

Ordinance No. 123935

Council Bill No. 117515

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a right of entry agreement with Comcast Cable Communications Management, LLC and a license agreement with KCTS Television, to allow for access of conduit and installation of fiber optic cable and related equipment needed to provide various communication services at Seattle Center.

Related Legislation File:

Date Introduced and Referred:	To: (committee):
July 9, 2012	Libraries, Utilities, and Center
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action:	Date Presented to Mayor:
7.23.12	7.24.12
Date Signed by Mayor:	Date Returned to City Clerk:
7/30/12	8/1/12
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

## The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: [Signature]

### Committee Action:

Date	Recommendation	Vote
7/17/12	Do Pass	JG, SB, RC

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

### Full Council Action:

Date	Decision	Vote
7.23.12	Passed	8-0
		exceeded: SC

LAW DEPARTMENT



**CITY OF SEATTLE**  
**ORDINANCE** 123935  
**COUNCIL BILL** 117515

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a right of entry agreement with Comcast Cable Communications Management, LLC and a license agreement with KCTS Television, to allow for access of conduit and installation of fiber optic cable and related equipment needed to provide various communication services at Seattle Center.

WHEREAS, the installation of innerducts, fiber optic cable, and related equipment within existing conduit will enable the provision of various communication services to Seattle Center facilities and tenants; and

WHEREAS, KCTS Television ("KCTS") owns conduit adjacent to certain portions of the Seattle Center campus; and

WHEREAS, contingent upon execution of the Right of Entry Agreement with Comcast Cable Communications Management, LLC ("Comcast"), KCTS has allowed the City to access and use KCTS's conduit to enable the provision of communication services at Seattle Center facilities; and

WHEREAS, Comcast will install, at its expense, innerducts, fiber optic cable and related equipment in both City and KCTS conduit; and

WHEREAS, the cooperative efforts of KCTS, Comcast and the City, and the granting of a non-exclusive license to access City conduit, will enable the provision of communication services to various Seattle Center tenants and facilities;

NOW, THEREFORE,

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

Section 1. The Director of Seattle Center ("Director") or his designee is hereby authorized to execute, on behalf of The City of Seattle, a right of entry agreement between the City of Seattle, Seattle Center Department and Comcast substantially in the form of the agreement attached hereto and identified as RIGHT OF ENTRY AGREEMENT BETWEEN THE CITY OF SEATTLE, SEATTLE CENTER DEPARTMENT AND COMCAST CABLE



1 COMMUNICATIONS MANAGEMENT, LLC (Attachment 1), under which Comcast is granted  
2 a non-exclusive license to access a portion of City conduit at Seattle Center and install  
3 equipment to provide various communication services to the Seattle Center.

4 Section 2. The Director or his designee is hereby authorized to execute, on behalf of The  
5 City of Seattle, a license agreement between KCTS Television and the City of Seattle  
6 substantially in the form of the agreement attached hereto and identified as LICENSE  
7 AGREEMENT BETWEEN KCTS TELEVISION AND THE CITY OF SEATTLE (Attachment  
8 2), under which the City is granted a non-exclusive license to use a portion of KCTS conduit so  
9 that Comcast can install equipment to provide various communication services to the Seattle  
10 Center.



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

Passed by the City Council the 23<sup>rd</sup> day of July, 2012, and signed by me in open session in authentication of its passage this 23<sup>rd</sup> day of July, 2012.

Sally Bagshaw  
President pro tem of the City Council

Approved by me this 30<sup>th</sup> day of July, 2012.

Michael McGinn  
Michael McGinn, Mayor

Filed by me this 1<sup>st</sup> day of August, 2012.

Monica Martinez Simmons  
Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Right of Entry Agreement between The City of Seattle, Seattle Center Department and Comcast Cable Communications Management, LLC

Attachment 2: License Agreement between KCTS Television and The City of Seattle



*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 1*

**Attachment 1**

**RIGHT OF ENTRY AGREEMENT**

**between**

**The City of Seattle, Seattle Center Department and  
Comcast Cable Communications Management, LLC**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between The City of Seattle ("City"), a Washington municipal corporation, by and through its Seattle Center Department ("Seattle Center") and Comcast Cable Communications Management, LLC, a Delaware limited liability company, on behalf of its affiliates (together, "Licensee") a Delaware limited liability company; (collectively "the Parties").

WHEREAS, the City is the owner of certain real property (the "Property") located at 301 Mercer Street in Seattle, King County, Washington; and

WHEREAS, Licensee wishes to install new fiber optic cable, coax, and related equipment necessary to provide various communication services to the Seattle Center and for its tenants occupying the Property (the "Customers"); and

WHEREAS, KCTS Television ("KCTS") owns four (4) 4" conduits under certain portions of the Seattle Center Campus adjacent to the Property; and

WHEREAS, by separate agreement, KCTS has allowed the City to access and use one of KCTS's 4" conduits for the purposes set forth herein; and

WHEREAS, the City owns a 4" conduit between the utility vault located approximately 100 feet south of the McCaw Hall main telecomm room and the McCaw Hall main telecomm room, and the City owns a 4" conduit between the McCaw Hall main telecomm room and the Exhibition Hall telecomm room, both of which Licensee also wishes to use in order to provide telecommunication services to the Customer; and

WHEREAS, the City hereby agrees to grant Licensee a non-exclusive license to access these 4" conduits, provided that Licensee install three (3) 1 1/4" innerducts within a portion of the conduits and one (1) 1 1/4" innerduct within another portion of the conduits, as specified herein; and

WHEREAS, the City also hereby agrees to grant Licensee a non-exclusive license to install new equipment in said conduit and several Seattle Center facilities adjacent to and/or underneath certain portions of the Property.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and promises set out herein, the Parties agree as follows:



*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 2*

**1. License**

a. The City hereby grants Licensee the non-exclusive license and right to install, construct, replace, maintain, repair, operate, and remove, at Licensee's option and expense, certain fiberoptic cable, coax, wires, cables, conduit, lock-boxes, building entrance facilities, and other appurtenant fixtures and equipment (the "Facilities"), in approximately 700 linear feet of existing 4" conduit (per 1.b, below) and approximately 25 square feet of space (the "Equipment Space"), over, under, across and along certain Seattle Center Buildings (collectively, the "Buildings"), for the purposes of providing communications services to the Customers. The Equipment Space and the Buildings are shown on Exhibit A, attached hereto.

b. The City also hereby grants Licensee non-exclusive access to one of the existing 4" conduits ("4" conduit") located between the KCTS vault at 4<sup>th</sup> Avenue North and Republican Streets and the McCaw Hall telecomm room (specific conduit to be designated by the City), and the existing 4" conduit between the McCaw Hall telecomm room and the Exhibition Hall telecomm room, also as shown on Exhibit A, attached hereto, for the purpose of providing communications services to the Customers.

c. Nothing in this License shall be construed to convey to the Licensee any property rights or to create any easement or any covenant or condition running with the Property or any further right other than as specifically provided herein.

d. The City reserves the right to utilize the Property on which the Facilities are located for any lawful purpose. If the City installs any modifications or improvements over, across, along or under the Equipment Space or the 4" conduit, Licensee shall take all reasonable steps to preserve such modifications and improvements throughout the operation, maintenance, or removal of the Facilities.

e. Nothing in this Agreement shall be construed to require Licensee to construct, install, or operate the Facilities in the Property, to deliver the Services to the Property, and/or to deliver the Services to a particular Customer or Customers. However, if and when Licensee constructs, installs, and/or operates the Facilities, it shall do so in accordance with Section 2 herein.

**2. Equipment**

a. Licensee shall only have the right to use that Equipment Space and existing 4" conduits for the purposes identified in this Agreement. Licensee, at its expense, shall install a total of three (3) 1 1/4" innerducts within one of the 4" conduits from the KCTS vault to the McCaw Hall main telecomm room. One innerduct may be for Licensee's use for the purpose specified in paragraph 1.a, above. The second of these innerducts shall be made available for future use by the City. The third of these innerducts shall be made available for use by KCTS, for the purpose specified in paragraph 2.b., below. Licensee shall also install one (1) 1 1/4"



*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 3*

innerduct in the 4" conduit from the McCaw Hall main telecomm room to the Exhibition Hall telecomm room, which shall be for its use for the purpose specified in paragraph 1.a, above. Licensee shall retain or replace the existing "pull string" in the 4" conduit between the McCaw Hall main telecomm room and the Exhibition Hall telecomm room. Licensee may request the right to install additional conduit, at its sole cost and expense, which request may be granted or withheld at City's sole discretion.

b. In addition to the Facilities described in paragraph 1.a., above, Licensee shall, at its expense, install a fiber optic hybrid cable containing 12 multimode strands and 12 single mode strands, which shall be supplied by the City, ("Fiberoptic Cable") between the equipment room (room 135) in KCTS's broadcast facility at 401 Mercer Street, and McCaw Hall's main telecomm room. Fiberoptic Cable shall be installed in the innerduct reserved for KCTS pursuant to paragraph 2.a. Licensee shall terminate four (4) multimode pairs and two (2) singlemode pairs of this Fiberoptic Cable in both the KCTS equipment room and the McCaw Hall main telecomm room, and shall leave unterminated pairs coiled and marked, all in an industry-standard professional manner. After Licensee's work is inspected and accepted by the City, Licensee shall have no further liability for the Fiberoptic Cable or its installation.

c. Licensee shall, at its expense, also remove and return to the City any abandoned City cabling in the 4" conduit it uses, as well as clean out accumulated dirt and debris in the conduit vaults, between KCTS and the utility vault 100 feet south of McCaw Hall's main telecomm room.

d. Licensee shall coordinate all installation, construction, repair, replacement, operation, maintenance and removal plans with Seattle Center prior to commencing same in order to minimize disruption to Seattle Center's activities. Licensee must obtain written permission from Seattle Center prior to any additions or construction. All approved installations and construction shall be performed by qualified contractors in accordance with plans and specifications approved in advance by Seattle Center and at no cost to the City. City shall supply, at Licensee's expense, an inspector from the City's Department of Information Technology, who will oversee the work of Licensee's contractor during the installation of the innerducts within the 4" conduits, and oversee Licensee's work in the Equipment Space.

e. Subject to Seattle Center's prior written approval, Licensee may install, at no cost to the City, additional utilities or improve the present utilities on the Property (including, but not limited to the installation of emergency power generators), solely as necessary for, and related to providing the communication services to the Customer, as described herein. Such installation or improvement of utilities shall not interfere with Seattle Center's use of the Property. Licensee shall pay any utility charges incurred due to Licensee's use of the Premises.

f. All installations by Licensee shall comply with all applicable laws, regulations, and ordinances of federal, state and local authorities.



*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 4*

g. Licensee shall not cause any damage to the Property in the exercise of its rights under this Agreement. In case of damage, Licensee shall either repair or pay all actual costs to repair such damages and to restore the damaged area of the Property to substantially its original condition normal wear and tear excepted. Licensee shall not obstruct or interfere with any other easements and encumbrances already on the Property.

### **3. Access**

The schedule for construction and installation of the Facilities shall be coordinated with and subject to the approval of the Seattle Center Technical Facility Management Supervisor or his/her designee. Following installation and for the duration of this Agreement, Seattle Center shall allow Licensee access to the Property at all times for the foregoing purposes. Notwithstanding, access to the Facilities for operating, maintaining and repairing the same shall be prearranged through the Seattle Center Technical Facility Management Supervisor or his/her designee. Access within the Customer's leased or subleased space shall be as provided in the separate services agreement between Licensee and the Customer.

### **4. Permits and Preliminary Requirements**

This Agreement is contingent upon Licensee obtaining and maintaining all certificates, permits, licenses and other approvals that may be required by any federal, state, or local authorities ("Governmental Approvals"). Licensee shall provide Seattle Center copies of all Governmental Approvals. Licensee shall, within five (5) business days, inform Seattle Center if any request for Governmental Approvals is rejected or if any certificate, permit, license, or approval issued to Licensee is canceled, expires, or is otherwise withdrawn or terminated

### **5. Consideration**

a. The City has determined that enhanced telecommunications connectivity between KCTS's broadcast facility and various Seattle Center facilities has significant material value to the City. Therefore, in lieu of a License Fee, Licensee shall fulfill the obligations and requirements set forth in paragraphs 2 b. and c. herein, and shall reimburse the City for one thousand dollars (\$1,000.00) of the cost of the Fiberoptic Cable within thirty (30) days of the City providing Licensee documentation of its related costs.

b. Licensee agrees to reimburse the Seattle Center for actual reasonable costs documented for construction related costs incurred by Seattle Center and the City directly associated with Licensee's installation of the Facilities in the Buildings, as provided for and described in 1.a and 2 a., b., and c., above., including, but not limited to the cost for the service of Department of Information Technology inspector, whose daily fee shall not exceed \$240, plus tax. All payments due hereunder shall be sent to the attention of Seattle Center Accounts Receivable at the address shown in Section 13.





*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 5*

c. Interest on Past Due Obligations. Any amount due to the City under this Agreement and not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement.

**6. Insurance**

Licensee shall maintain commercial general liability and business auto (owned, non-owned and hired) insurance in an aggregate amount of \$1,000,000, each, and name The City of Seattle as an additional insured on the certificate of insurance. Satisfactory evidence of insurance shall be provided to Seattle Center in the form of a certificate of insurance with The City of Seattle listed as an additional insured.

**7. Term**

This Agreement shall have an initial term of five (5) years commencing on the date first written above. If Licensee is not in default hereunder, beyond any applicable cure periods, this Agreement shall automatically renew for an additional three (3) periods of five (5) years each, upon the same terms and conditions stated herein. Notwithstanding the foregoing, if the relocation or removal of the Facilities is necessary due to any redevelopment of the Property by the City, the City shall have the right to require Licensee (at Licensee's expense) to relocate or remove the Facilities to the extent necessary for such redevelopment, upon at least one hundred twenty (120) days advance written notice to Licensee, provided that upon the completion of such redevelopment, Licensee shall continue have all of its rights under this Agreement, and this Agreement shall remain in effect for the remainder of the Term.

**8. Termination**

Except as otherwise agreed by Seattle Center, upon the expiration or termination of this Agreement, Licensee shall, at its sole cost and expense, remove the Facilities and Licensee's other personal property, if any, from the Property, and promptly repair all damage caused by such removal. Such removal and repairs shall be completed within sixty (60) days of the expiration or termination of this Agreement at Licensee's sole cost and expense, and shall be subject to Seattle Center's approval. Any property left on the Premises more than sixty (60) days after the expiration or termination of this Agreement shall be deemed to have been abandoned and to have become the property of Seattle Center, to dispose of as Seattle Center deems expedient and without further liability to Licensee, provided however that Licensee shall reimburse Seattle Center for all actual costs associated with such disposal. Licensee hereby waives all claims for damages that may be caused by Seattle Center taking possession of or removing Licensee's property as herein provided, and Licensee shall indemnify and hold Seattle Center and the City harmless therefrom.



## **9. Default**

Licensee's failure to comply with any provision of this Agreement, which failure continues for thirty (30) days after written notice thereof by Seattle Center, shall constitute a default. In the event of a default, the City shall have the right to terminate this Agreement by written notice to Licensee.

## **10. Ownership of Facilities**

All parts of Licensee's Facilities, with the exception of two (2) of the three (3) 1 ¼" innerducts within the 4" conduits from KCTS to McCaw Hall, located over, across, along and under the Property shall remain Licensee's personal property, and shall not be considered fixtures to the real estate or of the buildings located thereon. Except as otherwise agreed on by the Parties, no part of Licensee's Facilities (other than the two innerducts noted above, which shall be available exclusively for City use pursuant to Section 2. a. herein) shall be used at any time by or for the benefit of any party other than Licensee. The Facilities (with the exception of the two (2) innerducts noted herein) shall belong to Licensee and shall be there at the sole risk of Licensee, and Seattle Center shall not be liable for damage thereto or theft, misappropriation or loss thereof, except in the event of the gross negligence or willful misconduct of Seattle Center, its employees, or contractors. Licensee shall be solely responsible for any taxes or payments in lieu of taxes which may be assessed against or on account of all or any portion of the Facilities.

## **11. Environmental Laws**

Licensee shall indemnify, hold harmless and defend the City from any claims, expenses, liabilities, actions, or damages (including reasonable outside attorneys fees) resulting from discharges, emissions, spills, storage or disposal of Hazardous Substances occurring during the term of this Agreement to the extent caused by Licensee or its agents or contractors, or any other action by the Licensee giving rise to City liability, civil or criminal, or responsibility under Federal, state or local environmental laws. This provision shall survive the expiration or termination of this Agreement, and Licensee's obligations hereunder shall apply whenever the City incurs costs or liabilities for Licensee's actions of those of its agents or contractors. Notwithstanding the foregoing, Licensee shall not be responsible for any costs or liabilities resulting from any discharge, spill, storage or disposal of a Hazardous Substance if the Hazardous Substance was brought onto the Property by the City or its employees or agents.

"Hazardous Substance" means any hazardous, toxic, or dangerous waste, substance or material, including petroleum products, or any contaminant, pollutant or chemical defined or identified in any environmental regulation as posing a potential risk to human health or the environment.



*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 7*

Licensee understands and agrees that flammable or Hazardous Substances, including explosives, petroleum products, paint, solvents, and resins, are not allowed on the Premises without the express written permission of the City. If written permission to store the preceding materials is granted by the City, disposal of such materials shall be in a legal manner by Licensee.

Prior to initiating any process requiring the use or storage of, or generating, on or adjacent to the leased premises, Hazardous Substances, Licensee covenants and agrees to obtain the City's prior approval. The City may consider approving the specific use, but only after Licensee demonstrates to the satisfaction of the City that Licensee has all necessary permits for operation and a Hazardous Substances emergency response plan.

Licensee agrees to cooperate in any environmental audits conducted by the City's staff or independent third parties. If Licensee fails to take remedial measures for actions for which Licensee would be liable under this Agreement within ninety (90) days after notice of the same, the City may elect to perform such work, and Licensee covenants and agrees to reimburse the City for its actual costs associated with the City's work.

The indemnities, other duties, and obligations provided for in this Section shall survive the expiration or termination of this Agreement.

## **12. Indemnification**

a. The City shall not be liable to Licensee, in law or in equity, and Licensee hereby releases and agrees to hold the City harmless from any damages to Licensee's Facilities or for damages relating to the interruption of service or interference with the operation of Licensee's Facilities.

b. Licensee shall indemnify and hold the City harmless from all claims, actions, damages and expenses arising or that may arise in the future out of or resulting from Licensee's use of the Property or the Buildings or the conduct of its business or from any activity, work or thing done, permitted or suffered by Licensee in or about the Property or the Buildings, except for damages arising from the gross negligence or willful misconduct of the City, its employees, or contractors. If any suit based upon such claims, actions, damages, or expenses is brought against the City, Licensee, upon notice of the commencement thereof, shall defend the same by counsel reasonably satisfactory to the Licensee at Licensee's sole cost and expense (provided that the City shall have the right to appear in and defend any such action by its own counsel).

This indemnification obligation shall include, but is not limited to, all claims against the City by any employee or former employee of Licensee and Licensee expressly waives all immunity and limitations on liability under any industrial insurance act, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such a claim.



*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 8*

Any liability of Licensee hereunder for acts or omissions occurring during the term of this Agreement, or arising under any indemnity provision of this Agreement, shall survive termination and surrender (whether or not any claim giving rise to such liability shall have accrued).

**13. Notice**

All notices or other instruments pertaining to this License shall be in writing and shall be sent by certified mail, return receipt requested, or by nationally recognized overnight courier service, to the addresses set forth below:

City: Robert Nellams  
Director  
Seattle Center  
305 Harrison Street  
Seattle, Washington 98109

Licensee: Comcast Cable Communications Management, LLC  
410 Valley Avenue NW  
Puyallup, WA 98371  
Attn: Business Services

With a copy to: Comcast Cable Communications, LLC  
Attn: General Counsel  
One Comcast Center  
1701 John F. Kennedy Blvd.  
Philadelphia, PA 19102

Such address may be changed upon five (5) days written notice thereof given to the other Party.

**14. Relationship**

In no event shall the City be construed or held to have become in any way or for any purpose a partner, associate, or joint venturer of Licensee or any party associated with Licensee in the conduct of Licensee's business or otherwise. This Agreement does not make Licensee the agent or legal representative of the City for any purpose whatsoever.





*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 9*

**15. Authority**

Each Party represents and warrants that it has full power and authority to enter into and perform this Agreement, and that the person signing this Agreement on behalf of each Party has been properly authorized and empowered to do so. Each Party further acknowledges that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted.

**16. Assignment**

Licensee shall not assign or transfer this Agreement without the written consent of the City, which consent will not be unreasonably withheld or conditioned or unduly delayed; except that, upon written notice to the City, Licensee may, without obtaining City's prior consent, make such assignment to:

(a) any parent, affiliate, or subsidiary of Licensee; or

(b) any entity which succeeds to all or substantially all of Licensee's assets or ownership interests, or the cable system operated by Licensee (or its affiliate or subsidiary) which serves the municipality in which the Property is located, whether by merger, sale or otherwise, provided that such successor also succeeds to the cable television franchise agreement held by Licensee (or its affiliate or subsidiary) for the municipality in which the Property is located.

**17. Limitation of Liability**

Neither party shall be liable to the other party for any lost profits, special, incidental, punitive, exemplary or consequential damages, including but not limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities or services, or down time cost, even if advised of the possibility of such damages.

**18. Miscellaneous**

a. This Agreement, together with the attached Exhibit A, constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind between the Parties not set forth herein. Any amendments to this Agreement must be in writing and executed by both Parties.

b. This License shall be construed in accordance with the laws of the State of Washington. Venue for any action hereunder shall be in King County, Washington.



*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 10*

c. If any term of this License is found to be void or invalid, such invalidity shall not affect the remaining terms of this License, which shall continue in full force and effect.

d. This Agreement shall bind and benefit the parties and their respective successors and assigns.

**19. Force Majeure**

The Parties shall not be liable to each other for failure to perform its obligations hereunder due to acts of God, the failure of equipment or facilities not belonging to Licensee (including, but not limited to, utility facilities or service), denial of access to facilities or rights-of-way essential to serving the Property or Building, government order or regulation or any other circumstances beyond the reasonable control of the Licensee.

**IN WITNESS WHEREOF**, the Parties hereto have caused this License to be duly executed as of the date first mentioned above.

CITY:

THE CITY OF SEATTLE  
Seattle Center

\_\_\_\_\_  
Robert Nellams  
Director

LICENSEE:

Comcast Cable Communications Management, LLC

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_



*City of Seattle/Seattle Center – Comcast Cable Communications LLC Agreement, pg. 11*

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF KING                )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of The City of Seattle, Seattle Center Department, to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC residing at  
\_\_\_\_\_, Washington.  
My appointment expires \_\_\_\_\_.

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF KING                )

Comcast Cable Communications Management LLC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

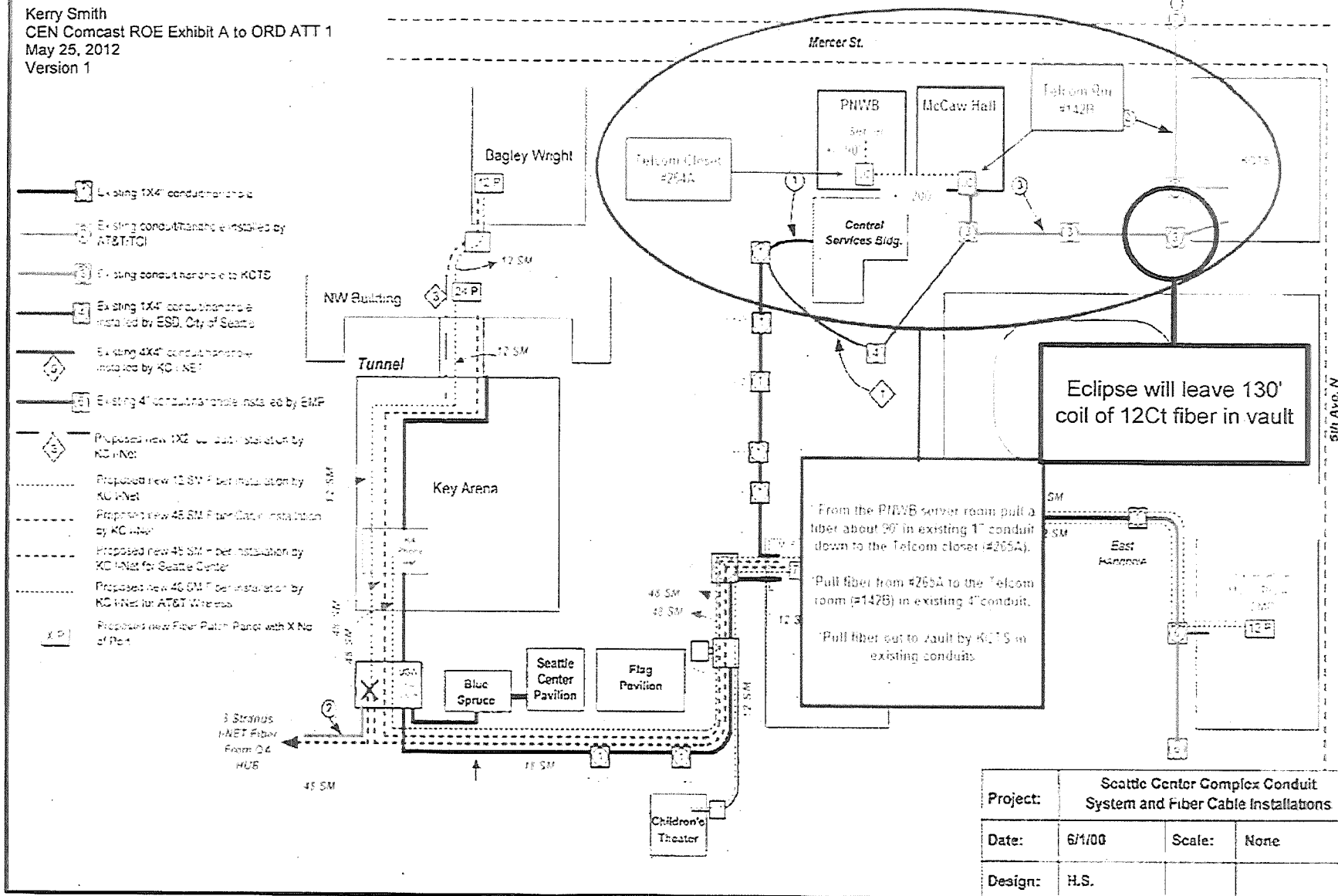
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
NOTARY PUBLIC residing at  
\_\_\_\_\_, Washington.  
My appointment expires \_\_\_\_\_.





Kerry Smith  
CEN Comcast ROE Exhibit A to ORD ATT 1  
May 25, 2012  
Version 1



Project:	Seattle Center Complex Conduit System and Fiber Cable Installations		
Date:	6/1/00	Scale:	None
Design:	H.S.		

Site #	JT # 56584	Date	11/12/10	By	Bart Sisek	Task	Surveyed	Engineered For:		Page Title	Sheet 1 - Sefnco Handoff		
Site Name	Pacific Northwest Ballet						Designed			Date	Nov 12, 2010		
Address	301 Mercer St Seattle Wa 98109									Title	56584 - Sefnco Handoff - 8x10.vsd		
							Approved						

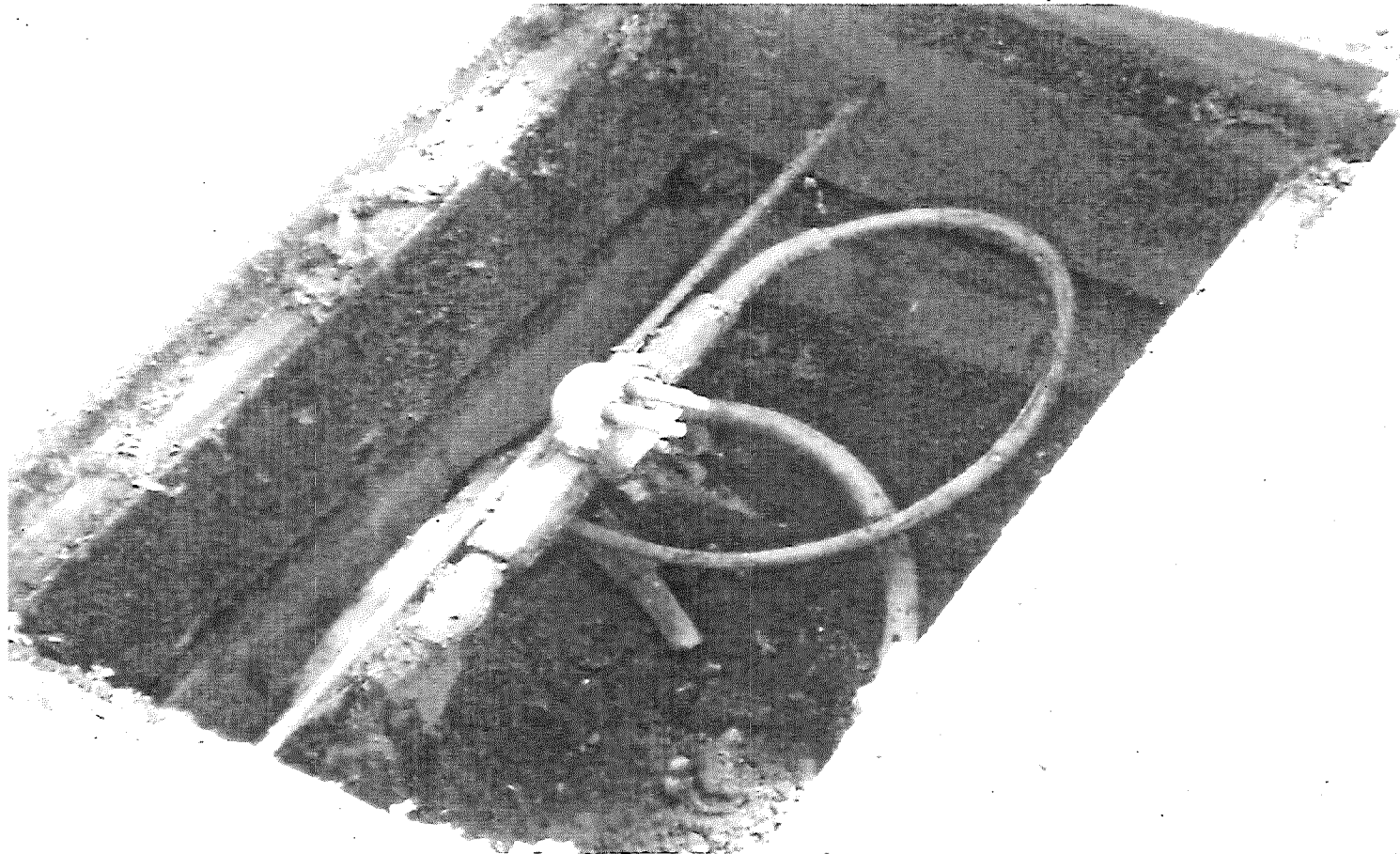






Kerry Smith  
CEN Comcast ROE Exhibit A to ORD ATT 1  
May 25, 2012  
Version 1

From node at 5<sup>th</sup> and Roy over lash fiber north to Valley the go west over lash to 4th then head south down fourth riser down to HH next to pole #602. Proof and pull fiber north to HH at Republic and fourth 500ft and leave coil.

1700ft of aerial and 500ft ug proof and pull.



HH next to pole #602 on 4<sup>th</sup> ave.

JT # 56584		Date 11/12/10	By Bart Sisk	Task Surveyed	Engineered For	Page Title Sheet 2 - vault	
Site Name	Pacific Northwest Ballet			Designed	  <b>eclipse engineering</b> 1120 1st Ave S Burien, WA 98148 Phone: 206.834.8500	Date	Nov 12, 2010
Address	301 Mercer St Seattle WA 98109			Approved		Title	56584 - Seifco Handoff - Bx10.vsd

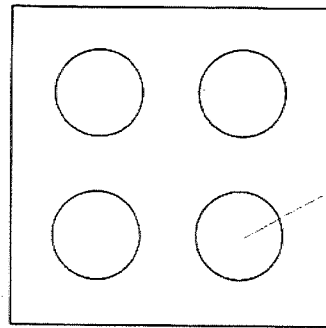
Kerry Smith  
CEN Comcast ROE Exhibit A to ORD ATT 1  
May 25, 2012  
Version 1



# Exhibit A

KCTS – Seattle Center Conduit  
(NOT TO SCALE)

Side view of vault 1



Licensed Conduit

McCaw Hall IT City Fiber

100'

Comcast Vault

Arena wall box to roof

KCTS Vault 1

85'

60'

KCTS Vault 2

220'

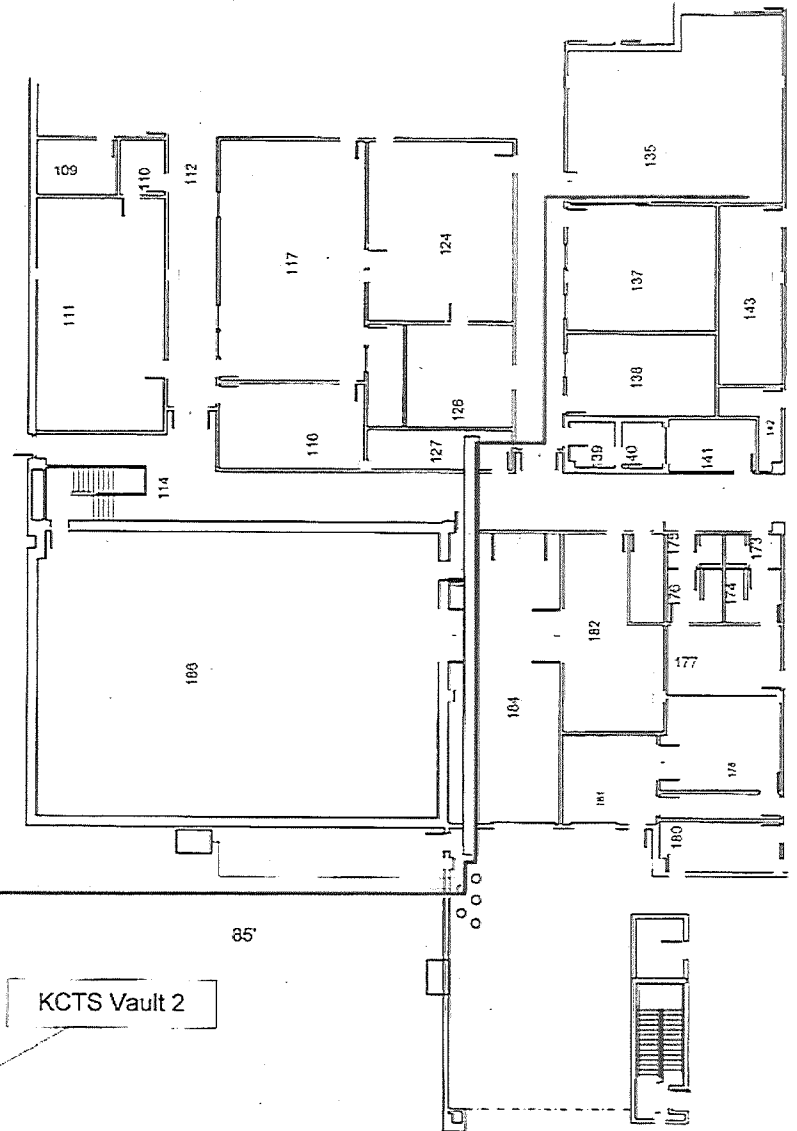
300'

KCTS Vault 4

KCTS Vault 3

Behind McCaw Hall

Behind Arena



12 pr SM/MM from McCaw Hall  
telecom to KCTS Room 135

**Attachment 2**  
**LICENSE AGREEMENT**  
**Between**  
**KCTS TELEVISION**  
**And**  
**THE CITY OF SEATTLE**

**THIS LICENSE AGREEMENT** (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between KCTS Television, a Washington nonprofit corporation, (the "Licensor"), and The City of Seattle, a Washington municipal corporation (the "Licensee").

1. **Grant.** Licensor hereby grants to Licensee or its contractors or agents (i) a non-exclusive license to use one of the four 4" conduits owned by Licensor that runs between Licensor's vault at 4<sup>th</sup> Avenue North and Republican Streets and the vault approximately 100 feet south of the McCaw Hall main telecomm room at Seattle Center, which conduit run is approximately 600 linear feet (the "Conduit"), as shown on Exhibit A attached hereto and incorporated herein by reference; and (ii) a non-exclusive right to install, construct, replace, maintain, repair, operate, and remove, at Licensee's option and expense, three 1¼" innerducts within a portion of Licensor's Conduit (the "Innerducts").

2. **Access.** Licensor shall allow Licensee or its contractors or agents access to the Conduit at all times, twenty four (24) hours per day, seven (7) days per week, for the foregoing purposes.

3. **Installation.** Construction of the Innerducts shall be performed in a manner consistent with generally accepted construction standards. Licensee or its contractors or agents shall remove any existing cabling from the Conduit, and return it to Licensor. Licensee shall notify Licensor of the date and time such construction is scheduled to begin, and shall notify, or have its contractor or agent notify, Licensor upon completion of the construction of the Innerducts.

4. **Licensee Obligations.** Licensee shall comply with all applicable laws. Licensee shall keep the Conduit in good order and repair, and shall promptly repair all damage to the Conduit caused by Licensee, other than ordinary wear and tear. The Innerducts shall belong to Licensee, shall be there at the sole risk of Licensee, and Licensor shall not be liable for damage thereto or loss thereof, except in the event of Licensor's gross negligence or willful misconduct.



5. **Term.** The Term of this Agreement shall be five (5) years, commencing on the date set forth above. The Licensee shall have the right to renew this Agreement for up to three (3) additional five year terms. Licensee shall provide written notice to Licensor of its intent to renew the Agreement at least sixty (60) days prior to the expiration of this Agreement.

6. **Consideration.** In exchange for Licensee's use of Licensor's Conduit, Licensee shall:

(a) Install, in one of the three (3) Innerducts installed and owned by Licensee, a 12-pair hybrid multimode/singlemode fiberoptic cable provided and owned by Licensor (the "Fiberoptic Cable") between Licensor's main equipment room ("Room 135") in Licensor's broadcast facility at 401 Mercer Street and the McCaw Hall main telecomm room, and a wall-mount fiber connector panel in each of these locations, for Licensor's exclusive use. The Fiberoptic Cable shall be installed in an industry-standard professional manner; and

(b) Terminate four (4) multimode pairs and two (2) singlemode pairs of the Fiberoptic Cable on the wall-mount fiber connector panels in both Room 135 and the McCaw Hall main telecomm room (connectors shall be SC type connectors), and leave the unterminated pairs coiled and marked, in an industry-standard professional manner; and

(c) Subject to the prior written approval of the Seattle Center Director for each project or event, allow Licensor to access and use certain, limited fiberoptic cable infrastructure owned by Licensee, as may be located between the McCaw Hall main telecomm room and any other Seattle Center facility, for projects or events of a limited duration involving Seattle Center programs and/or Seattle Center Resident Tenants; and

(d) Reimburse Licensor for \$1,000.00 of the cost of the Fiberoptic Cable, within thirty (30) days after receipt from Licensor documenting Licensor's cost to purchase it.

7. **Insurance.** Licensee shall maintain in full force and effect, at its own expense, self insurance or other insurance covering claims and risks of loss from perils that can be insured against under Commercial General Liability insurance policies in conjunction with any work performed by the City or its employees. Licensee has provided evidence of the same to Licensor. In addition, Licensee shall require that any third party who performs work or services on the Conduit or Innerducts shall maintain Commercial General Liability insurance in an aggregate amount of \$1,000,000.

8. **Contingency.** This Agreement is contingent upon the execution of a Right of Entry Agreement between Licensee and Comcast Cable Communications Management, LLC, in substantially the form attached hereto as Attachment 1 ("Right of





Entry”), no later than three (3) months after the date of this Agreement. In the event the Right of Entry is not finalized and executed within three (3) months, this Agreement shall automatically terminate and the parties shall have no further rights or obligations under it.

9. **Authority.** Each party represents and warrants that it has full power and authority to enter into and perform this Agreement, and that the person signing this Agreement has been properly authorized and empowered to do so.

10. **Notices.** All notices under this Agreement shall be written and given by certified mail, return receipt requested, or nationally recognized overnight courier service, to the respective address set forth below (or as may subsequently be provided):

If to Licensor: KCTS Television  
401 Mercer Street  
Seattle, WA 98109  
Attention: Legal Affairs Manager

If to Licensee: Director, Seattle Center  
305 Harrison Street  
Seattle, WA 98109

11. **Relationship.** In no event shall Licensor be construed or held to have become in any way or for any purpose a partner, associate, or joint venture of Licensee or any party associated with Licensee in the conduct of Licensee’s business or otherwise. This Agreement does not make Licensee the agent or legal representative of Licensor for any purpose whatsoever.

12. **Assignment/Sublicense.** Other than the Right of Entry attached hereto as Attachment 1, Licensee shall not assign or transfer this Agreement or sublicense the use and/or the rights granted under this Agreement without the written consent of Licensor, which consent will not be unreasonably withheld, conditioned or delayed.

13. **Miscellaneous.**

- (a) This Agreement and Exhibit A hereto, constitute the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind between the parties not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.
- (b) This Agreement shall be construed in accordance with the laws of the State of Washington. Venue for any action hereunder shall be in King County, Washington.



- (c) If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of the Agreement, which shall continue in full force and effect.
- (d) This Agreement shall bind and benefit the parties and their respective successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date first mentioned above.

Licensee:

City of Seattle

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Licensor:

KCTS Television

By: \_\_\_\_\_

Name: \_\_\_\_\_

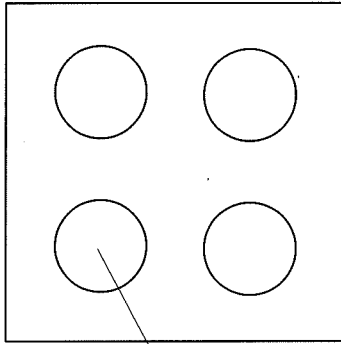
Title: \_\_\_\_\_



# Exhibit A

## KCTS - Seattle Center Conduit (NOT TO SCALE)

Side view of vault 1



Licensed Conduit

McCaw Hall IT City Fiber

100'

Arena wall box to roof

Comcast Vault

KCTS Vault 1

220'

KCTS Vault 4

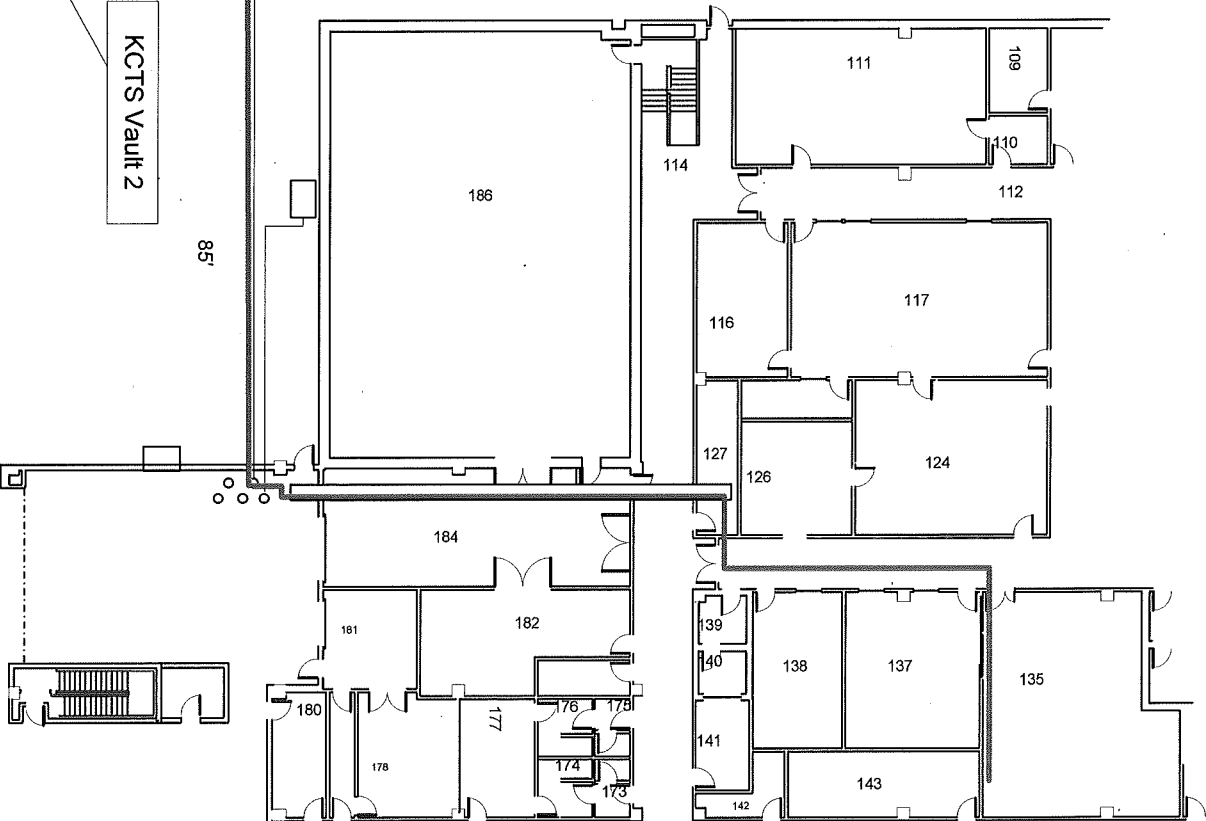
300'

KCTS Vault 3

KCTS Vault 2

60'

85'



Behind McCaw Hall

Behind Arena

12 pr SM/MM from McCaw Hall  
telecom to KCTS Room 135

### **FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Seattle Center	Chris Miller, SC 733-9711 Kerry Smith, SC 615-0358 Suzanne Smith, Law, 684-5472	Greg Shiring, 386-4085

**Legislation Title:**

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a right of entry agreement with Comcast Cable Communications Management, LLC and a license agreement with KCTS Television, to allow for access of conduit and installation of fiber optic cable and related equipment needed to provide various communication services at Seattle Center.

**Summary of the Legislation:**

This legislation authorizes a right of entry agreement with Comcast Cable Communications Management, LLC ("Comcast") and a license agreement with KCTS to allow for access to conduit and installation of innerducts, fiber optic cable and related equipment in City and KCTS conduit to provide various communication services to Seattle Center tenants and facilities.

**Background:**

This legislation is the result of a cooperative effort between KCTS, Pacific Northwest Ballet (PNB), Comcast and Seattle Center.

KCTS, PNB and Seattle Center want to improve communication services in their facilities by adding telecommunications infrastructure technology to provide higher speed and higher capacity internet connectivity. Specifically, PNB requires an Ethernet dedicated internet (EDI) circuit to support their growing volume of on-line ticket sales and other internet based transactions between their two facilities. At the same time, a growing number of McCaw Hall event clients desire this type of high speed/high capacity internet bandwidth for events which utilize video conferencing or multiple simultaneous Wi-Fi internet services. Finally, as the cost of this infrastructure technology has become more affordable, KCTS desires to install high speed/high capacity connectivity between its facility and Seattle Center's facilities, to enable possible broadcast of Seattle Center events by KCTS.

PNB received a grant from the Wallace Foundation to purchase and install EDI circuits for the Phelps Center and their school facility on the east side. Comcast indicated to PNB that installing a direct conduit connection between their closest internet "point of presence" facility and the Phelps Center would be cost prohibitive for PNB. Comcast was able to suggest an alternative and affordable connection method, utilizing existing conduit infrastructure between Comcast's internet service vault adjacent to KCTS's facility at 4<sup>th</sup> and Republican and the Phelps Center,





via McCaw Hall's main telecomm room. This method saves PNB's capital funds and provides benefits to all the parties at no additional cost. It also provides Seattle Center the capability to significantly enhance the speed and capacity of internet service for its event clients at McCaw Hall which has become an expectation of many clients over the past several years.

EDI circuits operate exclusively over fiber optic cable, which is currently not available in the existing conduit between McCaw Hall, KCTS and the Exhibition Hall/Phelps Center. Some of the conduit needed to connect these facilities to each other and to the vault in KCTS is owned by the City and some is owned by KCTS. Two separate agreements, each contingent upon the other, are necessary to authorize the installations to implement the EDI circuit for PNB and for enhanced internet connectivity for McCaw Hall.

The right of entry agreement with Comcast will authorize Comcast to add innerducts and install fiber optic cable and related equipment in Seattle Center conduit so that PNB will be able to utilize an EDI circuit. As consideration for being allowed to install this equipment, Comcast will also add additional innerducts and fiber optic cable in Seattle Center's and KCTS's conduit for use by Seattle Center and KCTS. Those innerducts will be used by Seattle Center to serve McCaw Hall and the Exhibition Hall. Comcast will install the necessary equipment at no expense to Seattle Center and KCTS will purchase the fiber optic cable. Comcast will reimburse the City for the cost of fiber optic cable and the City will reimburse KCTS.

The license agreement with KCTS will allow the City to use KCTS conduit to authorize Comcast to install innerducts and fiber optic cable for City use. In exchange for City use of their conduit, KCTS will provide fiber optic cable to be connected between KCTS's equipment room and the McCaw Hall telecomm room. KCTS, subject to the Seattle Center Directors approval, will be able to use utilize the fiber optic cable for broadcast purposes for Seattle Center events.

The right of entry agreement with Comcast has an initial five-year term that automatically renews for three additional five-year terms unless Comcast is in default. The license agreement with KCTS allows the City access to the conduit for five years, with options for the City to renew the license for three additional five-year terms.

DoIT has been involved in determining the appropriate conduit and installation procedures necessary to implement the improved communication services.

Please check one of the following:

☒ **This legislation does not have any financial implications.**

☐ **This legislation has financial implications.**

**Other Implications:**

**a) Does the legislation have indirect financial implications, or long-term implications?**

This legislation is not expected to expense implications for the City, although the availability of enhanced internet connectivity in McCaw Hall will be attractive to rental clients

and may result in increased event revenue for the facility.

**b) What is the financial cost of not implementing the legislation?**

This legislation is being proposed to enable Seattle Center tenants and clients using the Center's facilities to utilize an Ethernet dedicated internet (EDI) circuit and to provide the option for KCTS to broadcast Seattle Center events. The circuit allows higher speed and higher capacity internet than is currently available. The Center needs to meet current technology standards to maintain service to both tenants and clients in a competitive environment.

**c) Does this legislation affect any departments besides the originating department?**

The Department of Information Technology will assist in overseeing the work of Comcast's contractor while installing the cabling through Seattle Center conduit and telecomm rooms. Kristine Henry-Simmons, DoIT Fiber Program Manager is aware of this legislation.

**d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

While Seattle Center tenants might be able to secure EDI service through other means, neither the City nor the rental facilities would benefit from this approach without additional expense.

**e) Is a public hearing required for this legislation?**

No

**f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No

**g) Does this legislation affect a piece of property?**

No

**h) Other Issues:**

None

**List attachments to the fiscal note below:**

None





**City of Seattle**  
Office of the Mayor

June 19, 2012

Honorable Sally J. Clark  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Clark:


I am pleased to transmit the attached proposed Council Bill that authorizes a Right of Entry Agreement with Comcast Cable Communications Management, LLC at Seattle Center and a License Agreement between KCTS Television and the City of Seattle. Under these agreements, Comcast is authorized to use City conduit and the City is authorized to use KCTS conduit to provide communication services to Seattle Center tenants and facilities. These agreements will allow McCaw Hall, the Phelps Center and the Exhibition Hall to be served by Ethernet dedicated internet (EDI) circuits, significantly increasing the speed and capacity of internet service. It will also provide KCTS with fiber optic connectivity to McCaw Hall, for possible future broadcast of Seattle Center events.

There is conduit between the Exhibition Hall, Phelps Center, McCaw Hall and KCTS. Some of that conduit is owned by KCTS and some is owned by Seattle Center. Under these agreements, Comcast will have a license to access City and KCTS conduit for up to twenty years, and the City will have a license to use KCTS conduit for this purpose for five years, with options for three additional five-year terms. In exchange for the City allowing Comcast to access the conduit, Comcast will add additional innerducts and fiber optic cable for Seattle Center and KCTS use. Comcast will be responsible for all expenses associated with these improvements. Fiber optic cable will also be added between KCTS and McCaw Hall as consideration for use of KCTS's conduit.

Through the cooperative efforts of KCTS, Pacific Northwest Ballet and Comcast, it will be possible to offer facility tenants and clients high speed, high capacity internet service to meet their technology requirements.

Thank you for your consideration of this legislation. Should you have questions, please contact Chris Miller at 733-9711 or Robert Nellams at 684-7334.

Sincerely,



Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor  
Office of the Mayor  
600 Fourth Avenue, 7<sup>th</sup> Floor  
PO Box 94749  
Seattle, WA 98124-4749

Tel (206) 684-4000  
Fax (206) 684-5360  
TDD (206) 615-0476  
mike.mcgin@seattle.gov



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CITY OF SEATTLE  
12 SEP -7 PM 3:15  
CITY CLERK

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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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287392  
CITY OF SEATTLE, CLERKS OFFICE

No. 123933,934,935,936,937

**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 12<sup>th</sup> 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:TITLE ONLY ORDINANCE

was published on

08/10/12

The amount of the fee charged for the foregoing publication is the sum of \$ 104.63, which amount has been paid in full.



Affidavit of Publication

*[Signature]*

Subscribed and sworn to before me on

08/10/12

*[Signature]*

Notary public for the State of Washington,  
residing in Seattle

## State of Washington, King County

### City of Seattle Title Only Ordinances

The full text of the following legislation, passed by the City Council on July 23, 2012, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>.

Contact: Office of the City Clerk at (206) 684-8344.

#### ORDINANCE NO. 123933

AN ORDINANCE authorizing, in 2012, acceptance of funding from non-City sources; authorizing the heads of the Seattle Fire Department, Seattle Police Department, Office of Economic Development, Office of Sustainability and Environment, Department of Neighborhoods, Human Services Department, Department of Information Technology, Seattle City Light, Department of Parks and Recreation, Seattle Department of Transportation and Seattle Public Utilities to accept specified grants and private funding and to execute, deliver, and perform corresponding agreements; and ratifying and confirming certain prior acts.

#### ORDINANCE NO. 123934

AN ORDINANCE relating to a recreational trails agreement with King County; authorizing the Director of Seattle Public Utilities to grant King County permission to develop and operate recreational trails on portions of utility property in the Tolt Right of Way, the Lake Youngs Reservoir area, the West Seattle Right of Way, the Snoqualmie Valley/Rattlesnake Lake area, and the Cedar River Pipeline Drain Right of Way; in partial consideration for which the County will grant the City permission to use King County property in the vicinity of Rattlesnake Lake for recreational trails and an access road; and authorizing the Director to execute the agreement for these property uses.

#### ORDINANCE NO. 123935

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a right of entry agreement with Comcast Cable Communications Management, LLC and a license agreement with KCTS Television, to allow for access of conduit and installation of fiber optic cable and related equipment needed to provide various communication services at Seattle Center.

#### ORDINANCE NO. 123936

AN ORDINANCE relating to the Technology Matching Fund Program; making allocations and authorizing implementation of certain Technology Matching Fund projects in 2012; providing that 2012 appropriations for the Technology Matching Fund from the Cable Television Franchise Subfund and from the Information Technology Fund shall automatically carry forward into the 2013 fiscal year; that any unspent funds from an individual project may be applied to another Technology Matching Fund project; and ratifying and confirming certain prior acts.

#### ORDINANCE NO. 123937

AN ORDINANCE relating to the referral of certain permit applications from the Department of Planning and Development to the Department of Neighborhoods for historic landmark review and amending Sections

25.05.800 and 25.12.370 of the Seattle Municipal Code.

Date of publication in the Seattle Daily Journal of Commerce, August 10, 2012.

8/10(287392)