

Ordinance No. 122179

Council Bill No. 115623

AN ORDINANCE related to cable television; authorizing the Mayor to approve the transfer of control, subject to conditions, of the franchises held by Millennium Digital Media Systems, L.L.C. to a new entity, WaveDivision V, L.L.C.; and authorizing the Chief Technology Officer to execute an Assignment of Cable Franchise Consent Agreement for the purpose of implementing and administering the transfer.

CF No. _____

Date Introduced:	JUL 10 2006	
Date 1st Referred:	JUL 10 2006	To: (committee) Energy and Technology
Date Re - Referred:		To: (committee)
Date Re - Referred:		To: (committee)
Date of Final Passage:	7-31-06	Full Council Vote: 9-0
Date Presented to Mayor:	8-1-06	Date Approved:
Date Returned to City Clerk:	8/10/06	Date Published: <i>4/10/06</i> T.O. <input checked="" type="checkbox"/> F.T. <input checked="" type="checkbox"/>
Date Vetoed by Mayor:		Date Veto Published:
Date Passed Over Veto:		Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

Returned Unsigned
by Mayor

Councilmember

Committee Action:

7/26/06 DO PASS JG, RD, NL

7-31-06 Passed 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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ORDINANCE

122179

AN ORDINANCE related to cable television; authorizing the Mayor to approve the transfer of control, subject to conditions, of the franchises held by Millennium Digital Media Systems, L.L.C. to a new entity, WaveDivision V, L.L.C.; and authorizing the Chief Technology Officer to execute an Assignment of Cable Franchise Consent Agreement for the purpose of implementing and administering the transfer.

WHEREAS, Millennium Digital Media Systems, L.L.C. ("Millennium") provides cable services in the City of Seattle ("City") pursuant to nonexclusive franchise agreements authorized by Ordinance 117955 and Ordinance 118361, as amended, and transferred from Summit Communications, Inc. to Millennium by Ordinance 119295 (collectively, the "Franchises"); and

WHEREAS, on February 8, 2006, Millennium and WaveDivision Holdings, L.L.C., a Delaware limited liability company ("WaveDivision"), entered into a Unit Purchase Agreement whereby Millennium agreed to sell to WaveDivision the cable system assets within the City that Millennium owns and operates pursuant to the Franchises; and

WHEREAS, the proposed transfer of Millennium's Seattle Franchises and cable system assets to Wave involves a two-step transfer with the ultimate owner of the Franchises and cable system assets being a new limited liability company, WaveDivision V, L.L.C. ("WaveV"), a Washington limited liability company (to be formed within 5 days prior to the Unit Purchase Agreement closing date), which will be wholly owned by WaveDivision; and

WHEREAS, pursuant to Section 14 of the Franchises, and SMC 21.60.520, the Franchises may not be transferred without prior consent of the City; and

WHEREAS, pursuant to 47 U.S.C. § 537, the City has 120 days to act upon a request for approval of a transfer after receipt of a completed application unless an agreement is reached to extend the date; and

WHEREAS, Millennium and WaveDivision filed an FCC Form 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise with the City ("Application") on February 10, 2006; and

WHEREAS, the City, through its Office of Cable Communications ("OCC"), pursuant to its authority under SMC 21.60.520, the Franchises, and federal law, had requested additional information from Millennium and WaveDivision necessary to evaluate the Application, and following receipt of such information, the OCC deemed the Application complete on April 10, 2006; and



1 WHEREAS, the City has received from Millennium and WaveDivision information sufficient
2 to make a determination regarding the Application; and

3 WHEREAS, WaveDivision is not seeking any modification of the terms and conditions of the
4 current Franchises in connection with the transfer and has agreed to comply fully with
5 all Franchise provisions and to meet or exceed all applicable and lawful federal, state,
6 and local requirements including, but not limited to, those relating to franchise fees,
7 customer service, and technical standards; and

8 WHEREAS, WaveDivision has given evidence of financial responsibility and its ability to
9 comply with the Franchises and SMC Chapter 21.60; and

10 WHEREAS, the proposed transfer is not contrary to public interest or federal, state, or local law;
11 and

12 WHEREAS, WaveDivison and WaveV have agreed to enter into an Assignment of Cable
13 Franchise Consent Agreement (Exhibit A) with the City which requires them to comply
14 with the terms of the Franchises, among other things, and to otherwise continue to
15 operate the cable system in a manner that benefits the citizens of the City; NOW
16 THEREFORE

17 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

18 Section 1. The Mayor is authorized to approve the transfer of control of the cable
19 franchises of Millennium Digital Media, L.L.C. ("Millennium"), including the franchises
20 authorized under Ordinances 117955 and 118361, as amended, and transferred from Summit
21 Communications to Millennium by Ordinance 119295, to WaveDivision V, L.L.C. ("WaveV")
22 subject to the terms and conditions contained in Exhibit A attached hereto.

23 Section 2. The Chief Technology Officer is authorized to execute the Assignment of
24 Cable Franchise Consent Agreement in substantially the form attached to this ordinance as
25 Exhibit A ("Consent Agreement"), and to take such further action as may be necessary to
26 implement the Consent Agreement.

27 Section 3. In the event that the transaction or transactions which are the subjects of this
28 ordinance do not close for any reason; or in the event that such transaction or transactions close



1 on terms substantially or materially different from the terms described in the FCC Form 394
2 and from subsequent information provided to the City by Millennium, WaveDivision Holdings,
3 L.L.C. ("WaveDivision") and WaveV that is relied upon by the City; or WaveDivision and
4 WaveV do not accept and comply with each and every condition of the transfer of control
5 required of them respectively as set forth in the Consent Agreement; then the consent provided
6 for in Section 1 shall be null and void, and the City shall be deemed to have disapproved the
7 transfer under the Franchise and federal law, and all remedies under Sections 14.2 and 19.1 of
8 the Franchise shall be available to the City. A signed Consent Agreement, substantially in the
9 same form as Exhibit A to this ordinance, shall be filed by WaveDivision and WaveV with the
10 City Clerk and the Office of Cable Communications within ten (10) days of the Mayor's
11 signature on this ordinance.
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1 Section 4. Any acts consistent with and prior to the effective date of this ordinance are
2 hereby ratified and confirmed.

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

6 Passed by the City Council the 3rd day of July, 2006, and signed by me in open
7 session in authentication of its passage this 3rd day of July, 2006.
8

9
10
11 
12 President of the City Council

13 Approved by me this ____ day of _____, 2006.

14 **Returned Unsigned**
15 **by Mayor**

16 _____
17 Gregory J. Nickels, Mayor

18 Filed by me this 10th day of August, 2006.

19
20 
21 City Clerk

22 (Seal)

23 Exhibit A: Assignment of Cable Franchise Consent Agreement between the City of Seattle
24 and WaveDivision Holdings, L.L.C and WaveDivision V, L.L.C.
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**Legislative Department
Office of City Clerk
Memorandum**

Date: August 16, 2006
To: Councilmembers
From: Judith E. Pippin, City Clerk
Subject: Mayor's Return of Council Bill No. 115623, Unsigned
(*Transfer of franchise services from Millennium Digital to WaveDivision*)

On ^{Aug. 10} ~~July 31~~, 2006, Mayor Nickels returned Council Bill No. 115623, relating to the transfer of franchise services from Millennium Digital to WaveDivision, to this office without his signature of approval.

The Mayor did not provide a letter of explanation, but there is indication that his reason for not signing is related to the cancellation of the purchase and transfer agreement between the two cable companies. (Contact Councilmember Godden's office if you have questions regarding the cable companies' actions)

The absence of the Mayor's signature indicates neither his approval nor disapproval of the Council Bill, as addressed in Seattle Municipal Code 1.04.020 and City Charter Article IV, Section 12.

A Bill returned by the Mayor unsigned is considered "approved" for purposes of the Bill becoming an Ordinance, and therefore law, within the City of Seattle.

This Ordinance now becomes effective 30 days from the date it was returned by the Mayor, however given that it is an Ordinance authorizing the Mayor to approve the transfer of cable services, and there is no transfer to occur, this Ordinance will seemingly have no effect.

No further action on the part of Council is required.



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

June 20, 2006

Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Licata:

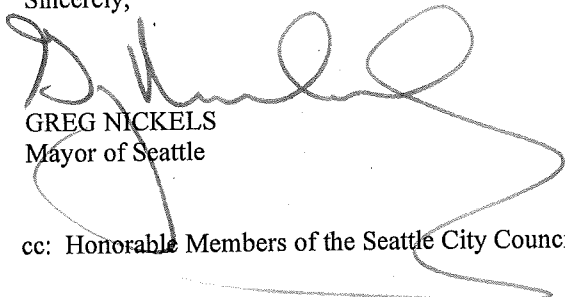
I am transmitting the attached proposed Council Bill that approves the transfer of the cable franchises of Millennium Digital Media, L.L.C. ("Millennium") to a new Washington limited liability company, WaveDivision V, L.L.C., also known as Wave Broadband ("Wave"). The Bill also authorizes the Chief Technology Officer to enter into an Assignment of Cable Franchise Consent Agreement ("Consent Agreement") with Wave. Wave has stated that within the next 12 months, it expects to make available a lower priced cable service tier and to upgrade the cable system to offer video on demand and improved service quality. Wave will also partner with the City in providing technology access to underprivileged Seattle residents through the City's Community Technology Program.

Millennium holds two franchise agreements to provide cable television services in Seattle's Central Cable Television Franchise District (Central District and Beacon Hill), Cable Franchise District One (parts of Capitol Hill and Queen Anne); and the Central Business Franchise District (downtown Seattle), collectively, the "Franchises." Millennium is proposing to transfer its Franchises and cable system assets within the City to Wave. Pursuant to SMC 21.60.520, Millennium must request the City's consent for the transfer, and the City may not unreasonably deny the transfer. Federal law requires the City to act within 120 days of a completed application (in this case, by August 8th) unless an agreement is reached to extend the date, or consent by the City is implied.

The Office of Cable Communications has conducted a legal, financial, and technical review of the transfer and has resolved certain outstanding compliance issues regarding Millennium's cable system. Based on this review, the attached Council Bill and Consent Agreement include certain conditions to ensure that Wave abides by the terms and conditions of the Franchises. I recommend that the City grant Millennium's transfer request, subject to the terms and conditions contained in the proposed Council Bill and Consent Agreement.

Thank you for your consideration of this legislation. Should you have questions, please contact Tony Perez at 386-0070 or Janet Jensen at 386-0031.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

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EXHIBIT A.
ASSIGNMENT OF CABLE FRANCHISES
CONSENT AGREEMENT

This Agreement is entered into effective as of the Effective Date (as defined in Recital D below), by and among WaveDivision V, L.L.C., a Washington limited liability company ("WaveV"), WaveDivision Holdings, L.L.C., a Delaware limited liability company ("WaveDivision") and the City of Seattle, a Washington municipal corporation ("City").

RECITALS

A. The City and Millennium Digital Media Systems, L.L.C. ("Millennium") are parties to cable franchises authorized under Ordinances 117955 and 118361, as amended, and as transferred to Millennium under Ordinance 119295 (collectively, the "Franchises"), whereby the City granted cable television franchises to Millennium to construct, maintain and operate a cable television system in certain cable franchise districts in Seattle.

B. On February 8, 2006, Millennium (and its affiliates) and WaveDivision entered into a Unit Purchase Agreement ("Unit Purchase Agreement") whereby Millennium agreed to contribute the cable system facilities and other assets within the City that Millennium owns and operates pursuant to the Franchises (the "Cable System") to WaveV, a limited liability company that will be formed by and initially owned by Millennium, and immediately after such contribution Millennium shall sell to WaveDivision all of the membership interests of WaveV.

C. Section 14 of the Franchises and Subsection 21.60.520 of the Seattle Municipal Code provide that neither a cable franchise nor a cable system operated thereunder may be transferred to another person without the approval of the City. The transactions described in the Unit Purchase Agreement each constitute a "Transfer" as that term is defined in the Franchises.

D. On February 10, 2006, Millennium and WaveDivision submitted an application (the "Application") for the City's consent to the transfer of the Franchises from Millennium to WaveV and the sale of all of the membership interests of WaveV from Millennium to WaveDivision (the transfer and sale are referred to herein collectively as the "Assignment" and the date on which the Assignment is consummated is referred to herein as the "Effective Date"). Following the receipt of the additional information, the City deemed the Application complete on April 10, 2006.

E. On _____, 2006, the Seattle City Council adopted the ordinance introduced as Council Bill _____ (Ordinance _____) conditionally approving the Assignment subject to execution of this Agreement by WaveV and WaveDivision.

In consideration of the approval of the Assignment and the terms and conditions of this Agreement, the parties hereto agree as follows:



AGREEMENTS

1. Consent. Subject to the terms and conditions of this Agreement, City consents to the Assignment as specified in the Application. The parties agree that the City acted on the Application in a timely manner under federal law. This Agreement shall be null and void if a duly authorized officer or agent of WaveV fails to deliver the notice required pursuant to Section 4.8 in a timely manner.

2. Reservation of Rights. The City reserves all rights not expressly granted in this Agreement. In particular, and without limitation:

2.1. Neither this Agreement, nor any other action or omission by the City at or before the execution of this Agreement, shall be construed to grant the City's consent to any future transfer of the Franchises or the cable system, and/or change in ownership and/or control of WaveV or WaveDivision, or to mean that the City's consent to any future transaction that is required by the Franchises is otherwise not required.

2.2. As a result of the Assignment, the City waives none of its rights with respect to Millennium's compliance with the terms, conditions, requirements and obligations set forth in the Franchises and Title 21, Chapter 21.60, of the Seattle Municipal Code (the "Franchise Documents"), including the City's right to compel Millennium or its successors in interest to comply with the provisions of the Franchise Documents. The City's approval of the Application shall in no way be deemed a representation by the City that Millennium or its successors in interest are in compliance with all of its obligations under the Franchise Documents; provided however, the City will look initially to WaveV and WaveDivision for full performance of all the obligations under the Franchise Documents from and after the Effective Date.

3. Compliance with Franchise.

3.1 As of the Effective Date, WaveV hereby accepts, acknowledges, and agrees to be bound by all terms and conditions of the Franchise Documents and to assume all current and future commitments, duties, liabilities and obligations of Millennium thereunder. Each of the parties hereto further agrees that neither the Assignment nor the City's consent thereto shall diminish or otherwise effect Millennium's or WaveV's commitments, duties, liabilities and obligations embodied in the Franchise Documents except as may be expressly provided herein.

3.2. As of the Effective Date, WaveV agrees to comply with all provisions of the Franchises and all applicable provisions of the City's Municipal Code and federal and state law, to the maximum extent required by law.

3.3. As of the Effective Date, WaveDivision agrees that it shall cause the Grantee (as defined by SMC Chapter 21.60) to fully comply with all of the terms and conditions set forth in the Franchise Documents and this Agreement, including, but not limited to, the provision of books and records as required by the Franchise Documents and federal and state



law, regardless of whether those books and records are maintained by WaveV, WaveDivision or an affiliate.

3.4. WaveV agrees that neither the Assignment nor the City's approval of the Application shall in any respect relieve the Grantee of responsibility for past acts or omissions, known or unknown. The City hereby confirms to WaveV and WaveDivision that to the best of its knowledge the only defaults, deficiencies or breaches of the Franchises are described in Section 3.7. Notwithstanding the foregoing, due to the number and type of violations found during the preliminary technical audit discussed in Section 3.7, the City believes that there are more widespread technical violations relating to the cable system and will proceed with conducting a more comprehensive technical audit of the cable system as part of the transfer process.

3.5 WaveV, while it or its affiliates hold the Franchises, agrees to provide monthly Internet service at no cost to (i) those community technology sites required under the Franchises and which are otherwise set to expire as of December 31, 2006, and (ii) such other community technology sites mutually agreed to in writing by the City and WaveV; provided the number of other community technology sites designated pursuant to clause (ii) hereof shall not exceed fifty (50) different locations and WaveV shall not unreasonably disagree regarding sites proposed by the City to be served. Complimentary Internet service shall consist of (i) a line extension to the building; (ii) one drop to a room specified by the organization; (iii) technical and customer service support to ensure the service and equipment is in working order; and (iv) static IP addresses as requested. Complimentary Internet service shall be installed and activated within 30 days of a request from the City unless an alternative schedule is mutually agreed upon. In addition, WaveV agrees to engage in good faith discussions with the City regarding the provision of technology training support / classes at City-sponsored community technology sites; provided that any support to be contributed by WaveV shall be only as mutually agreed in writing by WaveV and the City.

3.6 WaveV, while it or their affiliates hold the Franchises, agrees to continue to provide a discount on cable services and related equipment to subscribers with low incomes as required by the Franchises and Ordinance 121458. WaveV acknowledges that cable service discounts will be one element of negotiations during the franchise renewal process for the Franchises that are due to expire in 2008.

3.7 The City has discovered as a result of the spot testing recently performed by Columbia Telecommunications Corporation ("Columbia"), a copy of which test results are attached hereto as Attachment I, that the Cable System does not meet certain technical qualifications as required under the Franchises and federal law and the City has formally notified Millennium of the technical and other outstanding violations in a Notice from the City to Millennium dated May 22, 2006. The City understands that the correction of these technical and other deficiencies may not be completed prior to the Effective Date and, accordingly, the City specifically (i) reserves the right to compel Millennium or its successors in interest to correct franchise violations including the technical deficiencies identified by Columbia and the City as described in the Notice from the City to Millennium dated May 22, 2006, and (ii) requires that WaveV implement a sweep of the cable system immediately following the Effective Date to



uncover any technical or safety violations under applicable federal or local laws and regulations and to take appropriate corrective action. In addition, WaveV shall reimburse the City for one-half of the reasonable cost and expense, including all outside legal and testing costs, related (i) to the additional testing of the technical facets of the Cable System by Columbia or other qualified technical review specialists and (ii) to the re-testing of the technical facets of the Cable System which were found to be deficient as of the date hereof or are found to be deficient at a later date; provided that WaveV's reimbursement obligation for such services shall not exceed \$25,000. WaveV's failure to correct the technical deficiencies or take corrective action as outlined above shall be considered a material breach of its Franchises subject to the remedies provided therein.

4. Guaranty.

4.1. Obligations Guaranteed. In consideration of the City's approval of the Assignment, WaveDivision hereby absolutely, irrevocably and unconditionally guarantees the full and faithful performance by WaveV of all of the terms, covenants, conditions and agreements contained in the Franchises and this Agreement subject to Applicable Law. For purposes of this Agreement, "Applicable Law" shall mean any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order which has been issued, executed, entered and deemed applicable to City, either specifically or by reference to a class including City, by any court of competent jurisdiction or other federal or state department, commission, board or agency.

4.2. Representations and Warranties. WaveV and WaveDivision hereby represent and warrant that:

A. WaveDivision has investigated fully whether any benefit or advance will inure to WaveDivision by reason of the execution of this Agreement, and has determined that a direct or indirect benefit will inure to WaveDivision by reason of the execution of this Agreement.

B. This Agreement is a legal, valid and binding agreement of WaveV and WaveDivision that is enforceable in accordance with its terms.

C. The Franchises are legal, valid and binding and enforceable against WaveV in accordance with their terms, subject to Applicable Law.

D. The financial statements of WaveDivision for the twelve months ended December 31, 2004 and the nine month period ended September 30, 2005, heretofore delivered to the City are true and correct in all material respects, and fairly present the financial position or results of operations, as the case may be, for the periods or as of the dates indicated on such statements, and no material adverse change has occurred in the financial condition of WaveDivision since the date thereof.

E. WaveV and WaveDivision each has the full right, power and authority to execute and deliver this Agreement, and to perform the undertakings contained herein and the transactions contemplated hereby, and all corporate or other action necessary to authorize the execution and



delivery of this Agreement, and the performance of the undertakings contained herein and the transactions contemplated hereby, have been taken.

F. No approval, consent, exemption or other action, or notice to or filing with, any governmental or public body or authority is required in connection with the execution, delivery, performance and enforcement of this Agreement.

4.3. Authority of the City and/or WaveV. WaveDivision hereby agrees that subject only to the provisions of the Franchises which have been agreed to by WaveV, the City and WaveV may in such manner, upon such terms and at such times as the City and WaveV mutually agree and deem best and without notice to WaveDivision (a) alter, modify, compromise, accelerate, extend or change the time or manner for the performance of any obligation hereby guaranteed, or otherwise change any term of the Franchises or (b) add any one or more guarantors or endorser. Unless in a writing signed by the City and WaveDivision, no exercise or nonexercise by the City of any right given it by this Agreement, no dealing by the City with WaveV or any other guarantor, endorser or any other person, and no change, impairment, release or suspension of any right or remedy of the City shall in any way affect any of the obligations of WaveDivision hereunder. If the City has now exculpated or hereafter exculpates WaveV from liability in whole or in part other than in a writing signed by WaveV and/or WaveDivision, such exculpation and agreement shall not affect the obligations of WaveDivision under this Agreement, it being understood that WaveDivision's obligations hereunder are independent of the obligations of WaveV and are to be construed as if no such exculpation or agreement had been given to WaveV by the City. WaveDivision further acknowledges and agrees that if any such exculpation or agreement has been given by the City in a writing signed by WaveV, the City has done so in reliance upon the agreements of WaveDivision expressed herein. In any action by the City to enforce this Agreement against WaveDivision, WaveDivision shall bear the burden of establishing the existence and terms of such a written exculpation of WaveV and/or WaveDivision by the City.

4.4 Waivers by WaveDivision. WaveDivision hereby expressly waives and relinquishes any and all defenses to enforcement of this Agreement including without limitation (a) any right to require the City, as a condition precedent or concurrent to enforcement of this Agreement, to proceed against WaveV or any other person or to pursue any other right or remedy in the City's power before proceeding against WaveDivision; (b) notice of the acceptance of this Agreement by any person; (c) demand, notice of default or nonpayment, presentment, protest, and all other notices of any kind to which WaveDivision might otherwise be entitled in connection with this Agreement, including, but not limited to, notice of the existence, creation or incurring of any new or additional obligations or of any action or nonaction on the part of WaveV; (d) any defense based upon an election of remedies by the City or any other act, actions, or failure to act by or on behalf of the City which destroys or otherwise impairs the subrogation rights of WaveDivision or the right of WaveDivision to proceed against WaveV for reimbursement, or both, including any defense available to WaveDivision to a deficiency judgment arising from the destruction of WaveDivision's subrogation rights; (e) any defense based upon any statute or rule of law which provides that an offer of performance exonerates a surety; (f) any defense arising because of the City's election, in any proceeding instituted under the federal Bankruptcy Code, or the Application or Section 1111(b)(2) of the federal Bankruptcy Code of 1978, as amended; and



(g) any defense under Section 364 of the federal Bankruptcy Code of 1978, as amended, it being agreed by WaveDivision that the failure of the City to exercise any rights or remedies it has or may have against WaveV shall in no way impair the obligation of such Agreement and that the liability of WaveDivision hereunder is and shall be direct and unconditional.

4.5. Independent Investigation by WaveDivision. WaveDivision understands and agrees that WaveDivision is fully responsible for being and keeping informed of the financial condition of WaveV and of all circumstances bearing on the risk of nonperformance of any obligations hereby guaranteed.

4.6. Remedies Cumulative. Except as expressly provided, all rights, power and remedies of the City hereunder shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to the City by law. This guaranty is in addition to and exclusive of the guaranty of any other guarantor of any obligations of WaveV to the City.

4.7. Actions. The obligations of WaveDivision hereunder are independent obligations of WaveDivision and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against WaveDivision, whether or not WaveV is joined therein or a separate action or actions are brought against WaveV. The City may maintain successive actions for other defaults. This Agreement may be enforced by an action against WaveDivision, without the necessity of joining in such action any other WaveDivision obligations guaranteed hereby. The City's rights hereunder shall not be exhausted by exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations the performance of which are hereby guaranteed, have been fully performed.

4.8 Notice Regarding Closing. Within five (5) business days of the Effective Date, WaveV or WaveDivision (if WaveV is not currently in existence) shall notify the City of the pending consummation of the Assignment. At such time, all of the pre-conditions and requirements of this Agreement, if and to the extent such requirements as provided herein or in related Assignment documents are to be executed, met or completed prior to the Effective Date, shall be executed, met or completed.

4.9 Certificate of Authority for WaveV. Within five (5) business days of the filing of the WaveV Certificate of Formation with the Washington Secretary of State, WaveV or WaveDivision shall notify the City by providing the City with a Washington Certificate of Existence/Authorization for WaveV.

4.10 Reimbursement for Out of Pocket Expenses. WaveV hereby agrees to reimburse the City for all reasonable out of pocket expenses incurred by the City, including all costs incurred by the City for outside consultants, related to the Assignment.

5. **Renewal.** Except as specifically provided herein, this Agreement shall not have any effect on the City's authority to enforce the Franchise Documents. Further, this Agreement shall not have any effect on any authority the City may have to review, conditionally approve or deny the renewal of the franchises granted to WaveV. The City expressly reserves its rights to



conduct a complete renewal proceeding pursuant to 47 U.S.C. § 546, including but not limited to, conducting a complete review of WaveV's compliance with, and performance under, the Franchises and any other obligation WaveV may have under federal or local law, beginning from the Effective Date through the end of each Franchise term, March 8, 2008, and including, without limitation, any Franchise term extensions thereto up to and including during the franchise renewal process, and to conditionally approve or deny a renewal based on any such failure, noncompliance or violations.

6. Rates. WaveV and WaveDivision agree that the Assignment will not result in an increase in the rate for basic cable service. Nothing shall prohibit rate increases made in the ordinary course of business in compliance with local, state and federal law that are not caused by the Assignment. WaveV and WaveDivision agree that it will not rely upon an increase in debt service or in debt service coverage, if any, that results from the Assignment to justify an increase in rates for regulated cable services.

7. PEG Access Financial Support. WaveV acknowledges that financial support for public, education and government (PEG) channels will be one element of negotiations during the franchise renewal process for the Franchises that are due to expire in 2008.

8. Local Office. As a condition of this Agreement, WaveV agrees to maintain one local office as required by SMC 21.60.820; it being understood and agreed that WaveV's assumption of the pay station agreement (or a successor agreement approved by the City) between the City and Millennium shall serve as an acceptable substitute for a local office.

9. Representations and Warranties. WaveDivision and WaveV acknowledge and agree that the City's consent to the Assignment is made in reliance upon the written information provided by WaveDivision and WaveV, including but not limited to the Form 394 and supplemental information. WaveDivision and WaveV represent and warrant that the foregoing information and representations are true and accurate, and omit no material information the absence of which would cause the information provided to be materially misleading. WaveDivision and WaveV also represent and warrant that WaveV, upon the consummation of the Assignment, will be a wholly-owned subsidiary of WaveDivision and that at the time of execution of this Agreement each such entity is duly organized, validly existing and in good standing under the laws of the states in which they were formed, and that they are qualified to do business within the State of Washington.

10. Franchise Fee Review. WaveV agrees that it will properly calculate and remit to the City the franchise fees in accordance with the Franchises. WaveV also agrees that, absent written notice to the contrary from WaveV, the City will not have to set the franchise fee credit annually by ordinance, as required by Subsection 11.2 of the Franchises, unless it wishes to alter the franchise fee credit from the credit established by ordinance in 2006.

11. Enforcement. Any violation of this Agreement shall be deemed a violation of the Franchises subject to the remedies provided in the Seattle Municipal Code as well as other remedies provided by law or in equity. Any action to interpret or enforce any provision in this Agreement, the Franchises or the Seattle Municipal Code may only be brought in a court of



competent jurisdiction in Washington, and the parties agree to be subject to the jurisdiction of Washington state and federal courts for such purposes. This Agreement shall be governed by the law of the State of Washington.

12. Authority. Each of the persons executing this Agreement certifies that they are authorized by the respective party to execute this Agreement and to bind that party.

13. Notices. All notices required or permitted under the Franchise Documents shall be delivered in the manner provided in Section 21.8 of the Franchises, except that the address for the "Grantee" thereunder is hereby changed to the following:

WaveDivision V, LLC
Attn: Steve Weed and Jim Penney
401 Kirkland Park Place, Suite 410
Kirkland, WA 98033

14. Insurance. Prior to the earlier of the Effective Date or the commencement of any activity whatsoever relating to the operation of the Cable System, WaveV shall provide the City with certificates of insurance and original endorsements evidencing the insurance coverage below in accordance with Section 12.2 of the Franchises and Attachment II to this Agreement.

15. Security Fund. In lieu of the security fund required under Section 12.4(A) of the Franchises, WaveV shall provide and maintain a bond, a cash security deposit, or an irrevocable letter of credit upon execution of this Agreement, in the amount of One Hundred Thousand Dollars (\$100,000) to guarantee performance of Franchise obligations, of which no less than \$10,000 shall be in the form of a cash security deposit or letter of credit.

16. Effect on Franchise. This Agreement shall have no effect on the Franchises except as specifically provided in this Agreement.

17. Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute an agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

18. Binding Agreement. This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns. This Agreement shall be effective only upon the execution of this Agreement by all parties hereto. Any purported assignment of this Agreement is void without the express written consent of the parties hereto.

19. Reliance on Own Judgment. Each of the parties represents that in executing this Agreement it relied solely on its own judgment, belief and knowledge, and upon the advice and recommendations of its own independently selected counsel, concerning the nature, extent and duration of its rights and claims, and that it has not been influenced in executing this Agreement by any of the other parties hereto or by any person representing them. This Agreement shall not



be deemed to have been drafted by any individual party and shall not thereby be construed against any party.

20. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the matters addressed herein. This Agreement may only be modified by written amendments signed by all parties.

[Remainder of Page Blank; Signature Page Follows.]



[Signature Page.]

Dated: _____

CITY OF SEATTLE

BY: _____
William Schrier, Chief Technology Officer

Dated: _____

WAVEDIVISION HOLDINGS, LLC

BY: _____
Steven B. Weed, CEO

Dated: _____

WAVEDIVISION V, LLC

BY: _____
Steven B. Weed, CEO



ATTACHMENT I.

Technical Audit Report of Columbia Telecommunications Corporation



**Preliminary Technical Evaluation of the
Millennium Cable System
Serving
Seattle, Washington**

May 22, 2006
Version 2



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I. EXECUTIVE SUMMARY

Columbia Telecommunications Corporation ("CTC") conducted an initial inspection of the franchise area served by Millennium Digital Media (MDM) in the City of Seattle, Washington on April 18, 2006. This report provides an overview of our preliminary findings regarding the headend facility, electrical testing of the system at the headend and one test point, and inspection of a small portion of the physical plant in the area surrounding the test point.

The initial inspection was limited to a four to five-hour period due to prior scheduling conflicts within the Millennium technical organization and CTC staff availability. The Millennium staff was present and cooperated fully in the inspection process.

1.1 Adequacy of the Overall Picture Quality

At the headend and the one test point, all of the analog cable channels were inspected for picture quality using a television receiver. Quantitative measurements were made on 11 selected channels to measure the carrier-to-noise of the channels. The FCC has established that a carrier-to-noise ratio of 43 dB be maintained as the minimum acceptable value on analog video channels. Of the eleven channels measured, only channel 29 (Public Access) failed to meet the minimum acceptable value. On channel 29, the measured value of the carrier-to-noise was only 41.7 dB at the headend. The average value of carrier-to-noise measured for all eleven channels was 51.6 dB. Section 7.6 of the City's Franchise Agreement with Millennium requires the operator to meet or exceed the FCC technical standards.

At the time of our testing the system did not provide the required minimum 43 dB carrier-to-noise required for all channels under the FCC rules. There are a number of factors that might play into this specific deficiency: 1) the signal at the source or program material might have had high noise content, 2) the transmission network from the source to the headend could be introducing the noise, and/or 3) there may be deficiencies at the headend. We recommend that the Millennium technical staff track the source of the noise and perform necessary repair or adjustments.

1.2 Cable Network Physical Plant

In addition to the system testing, CTC inspected the physical cable plant occupying public and private rights-of-ways within several blocks of the test point. With regard to the limited area inspected on the utility poles, we found the cable plant to be in generally acceptable condition in relationship to other cable systems that we have inspected, and more specifically, with relationship to the other utilities serving the City. There were no obvious problems identified, such as hanging cables, or missing cable guy guards. However, we did find that there is a significant number of problems with regard to the subscriber drop cables inspected.

We inspected a total of 16 accessible subscriber drop cables in order to determine their compliance with prevailing electrical codes. Section 9.1 (A) of the Franchise Agreement requires the operator's construction practices to be in compliance with the National Electric Code (NEC) and the National Electrical Safety Code (NESC). Of this limited sample, we found that half of the



drops were not compliant with the current electrical code. Additional details of these violations are provided in Section 4.2.1.

II. SYSTEM DESCRIPTION AND OPERATION

The cable television system in Seattle is one of several systems operated in King County and other nearby counties. This headend includes equipment to receive, process, and monitor signals for transmission to subscribers.

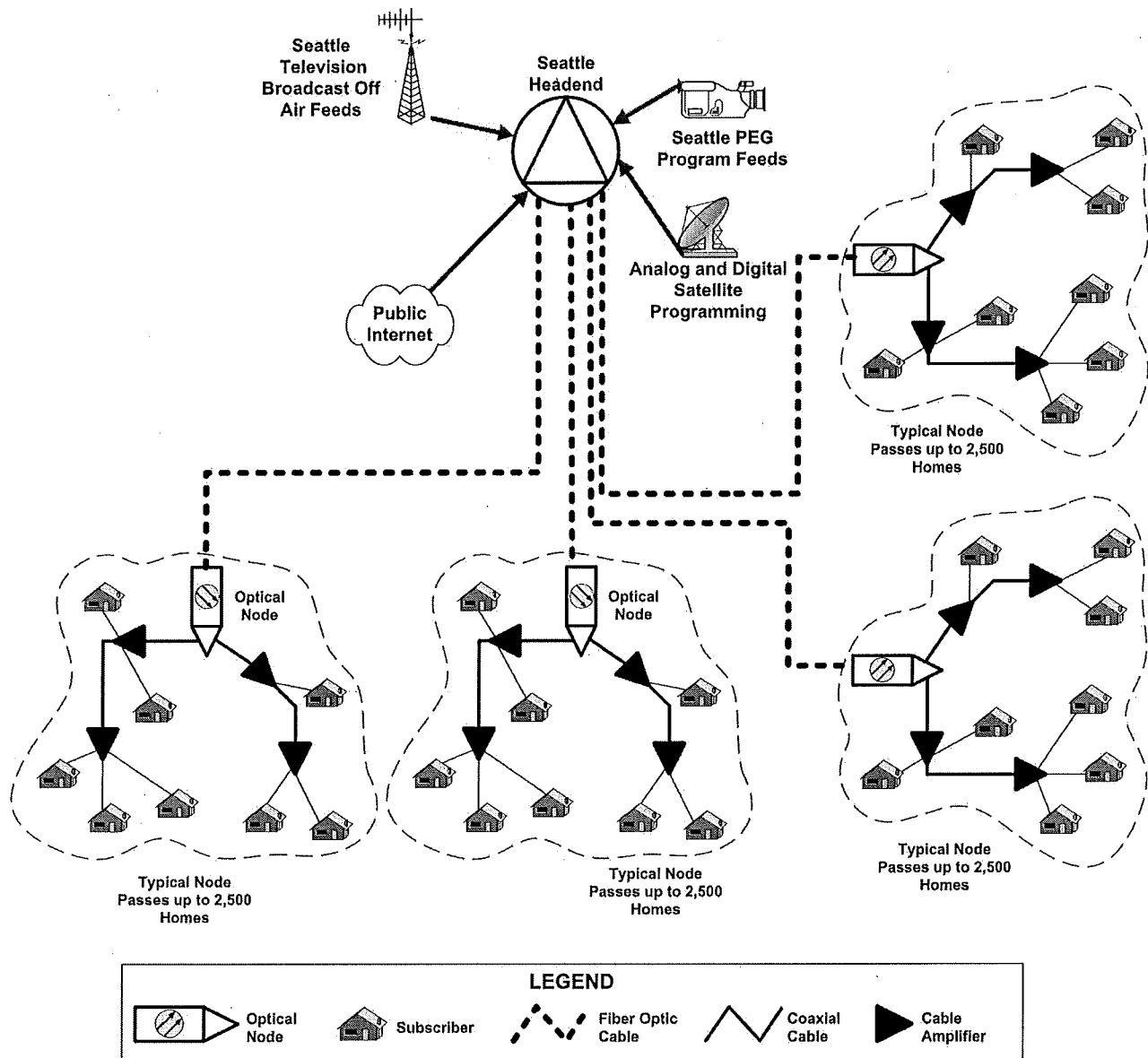
The system offers many of the analog and digital television channels, pay-per-view channels, high-definition television, and high-speed data services provided on all cable systems. New technologies, such as video on demand (VOD), are centrally controlled. Digital Video Recorders (DVR) are not currently supported by this system.

2.1 Headend

The headend facility serves as the network control for the cable system. A system overview diagram for the network is provided in Figure 1.



Figure 1: Seattle Cable System Configuration



We found the headend facility to have very limited space. Much of the analog video processing equipment is dated and will need to be upgraded or replaced. The system still employs antiquated HRC technology which offsets the assignment of channels to reduce distortion. This technology was used in older, all coaxial cable networks that required long amplifier cascades. The new hybrid systems using a mix of fiber optic cable and coaxial cable no longer require the HRC distortion reduction technology.

All modulators, signal processors, fiber interface, cable control, and other associated equipment is mounted in telecommunications equipment racks.

Figure 2: Analog Channel Signal Processing Equipment

The facility is centrally air-conditioned and temperature regulated to maintain electronic equipment at the desired operating temperature independent of outside weather conditions.

A stand-alone back-up generator has been installed in the headend building that automatically goes into operation in the event of failure of the commercial power. The uninterruptible power supply maintains continuous operation of critical equipment in the network during the transmission phase between commercial power operation and the back-up generator.

2.2 Distribution System

The plant distribution system is hybrid fiber-coaxial cable with fiber optic nodes and a maximum amplifier cascade of seven, plus the optical node. This is an acceptable cascade length under the requirements of the Franchise Agreement. However, it is a long cascade when compared with systems that have been recently rebuilt. Typically, we would be looking at a maximum cascade length of 5 amplifiers in a newer system. The architecture is a standard design for cable systems upgraded in the past few years (see Figure 1 in Section 2.1). It is our understanding that there are 2,500 or less residential dwelling units passed by the cable plant of each individual fiber optic node. The upper system bandwidth is 750 MHz providing 700 MHz downstream transmission

capacity. The upgraded network has unassigned bandwidth that can support additional services in the future. The power supplies for the optical nodes are backed-up with batteries that are capable of operating the system in the absence of external primary power for 3 to 4 hours. Depending on the network loading, the battery back-up system installed may not be adequate to satisfactorily address the Franchise requirement under Section 7.6 (B) for 4 hours of back-up power.

The power supplies do not have a remote status monitoring system which allows the system managers to remotely monitor the battery charge level and to alert the operators when power supplies are operating in the stand-by mode. This remote monitoring or management capability is required in the Franchise Agreement under Section 7.6 (D).

2.3 Subscriber Channels

The MDM Seattle system provides 84 analog channels, 54 digital audio channels, and more than 200 digital channels.

At the time of our inspection, Millennium reported the following subscriber base in Seattle:

Total dwelling units passed	42,931
Video service subscribers	12,278
Digital tier subscribers	7,705
High Speed Data	5,397

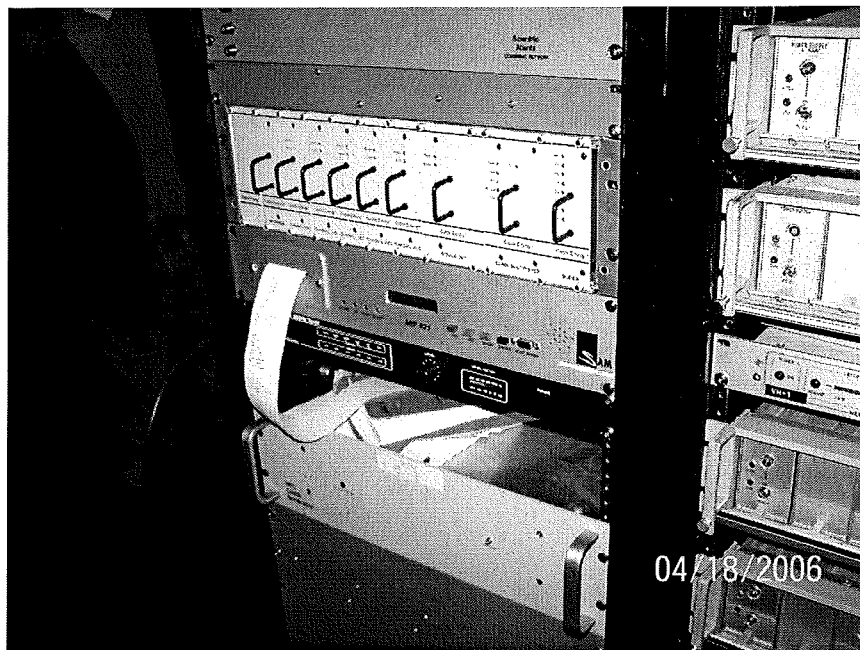
2.4 Emergency Alert System

The nationwide Emergency Alert System ("EAS") enables authorized government authorities to override the programming on a cable system to provide emergency information to subscribers. The minimum requirements for EAS system operation are outlined in the FCC rules and regulations. These regulations detail a testing procedure and the documentation required.

The Seattle Millennium system uses the SAM 921 system (see Figure 3). A screen message is displayed on all analog and digital channels, except for local off-air channels, which requested that the cable operator not override its channels.

The SAM system provides an EAS message on all analog channels. The digital subscriber set-top converters are automatically force-tuned to an analog channel to view the EAS message. The EAS equipment is programmed to forward only weather, state primary, state, local, federal, and required test alerts to the subscriber.



Figure 3: Emergency Alert System Equipment

The cable operator is required to maintain records documenting the FCC-required EAS testing results as well as recent copies of the FCC technical performance tests in a Public Reference file that is available for review by the general public.

Section 7.8 (E) of the Franchise Agreement requires that MDM install an EAS system that allows the City to override the system to communicate to all cable subscribers in time of emergency. MDM technical staff claim that the SAM unit meets this requirement. No test was made during this inspection period; however, this requirement will be examined in more detail in the next phase of our inspection activities.

2.5 Public, Educational, and Government Channels

The Millennium headend receives programming provided by the PEG programmers on dedicated fiber optic transmission links. The following PEG programming is carried on the system:

- Channel 8: KCTS –PBS Educational
- Channel 21: Government Channel
- Channel 27: University of Washington -Educational
- Channel 29: Public Access
- Channel 32: Seattle Community College – Educational
- Channel 27: University of Washington (2) -Educational
- Channel 75: SPS – Educational

MDM does not carry the KCTS plus channel on the Seattle system. They do carry the channel on their King County system, however. We recommend that the channel be added to the basic channel line-up since it appears to be required under the terms of the Franchise Agreement.

2.6 Cable Modem Service

Millennium provides cable modem service throughout the Franchise area. Nearly half of the cable video subscribers also subscribe to the MDM high speed cable modem service.



III. PERFORMANCE TESTING

The FCC requires semi-annual Proof-of-Performance ("proof") tests to verify the system meets the FCC's minimum technical standards. The tests must be performed once in the winter and once in the summer. The testing procedures presume that a sample of measurements taken for a number of channels at a number of locations across the system will be representative of the system as a whole. However, the operator is required to have all channels meet the FCC minimum technical requirements. The number of channels and locations to be tested is determined using an FCC formula based on the number of subscribers and the cable system design. Appendix B of this report provides full details on the FCC's testing requirements.

Signal amplitude level tests and subject monitoring tests were performed and recorded for all analog channels. Further, the FCC requires cable operators to perform a more detailed signal quality testing on a select number of analog video channels to provide a quantitative measurement of the system performance.

In cooperation with Millennium technical staff, CTC performed a subset of the FCC proof tests at the headend and at one location in the City of Seattle. The headend tests were first made to confirm that the signals assembled at the headend were properly received and processed prior to transmission on the system, and that they were all adjusted to the same audio and video carrier levels. Each of the analog and a few selected digital channels were examined. Starting with the basic tier, we examined each channel for picture quality.

A second set of tests were performed at one of the test points that Millennium uses to conduct the FCC tests. This test point used was located at 706 26th Avenue South in Seattle.

A Stealth signal level meter model SDA4040D supplied by CTC, and a television receiver and spectrum analyzer provided by Millennium was used to conduct tests of the signal level, carrier-to-noise, hum, and subjective picture viewing tests at the sites. The detailed test results are provided in Appendix A.

Overall, the visual testing and quantitative measurements support that the system was operating properly at all test points. Measurements were made with regular programming to minimize subscriber inconvenience. All measured parameters were well within the FCC's specification with the exception of the carrier-to-noise measurement on channel 29, the Public Access Channel.



IV. PHYSICAL PLANT INSPECTION

A physical inspection of the cable plant, which included both underground and aerial construction, was conducted in the area around the proof test sites. The inspection concentrated on an examination of the quality of the plant construction, appearance, and compliance with national construction standards.

4.1 Physical Plant Standards

There are two primary national construction standards cited with which the cable system must comply.

The first standard, the National Electrical Safety Code ("NESC") published by the Institute of Electrical and Electronics Engineers, Inc., 2002, is the primary guide to construction of the cable system in the public rights-of-way. The NESC is a national code designed to provide standards and work rules to protect persons against hazards from the installation, maintenance, and operation of electrical systems and communications lines.

The second standard is the National Electrical Code ("NEC") published by the National Fire Protection Association, Inc., 2002. This national code establishes rules for the safe installation of electrical conductors and equipment.

During our inspection of the cable plant in the areas around the test points and the drop inspection, we did not find any infractions on the utility poles relating to these codes. The following sections address the categories for violations of physical plant construction that we look for in the public rights-of way.

4.1.1 *Bonding and Grounding*

We inspect bonding and grounding according to NEC and NESC and industry standards for the safety of workers on the aerial and underground cables and at subscriber homes and equipment. Grounding protects against injury from lightning and surges of excessive electrical current on the system.

Grounding is required for electrified system components at specified locations along the plant itself. This is accomplished by bonding the cable plant and equipment to the common neutral ground of the other utilities on the poles. Alternatively, when there is no other ground, the cable system is directly grounded with a ground rod at the site where grounding is required. Bonding creates "the permanent joining of metallic parts to form an electrically conductive path that ensures electrical continuity and the capacity to conduct safely any current likely to be imposed" (NEC ART. 100). The authorities for reporting these kinds of violations may be found in the following:

- NEC, Rules 820-33, 820-40; and
- NESC, §092C, §093D, §215, and §239.



No grounding or bonding violations were found on utility poles during our inspection.

4.1.2 Lashing

In aerial portions of the cable system, the cables are attached to steel cables or "strand" that is bolted to the poles. A strong thin lashing wire is wrapped around both the cable and strand to secure the cable to its supporting strand. This practice places the weight of the cable on the strand rather than on the cable itself.

Improper lashing can result in undue stress on the cable and connectors, potentially causing signal quality problems. If the lashing wire breaks and unravels, it usually causes the cable to fall from its supporting strand toward the ground, thereby reducing clearances over streets, driveways, or sidewalks and presenting hazards to vehicular and pedestrian traffic.

No loose or broken lashing wires were observed during the inspection.

4.1.3 Construction

The construction category addresses the manner in which the cable system is built. Poor construction practices are evident in such violations as bolts of improper length, which if too long create hazards for personnel climbing the poles, or if too short fail to secure the cables to the poles (NESC §217A4). Other violations in this category include missing bolts, strand that is not attached to poles, strand that does not have the proper tension, cable supports and spacers that are missing or improperly installed, and equipment that is improper for the system.

No construction violations were observed in the inspected areas.

4.1.4 Clearances

Clearances of the cables from the ground, streets and sidewalks, and other utilities are specified in national codes such as the NESC §23 and Tables 232 and 234. All cables on the utility poles and underground should be placed in a manner to avoid contact with one another. The codes establish acceptable distances between power, telephone, and other communications lines placed on the same poles and in the same area in the public rights-of-way or public utility easements.

Proper distance between cable television lines and other utility cables provides a level of safety for all workers on the poles. The clearance distances from power lines and streets and sidewalks are established to permit safe and unhindered access to cables on the poles and to avoid obstructions to vehicular traffic and pedestrians passing under the cables.

No violations were observed in the inspected areas.



4.1.5 Guying and anchoring

In aerial construction, guy wires are necessary to provide additional support to the utility pole where the weight of cables on the poles is greater than can be safely supported by the poles alone. Guy wires are required not only for poles that support a large number of cables, but also for poles supporting very long spans of cable, and on corners or at the end-of-lines where there is also additional weight on the poles.

Missing or improperly installed guy wires can create a public safety hazard because of a greater potential for pole failure under stress from high winds, accidents, or pole degradation over time.

The steel cables used to guy the poles must be properly bolted to the poles and anchored in the ground at prescribed tensions. At ground level, the guy wire itself is required to be covered with a plastic "guard" to alert passersby to the presence of the wire and protect pedestrians from accidental injury.

The requirements for guy wire violations are documented in NESC Rules 261B, 261C, 261D, and 264.

No violations in this category were observed in the inspected areas.

4.2 Subscriber Drop-Related Violations

"Drops" are the wires that connect the subscriber homes to the cable system on the street. Under the NEC, drops are required to meet specific construction standards for attachment to the homes. These standards have requirements for attachment to the residence, clearance from the ground or depth of buried cable, and grounding to protect against shock, equipment damage, and fire hazards. Drop violations include drops from aerial plant down a utility pole to an underground service connection not being secured to the pole and which may become inadvertently snagged and disconnected.

Safety is a significant concern in installation and maintenance of drops. For example, a common operator practice is to place a temporary unburied drop to a home serviced by underground plant. This can also occur when the ground is frozen or snow covered and cable cannot be buried at the time of installation. This may be acceptable for a few days, if properly guarded or marked, but when left exposed for weeks it is not only an annoyance to subscribers but presents a safety hazard in the public rights-of-way. These situations are also reported as violations. Standards for drop installation and maintenance are governed by generally accepted industry practices and by the NEC §250 and §820.

4.2.1 Drop Grounding

With regard to subscriber drop cables that connect subscriber residences to the cable system, we found a significant number of cable drops that were not compliant with the current electrical code. Table 1 provides a tabulation of the findings of our inspection at 16 locations.



Table 1
Summary of Cable Drop Inspection results

Address	Field Notes	Compliant
706 26 th Avenue S	Ground OK	Yes
710 26 th Avenue S	Ground OK	Yes
714 26 th Avenue S	Ground OK	Yes
718 26 th Avenue S	Ground OK	Yes
724 26 th Avenue S	Grounded to water pipe	No
732 26 th Avenue S	Ground OK	Yes
733 26 th Avenue S	Not grounded	No
729 26 th Avenue S	Ground OK	Yes
725 26 th Avenue S	Ground OK	Yes
719 26 th Avenue S	Grounded to ground rod	No
515 26 th Avenue S	Grounded to ground rod	No
513 26 th Avenue S	Grounded to ground rod	No
509 26 th Avenue S	Not grounded	No
512 26 th Avenue S	Ground OK – needs to be cleaned up	Yes (loose wires)
528 26 th Avenue S	Not grounded	No
530 26 th Avenue S	Not grounded	No

Only one-half of the subscriber drop installations examined in our limited sample area were fully compliant with the current provisions in the electrical codes. Figure 4 is a photograph of one of the fully compliant installations observed.



**Figure 4: A Fully-Compliant Cable Drop Installation
(Only 50% of drops inspected were compliant)**



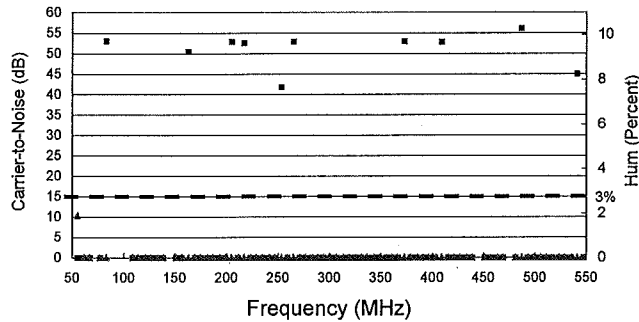
Q:\Seattle, WA\Seattle Preliminary Evaluation report_v2_052306.doc

Appendix A
Performance Test Results

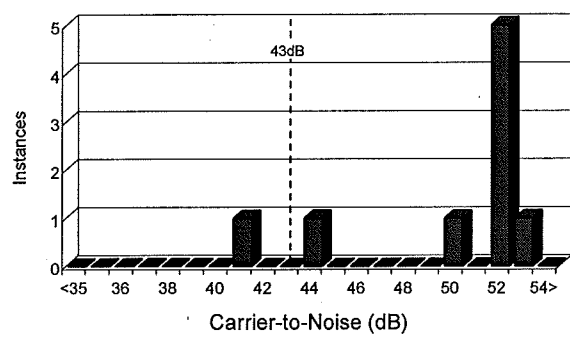


Seattle Headend 04/18/06

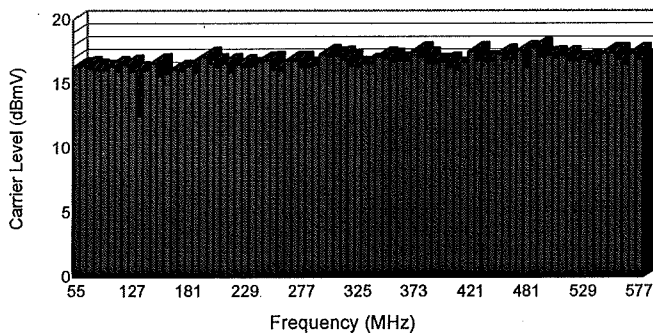
CARRIER-TO-NOISE AND HUM PERFORMANCE



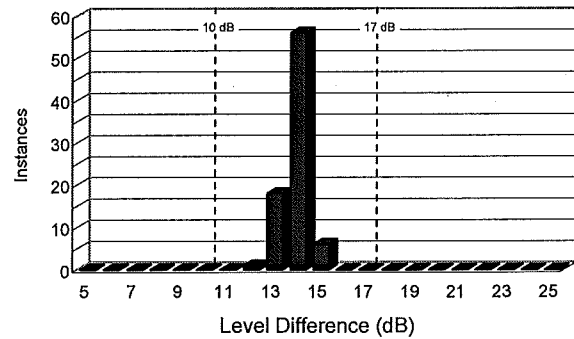
C/N PERFORMANCE DISTRIBUTION



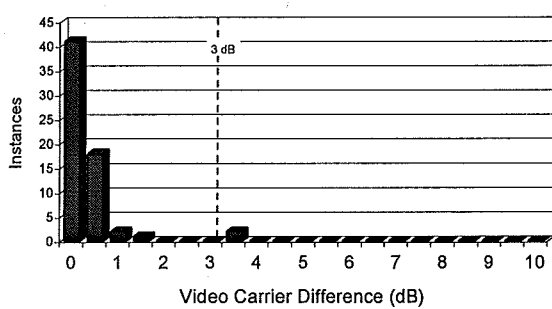
VIDEO CARRIER LEVELS



VIDEO-TO-AUDIO RATIO



ADJACENT CHANNEL DIFFERENCE



Carrier-to-Noise

Average 51.6 dB Min. allowable 43 dB
C/N on 1 of the channels is below 43 dB

Carrier Level Variation

Overall 5.3 dB Max. allowable 13 dB
Adjacent 3.6 dB Max. allowable 3 dB X

Hum

Average 1.88% Max. allowable 3 %

A/V Ratio

Maximum 15.9 dB Max. allowable 17 dB
Minimum 12.2 dB Min. allowable 10 dB

Millennium Signal Level Test Results

Model: SDA-4040D	Serial #: 0033582	Cal Date: 09/27/05
Operator: ?	File: HEADSEA	DOS File: HEADSEA
Date: 04/18/06	Time: 12:49:27	0.0 0.0
Description:		

Location: Seattle Headend							
Channel	Label	Video (dBmV)	Audio (dBmV)	Delta A/V (dB)	C/N (dB)	Hum (%)	Hum (dB)
2		16.3	1.4	14.9		1.9	-34.5
3		16.4	1.9	14.5			
4		16.2	1.3	14.9			
5		16.1	1.6	14.5			
6		16.1	1.6	14.5	53.0		
98		16.4	2.1	14.3			
99		16.0	1.4	14.6			
14		16.5	1.5	15.0			
15		16.0	2.0	14.0			
16		12.5	0.3	12.2			
17		16.1	1.6	14.5			
19		16.6	1.4	15.2			
20		15.6	1.4	14.2			
21		15.8	1.2	14.6	50.4		
22		16.1	1.9	14.2			
7		16.0	2.3	13.7			
8		16.4	1.6	14.8			
9		15.9	1.9	14.0			
10		17.1	2.4	14.7			
11		16.6	2.2	14.4			
12		16.3	3.1	13.2	52.8		
13		16.6	0.7	15.9			
23		15.9	1.5	14.4	52.5		
24		16.5	1.5	15.0			
25		16.3	1.7	14.6			
26		16.4	2.0	14.4			
27		16.7	2.6	14.1			
28		16.8	2.6	14.2			
29		16.1	2.0	14.1	<u>41.7</u>		
30		16.0	1.7	14.3			
31		16.8	1.5	15.3	52.8		
32		16.8	1.9	14.9			



Millennium Signal Level Test Results

Location: Seattle Headend							
Channel	Label	Video	Audio	Delta A/V	C/N	Hum	Hum
33		16.3	1.7	14.6			
34		16.3	2.0	14.3			
35		16.5	2.8	13.7			
36		17.3	2.4	14.9			
37		17.1	2.2	14.9			
38		17.2	2.9	14.3			
39		16.9	2.8	14.1			
40		16.4	2.2	14.2			
41		16.3	3.0	13.3			
42		16.6	3.0	13.6			
43		16.6	2.0	14.6			
44		17.1	2.9	14.2			
45		17.0	3.3	13.7			
46		16.7	2.6	14.1			
47		16.8	2.3	14.5			
48		16.8	2.7	14.1			
49		17.5	3.5	14.0	52.9		
50		17.1	2.6	14.5			
51		16.6	1.5	15.1			
52		16.6	2.4	14.2			
53		16.7	2.3	14.4			
54		16.3	2.1	14.2			
55		16.1	2.5	13.6	52.7		
56		16.7	2.3	14.4			
57		17.5	2.7	14.8			
58		16.8	2.9	13.9			
59		16.8	3.0	13.8			
60		16.8	3.3	13.5			
62		17.3	3.2	14.1			
63		16.9	2.9	14.0			
64		16.9	2.8	14.1			
65		17.6	2.7	14.9			
67		16.3	2.7	13.6			
68		17.8	3.7	14.1	56.0		
69		17.1	3.2	13.9			
70		17.2	3.2	14.0			
71		17.0	3.7	13.3			
72		17.2	3.3	13.9			
73		16.8	2.8	14.0			

Millennium
Signal Level Test Results

Location: Seattle Headend							
Channel	Label	Video	Audio	Delta A/V	C/N	Hum	Hum
74		16.8	2.7	14.1			
75		16.9	2.7	14.2			
76		16.7	3.1	13.6			
77		16.5	2.9	13.6	44.9		
78		17.4	3.0	14.4			
79		17.4	3.0	14.4			
80		16.9	2.8	14.1			
81		16.5	3.3	13.2			
82		17.4	3.1	14.3			
83		16.9	3.1	13.8			

Appendix B

FCC Technical Standards

[Revised as of October 1, 2005]

From the U.S. Government Printing Office via GPO Access

**TITLE 47--TELECOMMUNICATION
CHAPTER I--FEDERAL COMMUNICATIONS
COMMISSION (CONTINUED)
PART 76 _MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

Subpart K Technical Standards

Sec. 76.601 Performance tests.

- (a) The operator of each cable television system shall be responsible for insuring that each such system is designed, installed, and operated in a manner that fully complies with the provisions of this subpart.
- (b) The operator of each cable television system shall conduct complete performance tests of that otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in Sec. 76.605(a) and shall be as follows:
 - (1) For cable television systems with 1000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (e.g., 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, etc.). In addition, for technically integrated portions of cable systems that are not mechanically continuous (i.e., employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.



- (2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in Sec. 76.605(a) (3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in Sec. 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (e.g., 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217-300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit to 300 to 400 MHz, etc.). The channels selected for testing must be representative of all the channels within the cable television system.
- (3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in Sec. 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.
- (4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in Sec. 76.605(a)(11).
- (c) Successful completion of the performance tests required by paragraph (b) of this section does not relieve the system of the obligation to comply with all pertinent technical standards at all subscriber terminals. Additional tests, repeat tests, or tests involving specified subscriber terminals may be required by the Commission or the local franchiser to secure compliance with the technical standards.
- (d) The provisions of paragraphs (b) and (c) of this section shall not apply to any cable television system having fewer than 1,000 subscribers: Provided, however, that any cable television system using any frequency spectrum other than that allocated to over-the-air television and FM broadcasting (as described in Sec. Sec. 73.603 and 73.210 of this chapter) is required to conduct all tests, measurements and monitoring of signal leakage that are required by this subpart. A cable television system operator complying with the monitoring, logging and the leakage repair requirements of Sec. 76.614, shall be considered to have met the requirements of this paragraph. However, the leakage log shall be retained for five years rather than the two years prescribed in Sec. 76.1706.

Note 1 to Sec. 76.601: Prior to requiring any additional testing pursuant to Sec. 76.601(c), the local franchising authority shall notify the cable operator who will be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected. The Commission may request cable operators to test their systems at any time.



Note 2 to Sec. 76.601: Section 76.1717 contains recordkeeping requirements for each system operator in order to show compliance with the technical rules of this subpart.

Note 3 to Sec. 76.601: Section 76.1704 contains recordkeeping requirements for proof of performance tests.

Sec. 76.605 Technical standards.

- (a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:
- (1) (i) The cable television channels delivered to the subscriber's terminal shall be capable of being received and displayed by TV broadcast receivers used for off-the-air reception of TV broadcast signals, as authorized under part 73 of this chapter; and

(ii) Cable television systems shall transmit signals to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in CEA-542-B: "Standard: Cable Television Channel Identification Plan," (Incorporated by reference, see Sec. 76.602).
 - (2) The aural center frequency of the aural carrier must be 4.5 MHz - 5 kHz above the frequency of the visual carrier at the output of the modulating or processing equipment of a cable television system, and at the subscriber terminal.
 - (3) The visual signal level, across a terminating impedance which correctly matches the internal impedance of the cable system as viewed from the subscriber terminal, shall not be less than 1 millivolt across an internal impedance of 75 ohms (0 dBmV). Additionally, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, it shall not be less than 1.41 millivolts across an internal impedance of 75 ohms (+3 dBmV). (At other impedance values, the minimum visual signal level, as viewed from the subscriber terminal, shall be the square root of $0.0133 (Z)$ millivolts and, as measured at the end of a 30 meter (100 foot) cable drop that is connected to the subscriber tap, shall be 2 times the square root of $0.00662(Z)$ millivolts, where Z is the appropriate impedance value.)
 - (4) The visual signal level on each channel, as measured at the end of a 30 meter cable drop that is connected to the subscriber tap, shall not vary more than 8 decibels within any six-month interval, which must include four tests performed in six-hour increments during a 24-hour period in July or August and during a 24-hour period in January or February, and shall be maintained within:



- (i) 3 decibels (dB) of the visual signal level of any visual carrier within a 6 MHz nominal frequency separation;
 - (ii) 10 dB of the visual signal level on any other channel on a cable television system of up to 300 MHz of cable distribution system upper frequency limit, with a 1 dB increase for each additional 100 MHz of cable distribution system upper frequency limit (e.g., 11 dB for a system at 301-400 MHz; 12 dB for a system at 401-500 MHz, etc.); and
 - (iii) A maximum level such that signal degradation due to overload in the subscriber's receiver or terminal does not occur.
- (5) The rms voltage of the aural signal shall be maintained between 10 and 17 decibels below the associated visual signal level. This requirement must be met both at the subscriber terminal and at the output of the modulating and processing equipment (generally the headend). For subscriber terminals that use equipment which modulate and remodulate the signal the rms voltage of the aural signal shall be maintained between 6.5 and 17 decibels below the associated visual signal level at the subscriber terminal.
- (6) The amplitude characteristic shall be within a range of 2 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries. The amplitude characteristic shall be measured at the subscriber terminal.
- (7) The ratio of RF visual signal level to system noise shall not be less than 43 decibels. For class I cable television channels, the requirements of this section are applicable only to:
- (i) Each signal which is delivered by a cable television system to subscribers within the predicted Grade B contour for that signal;
 - (ii) Each signal which is first picked up within its predicted Grade B contour;
 - (iii) Each signal that is first received by the cable television system by direct video feed from a TV broadcast station, a low power TV station, or a TV translator station.
- (8) The ratio of visual signal level to the rms amplitude of any coherent disturbances such as intermodulation products, second and third order distortions or discrete-frequency interfering signals not operating on proper offset assignments shall be as follows:
- (i) The ratio of visual signal level to coherent disturbances shall not be less than 51 decibels for noncoherent channel cable television systems, when measured with modulated carriers and time averaged; and
 - (ii) The ratio of visual signal level to coherent disturbances which are frequency-coincident with the visual carrier shall not be less than 47 decibels for coherent channel cable systems, when measured with modulated carriers and time averaged.

- (9) The terminal isolation provided to each subscriber terminal:
- (i) Shall not be less than 18 decibels. In lieu of periodic testing, the cable operator may use specifications provided by the manufacturer for the terminal isolation equipment to meet this standard; and
 - (ii) Shall be sufficient to prevent reflections caused by open-circuited or short-circuited subscriber terminals from producing visible picture impairments at any other subscriber terminal.
- (10) The peak-to-peak variation in visual signal level caused by undesired low frequency disturbances (hum or repetitive transients) generated within the system, or by inadequate low frequency response, shall not exceed 3 percent of the visual signal level. Measurements made on a single channel using a single unmodulated carrier may be used to demonstrate compliance with this parameter at each test location.
- (11) As of June 30, 1995, the following requirements apply to the performance of the cable television system as measured at the output of the modulating or processing equipment (generally the headend) of the system:
- (i) The chrominance-luminance delay inequality (or chroma delay), which is the change in delay time of the chrominance component of the signal relative to the luminance component, shall be within 170 nanoseconds.
 - (ii) The differential gain for the color subcarrier of the television signal, which is measured as the difference in amplitude between the largest and smallest segments of the chrominance signal (divided by the largest and expressed in percent), shall not exceed 20%.
 - (iii) The differential phase for the color subcarrier of the television signal which is measured as the largest phase difference in degrees between each segment of the chrominance signal and reference segment (the segment at the blanking level of O IRE), shall not exceed 10 degrees.
- (12) As an exception to the general provision requiring measurements to be made at subscriber terminals, and without regard to the type of signals carried by the cable television system, signal leakage from a cable television system shall be measured in accordance with the procedures outlined in Sec. 76.609(h) and shall be limited as follows:



Signal leakage

Frequencies limit

Distance in (micro-volt/ meters (m) meter)

Less than and including 54 MHz, and over 216 MHz	15	30
Over 54 up to and including 216 MHz	20	3

- (b) Cable television systems distributing signals by using methods such as non-conventional coaxial cable techniques, non-coaxial copper cable techniques, specialized coaxial cable and fiber optical cable hybridization techniques or specialized compression techniques or specialized receiving devices, and which, because of their basic design, cannot comply with one or more of the technical standards set forth in paragraph (a) of this section, may be permitted to operate: Provided, That an adequate showing is made pursuant to Sec. 76.7 which establishes that the public interest is benefited. In such instances, the Commission may prescribe special technical requirements to ensure that subscribers to such systems are provided with an equivalent level of good quality service.

Note 1: Local franchising authorities of systems serving fewer than 1000 subscribers may adopt standards less stringent than those in Sec. 76.605(a). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

Note 2: For systems serving rural areas as defined in Sec. 76.5, the system may negotiate with its local franchising authority for standards less stringent than those in Sec. Sec. 76.605(a)(3), 76.605(a)(7), 76.605(a)(8), 76.605(a)(10) and 76.605(a)(11). Any such agreement shall be reduced to writing and be associated with the system's proof-of-performance records.

Note 3: The requirements of this section shall not apply to devices subject to the TV interface device rules under part 15 of this chapter.

Note 4: Should subscriber complaints arise from a system failing to meet Sec. 76.605(a)(6) prior to December 30, 1999, the cable operator will be required to provide a converter that will allow the system to meet the standard immediately at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order all converters on the system be changed to meet the standard.

Note 5: Should subscriber complaints arise from a system failing to meet Sec. 76.605(a)(10), the cable operator will be required to remedy the complaint and perform test measurements on Sec. 76.605(a)(10) containing the full number of channels as indicated in Sec. 76.601(b)(2) at the complaining subscriber's terminal. Further, should the problem be found to be system-wide, the Commission may order that the full number of channels as indicated in Sec. 76.601(b)(2) be tested at all required locations for future proof-of-performance tests.



Note 6: No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

Sec. 76.609 Measurements.

- (a) Measurements made to demonstrate conformity with the performance requirements set forth in Sec. Sec. 76.601 and 76.605 shall be made under conditions which reflect system performance during normal operations, including the effect of any microwave relay operated in the Cable Television Relay (CARS) Service intervening between pickup antenna and the cable distribution network. Amplifiers shall be operated at normal gains, either by the insertion of appropriate signals or by manual adjustment. Special signals inserted in a cable television channel for measurement purposes should be operated at levels approximating those used for normal operation. Pilot tones, auxiliary or substitute signals, and non-television signals normally carried on the cable television system should be operated at normal levels to the extent possible. Some exemplary, but not mandatory, measurement procedures are set forth in this section.
- (b) When it may be necessary to remove the television signal normally carried on a cable television channel in order to facilitate a performance measurement, it will be permissible to disconnect the antenna which serves the channel under measurement and to substitute there for a matching resistance termination. Other antennas and inputs should remain connected and normal signal levels should be maintained on other channels.
- (c) As may be necessary to ensure satisfactory service to a subscriber, the Commission may require additional tests to demonstrate system performance or may specify the use of different test procedures.
- (d) The frequency response of a cable television channel may be determined by one of the following methods, as appropriate:
 - (1) By using a swept frequency or a manually variable signal generator at the sending end and a calibrated attenuator and frequency-selective voltmeter at the subscriber terminal; or
 - (2) By using either a multi-burst generator or vertical interval test signals and either a modulator or processor at the sending end, and by using either a demodulator and either an oscilloscope display or a waveform monitor display at the subscriber terminal.
- (e) System noise may be measured using a frequency-selective voltmeter (field strength meter) which has been suitably calibrated to indicate RMS noise or average power level and which has a known bandwidth. With the system operating at normal level and with a properly matched resistive termination substituted for the antenna, noise power indications at the subscriber terminal are taken in successive increments of frequency equal to the bandwidth of the frequency-selective voltmeter, summing the power indications to obtain the total noise power present over a 4 MHz band centered within the cable television channel. If it is established that the noise level is constant



within this bandwidth, a single measurement may be taken which is corrected by an appropriate factor representing the ratio of 4 MHz to the noise bandwidth of the frequency-selective voltmeter. If an amplifier is inserted between the frequency-selective voltmeter and the subscriber terminal in order to facilitate this measurement, it should have a bandwidth of at least 4 MHz and appropriate corrections must be made to account for its gain and noise figure. Alternatively, measurements made in accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on noise measurement may be employed.

- (f) The amplitude of discrete frequency interfering signals within a cable television channel may be determined with either a spectrum analyzer or with a frequency-selective voltmeter (field strength meter), which instruments have been calibrated for adequate accuracy. If calibration accuracy is in doubt, measurements may be referenced to a calibrated signal generator, or a calibrated variable attenuator, substituted at the point of measurement. If an amplifier is used between the subscriber terminal and the measuring instrument, appropriate corrections must be made to account for its gain.
- (g) The terminal isolation between any two terminals in the cable television system may be measured by applying a signal of known amplitude to one terminal and measuring the amplitude of that signal at the other terminal. The frequency of the signal should be close to the mid-frequency of the channel being tested. Measurements of terminal isolation are not required when either:
 - (1) The manufacturer's specifications for subscriber tap isolation based on a representative sample of no less than 500 subscribers taps or
 - (2) Laboratory tests performed by or for the operator of a cable television system on a representative sample of no less than 50 subscriber taps, indicates that the terminal isolation standard of Sec. 76.605(a)(9) is met. To demonstrate compliance with Sec. 76.605(a)(9), the operator of a cable television system shall attach either such manufacturer's specifications or laboratory measurements as an exhibit to each proof-of-performance record.
- (h) Measurements to determine the field strength of the signal leakage emanated by the cable television system shall be made in accordance with standard engineering procedures. Measurements made on frequencies above 25 MHz shall include the following:
 - (1) A field strength meter of adequate accuracy using a horizontal dipole antenna shall be employed.
 - (2) Field strength shall be expressed in terms of the RMS value of synchronizing peak for each cable television channel for which signal leakage can be measured.



- (3) The resonant half wave dipole antenna shall be placed 3 meters from and positioned directly below the system components and at 3 meters above ground. Where such placement results in a separation of less than 3 meters between the center of the dipole antenna and the system components, or less than 3 meters between the dipole and ground level, the dipole shall be repositioned to provide a separation of 3 meters from the system components at a height of 3 meters or more above ground.
- (4) The horizontal dipole antenna shall be rotated about a vertical axis and the maximum meter reading shall be used.
- (5) Measurements shall be made where other conductors are 3 or more meters (10 or more feet) away from the measuring antenna.
 - (i) For systems using cable traps and filters to control the delivery of specific channels to the subscriber terminal, measurements made to determine compliance with Sec. 76.605(a) (5) and (6) may be performed at the location immediately prior to the trap or filter for the specific channel. The effects of these traps or filters, as certified by the system engineer or the equipment manufacturer, must be attached to each proof-of-performance record.
 - (j) Measurements made to determine the differential gain, differential phase and the chrominance-luminance delay inequality (chroma delay) shall be made in accordance with the NCTA Recommended Practices for Measurements on Cable Television Systems, 2nd edition, November 1989, on these parameters.



APPENDIX C

ABOUT COLUMBIA TELECOMMUNICATIONS CORPORATION

Columbia Telecommunications Corporation (CTC) provides telecommunications engineering support to state and local governments as well as public, non-profit, and educational institutions. For over 23 years, CTC has provided a wide range of technical planning, engineering design, and implementation support to clients throughout the United States in the following broad, evolving areas:

- (1) Network Planning, Design, and Implementation;
- (2) Cable System Technical Evaluation, including
 - System Inspection of Physical Plant, and
 - System Performance Testing of Electrical Plant;
- (3) Franchise Support, including
 - Technical Enforcement and Corrective Action Analysis, and
 - Negotiation Support;
- (4) Tower Siting Engineering and Analysis;
- (5) Intelligent Transportation Systems (ITS) Telecommunications; and
- (6) Video/PEG Engineering.

For additional information visit our website at www.internetCTC.com.



ATTACHMENT II.

Insurance Requirements for the City of Seattle



Insurance Requirements for the City of Seattle

Grantee shall maintain on file with the City evidence of insurance coverage satisfactory to the City with minimum coverage and limits of liability specified below; with respect to the scope of such coverage, Grantee specifically acknowledges that the limits of liability requirements specified shall neither be construed as a limitation of Grantee's liability nor shall they be construed to inure to the benefit of any insurer by serving as a limitation or maximum of any insurer's limits of liability that would otherwise apply.

Grantee shall maintain:

(A) Commercial general liability insurance (including premises, products and completed operations, contractual, independent contractors, employers/stop gap and personal/advertising injury liability) that shall not exclude XCU/Subsidence perils or any similar perils ("CGL Insurance");

(B) Automobile liability insurance covering owned, non-owned, leased and hired vehicles; and

(C) Workers Compensation insurance in compliance with the Revised Code of Washington Title 51 ("Industrial Insurance").

The minimum limits of liability to be maintained for CGL and automobile liability insurance shall be five million dollars (\$5,000,000) combined single limit each occurrence bodily injury and property damage (except, with respect to CGL Insurance, five million dollars (\$5,000,000) each accident/disease employers/stop gap liability and five million dollars (\$5,000,000) each offense personal/advertising injury).

The City shall by designated additional insured endorsement or blanket additional insured endorsement or policy wording be covered as an additional insured for the total corporate limits of liability maintained by Grantee for CGL Insurance and automobile liability insurance whether such limits are primary, excess, contingent or otherwise. Such additional insured status shall be primary and non-contributory with any insurance maintained by the City, and in a form acceptable to the City.

Insurance coverage shall be maintained with insurers acceptable to the City and shall not be cancelable without mailing notice of cancellation not less than thirty (30) days (ten (10) days as respects cancellation for non-payment of premium) prior to the actual date of such cancellation.

Certification of insurance shall be in a form and with such content that is acceptable to the City and shall include an actual copy of the designated additional insured endorsement or blanket additional insured endorsement or policy wording documenting that the City is covered as an additional insured under Grantee's CGL Insurance.

The term "insurance" and "insurer(s)" under this Section 12.2 of the Franchises shall apply to self-insurance and self-insurer(s). Should Grantee maintain self-insurance (except that subject to a deductible endorsement provision that specifies that the nonpayment of deductible amounts by



the named insured shall not relieve the insurer from payment of claims), it shall disclose in writing details of such self-retained limit(s). Should such self-insurance not be fronted by an insurance company, Grantee shall issue a letter stating that it will cover the City as an additional insured for the required coverages as if a commercial insurance policy applied and will specify how and to whom a tender of claim should be directed.

Certification of insurance, notice of cancellation and any other written communication under Section 12.2 of the Franchises shall be addressed to:

The City of Seattle
Risk Management Division
700 5th Avenue, Suite 4350
P.O. Box 94669
Seattle, WA 98124-4669
riskmanagement@seattle.gov
Fax: (206) 615-0065

with a copy to the Seattle Department of Information Technology, Office of Cable Communications (*see* address in Section 21.8 of the Franchises).



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
DoIT	Tony Perez /386-0070	Aimee Strasko/386-4090

Legislation Title:

AN ORDINANCE related to cable television; authorizing the Mayor to approve the transfer of control, subject to conditions, of the franchises held by Millennium Digital Media Systems, L.L.C. to a new entity, WaveDivision V, L.L.C.; and authorizing the Chief Technology Officer to execute an Assignment of Cable Franchise Consent Agreement for the purpose of implementing and administering the transfer.

• **Summary of the Legislation:**

Millennium Digital Systems, L.L.C. ("Millennium") has submitted an application to the City to approve the transfer of control of its Seattle franchises and cable system assets to a new entity, WaveDivision V, L.L.C. ("WaveV"), a Washington limited liability company (to be formed within 5 days prior to the Unit Purchase Agreement closing date), which will be wholly owned by WaveDivision Holdings, L.L.C ("WaveDivision"), a Delaware limited liability company. Under federal law, the City must act within 120 days of receipt of a completed application (in this case by August 8, 2006), or its consent to the transfer is implied unless an agreement is reached to extend the date. The City may not unreasonably withhold its consent, and such consent must be by ordinance. This ordinance authorizes approval of the transfer subject to the terms and conditions contained in an agreement between the City, WaveV and WaveDivision (Cable Franchise Consent Agreement or "Consent Agreement").

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

Millennium provides cable services in certain areas of Seattle pursuant to nonexclusive franchise agreements authorized by Ordinances 117955 and 118361, as amended, and transferred from Summit to Millennium by Ordinance 119295 (collectively, the "Franchises"). Approximately 15,000 cable and Internet subscribers are served by Millennium in the Central Cable Television Franchise District (Central District and Rainier Valley), the Central Business Franchise District (downtown), and Cable Franchise District One (portions of Queen Anne and Capitol Hill).

On February 8, 2006, Millennium and WaveDivision entered into a Unit Purchase Agreement whereby Millennium agreed to sell to WaveDivision the cable system within the City that

1 Millennium owns and operates pursuant to the Franchises. The proposed transfer of the
2 Millennium's Seattle Franchises and cable system assets to WaveDivision involves a two-step
3 process with the ultimate owner of Millennium's Seattle Franchises and cable system assets
4 being a new limited liability company WaveV, which will be wholly owned by WaveDivision.

5 In accordance with SMC 21.60.520, the City may not unreasonably refuse a request to transfer a
6 franchise. Council must make a decision to approve the transfer, approve it with conditions, or
7 deny the transfer within 120 days (or in this case by August 8, 2006), or the request shall be
8 deemed granted pursuant to federal regulations unless an agreement is reached to extend the
9 date.

10 To obtain Council approval, the proposed assignee must demonstrate financial responsibility
11 and the ability to comply with the provisions of SMC Chapter 21.60 (Cable Communications
12 Ordinance), among other things. After review and analysis by the Office of Cable
13 Communications ("OCC"), with the help of legal, financial, and technical consultants, the OCC
14 recommends approval of the transfer with conditions. The conditions contained in the Consent
15 Agreement are designed to protect the City's interests in such areas as ensuring that the cable
16 system meets applicable safety and technical standards and providing for an increased security
17 fund. In addition, the Consent Agreement contains a voluntary commitment by WaveV to
18 provide complimentary Internet service to up to 50 City-sponsored community technology
19 centers.

20 • *Please check one of the following:*

21 **X** **This legislation does not have any financial implications.** *(Stop here and delete the
22 remainder of this document prior to saving and printing.)*

23 **This legislation has financial implications.** *(Please complete all relevant sections that
24 follow.)*

25 • **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings
26 have been held to date, and/or what plans are in place to hold a public hearing(s) in the
27 future.)*

28 Yes. DoIT will work with Council staff to schedule one public hearing.

Please list attachments to the fiscal note below:

STATE OF WASHINGTON – KING COUNTY

--SS.

201489
CITY OF SEATTLE, CLERKS OFFICE

No.

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.

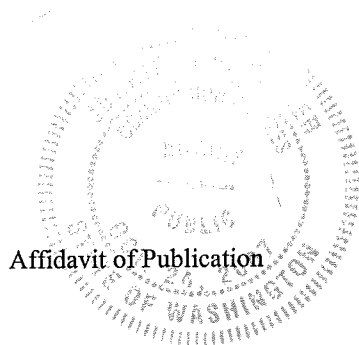
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122179 ORDINANCE

was published on

08/15/06

The amount of the fee charged for the foregoing publication is the sum of \$ 227.70, which amount has been paid in full.



Subscribed and sworn to before me on

08/15/06

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

ORDINANCE 122179

AN ORDINANCE related to cable television; authorizing the Mayor to approve the transfer of control, subject to conditions, of the franchises held by Millennium Digital Media Systems, L.L.C. to a new entity, WaveDivision V, L.L.C.; and authorizing the Chief Technology Officer to execute an Assignment of Cable Franchise Consent Agreement for the purpose of implementing and administering the transfer.

WHEREAS, Millennium Digital Media Systems, L.L.C. ("Millennium") provides cable services in the City of Seattle ("City") pursuant to nonexclusive franchise agreements authorized by Ordinance 117955 and Ordinance 118361, as amended, and transferred from Summit Communications, Inc. to Millennium by Ordinance 119295 (collectively, the "Franchises"); and

WHEREAS, on February 8, 2006, Millennium and WaveDivision Holdings, L.L.C., a Delaware limited liability company ("WaveDivision"), entered into a Unit Purchase Agreement whereby Millennium agreed to sell to WaveDivision the cable system assets within the City that Millennium owns and operates pursuant to the Franchises; and

WHEREAS, the proposed transfer of Millennium's Seattle Franchises and cable system assets to Wave involves a two-step transfer with the ultimate owner of the Franchises and cable system assets being a new limited liability company, WaveDivision V, L.L.C. ("WaveV"), a Washington limited liability company (to be formed within 5 days prior to the Unit Purchase Agreement closing date), which will be wholly owned by WaveDivision; and

WHEREAS, pursuant to Section 14 of the Franchises, and SMC 21.60.520, the Franchises may not be transferred without prior consent of the City; and

WHEREAS, pursuant to 47 U.S.C. § 537, the City has 120 days to act upon a request for approval of a transfer after receipt of a completed application unless an agreement is reached to extend the date; and

WHEREAS, Millennium and WaveDivision filed an FCC Form 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise with the City ("Application") on February 10, 2006; and

WHEREAS, the City, through its Office of Cable Communications ("OCC"), pursuant to its authority under SMC 21.60.520, the Franchises, and federal law, had requested additional information from Millennium and WaveDivision necessary to evaluate the Application, and following receipt of such information, the OCC deemed the Application complete on April 10, 2006; and

WHEREAS, the City has received from Millennium and WaveDivision information sufficient to make a determination regarding the Application; and

WHEREAS, WaveDivision is not seeking any modification of the terms and conditions of the current Franchises in connection with the transfer and has agreed to comply fully with all Franchise provisions and to meet or exceed all applicable and lawful federal, state, and local requirements including, but not limited to, those relating to franchise fees, customer service, and technical standards; and

WHEREAS, WaveDivision has given evidence of financial responsibility and its ability to comply with the Franchises and SMC Chapter 21.60; and

WHEREAS, the proposed transfer is not contrary to public interest or federal, state, or local law; and

WHEREAS, WaveDivision and WaveV have agreed to enter into an Assignment of Cable Franchise Consent Agreement (Exhibit A) with the City which requires them to comply with the terms of the Franchises, among other things, and to otherwise continue to operate the cable system in a manner that benefits the citizens of the City; NOW THEREFORE

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor is authorized to approve the transfer of control of the cable franchises of Millennium Digital Media, L.L.C. ("Millennium"), including the franchises authorized under Ordinances 117955

and 118361, as amended, and transferred from Summit Communications to Millennium by Ordinance 119295, to WaveDivision V, L.L.C. ("WaveV") subject to the terms and conditions contained in Exhibit A attached hereto.

Section 2. The Chief Technology Officer is authorized to execute the Assignment of Cable Franchise Consent Agreement in substantially the form attached to this ordinance as Exhibit A ("Consent Agreement"), and to take such further action as may be necessary to implement the Consent Agreement.

Section 3. In the event that the transaction or transactions which are the subjects of this ordinance do not close for any reason; or in the event that such transaction or transactions close on terms substantially or materially different from the terms described in the FCC Form 394 and from subsequent information provided to the City by Millennium, WaveDivision Holdings, L.L.C. ("WaveDivision") and WaveV that is relied upon by the City; or WaveDivision and WaveV do not accept and comply with each and every condition of the transfer of control required of them respectively as set forth in the Consent Agreement; then the consent provided for in Section 1 shall be null and void, and the City shall be deemed to have disapproved the transfer under the Franchise and federal law, and all remedies under Sections 14.2 and 19.1 of the Franchise shall be available to the City. A signed Consent Agreement, substantially in the same form as Exhibit A to this ordinance, shall be filed by WaveDivision and WaveV with the City Clerk and the Office of Cable Communications within ten (10) days of the Mayor's signature on this ordinance.

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

WHEREAS, Millennium Digital Media Systems, L.L.C. ("Millennium") provides cable services in the City of Seattle ("City") pursuant to nonexclusive franchise agreements authorized by Ordinance 117955 and Ordinance 118361, as amended, and transferred from Summit Communications, Inc. to Millennium by Ordinance 119295 (collectively, the "Franchises"); and

WHEREAS, on February 8, 2006, Millennium and WaveDivision Holdings, L.L.C., a Delaware limited liability company ("WaveDivision"), entered into a Unit Purchase Agreement whereby Millennium agreed to sell to WaveDivision the cable system assets within the City that Millennium owns and operates pursuant to the Franchises; and

WHEREAS, the proposed transfer of Millennium's Seattle Franchises and cable system assets to Wave involves a two-step transfer with the ultimate owner of the Franchises and cable system assets being a new limited liability company, WaveDivision V, L.L.C. ("WaveV"), a Washington limited liability company (to be formed within 5 days prior to the Unit Purchase Agreement closing date), which will be wholly owned by WaveDivision; and

WHEREAS, pursuant to Section 14 of the Franchises, and SMC 21.60.520, the Franchises may not be transferred without prior consent of the City; and

WHEREAS, pursuant to 47 U.S.C. § 537, the City has 120 days to act upon a request for approval of a transfer after receipt of a completed application unless an agreement is reached to extend the date; and

WHEREAS, Millennium and WaveDivision filed an FCC Form 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise with the City ("Application") on February 10, 2006; and

WHEREAS, the City, through its Office of Cable Communications ("OCC"), pursuant to its authority under SMC 21.60.520, the Franchises, and federal law, had requested additional information from Millennium and WaveDivision necessary to evaluate the Application, and following receipt of such information, the OCC deemed the Application complete on April 10, 2006; and

WHEREAS, the City has received from Millennium and WaveDivision information sufficient to make a determination regarding the Application; and

WHEREAS, WaveDivision is not seeking any modification of the terms and conditions of the current Franchises in connection with the transfer and has agreed to comply fully with all Franchise provisions and to meet or exceed all applicable and lawful federal, state, and local requirements including, but not limited to, those relating to franchise fees, customer service, and technical standards; and

WHEREAS, WaveDivision has given evidence of financial responsibility and its ability to comply with the Franchises and SMC Chapter 21.60; and

WHEREAS, the proposed transfer is not contrary to public interest or federal, state, or local law; and

WHEREAS, WaveDivision and WaveV have agreed to enter into an Assignment of Cable Franchise Consent Agreement (Exhibit A) with the City which requires them to comply with the terms of the Franchises, among other things, and to otherwise continue to operate the cable system in a manner that benefits the citizens of the City; NOW THEREFORE

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor is authorized to approve the transfer of control of the cable franchises of Millennium Digital Media, L.L.C. ("Millennium"), including the franchises authorized under Ordinances 117955

and 118361, as amended, and transferred from Summit Communications to Millennium by Ordinance 119295, to WaveDivision V, L.L.C. ("WaveV"), subject to the terms and conditions contained in Exhibit A attached hereto.

Section 2. The Chief Technology Officer is authorized to execute the Assignment of Cable Franchise Consent Agreement in substantially the form attached to this ordinance as Exhibit A ("Consent Agreement"), and to take such further action as may be necessary to implement the Consent Agreement.

Section 3. In the event that the transaction or transactions which are the subjects of this ordinance do not close for any reason; or in the event that such transaction or transactions close on terms substantially or materially different from the terms described in the FCC Form 394 and from subsequent information provided to the City by Millennium, WaveDivision Holdings, L.L.C. ("WaveDivision") and WaveV that is relied upon by the City; or WaveDivision and WaveV do not accept and comply with each and every condition of the transfer of control required of them respectively as set forth in the Consent Agreement; then the consent provided for in Section 1 shall be null and void, and the City shall be deemed to have disapproved the transfer under the Franchise and federal law, and all remedies under Sections 14.2 and 19.1 of the Franchise shall be available to the City. A signed Consent Agreement, substantially in the same form as Exhibit A to this ordinance, shall be filed by WaveDivision and WaveV with the City Clerk and the Office of Cable Communications within ten (10) days of the Mayor's signature on this ordinance.

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 31st day of July, 2006, and signed by me in open session in authentication of its passage this 31st day of July, 2006.

Nick Licata
President of the City Council
Approved by me this ____ day of ____
2006.

(Returned Unsigned)
Gregory J. Nickels, Mayor
Filed by me this 10th day of August,
2006.

(Seal) Judith Pippin
City Clerk

Exhibit A: Assignment of Cable Franchise Consent Agreement between the City of Seattle and WaveDivision Holdings, L.L.C. and WaveDivision V, L.L.C.

See City Clerk for Exhibit

Publication ordered by JUDITH PIPPIN
City Clerk

Date of publication in the Seattle
Journal of Commerce, August 15, 2006
8/15/06