14th day of December, 1998, and signed by me in open
6 session in authentication of its passage this 14th day of December, 1998.

7 Barbara L.
8 President of the City Council

9
10 Approved by me this 17th day of December, 1998.

11 Paul Schell
12 Mayor
13

14
15 Filed by me this 17th day of December, 1998.

16 Chris Dambold
17 acting City Clerk
18

19
20 (Seal)

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City of Seattle

Paul Schell, Mayor

Executive Services Department

Dwight D. Dively, Director

MEMORANDUM

DATE: November 23, 1998

TO: Sue Donaldson, President
Seattle City Council

FROM: Dwight Dively, Director *DD*
Executive Services Department

SUBJECT: Ordinance Giving Consent to the Transfer of Summit Communications.

The attached ordinance will approve the transfer of Summit Communications, Inc. (Summit) to a newly created Limited Partnership, Summit Cablevision LP. All of the assets of Summit Cablevision LP will then be acquired by Millennium Digital Media Systems, L.L.C. (Millennium), which is a St. Louis-based investment group investing in cable properties. Summit is the Bellevue-based cable operator that provides cable service to downtown Seattle, the Central District, and parts of the TCI-1 franchise territory. Pursuant to Summit's Franchise Agreements with the City, and SMC 21.60 (the City's Cable Communications Ordinance), the City's consent is required before Summit's franchise agreements can be transferred.

Millennium's partners consist of executives and managers with considerable cable television experience, gained primarily through affiliations with Charter Communications (which has announced its pending acquisition by Paul Allen). Millennium states that it intends to retain most of Summit's management team, that it will abide by the terms and conditions of Summit's current Franchise Agreements, and that, except for an eventual name change, the transfer will likely be invisible to subscribers and franchise authorities. Millennium intends to increase revenues per subscriber by supplying enhanced services over the system, such as digital television and high speed Internet access.

The attached ordinance will have no fiscal impact on the City, as the new franchisee, Summit Cablevision LP, will be bound by all of the terms and conditions of the prior franchisee. This includes the current requirement to pay a net 2% of gross revenues to the City as a franchisee fee. While Millennium is a new venture, and therefore speculative, our analysis concludes that it has the financial and economic capability to meet Summit's obligations, including franchise obligations. While we believe Millennium's projections for increasing revenues are ambitious, they are in line with what other cable operators have been able to achieve.

600 Fourth Avenue, Room 103, Seattle, WA 98104-1891

Tel: (206) 684-0484, TDD: (206) 233-7810, Fax: (206) 684-8286, <http://www.ci.seattle.wa.us>

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Dively/Donaldson
Summit Transfer Ordinance
November 23, 1998
Page 2

Pursuant to SMC 21.60, the Office of Cable Communications has prepared a report analyzing the transfer in detail. The report focuses on Millennium's financial and managerial capabilities, and concludes that the City should give its consent to the transfer. Copies of the report will be made available to you shortly.

The attached ordinance commits the new parent company, Millennium, to honor all of Summit's franchise obligations, and to retain local management sufficient to meet those obligations. The ordinance also establishes access to high speed Internet services by non-affiliated Internet Service Providers and On-line Service Providers as an issue that the City has the authority to evaluate under current franchise reopener provisions. (This issue is currently of particular regulatory significance.) Under the ordinance, Millennium is obliged to state its adherence to the terms and conditions contained therein by giving its consent in writing to the City Clerk and the Office of Cable Communications.

We look forward to your positive consideration of this legislation. If you have questions, or would like an individual briefing on this matter, please contact Steve Holmes, Director of the Office of Cable Communications, at 386-0070.

cc: Steve Holmes, Cable Franchise Office

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Graham & James LLP/Riddell Williams P.S.

March 8, 1999

VIA HAND DELIVERY

Judith Pippin
Seattle City Clerk
600 Fourth Avenue Room 104
Seattle WA 98104-1892

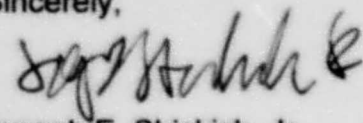
Re: Ordinance No. 119295/Acceptance by Millennium Digital Media Systems

Dear Ms. Pippin:

Pursuant to Ordinance No. 119295, Millennium hereby submits a copy of its acceptance letter to you for filing. Please conform the enclosed copy and return it to us.

With best personal regards.

Sincerely,


Joseph E. Shickich, Jr.
of
GRAHAM & JAMES LLP/RIDDELL WILLIAMS P.S.

JES/cc
Enclosure
cc: Kelvin R. Westbrook
Steve Holmes
Our File: 50800.00001

99 MAR 8 PM 1:45
CITY CLERK
The Pacific Northwest
Section of
Graham & James LLP
Seattle, WA
1000 Fourth Avenue, Suite 4000
Tel: (206) 474 3600
Fax: (206) 389 1708

Direct tel:
(206) 389 1772

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jshickich@gj.com

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Sacramento
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Seattle
Washington, DC
Beijing
Tokyo
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Milan

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March 4, 1999

Mr. Steve Holmes, Director
Office of Cable Communications
618 Second Avenue, 12th Floor
Seattle, WA 98104-2214

Re: Acceptance of Conditions of Ordinance No. 119295

Dear Mr. Holmes:

By this letter Millennium Digital Media Systems, L.L.C, hereby unconditionally accepts each and every term, condition, and limitation of the City of Seattle's approval of the transfer of franchises held by Summit Communications, Inc. to Summit Cablevision LP, and the subsequent purchase of a controlling interest in Summit Cablevision LP by Millennium Digital Media Systems, L.L.C., as set forth in Ordinance No. 119295. A copy of this letter is also being filed with the City Clerk as required by Section 2 of said Ordinance.

Sincerely yours,

Kelvin R. Westbrook
President & CEO

Graham & James LLP/Riddell Williams P.S.



March 8, 1999

VIA HAND DELIVERY

Judith Pippin
Seattle City Clerk
600 Fourth Avenue Room 104
Seattle WA 98104-1892

Re: Ordinance No. 119295/Acceptance by Millennium Digital Media Systems

Dear Ms. Pippin:

Earlier today, we hand delivered to your Office a similar letter lacking the copy referenced therein. Attached to this letter is the missing acceptance letter.

Pursuant to Ordinance No. 119295, Millennium hereby submits a copy of its acceptance letter to you for filing. Please conform the enclosed copy and return it to us.

With best personal regards.

Sincerely,

Joseph E. Shickich, Jr.
of
GRAHAM & JAMES LLP/RIDDELL WILLIAMS P.S.

JES/cc
Enclosure
Our File: 50800.00001

The Pacific Northwest
Practice of
Graham & James LLP
A California Registered
Limited Liability Partnership
Including Professional
Corporations

Attorneys

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CITY CLERK
89 MAR -8 PM 4:08

FILED
CITY OF SEATTLE



March 4, 1999

Mr. Steve Holmes, Director
Office of Cable Communications
618 Second Avenue, 12th Floor
Seattle, WA 98104-2214

Re: Acceptance of Conditions of Ordinance No. 119295

Dear Mr. Holmes:

By this letter Millennium Digital Media Systems, L.L.C, hereby unconditionally accepts each and every term, condition, and limitation of the City of Seattle's approval of the transfer of franchises held by Summit Communications, Inc. to Summit Cablevision LP, and the subsequent purchase of a controlling interest in Summit Cablevision LP by Millennium Digital Media Systems, L.L.C., as set forth in Ordinance No. 119295. A copy of this letter is also being filed with the City Clerk as required by Section 2 of said Ordinance.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Kelvin R. Westbrook', is written over a horizontal line.

Kelvin R. Westbrook
President & CEO

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ORDINANCE _____

AN ORDINANCE related to cable television; authorizing the Mayor to approve the transfer of franchises held by Summit Communications, Inc. to Summit Cablevision LP, and the subsequent purchase of a controlling interest in Summit Cablevision LP by Millennium Digital Media Systems, L.L.C.

WHEREAS, Summit Communications, Inc. provides cable service in Seattle to subscribers in the Central Cable Television Franchise District pursuant to Seattle City Ordinance No. 118361 (passed on November 4, 1996), and in the TCI-1 franchise area pursuant to Ordinance No. 117955 (passed on December 18, 1995) (collectively, the "Franchise Agreements"); and

WHEREAS, Summit has entered into a purchase and sale agreement with Millennium Digital Media Systems, L.L.C. ("Millennium"), dated July 2, 1998, providing for the transfer of all of the assets of the cable system, including all of the rights and obligations under the Franchise Agreements, to Summit Cablevision LP ("LP"), and further providing for the subsequent acquisition of all of Summit's interest in LP by Millennium; and

WHEREAS, under the Franchise Agreements, Summit must obtain the City's consent before it may transfer its Seattle cable assets to LP and Millennium; and

WHEREAS, Summit and Millennium, on September 9, 1998, filed with the City an FCC Form 394, requesting the City's consent to transfer its Seattle cable assets to LP and Millennium; and

WHEREAS, the City, through its Office of Cable Communications, pursuant to its authority under SMC Ch. 21.60 (the Cable Communications Ordinance), the Franchise Agreements and federal law has requested information from Summit and Millennium necessary to evaluate that request; and

WHEREAS, Summit and Millennium have supplied certain information as requested, via correspondence and attachments dated October 12, 1998, November 9, 1998, November 12, 1998 and November 16, 1998; and

WHEREAS, Millennium states that it is not seeking any modification of the terms and conditions of the Franchise Agreements in connection with this transfer; and

WHEREAS, Millennium and LP state their intent to comply fully with all franchise provisions and to meet or exceed all applicable federal, state and local operation requirements, including but not limited to those relating to rebuild and buildout requirements, customer service standards, Internet access, franchise fees, PEG obligations, and system's technical standards; and

WHEREAS, Millennium and Summit's policies regarding access to its cable communications system for the purpose of delivering high speed Internet services may be affected by the overall assessment of industry policies on this issue that is presently being conducted at the national and local levels; and

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1 WHEREAS, Millennium has given evidence of financial responsibility, and its ability to comply with the
2 relevant provisions of the Franchise Agreements and SMC 21.60; and

3 WHEREAS, the proposed transfer is not contrary to the public interest; Now, Therefore,

4 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

5
6 Section 1. The Mayor is authorized to approve the transfer of the franchises to operate a cable
7 system in the TCI-1 and Central District franchise areas from Summit Communications, Inc. to Summit
8 Cablevision LP, and the subsequent purchase of a controlling interest in LP by Millennium Digital Media
9 Systems, L.L.C., subject to the following conditions.

10 a. Millennium and LP shall comply with all requirements of Seattle Municipal
11 Code 21.60, Franchise Ordinances Nos. 118361 and 117955, and all related applicable orders, contracts,
12 agreements, commitments, side letters and regulatory actions.

13
14 b. Millennium and LP shall take steps to ensure a continued local management
15 presence within King County by maintaining management level positions in network administration,
16 customer service and support, construction engineering, and high speed data services, and support staff
17 sufficient to fulfill all franchise responsibilities.

18 c. Millennium acknowledges that the issue of open access to its high speed cable
19 modem services by Internet and On-Line service providers is currently being assessed at the national and
20 local levels. To protect the City's role in that assessment, Millennium agrees that restrictions on open
21 access to the cable system may, at the City's discretion, constitute an occurrence that shall be grounds for
22 the City to reopen the franchise agreements under Section 20 of the Franchise Agreements, but only to
23 the extent permitted under federal law.
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Holmes/lp
Summit Ord
November 23, 1998
Version 1

1 d. Millennium agrees to assume responsibility for any and all non-compliance
2 under the Franchise Agreements that may now exist or may later be discovered to have existed during the
3 terms of the Franchise Agreements, even if prior to the closing of this transaction.

4 e. Millennium agrees to comply fully with all franchise provisions and to meet or
5 exceed all applicable federal, state and local requirements, including but not limited to those relating to
6 franchise fees and taxes, rebuild and buildout requirements, customer service standards, Internet access,
7 PEG obligations, and the system technical standards.

8 f. Millennium agrees that within thirty days of the completion of this transfer, it
9 will submit an updated corporate organization chart identifying the roles of the current Summit managers
10 in the new Millennium organization.

12 Section 2. This consent to transfer granted under this ordinance shall not become effective
13 for any purpose unless and until Millennium accepts the conditions of this ordinance and such
14 acceptance is filed with the City Clerk and Office of Cable Communications. Such acceptance shall be
15 in writing, shall be in a form and substance approved by the City Attorney, and shall be and operate as an
16 acceptance of each and every term and condition and limitation contained in this ordinance, SMC Ch.
17 21.60, or in the Franchise Agreements, or otherwise specified as provided in this section.

19 Section 3. In the event that the transaction or transactions which are the subjects of this
20 ordinance do not close for any reason, or in the event that such transaction or transactions close on terms
21 substantially and materially different from the terms described in the FCC Form 394 and subsequent
22 information provided to the City by Summit and Millennium and relied upon by the City, then the
23 consent provided for in Section 2 shall be null and void.

24 Section 4. Any acts consistent with and prior to the effective date of this Ordinance are hereby
25 ratified and confirmed.
26
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Holmes/lp
Summit Ord
November 23, 1998
Version 1

1 Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its
2 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
3 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the ____ day of ____, 1998, and signed by me in open
5 session in authentication of its passage this ____ day of ____, 1998.

6 _____
7 President of the City Council

8
9 Approved by me this ____ day of ____, 1998.

10 _____
11 Mayor

12
13 Filed by me this ____ day of ____, 1998.

14 _____
15 City Clerk

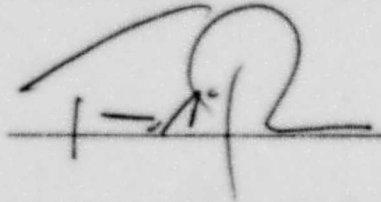
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FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO:

PRESIDENT'S SIGNATURE

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STATE OF WASHINGTON - KING COUNTY

100560
City of Seattle, City Clerk

—ss.

No. FULL ORDINAN

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 119295

was published on

12/24/98

The amount of the fee charged for the foregoing publication is the sum of \$, which amount has been paid in full.

Subscribed and sworn to before me on

12/28/98

Notary Public for the State of Washington,
residing in Seattle

Affidavit of Publication

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STATE OF WASHINGTON - KING COUNTY

100560
City of Seattle, City Clerk

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12/24/98

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12/28/98

Notary Public for the State of Washington,
residing in Seattle

Affidavit of Publication

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City of Seattle

ORDINANCE 118886

AN ORDINANCE related to cable television, authorizing the Mayor to approve the transfer of franchises held by Summit Communications, Inc. to Summit Cablevision LP, and the subsequent purchase of a controlling interest in Summit Cablevision LP by Millennium Digital Media Systems, L. L. C.

WHEREAS, Summit Communications, Inc. provides cable service in Seattle to subscribers in the Central Cable Television Franchise District pursuant to Seattle City Ordinance No. 111961 (passed on November 4, 1996), and in the TCI-1 franchise area pursuant to Ordinance No. 117965 (passed on December 18, 1995) (collectively, the "Franchise Agreements"); and

WHEREAS, Summit has entered into a purchase and sale agreement with Millennium Digital Media Systems, L. L. C. ("Millennium") dated July 2, 1998, providing for the transfer of all of the assets of the cable system, including all of the rights and obligations under the Franchise Agreements, to Summit Cablevision LP ("LP"), and further providing for the subsequent acquisition of all of Summit's interest in LP by Millennium; and

WHEREAS, under the Franchise Agreements, Summit must obtain the City's consent before it may transfer its Seattle cable assets to LP and Millennium; and

WHEREAS, Summit and Millennium, on September 9, 1998, filed with the City an FCC Form 394, requesting the City's consent to transfer its Seattle cable assets to LP and Millennium; and

WHEREAS, the City, through its Office of Cable Communications, pursuant to its authority under SMC Ch. 21.60 (the Cable Communications Ordinance), the Franchise Agreements and federal law has requested information from Summit and Millennium necessary to evaluate that request; and

WHEREAS, Summit and Millennium have supplied certain information as requested, via correspondence and attachments dated October 12, 1998, November 9, 1998, November 12, 1998 and November 18, 1998; and

WHEREAS, Millennium states that it is not seeking any modification of the terms and conditions of the Franchise Agreements in connection with this transfer; and

WHEREAS, Millennium and LP state their intent to comply fully with all franchise provisions and to meet or exceed all applicable federal, state and local operation requirements, including but not limited to those relating to channel and bandwidth requirements, service or service standards, internet access, franchise fees, FCC obligations, and system's technical standards; and

WHEREAS, Millennium and Summit's policies regarding access to its cable communications system for the purpose of delivering high speed internet services may be affected by the overall attainment of industry policies on this issue that is presently being conducted at the national and local levels; and

WHEREAS, Millennium has given evidence of financial responsibility, and its ability to comply with the relevant provisions of the Franchise Agreements and SMC 21.60; and

WHEREAS, the proposed transfer is not contrary to the public interest; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor is authorized to approve the transfer of the franchise to operate a cable system in the TCI-1 and Central District franchise areas from Summit Communications, Inc. to Summit Cablevision LP, and the subsequent purchase of a controlling interest in LP by Millennium Digital Media Systems, L. L. C., and the granting by LP and Millennium of security interests and liens in their tangible and intangible property, including in all rights, powers and privileges under the Franchise Agreements, for the purpose of financing the acquisition of equipment and the acquisition, construction and operation of the cable system, subject to the following conditions:

a. Millennium and LP shall comply with all requirements of Seattle City Ordinance 21.60, Franchise Ordinance No. 118886 and 117965, and all related applicable orders, contracts, agreements, amendments, side letters and regulatory actions.

b. Millennium and LP shall take steps to ensure a continuous level management presence with the City by ensuring that management level personnel is available for administration, customer service and support, construction engineering, and high speed data services, and support shall be sufficient to fulfill all franchise responsibilities.

c. Millennium acknowledges that the issue of open access to its high speed cable network services by internet and On-Line service providers is currently being addressed at the national and local levels. The City's role is that of an arbitrator. Millennium agrees that unreasonable restrictions on open access to the cable system may, at the City's discretion, constitute an emergency that shall be grounds for the City to reopen the franchise agreements under Section 18 of the Franchise Agreements, but only to the extent permitted under federal law.

d. Millennium agrees to assume responsibility for any and all non-compliance under the Franchise Agreements that may now exist or may later be discovered to have existed during the term of the Franchise Agreement, even if prior to the closing of this transaction.

e. Millennium agrees to comply fully with all franchise provisions and to meet or exceed all applicable federal, state and local requirements, including but not limited to those relating to franchise fees and taxes, rebuild and bandwidth requirements, customer service standards, internet access, FCC obligations, and the system technical standards.

f. Millennium agrees that within thirty days of the completion of this transfer, it will submit an updated corporate organization chart identifying the roles of the current Summit managers in the new Millennium organization.

Section 2. This consent to transfer granted under this ordinance shall not become effective for any purpose unless and until Millennium accepts the conditions of this ordinance and such acceptance is filed with the City Clerk and Office of Cable Communications. Such acceptance shall be in writing, shall be in a form and substance approved by the City Attorney, and shall be and operate as an acceptance of each and every term and condition and limitation contained in this ordinance, SMC Ch. 21.60, or in the Franchise Agreements, or otherwise specified as provided in this section.

Section 3. In the event that the transaction or transactions which are the subject of this ordinance do not close for any reason, or in the event that such transaction or transactions close on terms substantially and materially different from the terms described in the FCC Form 394 and subsequent information provided to the City by Summit and Millennium and relied upon by the City, then the consent provided for in Section 2 shall be null and void.

Section 4. Any acts consistent with and prior to the effective date of this Ordinance are hereby ratified and confirmed.

Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 14th day of December, 1998, and signed by me in

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WHEREAS, Summit has entered into a purchase and sale agreement with Millennium Digital Media Systems, L. L. C. ("Millennium") dated July 2, 1998, providing for the transfer of all of the assets of the cable system, including all of the rights and obligations under the Franchise Agreements, to Summit Cablevision LP ("LP"), and further providing for the subsequent acquisition of all of Summit's interest in LP by Millennium; and

WHEREAS, under the Franchise Agreements, Summit must obtain the City's consent before it may transfer its Seattle cable assets to LP and Millennium; and

WHEREAS, Summit and Millennium, on September 9, 1998, filed with the City an FCC Form 354, requesting the City's consent to transfer its Seattle cable assets to LP and Millennium; and

WHEREAS, the City, through its Office of Cable Communications, pursuant to its authority under SMC Ch. 21.60 (the Cable Communications Ordinance), the Franchise Agreements and federal law has requested information from Summit and Millennium necessary to evaluate that request; and

WHEREAS, Summit and Millennium have supplied certain information as requested, via correspondence and attachments dated October 12, 1998, November 9, 1998, November 13, 1998 and November 18, 1998; and

WHEREAS, Millennium states that it is not seeking any modification of the terms and conditions of the Franchise Agreements in connection with this transfer; and

WHEREAS, Millennium and LP state their intent to comply fully with all franchise provisions and to meet or exceed all applicable federal, state and local operation requirements, including but not limited to those relating to rebuild and buildout requirements, customer service standards, Internet access, franchise fees, PEG obligations, and system's technical standards; and

WHEREAS, Millennium and Summit's policies regarding access to its cable communications system for the purpose of delivering high speed Internet services may be affected by the overall assessment of industry policies on this issue that is presently being conducted at the national and local levels; and

WHEREAS, Millennium has given evidence of financial responsibility, and its ability to comply with the relevant provisions of the Franchise Agreements and SMC 21.60; and

WHEREAS, the proposed transfer is not contrary to the public interest; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor is authorized to approve the transfer of the franchise to operate a cable system in the TCU-1 and Central District franchise areas from Summit Cablevision, Inc. to Summit Cablevision LP, and the subsequent purchase of a controlling interest in LP by Millennium Digital Media Systems, L. L. C., and the granting by LP and Millennium of access to its cable system and its facilities and equipment to other cable operators, subject to the following conditions:

a. Millennium and LP shall comply with all requirements of the Cable Communications Ordinance, SMC Ch. 21.60, and the Franchise Agreements, including but not limited to those relating to rebuild and buildout requirements, customer service standards, Internet access, franchise fees, PEG obligations, and system's technical standards.

b. Millennium and LP shall take steps to ensure a continued level of service to existing customers and to meet or exceed all applicable federal, state and local operation requirements, including but not limited to those relating to rebuild and buildout requirements, customer service standards, Internet access, franchise fees, PEG obligations, and system's technical standards.

c. Millennium acknowledges that the City's role in the cable system is to provide a public utility service to the community. Millennium agrees that the City's role in the cable system may, at the City's discretion, constitute an emergency that shall be grounds for the City to rescind the Franchise Agreements under Section 20 of the Franchise Agreements, but only to the extent permitted under federal law.

d. Millennium agrees to assume responsibility for any and all non-compliance under the Franchise Agreements that may now exist or may later be discovered to have existed during the term of the Franchise Agreement, even if prior to a closing of this transaction.

e. Millennium agrees to comply fully with all franchise provisions and to meet or exceed all applicable federal, state and local requirements, including but not limited to those relating to rebuild and buildout requirements, customer service standards, Internet access, franchise fees, PEG obligations, and system's technical standards.

f. Millennium agrees that within thirty days of the completion of this transfer, it will submit an updated corporate organization chart identifying the roles of the current Summit managers in the new Millennium organization.

Section 2. This consent to transfer granted under this ordinance shall not become effective for any purpose unless and until Millennium submits the resolution of this ordinance and such acceptance to the City Clerk and Office of Cable Communications. Such acceptance shall be in writing, shall be in a form and substance approved by the City Attorney, and shall be and operate as an acceptance of all and every term and condition and limitation contained in this ordinance, SMC Ch. 21.60, or in the Franchise Agreements, or otherwise specified as provided in this section.

Section 3. In the event that the transaction or transactions which are the subject of this ordinance do not close for any reason, or in the event that such transaction or transactions close on terms substantially different from the terms described in the FCC Form 354 and subsequent information provided to the City by Summit and Millennium and relied upon by the City, then the consent provided for in Section 2 shall be null and void.

Section 4. Any acts consistent with and prior to the effective date of this Ordinance are hereby ratified and confirmed.

Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 14th day of December, 1998, and signed by me in open session in authentication of its passage this 14th day of December, 1998.

SUE DONALDSON,
President of the City Council.
Approved by me this 17th day of December, 1998.

PAUL SCHELL,
Mayor
Filed by me this 17th day of December, 1998.

(Seal) ERIN DANFELD,
Acting City Clerk.
Publication ordered by JUDITH PIPPIN,
City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, December 24, 1998.
12/24(100500)

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