

Ordinance No. 122515

Council Bill No. 11594M

AN ORDINANCE related to cable television; approving the transfer of control, subject to conditions, of the franchises held by Millennium Digital Media Systems, L.L.C. ("Millennium"); repealing Ordinance 122179; approving the transfer of control of Millennium's franchises; authorizing the Chief Technology Officer to execute a Settlement Agreement, which includes a Town Hall Fiber Construction Agreement, for the purpose of resolving outstanding compliance issues related to the transfer; accepting funds from Millennium; and increasing appropriations in the 2007 Adopted Budget; all by a three-fourths vote of the City Council.

CF No. \_\_\_\_\_

Date Introduced:	<u>7.23.07</u>	
Date 1st Referred:	<u>7.23.07</u>	To: (committee) <u>Energy and Technology</u>
Date Re - Referred:		To: (committee)
Date Re - Referred:		To: (committee)
Date of Final Passage:	<u>10-1-07</u>	Full Council Vote: <u>80</u>
Date Presented to Mayor:	<u>10-2-07</u>	Date Approved: <u>10-11-07</u>
Date Returned to City Clerk:	<u>10-11-07</u>	Date Published: <u>5</u> T.O. <input 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: [Signature]  
Councilmember

## Committee Action:

9/26/07 - DO PASS - JG, DD

10-1-07 Passed 80 (Excused: McIver)

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

*Law Department*

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed

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

14 WHEREAS, Ordinance 122179, passed by the City Council on July 31, 2006, authorized the transfer of  
15 Millennium's Franchises to WaveDivision V, L.L.C. (a/k/a Wave Broadband); and

16 WHEREAS, Ordinance 122179 provided that in the event the sale of Millennium's assets to Wave  
17 Broadband did not close for any reason or, in the event that the sale closed on terms  
18 substantially or materially different from Millennium's FCC Form 394 filing or other  
19 information relied upon by the City, then the City's consent would be null and void, and the  
20 City deemed to have disapproved the transfer; and

21 WHEREAS, Millennium informed the City on or about August 2, 2006, that the sale to Wave  
22 Broadband had been cancelled and would not close (see Exhibit A), thereby voiding Ordinance  
23 122179; and

24 WHEREAS, Millennium subsequently secured financing through a series of transactions that affected  
25 the capital structure and equity ownership of Millennium's parent company, Millennium  
26 Digital Media Holdings, L.L.C. ("MDM Holdings"); and

27 WHEREAS, the City maintains that Millennium's actions to restructure its financing constitutes a  
28 "transfer of control" under Millennium's Franchises; and

WHEREAS, in accordance with Section 14 of the Franchises and SMC 21.60.520, cable franchises  
may not be transferred without prior consent of the City; and

WHEREAS, the City maintains that Millennium effectively transferred control of the Franchises on or  
about October 26, 2006, and Millennium is therefore in violation of its Franchises for not  
obtaining prior consent from the City; and

WHEREAS, pursuant to Section 19.2 of the Franchises, the City maintains that it has a right to assess  
liquidated damages against Millennium for Millennium's failure to obtain prior transfer  
approval required by Section 14 of the Franchises and SMC 21.60.520, among other available  
remedies; and



1 WHEREAS, in lieu of liquidated damages, the City and Millennium have agreed to enter into a  
2 Settlement Agreement (Exhibit B to this ordinance), wherein Millennium agrees to provide  
3 certain benefits such as a \$20,000 Community Technology Grant to be used to assist segments  
4 of the Seattle community who are underrepresented on the public access channel and cable  
5 modem service for City-sponsored community technology centers; and

6 WHEREAS, the City and Millennium have also agreed to enter into a Town Hall Fiber Construction  
7 Agreement to allow the Seattle Channel to air live programming from Town Hall events (see  
8 Attachment 2 to the Settlement Agreement in Exhibit B to this ordinance); and

9 WHEREAS, on December 11, 2006, Millennium provided the City with FCC Form 394 "Application  
10 for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television  
11 Franchise" (the "Application"), wherein Millennium described a series of transactions creating  
12 new financing and ownership of Millennium (the "Transaction"); and

13 WHEREAS, the City, through its Office of Cable Communications ("OCC"), pursuant to its authority  
14 under SMC 21.60.520, the Franchises, and federal law, requested additional information from  
15 Millennium necessary to evaluate the Application, and following receipt of such information,  
16 deemed the Application complete on May 1, 2007; and

17 WHEREAS, pursuant to 47 U.S.C. § 537, the City has 120 days to act upon a request for approval of a  
18 transfer after receipt of a completed application, in this case by August 28, 2007, unless an  
19 agreement is reached to extend the date, or the City's consent is implied; and

20 WHEREAS, Millennium has agreed to extend the 120 day time period until December 1, 2007; and

21 WHEREAS, the Transaction contemplated under the Application must be approved by City Council  
22 prior to or concurrently with the City's authorization of a renewed Millennium franchise,  
23 which is the subject of another Council Bill to be considered by the City Council in 2007, so  
24 that Millennium is in compliance with its existing Franchises; and

25 WHEREAS, the City wishes to make the approval of the Transaction retroactive to October 26, 2006,  
26 to coincide with the date when the alleged transfer of control effectively occurred; and

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

WHEREAS, the City has determined that the Transaction contemplated in the Application is not  
contrary to the public interest or federal, state, or local law; NOW THEREFORE

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



1 Section 1. Repeal of Ordinance 122179. Ordinance 122179, entitled:

2 AN ORDINANCE related to cable television; authorizing the Mayor to approve the transfer of  
3 control, subject to conditions, of the franchises held by Millennium Digital Media Systems,  
4 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.

5 is hereby repealed.

6 Section 2. The City, subject to Millennium Digital Media, L.L.C. ("Millennium") complying  
7 with the requirements of Section 6 of this ordinance, approves the transfer of control of the cable  
8 franchises of Millennium, including the franchises authorized under Ordinances 117955 and 118361,  
9 as amended, from TSG Cable Investment Corporation, a Delaware Corporation, TSG Cable Investment  
10 Corporation III, a Delaware Corporation (the "Redeeming Members"), and Millennium Digital Media,  
11 L.L.C., a Missouri Limited Liability Corporation to Highland Crusader Offshore Partners, L.P., an  
12 entity created, and in good standing, under the laws of Bermuda; Credit Suisse International, a foreign  
13 corporation organized under the laws of England and Wales; and Bear Stearns Credit Products Inc., a  
14 Delaware corporation, retroactive to October 26, 2006.

15  
16 Section 3. The Chief Technology Officer is authorized to execute a Settlement Agreement in  
17 substantially the form attached to this ordinance as Exhibit B, to accept grant funds in the amount of  
18 \$20,000 from Millennium, and to take such further action as may be necessary to implement the  
19 Settlement Agreement. The funds, when received, shall be deposited into the Cable Television  
20 Franchise Subfund.  
21

22 Section 4. The Chief Technology Officer is authorized to enter into an agreement with  
23 Millennium regarding installation of fiber from the Seattle Channel to Town Hall in substantially the  
24 form attached to this ordinance as Attachment 2 to Exhibit B ("Town Hall Fiber Construction  
25 Agreement") and to take such further action as may be necessary to implement the Town Hall Fiber  
26 Construction Agreement.  
27  
28



1 Section 5. In order to pay for necessary costs and expenses to be incurred in 2007, but for  
2 which insufficient appropriations were made, the appropriations for the following in the 2007 Budget are  
3 hereby increased as follows:

Fund	Department	Budget Control Level	Amount
Information Technology Fund (50410)	DoIT	D4400 Office of Electronic Communications	\$20,000
Cable Television Franchise Subfund (00160)	DoIT	D160B Cable Fee Support to Information Technology Fund	\$20,000

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13 The above appropriations are made for the purpose of implementing certain terms of the  
14 Settlement Agreement (found in Exhibit B) pertaining to the public access channel.

15 Section 6. An original Settlement Agreement, which includes a Town Hall Fiber Construction  
16 Agreement, substantially in the same form as Exhibit B to this ordinance, shall be signed and filed by  
17 Millennium with the City Clerk and the Office of Cable Communications no later than thirty (30) after  
18 the City Council passes Council Bill 115946, which authorizes the Mayor to enter into a renewed  
19 franchise agreement with Millennium, or this ordinance shall be null and void and the City shall be  
20 deemed to have disapproved the transfer under the Franchise and federal law, and all remedies under  
21 Sections 14.2 and 19.1 of the Franchise and applicable law shall be available to the City.  
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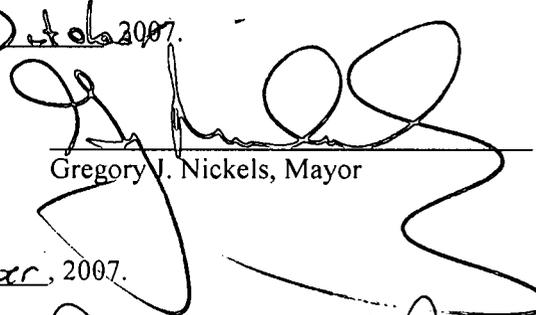
1 Section 7. Any acts consistent with and prior to the effective date of this ordinance are hereby  
2 ratified and confirmed.

3 Section 8. This ordinance shall take effect and be in force thirty (30) days from and after its  
4 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after  
5 presentation, it shall take effect as provided by Municipal Code Section 1.04.020; but only if  
6 Millennium signs and files the agreements described in Section 6 within thirty (30) days after the City  
7 Council passes Council Bill 115946 which authorizes the Mayor to enter into a renewed cable  
8 television franchise agreement with Millennium.

9 Passed by three-fourths (3/4) vote of the members of the City Council the 1<sup>st</sup> day of  
10 October, 2007, and signed by me in open session in authentication of its passage this 1<sup>st</sup> day of  
11 October, 2007.

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13 \_\_\_\_\_  
14 President \_\_\_\_\_ of the City Council

15 Approved by me this 11<sup>th</sup> day of October 2007.

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17 \_\_\_\_\_  
18 Gregory J. Nickels, Mayor

19 Filed by me this 11<sup>th</sup> day of October, 2007.

20   
21 \_\_\_\_\_  
22 City Clerk

23 (Seal)

24 Exhibit A: Letter dated August 2, 2006, from Millennium re cancelled contract  
25 Exhibit B: Settlement Agreement (includes Town Hall Fiber Construction Agreement)  
26 Attachment 1 – Goodwill Commitment to Explore Use of New Technologies  
27 Attachment 2 – Town Hall Fiber Construction Agreement  
28



# City of Seattle

Gregory J. Nickels, Mayor

FILED  
CITY OF SEATTLE

2007 OCT 25 PM 12:48

**Department of Information Technology**  
Bill Schrier, Director and Chief Technology Officer

CITY CLERK

**Date:** October 25, 2007  
**To:** City Clerk's Office  
**From:** Janet Jensen, Department of Information Technology  
**Subject:** Millennium Franchise Documents

Attached for filing are executed contracts pertaining to Millennium's renewed franchise, Ordinance 122514, and the Millennium franchise transfer, Ordinance 122515:

For filing with Ordinance 122514:

1. Signed cable franchise agreement

For filing with Ordinance 122515:

1. Signed Settlement Agreement
2. Signed Town Hall Fiber Construction Agreement

Please call me at 6-0031 should you have any questions.

07 OCT 25 PM 12: 51

ORDINANCE 122515

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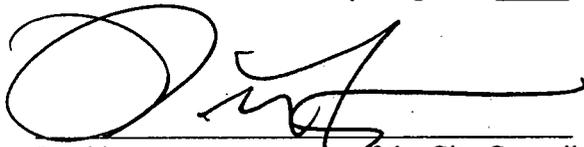
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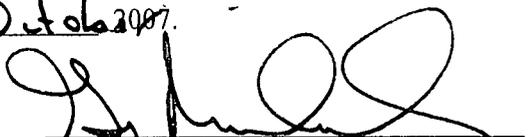
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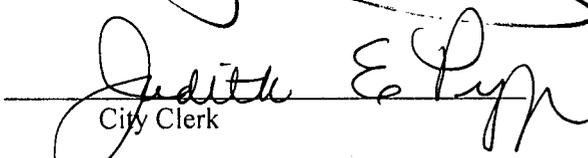
9 Passed by three-fourths (3/4) vote of the members of the City Council the 1<sup>st</sup> day of  
10 October, 2007, and signed by me in open session in authentication of its passage this 1<sup>st</sup> day of  
11 October, 2007.

12   
13 \_\_\_\_\_  
14 President \_\_\_\_\_ of the City Council

15 Approved by me this 11<sup>th</sup> day of October, 2007.

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17 \_\_\_\_\_  
18 Gregory J. Nickels, Mayor

19 Filed by me this 11<sup>th</sup> day of October, 2007.

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21 \_\_\_\_\_  
22 City Clerk

23 (Seal)

- 24 Exhibit A: Letter dated August 2, 2006, from Millennium re cancelled contract  
25 Exhibit B: Settlement Agreement (includes Town Hall Fiber Construction Agreement)  
26 Attachment 1 – Goodwill Commitment to Explore Use of New Technologies  
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28



Millennium Digital Media  
3633 136<sup>th</sup> Place, S.E.  
Suite 107  
Bellevue, WA 98006



August 2, 2006

Office of Cable Communications  
P.O. Box 94709  
Seattle, WA 98124-4709

Dear Sir or Madam:

As you know, earlier this year, Millennium Digital Media Systems L.L.C. ("MDM") filed Federal Communications Commission Form 394, "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise", requesting the consent of your community to a transfer of the ownership of the franchise from MDM to WaveDivision Holdings, LLC, or an affiliate thereof. We know that you have expended time and effort in reviewing the documentation for the transaction and preparing the item to be placed before your local regulatory body. However, we'd like you to know that the sale to WaveDivision Holdings has been cancelled and a close will not occur.

The sale was pursued in good faith and at the conception of the transaction appeared to be in the best interest of all parties concerned. However, as noted above, circumstances have changed and we have been able to resolve many of the challenges that we were facing and believe that our customers and our investors are best served by MDM retaining ownership of the systems.

We do regret and apologize for any and all inconvenience this situation may have caused. Please know that serving our customers and providing them with highly valued broadband services remains our first priority. We will keep you apprised of any new developments as and if they occur.

Again, we are very pleased to be able to continue to serve the cable related needs of your community. In the days and weeks to come, I will continue to be available to discuss any franchise related issues you may have. My number during business hours is 425.747.4600 ext. 1167.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Walker', written in a cursive style.

David Walker  
Vice President & General Manager

---

Millennium Digital Media • 120 S. Central Ave., Suite 150 • St. Louis, MO 63105-1705  
Telephone 314.802.2400 • Facsimile 314.802.2300

Exhibit A to CB 115947  
(Millennium 2007 Transfer Legislation)



07 OCT 25 PM 12: 52

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and among City of Seattle, a Washington <sup>CITY CLERK</sup> municipal corporation (the "City"), and Millennium Digital Media Systems, L.L.C. ("MDM Systems"), a Delaware limited liability company.

**RECITALS**

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

B. MDM Systems has notified City of its intent to seek renewal of the Franchises pursuant to 47 U.S.C. § 546 and City and MDM Systems have reached agreement on the terms and conditions for renewal of the Franchises ("Renewed Franchise").

C. Millennium Digital Media Holdings, L.L.C. ("MDM Holdings") is the indirect but ultimate parent of MDM Systems. Prior to October of 2006, all of the membership interests in MDM Holdings were owned by four investment groups, including TSG Cable Investment Corporation ("TSG"), TSG Cable Investment Corporation III ("TSG III"), Millennium Digital Media, L.L.C. ("MDM") and Caravelle Millennium Investment Corporation ("Caravelle").

D. On or about October 26, 2006, MDM Holdings redeemed and retired the membership interests of TSG, TSG III and MDM in a series of transactions that resulted in the acquisition of membership interests by Highland Crusader Offshore Partners, L.P. ("Highland"), an entity created, and in good standing, under the laws of Bermuda; Madeleine, L.L.C. ("Madeleine"), a New York limited liability company; Credit Suisse International, a foreign corporation organized under the laws of England and Wales; and Bear Stearns Credit Products Inc., a Delaware corporation (collectively and together with Caravelle, the "Assignee"). Madeleine has since conveyed its interests to Highland. These transactions are collectively referred to as the "Transaction."

E. Section 14 of the Franchises and Subsection 21.60.520 of the Seattle Municipal Code (SMC) provide that a cable franchise may not be transferred to another person without the approval of City. Section 14 also provides that substantial property owned and operated by the grantee of a franchise may not be transferred without the consent of City.

F. On December 11, 2006, MDM Systems provided City with a Form FCC 394 "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" (the "Application") reporting on the Transaction and providing documentation. MDM Systems has since supplemented the documentation. MDM Systems maintains that the Transaction did not constitute a transfer and/or change in control under its Franchises or SMC 21.60.520.



G. City maintains that the Transaction allowed MDM Systems to restructure its debt and secure financing to continue meeting its franchise and other business obligations and resulted in a transfer and/or a transfer of control under MDM Systems' Franchises and SMC 21.60.520.

H. To the extent the Transaction did constitute a transfer, failure to obtain City approval prior to the Transaction could be considered a violation of the Franchises and could subject MDM Systems to liquidated damages in the amount of \$265 per day from the date of violation.

I. MDM Systems and City now desire to conclude, settle, release and discharge once and forever, all rights, claims, causes of actions, liabilities, disputes and demands relating to the Transaction and any alleged violation of the Franchises or the Seattle Municipal Code as well as any liquidated damages that could be assessed by City on MDM Systems as a result of the Transaction.

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and obligations hereinafter set forth, and for good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Settlement Agreement hereto agree as follows:

## **AGREEMENTS**

### **1. Transfer Consent by City.**

City grants the Application and City consents to and approves the transfer and/or assignment requested in the Application. The parties agree that City acted on the Application in a timely manner under federal law.

### **2. Release of Claims by City.**

City hereby fully surrenders to and releases, acquits, and forever discharges MDM Systems, its officers, directors, members, shareholders, employees, predecessors, successors, and assigns, and MDM Systems' parents, subsidiaries, affiliates, and their officers, directors, members, shareholders, employees, predecessors, successors, and assigns, from any and all manner of action and actions, cause and causes of action, suits, damages (including liquidated damages), sums of money, demands or claims (as that term is defined at 11 U.S.C. §101(5)), whatsoever, in law or in equity, direct or indirect, whether or not now known, suspected or claimed, which it ever had, now has, or may have arising from or in any way related to the Transaction.

### **3. Consideration by MDM Systems.**

MDM Systems shall make available the following to City (definitions for all capitalized terms are the same as those in the Renewed Franchise, unless otherwise noted):

- A. Lower-Priced Tier.** Within six (6) months of the Effective Date, MDM Systems shall establish a lower-priced Cable Service tier to be offered throughout the term of the Renewed Franchise. This lower-priced tier will have an initial price not to exceed \$19.99 per month and will be comprised of approximately 30 channels. MDM Systems shall take such steps as necessary to insure that Subscribers and potential



Subscribers have ready access to information concerning the lower-priced tier through, at a minimum, posting on MDM Systems' website pages accessible to Seattle Subscribers and by telephone upon request to MDM Systems' customer service representatives.

- B. Cable Modem Service.** Upon the Effective Date, MDM Systems, while it or its affiliates hold the Renewed Franchise, agrees to provide Internet service at no cost to (i) those community technology sites that it was providing complimentary Internet service to in 2006, and (ii) such other community technology sites mutually agreed to in writing by City and MDM Systems; provided the number of other community technology sites designated pursuant to clause (ii) hereof shall not exceed fifty (50) different locations and MDM Systems shall not unreasonably disagree regarding sites proposed by 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 but not to exceed fifty (50) IP addresses. Complimentary Internet service shall be installed and activated within 30 days of a request from City unless an alternative schedule is mutually agreed upon.
- C. Goodwill Commitment to Explore Use of New Technologies.** See Attachment 1 for further details.
- D. KIRO Advertising Grant.** Beginning January 1, 2008, and on January 1 of each year thereafter throughout the term of the Renewed Franchise, MDM Systems shall make available an annual grant in the amount of ten thousand (\$10,000) dollars worth of advertising spots on KIRO TV to be used at City's discretion. In the event City does not use the full grant in any given year, it may not carry over the unused portion of the grant into subsequent years. The full value of the commitment by MDM Systems will be recognized as fulfilled annually based on the availability of the spots regardless of whether or not City chooses to use the advertising spots.
- E. Advertising Credit.** In the side letter between City of Seattle and Comcast of WA I, Inc. and Comcast of WA IV, Inc. ("Comcast"), dated April 9, 2006, Comcast agreed to provide City with a \$50,000 annual credit ("Advertising Credit") to be used for the purchase of air time to promote programs airing on the Government Access Channel. This enables City to purchase commercial spots on Comcast's cable system from Comcast Spotlight, which is Comcast's advertising sales division. MDM Systems does not have a similar advertising sales division; instead, MDM Systems uses Comcast Spotlight to sell advertising spots on MDM Systems' cable system. Throughout the term of Comcast's Franchise authorized under Ordinance 122089 or January 20, 2016, whichever is greater, whenever City uses the Advertising Credit to purchase a commercial spot from Comcast Spotlight that airs on Comcast's cable system, MDM Systems shall permit that commercial spot to air either simultaneously on MDM Systems' cable system or in a comparable time slot at no charge to City.
- F. Community Technology Grant.** Within thirty (30) days of the Effective Date, Millennium shall provide the City a technology grant in the amount of \$20,000. This



funding shall be used to establish a grant fund to assist segments of the Seattle community who are underrepresented (e.g. ethnically, economically) on the public access channel but who want to utilize the channel to have their voices heard and tell their stories. This grant fund shall be administered by the City's Designated Public Access Manager, SCAN, in cooperation with the Department of Information Technology.

- G. VOD.** Within twelve (12) months of the Effective Date, MDM Systems will establish a Video on Demand ("VOD") service offering to its Seattle Subscribers. VOD is the delivery of video content, in broadcast quality, over a cable system to an individual Subscriber. Such content is initiated by the Subscriber at his or her time of choosing and is delivered to the Subscriber as an individual data stream ("Unicast"). The content will allow for VCR-type functionality, such as record, fast-forward and pause.
- H. Customer Service Upgrades.** Within twelve (12) months of the Effective Date, MDM Systems shall carry out the following plans in an effort to improve customer responsiveness and to increase overall customer satisfaction:
1. MDM Systems will establish a new centralized call center with expanded hours that will provided three additional hours per day over what was provided during 2006 of live customer service for Seattle customers. MDM Systems intends to further expand available live customer support over time.
  2. MDM Systems will move to new office facilities to consolidate the technical, engineering, service, and operations staff under one roof.
- I. Planned System Upgrades.** Within twelve (12) months of the Effective Date unless otherwise noted,, MDM Systems shall make the following system upgrades in the Franchise Area in an effort to increase system reliability, enhance customer experience, and correct any system compliance issues:
1. MDM Systems will establish new network management support through IBBS that will provide 24/7 support for network monitoring alerts and traffic management.
  2. MDM Systems will increase the number of High Definition (HD) channels available to its Seattle Subscribers.
  3. MDM Systems will execute a technical compliance plan, approved by the Department of Information Technology ("DoIT"), to inspect and correct, if necessary, all noncompliant subscriber cable drop connections within MDM Systems' service area to be completed by December 1, 2008. MDM Systems will provide quarterly progress reports to City in accordance with the approved plan.



**J. Complementary Cable Service.**

1. MDM Systems shall install and furnish, at its sole cost, Basic Cable TV Service, including any required terminal equipment, to buildings in the Franchise Area owned and operated by the City for public purposes and not residential use (residential areas of fire and police stations excepted), as designated by the City.
2. MDM Systems shall install and furnish, at its sole cost, Basic Cable TV Service and "cable in the classroom" (or a reasonably available alternative program), including any required terminal equipment, to every School building in the Franchise Area.

**K.** MDM Systems shall construct a fiber connection to Town Hall pursuant to a written agreement that is substantially in the form of the "Town Hall Fiber Construction Agreement" attached hereto as Attachment 2.

**L.** As to section 3, subparagraphs B, D, E, F, I, J and K above, MDM Systems expressly waives: 1) any and all rights it may have under applicable laws to recover any consideration provided thereunder from City; 2) any rights it may have to offset or deduct any consideration provided thereunder from past, present or future franchise fee payments owed City; and 3) any rights it may have to pass through as a separate line item on Subscriber bills any consideration associated with the requirements set forth thereunder.

**4. Effective Date**

The effective date of this Settlement Agreement ("Effective Date") shall be the effective date of the ordinance introduced as Council Bill 115946 (Ordinance 122514) authorizing the Renewed Franchise.

**5. Voluntary Agreement**

This Settlement Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement. It is understood and agreed by City and MDM Systems that neither this Settlement Agreement nor anything herein shall be deemed to be an admission or confession by MDM Systems of any liability whatsoever or any breach of the terms of the Franchises or violation of SMC 21.60.520. If this Settlement Agreement should be deemed unenforceable, the parties shall have all rights under applicable law to pursue any and all remedies available.

**6. Binding Effect**

This Settlement Agreement will inure to the benefit of and be binding upon the parties and respective successors and assigns. The parties for themselves and their respective successors and assigns agree to join in or execute any instruments and to do any other act or thing necessary or proper to carry into effect this or any part of this Settlement Agreement.



**7. Governing Law**

This Settlement Agreement shall be interpreted and adjudicated in accordance with the laws of the State of Washington. Any litigation between the City and MDM Systems arising under or regarding this Settlement Agreement shall occur, if in the state courts, in the King County Superior Court, and if in the federal courts, in the United States District Court for the Western District of Washington.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as their free and voluntary acts and deeds.

**City of Seattle, Washington**

**Millennium Digital Media Systems, L.L.C.**

  
By: William M. Schrier Date: 25 Oct 2007  
Title: Chief Technology Officer

  
By: John K. Brooks Date: 10-18-07  
Title: Executive Vice President

Attachment 1 – Goodwill Commitment to Explore Use of New Technologies  
Attachment 2 – Town Hall Fiber Construction Agreement

## GOODWILL COMMITMENT TO EXPLORE USE OF NEW TECHNOLOGIES

The City of Seattle ("City") and Millennium Digital Media, L.L.C. ("Millennium") agree to work together to explore the possible uses of advanced broadband technology for the mutual benefit of the City, Millennium and the residents and businesses of the City. The City seeks to explore the use of broadband technology to strengthen the communication of the City with its residents by using innovative ways to enhance civic discourse. The City and Millennium agree to explore possible ways to work together to find creative ways to apply new technology to public process. The City hopes to add value to the franchise, increase understanding and support for City programs, increase citizen participation in public policy matters and provide a model for other municipalities seeking maximum public benefit from cable franchises.

This document is not intended to create binding legal obligations on either party, but, rather, it is to confirm the parties' understandings that each is willing to work in mutual good faith throughout the term of the franchise to achieve the goals outlined herein.

The City hopes to develop applications that bring information and City services to the public, applications that explore municipal use of cable and Internet for e-commerce and billing, and applications that allow interactive polling and on-line voting. Millennium understands that it is very difficult at this time for the City to fully define all applications and services that will be enabled as the capabilities of broadband technology evolve. Millennium agrees to work cooperatively with the City in the future in an effort to determine how the City can best utilize network capacity available for municipal purposes. Millennium agrees to consult and meet with the City of Seattle, and to the extent Millennium has resources available to do so, help the City better define how it plans to use the agreed upon channels and bandwidth capacity.

The City hopes to create an array of municipal services that stretch across technical platforms and technologies: a "Democracy Portal" that will build on Seattle's current successes in new communications strategies and provide the means for citizens to easily and meaningfully interact with their elected officials and decision makers. The City has an active presence on the Web, with an award-winning website. The Seattle Channel is on the forefront of methods to merge the Internet and television as channels for improved citizen participation. The City believes this approach will expand the content and service value of these resources. The City and Millennium commit themselves to exploring collaboration on uses of this advanced communications strategy.

Millennium and the City recognize that "channel number" assignments may lose some significance in an on-demand environment where the selection of video streams is similar to the point and click method typically associated with a web page on the Internet. Millennium and the City further recognize that during term of this franchise video programming could be accessed by subscribers over its cable system from a graphic interface similar to a web portal. Such a graphic interface, sometimes referred to as a "walled garden", will offer subscribers a menu of options including video programming. Millennium agrees that if it creates such a user interface, it will discuss with the City the option of placing an icon of the City's choosing on the top layer of any "walled garden" or other similar user interface so that subscribers will have ready access to local non commercial programming. The City of Seattle in turn will support the use of content from the City of Seattle to the Millennium "home page" environment to add to the local



experience for subscribers.

The Franchise agreement includes the use of television channels for Public, Education and Government (PEG) programming. As the technical capacity of the interactive television platform matures, the City and Millennium will explore possible pilot deployments of interactive capability for government purposes. Both parties recognize that the form and use of interactive television is at a formative stage. The mutual participation in such an effort could take a number of forms to support the Democracy Portal, or might possibly include the use of "instant polling" functions during City deliberative processes and/or the possible delivery of viewer comments, via the interactive television experience. The City will commit to work with Millennium and its partners in the development of interactive options to carefully respect any and all system or contractual restraints, set top box technology, programming methods, bandwidth constraints, and evolving business plans. Early notification to the City of the programming standards and requirements to support the Millennium technology may help to facilitate the City as possibly being an early provider of content. It is the hope of the City that the provision of such early interactive content will offer enhanced value for services which will be offered by Millennium as a result of its new technology and network to be deployed within the City. The City understands that Millennium's assistance must be consistent with its core operational and business needs, taking into account any immediate or potential impact on Millennium's network, customers, business plan and strategy. Millennium in turn acknowledges that the City seeks to maintain its role in providing its residents access to the most advanced technological services.



## TOWN HALL FIBER CONSTRUCTION AGREEMENT

THIS AGREEMENT (the "Construction Agreement") is by and between the City of Seattle, Washington (the "Owner"), and Millennium Digital Media Systems, L.L.C., a Delaware limited liability company ("Contractor"), for construction of a fiber optic cable connection related to the City of Seattle's cable television franchise granted to Contractor to use the City's public rights of way and compatible utility easements to construct, reconstruct, repair and maintain a Cable System.

The Owner and the Contractor hereby recite and agree as follows:

### RECITALS

WHEREAS, Owner and Contractor have entered into a written Franchise Agreement, authorized under the ordinance introduced as Council Bill 115946 (Ordinance 122514) under which Contractor will hold a cable franchise from the Owner to use the Owner's public rights of way and compatible utility easements to construct, reconstruct, repair and maintain a Cable System in a portion of the City of Seattle, Washington (the "Franchise Agreement").

WHEREAS, Owner and Contractor have entered into a written Settlement Agreement (the "Settlement Agreement"), authorized under the ordinance introduced as Council Bill 115947 (Ordinance 122515).

WHEREAS, as part of the consideration due from Contractor to Owner under the Franchise Agreement and the Settlement Agreement and in lieu of any liquidated damages related to a transfer of the existing franchises, Contractor has agreed to provide certain construction services for construction of a fiber optic cable connection from DoIT's manhole at 5<sup>th</sup> & Seneca to Town Hall at 1119 Eighth Avenue, Seattle, Washington (the "Fiber Connection").

WHEREAS, Owner and Contractor have agreed to execute this Construction Agreement evidencing the obligation of Contractor to provide construction services for construction of the Fiber Connection to Town Hall.

### ARTICLE 1

#### THE CONTRACT AND THE CONTRACT DOCUMENTS

##### 1.1 The Contract.

1.1.1 The Contract between Owner and Contractor, of which this Construction Agreement is a part, consists of the Contract Documents.

1.1.2 The Contract shall be effective on the Effective Date of the Franchise Agreement.



1.2 The Contract Documents.

1.2.1 The Contract Documents consist of

- (a) This Construction Agreement;
- (b) Any other amendments hereto executed by the parties hereafter;
- (c) The Map described in Article 2 below and attached as Attachment 2.1 hereto; and
- (d) The Estimate of Town Hall Fiber Connection Costs described in Article 2 below and attached as Attachment 2.2 hereto.

Documents not enumerated in this Section 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement.

1.3.1 The Contract constitutes the entire and exclusive agreement between Owner and Contractor with reference to Contractor's construction of the Fiber Connection and Owner's payment therefor. Specifically, without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between Owner and Contractor relating to the construction of the Fiber Connection. While the primary agreement between the parties is the Franchise Agreement, if there is a conflict between this Construction Agreement and the Franchise Agreement relating to the construction of the Fiber Connection, then this Construction Agreement shall control.

1.4 No Privity With Others.

1.4.1 Nothing contained in the Contract shall create, or be interpreted to create privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 Intent, Interpretation and Definitions.

1.5.1 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.2 When a word, term or phrase is used in the Contract, it shall be interpreted or construed as follows: First, as defined in this Construction Agreement or in the Franchise Agreement; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.



1.5.3 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.4 Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.5 Neither the organization of any of the Contract Documents nor the divisions, sections, paragraphs, articles (or other categories) shall control Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by subcontractors.

## ARTICLE 2

### THE WORK

2.1 Contractor shall perform all the Work required by the Contract.

2.2 The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties under the Contract, which specifically are construction of the Fiber Connection, including the installation of innerduct and the pulling of fiber optic cable; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required to fulfill Contractor's obligations under the Contract. The Work to be performed by Contractor is described as follows:

2.2.1 As depicted on the Map that is attached hereto as Attachment 2.1, Owner owns four-inch diameter conduit ("Owner Conduit") that is empty and runs from a City of Seattle manhole (referred to as "DoIT MH to Splice" on the Map) at Fifth Avenue and Seneca Street (Manhole No. 1) east on Seneca Street to a City of Seattle manhole (referred to as "DoIT MH" on the Map) at Eighth Avenue and Seneca Street (Manhole No. 2). Prior to installing fiber from Manhole No. 1 to Manhole No. 2, Contractor will notify Kris Henry-Simmons at (206) 684-0265.

2.2.2 Contractor shall install three (3) 1-1/4" innerduct with pull rope from Manhole No. 1 to Manhole No. 2. Prior to installing the innerduct described herein, Contractor will schedule the installation with Kris Henry-Simmons (206) 684-0265, who will notify AboveNet, Dan Walla (206) 988-8660, cell (206) 255-7372 (since the two manholes on each side of I-5 are common manholes).

2.2.3 The fiber count pulled through the innerduct shall be a minimum of 48-strand single mode fiber optic cable. Owner, not Contractor, is responsible for connecting or splicing and shall connect or splice the fiber optic cable to the Battery Street Tunnel Cable at Manhole No. 1.



2.2.4 Contractor shall complete the building entrance and inside conduit construction at Town Hall after scheduling the work to be performed with the Town Hall Director of Operations, Sheila Smith at 206-652-4255. Contractor shall install: A) a two-inch (2") conduit from DoIT's MH in the right-of way into Town Hall's maintenance closet; 2) a junction box in the maintenance closet; and 3) one inch flex steel, or some other surface mount conduit, from this junction box to a location agreed upon by Daryl Peck (Seattle Channel) and Sheila Smith (Town Hall) in the Great Hall Auditorium (upstairs). Daryl and Sheila have another location that the fiber (12 single mode "SM") needs to be extended and terminated at also in the "Downstairs at Town Hall" Auditorium. Sheila Smith from Town Hall shall determine whether flex-steel is used and painted to match the walls or another surface mount conduit is used. The total distance is estimated at under 400 feet.

2.2.5 Contractor shall also: 1) terminate 12 SM fibers (strands 1-12) with ST connectors; 2) install an Ortronics wall mount panel; and 3) label, test and supply OTDR test documentation for the length of the cable installed.

### ARTICLE 3

#### CONTRACT TIME

##### 3.1 Time.

3.1.1 Contractor shall commence the Work pursuant to the terms of Article 2 above when given written notice by Owner after the Effective Date and shall achieve Substantial Completion of the Work, as defined under Section 3.2, no later than three (3) months from such written notice.

##### 3.2 Substantial Completion.

3.2.1 "Substantial Completion" shall mean that stage when the Work performed is ready for final inspection and is subjected to and passes a technical performance test in accordance with Section 3.2.2.

3.2.2 When the Work is completed and the Contractor is ready for a final inspection, the Contractor shall notify the Owner in writing and propose a date for Owner's inspection. On the inspection date, the Contractor shall conduct a technical performance test in the Owner's presence to demonstrate the Work done is in full compliance with the Contract. If the Work passes the technical performance test to the reasonable satisfaction of the Owner, then the Work shall be deemed to have reached "Substantial Completion." If the Work fails to pass the test, the Contractor shall correct the problem promptly and propose a date for a second inspection.



## ARTICLE 4

### CONTRACT PRICE

4.1 Contractor Costs. Attached as Attachment 2.2 is a City Estimate of Town Hall Fiber Connection Costs prepared by the Owner. Contractor shall be responsible for covering the costs of the un-highlighted items, namely: Permit; Innerduct; Install innerduct; Labor to pull underground cable; Police safety watch; Truck rental; Building entrance at Town Hall; Flex steel inside Town Hall; Fiber panel (wall mounted); Fiber connector; Labor to terminate; Labor to test; Interior fiber box. Contractor shall not be responsible or liable for any costs or expenditures beyond those in Attachment 2.2 as described above. Any savings by Contractor from "Cost" set forth on Attachment 2.2 shall be for the benefit of and belong to Contractor.

4.2 Owner Costs. The Owner shall be responsible for covering the costs of the highlighted items shown on Attachment 2.2 and any other costs to complete the Work. In particular, the Owner is responsible for the following: fiber cable; fiber splice case; splice tray; labor to splice; van rental; splice into Battery Street Tunnel cable at 5<sup>th</sup> and Seneca (ends are SMT and EOC). Contractor shall reimburse Owner for Owner's actual costs (properly and completely documented) incurred for these items, provided that Owner shall use its best efforts to incur the minimal costs reasonable under the circumstances and in no event shall Contractor reimburse Owner for more than \$15,000.

4.3 Cost of Repair and Maintenance.

4.3.1 After Substantial Completion, the cost of any and all repair and maintenance shall be Owner's responsibility and borne by Owner, including the cost of relocation of any portion of the Fiber Connection, emergency restoration repairs, or utility construction or repair.

## ARTICLE 5

### THE OWNER

5.1 Information Required From Owner.

5.1.1 Owner shall furnish Contractor all information reasonably needed for Contractor to complete the Work under this Agreement .

5.2 Permits and Fees.

5.2.1 Owner shall use best efforts to ensure that the necessary permits for construction of the Fiber Connection are issued to Contractor in a timely and nondiscriminatory manner. Contractor shall not be responsible for any delays caused by the permitting process unless such delays are caused by Contractor.



5.3 Owner Conduit.

5.3.1 Owner warrants that the Owner Conduit is in good repair and sufficient to be used as contemplated in this Agreement.

**ARTICLE 6**

**THE CONTRACTOR**

6.1 Contractor shall perform the Work strictly in accordance with this contract.

6.2 Warranty.

6.2.1 Contractor warrants to Owner that, as of Substantial Completion, the Work will be in material compliance with the requirements of this Agreement, unless modified in writing by Contractor and Owner. The remedies set forth in this Agreement at Section 6.8 are the exclusive remedies for any breach of this Agreement. The warranties made in this Agreement are IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.3 Contractor shall obey and pay for all permits, fees and licenses necessary and ordinary for the Work. Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

6.4 Supervision.

6.4.1 Contractor shall supervise and direct the Work. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the contract.

6.5 Access to Work.

6.5.1 Owner shall have access to the Work at all times from commencement of the Work through Substantial Completion. Contractor shall take whatever steps are necessary to provide access when requested.

6.6 Indemnity.

6.6.1 Contractor agrees to forever indemnify the Owner, its employees and elected officials, against any liabilities, claims, damages, judgments, costs and expenses, including attorneys' fees, of any kind, whether direct or indirect, incurred by the Owner connected to or incident to Contractor's, including Contractor's employees, agents and subcontractors, negligence or breach of this Agreement.



6.7 Contractor shall not pass through to its Subscribers any of the costs associated with the Fiber Connection either as a line item on Subscriber bills, as an external charge in FCC rate forms, or as an offset against past, present or future franchise fees or any other fees or taxes owed by Contractor to the Owner.

6.8 Remedies. Neither party shall be in default of any obligation in this Agreement (the "Defaulting Party") unless and until the other party (the "Non-defaulting Party") shall have given the Defaulting Party written notice of such default and the Defaulting Party shall have failed to cure the same within thirty (30) days after receipt of such notice; provided, however, that where such default cannot reasonably be cured within such thirty (30) day period, if the Defaulting Party shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default shall be extended for a period no longer than sixty (60) days from the date of the receipt of the default notice. Any event of default by a Defaulting Party may be waived under the terms of this Agreement at the Non-defaulting Party's option. Upon the failure by the Defaulting Party to timely cure any such default after notice thereof from the Non-defaulting Party, the Non-defaulting Party may (i) take such action as it determines, in its sole discretion, to be necessary to correct the default, and (ii) pursue any legal remedies it may have under applicable law or principles of equity relating to such breach.

## ARTICLE 7

### SUBCONTRACTORS

#### 7.1 Definition.

7.1.1 A subcontractor is an entity which has a direct contract with the Contractor to perform all or a portion of the Work.

#### 7.2 Award of Subcontracts.

7.2.1 All subcontracts shall afford Contractor's rights against the subcontractor which correspond to those rights afforded to Owner against the Contractor herein.

## ARTICLE 8

### INSURANCE

8.1 During the term of the Contract, Contractor shall provide Owner with proof of insurance and comply with all the insurance provisions as required in the Franchise Agreement.

## ARTICLE 9

### MISCELLANEOUS

9.1 The Contract shall be governed by the law of State of Washington.

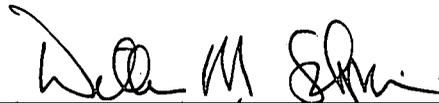


9.2 Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this contract. Neither Contractor nor Owner shall assign this Contract without the written consent of the other party which shall not be unreasonably withheld.

9.3 If Contractor shall be delayed or interrupted in the performance or completion of the Work hereunder by an embargo, war, fire, flood, earthquake, epidemic or other calamity, act of God or of the public enemy, or by any strike or labor dispute, or by the inability to secure governmental licenses, permits or priorities, or by the unavailability of sources of supply to Contractor, or by any other outside cause which is beyond the control of Contractor and without its fault or negligence, then it shall be excused from any delay or failure to perform under the Contract. Contractor shall employ commercially reasonable efforts to mitigate or eliminate the cause of any delay or to avoid any foreseeable events which may lead to a delay.

9.4 If Contractor shall be delayed or interrupted in the performance or completion of the Work hereunder by any neglect or default of Owner, then it shall be excused from any delay or failure to perform under the Contract caused by such neglect or default of Owner.

CITY OF SEATTLE, WASHINGTON

By:   
Its: Chris Technology Officer  
Dated: 25 OCT 2007

MILLENNIUM DIGITAL MEDIA SYSTEMS,  
L.L.C.

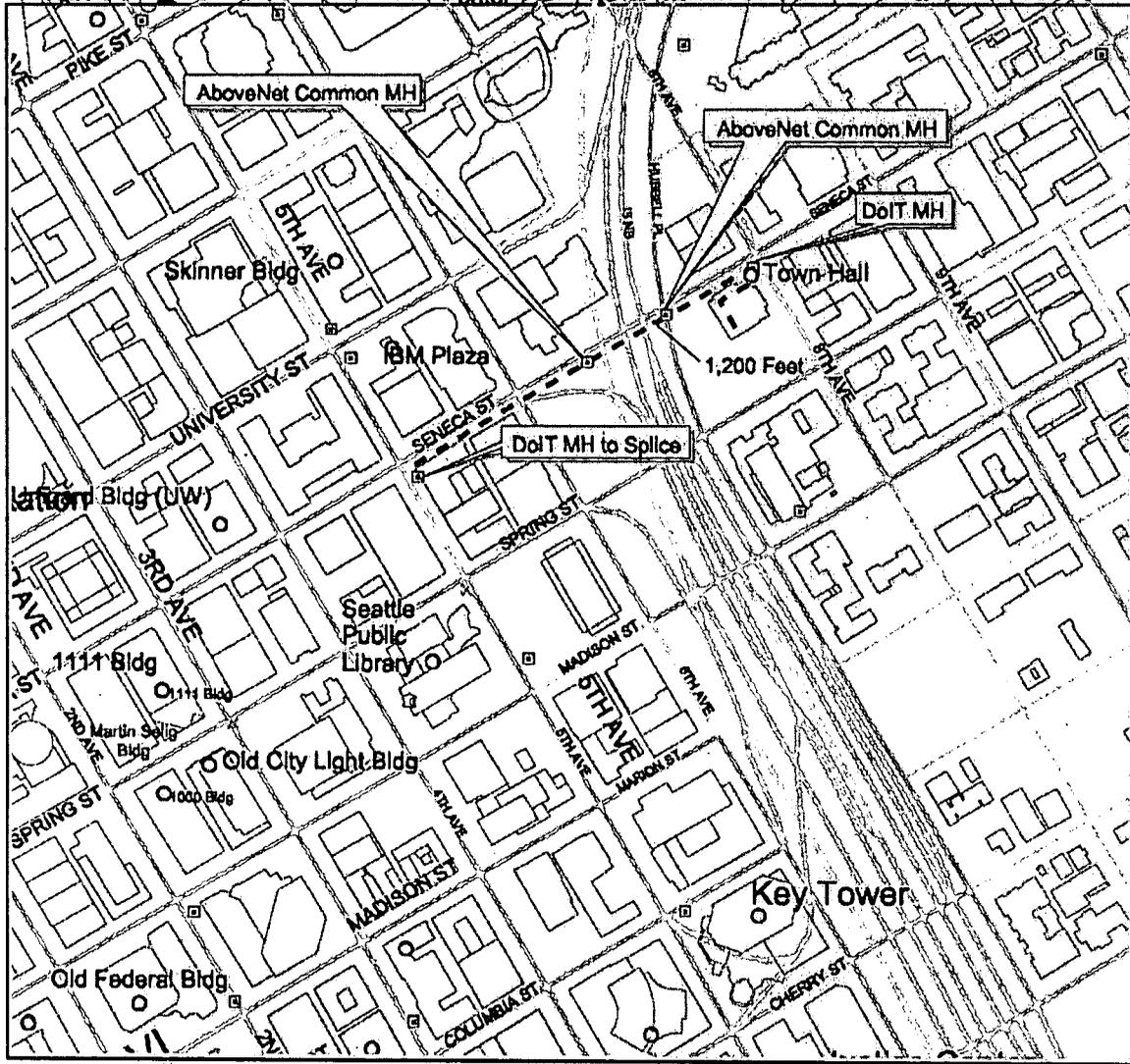
By:   
Its: Executive Vice President  
Dated: 10-18-07

Attachment 2.1 – Map

Attachment 2.2 - City Estimate of Town Hall Fiber Connection Costs



# Map For Fiber from Town Hall To Splice Location @ 5th & Seneca St



**Legend**

- AboveNet MH
- Fire Station
- Schools Public
- Community Centers
- Neighborhood Services
- Fiber Slack Locations
- Library
- SPD Fiber Routes to Elementary Schools
- Fiber Termination Sites
- DoIT MH's in Metropolitan Plan
- Splice Points
- Proposed Fiber Route
- Alaskan Way Viaduct Route

The City of Seattle



Produced by the City of Seattle,  
DoIT

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March 14, 2007

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No guarantee of any sort is made, including accuracy,  
completeness, or fitness for use.



**Attachment 2.2**

**City Estimate of Town Hall Fiber Connection Costs**

Items	Size	Type	Unit \$	Unit	Qty	Cost
Permit			\$1,500.00	each	1	\$ 1,500.00
Fiber cable	48 SM(IO)		\$ 0.50	feet	2100	\$ 1,050.00
Innerduct	1"		\$ 0.50	feet	3600	\$ 1,800.00
Install Innerduct	4x10x50x1.5	OT at night	\$3,000.00	night	1	\$ 3,000.00
Labor to pull underground cable	6x10x50*1.5	OT at night	\$4,500.00	night	0.5	\$ 2,250.00
Police safety watch		2 cops	\$ 900.00	day	2.5	\$ 2,250.00
Trunk rental			\$ 250.00	day	2	\$ 500.00
Bldg Entrance @ Town Hall			\$5,500.00	each	1	\$ 5,500.00
Flex Steel Inside Town Hall	2 runs, 400' total		\$3,000.00	each	1	\$ 3,000.00
Fiber splice case			\$ 600.00	each	2	\$ 1,200.00
Splice tray			\$ 50.00	each	2	\$ 100.00
Labor to splice	2x8x50x1.5	OT at night	\$1,200.00	day	1	\$ 1,200.00
Van rental			\$ 150.00	day	1	\$ 150.00
Fiber panel (Wall Mounted)	12-36 SM	Positions	\$ 450.00	each	1	\$ 450.00
Fiber connector	SM, ST		\$ 10.00	each	12	\$ 120.00
Labor to terminate			\$ 25.00	each term	24	\$ 600.00
Labor to test	2x8x50		\$ 800.00	day	1	\$ 800.00
Interior fiber box			\$ 5,000			\$ 5,000.00
Splice into Battery St Tunnel Cable @ 5th & Seneca St (ends are SMT and EOC)						\$ 7,115.47
<b>Subtotal</b>						\$37,585.47
<b>w/sale tax</b>						\$40,817.82
<b>w/ 5% Proj Management</b>						\$42,858.71
<b>w/ 10% Contingency</b>						\$47,144.58

= City Costs



STATE OF WASHINGTON  
COUNTY OF KING  
CITY OF SEATTLE

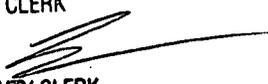
} SS

I, JUDITH E. PIPPIN, CITY CLERK OF THE CITY OF SEATTLE DO HEREBY  
CERTIFY THAT THE WITHIN AND FOREGOING IS A TRUE AND CORRECT  
COPY OF *Ordinance 122515*

AS THE SAME APPEARS ON FILE AND OF RECORD IN THIS DEPARTMENT.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED  
THE SEAL TO THE CITY OF SEATTLE, THIS *15<sup>th</sup> day October 2007*

JUDITH E. PIPPIN  
CITY CLERK

BY:   
DEPUTY CLERK

Millennium Digital Media  
3633 136<sup>th</sup> Place, S.E.  
Suite 107  
Bellevue, WA 98006



August 2, 2006

Office of Cable Communications  
P.O. Box 94709  
Seattle, WA 98124-4709

Dear Sir or Madam:

As you know, earlier this year, Millennium Digital Media Systems L.L.C. ("MDM") filed Federal Communications Commission Form 394, "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise", requesting the consent of your community to a transfer of the ownership of the franchise from MDM to WaveDivision Holdings, LLC, or an affiliate thereof. We know that you have expended time and effort in reviewing the documentation for the transaction and preparing the item to be placed before your local regulatory body. However, we'd like you to know that the sale to WaveDivision Holdings has been cancelled and a close will not occur.

The sale was pursued in good faith and at the conception of the transaction appeared to be in the best interest of all parties concerned. However, as noted above, circumstances have changed and we have been able to resolve many of the challenges that we were facing and believe that our customers and our investors are best served by MDM retaining ownership of the systems.

We do regret and apologize for any and all inconvenience this situation may have caused. Please know that serving our customers and providing them with highly valued broadband services remains our first priority. We will keep you apprised of any new developments as and if they occur.

Again, we are very pleased to be able to continue to serve the cable related needs of your community. In the days and weeks to come, I will continue to be available to discuss any franchise related issues you may have. My number during business hours is 425.747.4600 ext. 1167.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Walker', written in a cursive style.

David Walker  
Vice President & General Manager

---

Millennium Digital Media • 120-S. Central Ave., Suite 150 • St. Louis, MO 63105-1705  
Telephone 314.802.2400 • Facsimile 314.802.2300

Exhibit A to CB \_\_\_\_\_  
(Millennium 2007 Transfer Legislation)



## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and among City of Seattle, a Washington municipal corporation (the "City"), and Millennium Digital Media Systems, L.L.C. ("MDM Systems"), a Delaware limited liability company.

### **RECITALS**

- A. City and MDM Systems are parties to cable franchises authorized under Ordinances 117955 and 118361, as amended, and as transferred to MDM Systems under Ordinance 119295 (collectively, the "Franchises"), whereby City granted cable television franchises to MDM Systems to construct, maintain and operate a cable television system in certain cable franchise districts in Seattle.
- B. MDM Systems has notified City of its intent to seek renewal of the Franchises pursuant to 47 U.S.C. § 546 and City and MDM Systems have reached agreement on the terms and conditions for renewal of the Franchises ("Renewed Franchise").
- C. Millennium Digital Media Holdings, L.L.C. ("MDM Holdings") is the indirect but ultimate parent of MDM Systems. Prior to October of 2006, all of the membership interests in MDM Holdings were owned by four investment groups, including TSG Cable Investment Corporation ("TSG"), TSG Cable Investment Corporation III ("TSG III"), Millennium Digital Media, L.L.C. ("MDM") and Caravelle Millennium Investment Corporation ("Caravelle").
- D. On or about October 26, 2006, MDM Holdings redeemed and retired the membership interests of TSG, TSG III and MDM in a series of transactions that resulted in the acquisition of membership interests by Highland Crusader Offshore Partners, L.P. ("Highland"), an entity created, and in good standing, under the laws of Bermuda; Madeleine, L.L.C. ("Madeleine"), a New York limited liability company; Credit Suisse International, a foreign corporation organized under the laws of England and Wales; and Bear Stearns Credit Products Inc., a Delaware corporation (collectively and together with Caravelle, the "Assignee"). Madeleine has since conveyed its interests to Highland. These transactions are collectively referred to as the "Transaction."
- E. Section 14 of the Franchises and Subsection 21.60.520 of the Seattle Municipal Code (SMC) provide that a cable franchise may not be transferred to another person without the approval of City. Section 14 also provides that substantial property owned and operated by the grantee of a franchise may not be transferred without the consent of City.
- F. On December 11, 2006, MDM Systems provided City with a Form FCC 394 "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" (the "Application") reporting on the Transaction and providing documentation. MDM Systems has since supplemented the documentation. MDM Systems maintains that the Transaction did not constitute a transfer and/or change in control under its Franchises or SMC 21.60.520.



G. City maintains that the Transaction allowed MDM Systems to restructure its debt and secure financing to continue meeting its franchise and other business obligations and resulted in a transfer and/or a transfer of control under MDM Systems' Franchises and SMC 21.60.520.

H. To the extent the Transaction did constitute a transfer, failure to obtain City approval prior to the Transaction could be considered a violation of the Franchises and could subject MDM Systems to liquidated damages in the amount of \$265 per day from the date of violation.

I. MDM Systems and City now desire to conclude, settle, release and discharge once and forever, all rights, claims, causes of actions, liabilities, disputes and demands relating to the Transaction and any alleged violation of the Franchises or the Seattle Municipal Code as well as any liquidated damages that could be assessed by City on MDM Systems as a result of the Transaction.

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and obligations hereinafter set forth, and for good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Settlement Agreement hereto agree as follows:

## **AGREEMENTS**

### **1. Transfer Consent by City.**

City grants the Application and City consents to and approves the transfer and/or assignment requested in the Application. The parties agree that City acted on the Application in a timely manner under federal law.

### **2. Release of Claims by City.**

City hereby fully surrenders to and releases, acquits, and forever discharges MDM Systems, its officers, directors, members, shareholders, employees, predecessors, successors, and assigns, and MDM Systems' parents, subsidiaries, affiliates, and their officers, directors, members, shareholders, employees, predecessors, successors, and assigns, from any and all manner of action and actions, cause and causes of action, suits, damages (including liquidated damages), sums of money, demands or claims (as that term is defined at 11 U.S.C. §101(5)), whatsoever, in law or in equity, direct or indirect, whether or not now known, suspected or claimed, which it ever had, now has, or may have arising from or in any way related to the Transaction.

### **3. Consideration by MDM Systems.**

MDM Systems shall make available the following to City (definitions for all capitalized terms are the same as those in the Renewed Franchise, unless otherwise noted):

- A. Lower-Priced Tier.** Within six (6) months of the Effective Date, MDM Systems shall establish a lower-priced Cable Service tier to be offered throughout the term of the Renewed Franchise. This lower-priced tier will have an initial price not to exceed \$19.99 per month and will be comprised of approximately 30 channels. MDM Systems shall take such steps as necessary to insure that Subscribers and potential



Subscribers have ready access to information concerning the lower-priced tier through, at a minimum, posting on MDM Systems' website pages accessible to Seattle Subscribers and by telephone upon request to MDM Systems' customer service representatives.

- B. Cable Modem Service.** Upon the Effective Date, MDM Systems, while it or its affiliates hold the Renewed Franchise, agrees to provide Internet service at no cost to (i) those community technology sites that it was providing complimentary Internet service to in 2006, and (ii) such other community technology sites mutually agreed to in writing by City and MDM Systems; provided the number of other community technology sites designated pursuant to clause (ii) hereof shall not exceed fifty (50) different locations and MDM Systems shall not unreasonably disagree regarding sites proposed by 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 but not to exceed fifty (50) IP addresses. Complimentary Internet service shall be installed and activated within 30 days of a request from City unless an alternative schedule is mutually agreed upon.
- C. Goodwill Commitment to Explore Use of New Technologies.** See Attachment 1 for further details.
- D. KIRO Advertising Grant.** Beginning January 1, 2008, and on January 1 of each year thereafter throughout the term of the Renewed Franchise, MDM Systems shall make available an annual grant in the amount of ten thousand (\$10,000) dollars worth of advertising spots on KIRO TV to be used at City's discretion. In the event City does not use the full grant in any given year, it may not carry over the unused portion of the grant into subsequent years. The full value of the commitment by MDM Systems will be recognized as fulfilled annually based on the availability of the spots regardless of whether or not City chooses to use the advertising spots.
- E. Advertising Credit.** In the side letter between City of Seattle and Comcast of WA I, Inc. and Comcast of WA IV, Inc. ("Comcast"), dated April 9, 2006, Comcast agreed to provide City with a \$50,000 annual credit ("Advertising Credit") to be used for the purchase of air time to promote programs airing on the Government Access Channel. This enables City to purchase commercial spots on Comcast's cable system from Comcast Spotlight, which is Comcast's advertising sales division. MDM Systems does not have a similar advertising sales division; instead, MDM Systems uses Comcast Spotlight to sell advertising spots on MDM Systems' cable system. Throughout the term of Comcast's Franchise authorized under Ordinance 122089 or January 20, 2016, whichever is greater, whenever City uses the Advertising Credit to purchase a commercial spot from Comcast Spotlight that airs on Comcast's cable system, MDM Systems shall permit that commercial spot to air either simultaneously on MDM Systems' cable system or in a comparable time slot at no charge to City.
- F. Community Technology Grant.** Within thirty (30) days of the Effective Date, Millennium shall provide the City a technology grant in the amount of \$20,000. This



funding shall be used to establish a grant fund to assist segments of the Seattle community who are underrepresented (e.g. ethnically, economically) on the public access channel but who want to utilize the channel to have their voices heard and tell their stories. This grant fund shall be administered by the City's Designated Public Access Manager, SCAN, in cooperation with the Department of Information Technology.

- G. VOD.** Within twelve (12) months of the Effective Date, MDM Systems will establish a Video on Demand ("VOD") service offering to its Seattle Subscribers. VOD is the delivery of video content, in broadcast quality, over a cable system to an individual Subscriber. Such content is initiated by the Subscriber at his or her time of choosing and is delivered to the Subscriber as an individual data stream ("Unicast"). The content will allow for VCR-type functionality, such as record, fast-forward and pause.
- H. Customer Service Upgrades.** Within twelve (12) months of the Effective Date, MDM Systems shall carry out the following plans in an effort to improve customer responsiveness and to increase overall customer satisfaction:
1. MDM Systems will establish a new centralized call center with expanded hours that will provided three additional hours per day over what was provided during 2006 of live customer service for Seattle customers. MDM Systems intends to further expand available live customer support over time.
  2. MDM Systems will move to new office facilities to consolidate the technical, engineering, service, and operations staff under one roof.
- I. Planned System Upgrades.** Within twelve (12) months of the Effective Date unless otherwise noted,, MDM Systems shall make the following system upgrades in the Franchise Area in an effort to increase system reliability, enhance customer experience, and correct any system compliance issues:
1. MDM Systems will establish new network management support through IBBS that will provide 24/7 support for network monitoring alerts and traffic management.
  2. MDM Systems will increase the number of High Definition (HD) channels available to its Seattle Subscribers.
  3. MDM Systems will execute a technical compliance plan, approved by the Department of Information Technology ("DoIT"), to inspect and correct, if necessary, all noncompliant subscriber cable drop connections within MDM Systems' service area to be completed by December 1, 2008. MDM Systems will provide quarterly progress reports to City in accordance with the approved plan.



**J. Complementary Cable Service.**

1. MDM Systems shall install and furnish, at its sole cost, Basic Cable TV Service, including any required terminal equipment, to buildings in the Franchise Area owned and operated by the City for public purposes and not residential use (residential areas of fire and police stations excepted), as designated by the City.
2. MDM Systems shall install and furnish, at its sole cost, Basic Cable TV Service and "cable in the classroom" (or a reasonably available alternative program), including any required terminal equipment, to every School building in the Franchise Area.

**K.** MDM Systems shall construct a fiber connection to Town Hall pursuant to a written agreement that is substantially in the form of the "Town Hall Fiber Construction Agreement" attached hereto as Attachment 2.

**L.** As to section 3, subparagraphs B, D, E, F, I, J and K above, MDM Systems expressly waives: 1) any and all rights it may have under applicable laws to recover any consideration provided thereunder from City; 2) any rights it may have to offset or deduct any consideration provided thereunder from past, present or future franchise fee payments owed City; and 3) any rights it may have to pass through as a separate line item on Subscriber bills any consideration associated with the requirements set forth thereunder.

**4. Effective Date**

The effective date of this Settlement Agreement ("Effective Date") shall be the effective date of the ordinance introduced as Council Bill \_\_\_\_\_ (Ordinance \_\_\_\_\_) authorizing the Renewed Franchise.

**5. Voluntary Agreement**

This Settlement Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement. It is understood and agreed by City and MDM Systems that neither this Settlement Agreement nor anything herein shall be deemed to be an admission or confession by MDM Systems of any liability whatsoever or any breach of the terms of the Franchises or violation of SMC 21.60.520. If this Settlement Agreement should be deemed unenforceable, the parties shall have all rights under applicable law to pursue any and all remedies available.

**6. Binding Effect**

This Settlement Agreement will inure to the benefit of and be binding upon the parties and respective successors and assigns. The parties for themselves and their respective successors and assigns agree to join in or execute any instruments and to do any other act or thing necessary or proper to carry into effect this or any part of this Settlement Agreement.



**7. Governing Law**

This Settlement Agreement shall be interpreted and adjudicated in accordance with the laws of the State of Washington. Any litigation between the City and MDM Systems arising under or regarding this Settlement Agreement shall occur, if in the state courts, in the King County Superior Court, and if in the federal courts, in the United States District Court for the Western District of Washington.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as their free and voluntary acts and deeds.

**City of Seattle, Washington**

**Millennium Digital Media Systems, L.L.C.**

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

Attachment 1 – Goodwill Commitment to Explore Use of New Technologies  
Attachment 2 – Town Hall Fiber Construction Agreement



## GOODWILL COMMITMENT TO EXPLORE USE OF NEW TECHNOLOGIES

The City of Seattle ("City") and Millennium Digital Media, L.L.C. ("Millennium") agree to work together to explore the possible uses of advanced broadband technology for the mutual benefit of the City, Millennium and the residents and businesses of the City. The City seeks to explore the use of broadband technology to strengthen the communication of the City with its residents by using innovative ways to enhance civic discourse. The City and Millennium agree to explore possible ways to work together to find creative ways to apply new technology to public process. The City hopes to add value to the franchise, increase understanding and support for City programs, increase citizen participation in public policy matters and provide a model for other municipalities seeking maximum public benefit from cable franchises.

This document is not intended to create binding legal obligations on either party, but, rather, it is to confirm the parties' understandings that each is willing to work in mutual good faith throughout the term of the franchise to achieve the goals outlined herein.

The City hopes to develop applications that bring information and City services to the public, applications that explore municipal use of cable and Internet for e-commerce and billing, and applications that allow interactive polling and on-line voting. Millennium understands that it is very difficult at this time for the City to fully define all applications and services that will be enabled as the capabilities of broadband technology evolve. Millennium agrees to work cooperatively with the City in the future in an effort to determine how the City can best utilize network capacity available for municipal purposes. Millennium agrees to consult and meet with the City of Seattle, and to the extent Millennium has resources available to do so, help the City better define how it plans to use the agreed upon channels and bandwidth capacity.

The City hopes to create an array of municipal services that stretch across technical platforms and technologies: a "Democracy Portal" that will build on Seattle's current successes in new communications strategies and provide the means for citizens to easily and meaningfully interact with their elected officials and decision makers. The City has an active presence on the Web, with an award-winning website. The Seattle Channel is on the forefront of methods to merge the Internet and television as channels for improved citizen participation. The City believes this approach will expand the content and service value of these resources. The City and Millennium commit themselves to exploring collaboration on uses of this advanced communications strategy.

Millennium and the City recognize that "channel number" assignments may lose some significance in an on-demand environment where the selection of video streams is similar to the point and click method typically associated with a web page on the Internet. Millennium and the City further recognize that during term of this franchise video programming could be accessed by subscribers over its cable system from a graphic interface similar to a web portal. Such a graphic interface, sometimes referred to as a "walled garden", will offer subscribers a menu of options including video programming. Millennium agrees that if it creates such a user interface, it will discuss with the City the option of placing an icon of the City's choosing on the top layer of any "walled garden" or other similar user interface so that subscribers will have ready access to local non commercial programming. The City of Seattle in turn will support the use of content from the City of Seattle to the Millennium "home page" environment to add to the local



experience for subscribers.

The Franchise agreement includes the use of television channels for Public, Education and Government (PEG) programming. As the technical capacity of the interactive television platform matures, the City and Millennium will explore possible pilot deployments of interactive capability for government purposes. Both parties recognize that the form and use of interactive television is at a formative stage. The mutual participation in such an effort could take a number of forms to support the Democracy Portal, or might possibly include the use of "instant polling" functions during City deliberative processes and/or the possible delivery of viewer comments, via the interactive television experience. The City will commit to work with Millennium and its partners in the development of interactive options to carefully respect any and all system or contractual restraints, set top box technology, programming methods, bandwidth constraints, and evolving business plans. Early notification to the City of the programming standards and requirements to support the Millennium technology may help to facilitate the City as possibly being an early provider of content. It is the hope of the City that the provision of such early interactive content will offer enhanced value for services which will be offered by Millennium as a result of its new technology and network to be deployed within the City. The City understands that Millennium's assistance must be consistent with its core operational and business needs, taking into account any immediate or potential impact on Millennium's network, customers, business plan and strategy. Millennium in turn acknowledges that the City seeks to maintain its role in providing its residents access to the most advanced technological services.



## TOWN HALL FIBER CONSTRUCTION AGREEMENT

THIS AGREEMENT (the "Construction Agreement") is by and between the City of Seattle, Washington (the "Owner"), and Millennium Digital Media Systems, L.L.C., a Delaware limited liability company ("Contractor"), for construction of a fiber optic cable connection related to the City of Seattle's cable television franchise granted to Contractor to use the City's public rights of way and compatible utility easements to construct, reconstruct, repair and maintain a Cable System.

The Owner and the Contractor hereby recite and agree as follows:

### RECITALS

WHEREAS, Owner and Contractor have entered into a written Franchise Agreement, authorized under the ordinance introduced as Council Bill \_\_\_\_\_ (Ordinance \_\_\_\_\_) under which Contractor will hold a cable franchise from the Owner to use the Owner's public rights of way and compatible utility easements to construct, reconstruct, repair and maintain a Cable System in a portion of the City of Seattle, Washington (the "Franchise Agreement").

WHEREAS, Owner and Contractor have entered into a written Settlement Agreement (the "Settlement Agreement"), authorized under the ordinance introduced as Council Bill \_\_\_\_\_ (Ordinance \_\_\_\_\_).

WHEREAS, as part of the consideration due from Contractor to Owner under the Franchise Agreement and the Settlement Agreement and in lieu of any liquidated damages related to a transfer of the existing franchises, Contractor has agreed to provide certain construction services for construction of a fiber optic cable connection from DoIT's manhole at 5<sup>th</sup> & Seneca to Town Hall at 1119 Eighth Avenue, Seattle, Washington (the "Fiber Connection").

WHEREAS, Owner and Contractor have agreed to execute this Construction Agreement evidencing the obligation of Contractor to provide construction services for construction of the Fiber Connection to Town Hall.

### ARTICLE 1

#### THE CONTRACT AND THE CONTRACT DOCUMENTS

##### 1.1 The Contract.

1.1.1 The Contract between Owner and Contractor, of which this Construction Agreement is a part, consists of the Contract Documents.

1.1.2 The Contract shall be effective on the Effective Date of the Franchise Agreement.



1.2 The Contract Documents.

1.2.1 The Contract Documents consist of

- (a) This Construction Agreement;
- (b) Any other amendments hereto executed by the parties hereafter;
- (c) The Map described in Article 2 below and attached as Attachment 2.1 hereto; and
- (d) The Estimate of Town Hall Fiber Connection Costs described in Article 2 below and attached as Attachment 2.2 hereto.

Documents not enumerated in this Section 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement.

1.3.1 The Contract constitutes the entire and exclusive agreement between Owner and Contractor with reference to Contractor's construction of the Fiber Connection and Owner's payment therefor. Specifically, without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between Owner and Contractor relating to the construction of the Fiber Connection. While the primary agreement between the parties is the Franchise Agreement, if there is a conflict between this Construction Agreement and the Franchise Agreement relating to the construction of the Fiber Connection, then this Construction Agreement shall control.

1.4 No Privity With Others.

1.4.1 Nothing contained in the Contract shall create, or be interpreted to create privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 Intent, Interpretation and Definitions.

1.5.1 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.2 When a word, term or phrase is used in the Contract, it shall be interpreted or construed as follows: First, as defined in this Construction Agreement or in the Franchise Agreement; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.



1.5.3 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.4 Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.5 Neither the organization of any of the Contract Documents nor the divisions, sections, paragraphs, articles (or other categories) shall control Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by subcontractors.

## **ARTICLE 2**

### **THE WORK**

2.1 Contractor shall perform all the Work required by the Contract.

2.2 The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties under the Contract, which specifically are construction of the Fiber Connection, including the installation of innerduct and the pulling of fiber optic cable; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required to fulfill Contractor's obligations under the Contract. The Work to be performed by Contractor is described as follows:

2.2.1 As depicted on the Map that is attached hereto as Attachment 2.1, Owner owns four-inch diameter conduit ("Owner Conduit") that is empty and runs from a City of Seattle manhole (referred to as "DoIT MH to Splice" on the Map) at Fifth Avenue and Seneca Street (Manhole No. 1) east on Seneca Street to a City of Seattle manhole (referred to as "DoIT MH" on the Map) at Eighth Avenue and Seneca Street (Manhole No. 2). Prior to installing fiber from Manhole No. 1 to Manhole No. 2, Contractor will notify Kris Henry-Simmons at (206) 684-0265.

2.2.2 Contractor shall install three (3) 1-1/4" innerduct with pull rope from Manhole No. 1 to Manhole No. 2. Prior to installing the innerduct described herein, Contractor will schedule the installation with Kris Henry-Simmons (206) 684-0265, who will notify AboveNet, Dan Walla (206) 988-8660, cell (206) 255-7372 (since the two manholes on each side of I-5 are common manholes).

2.2.3 The fiber count pulled through the innerduct shall be a minimum of 48-strand single mode fiber optic cable. Owner, not Contractor, is responsible for connecting or splicing and shall connect or splice the fiber optic cable to the Battery Street Tunnel Cable at Manhole No. 1.



2.2.4 Contractor shall complete the building entrance and inside conduit construction at Town Hall after scheduling the work to be performed with the Town Hall Director of Operations, Sheila Smith at 206-652-4255. Contractor shall install: A) a two-inch (2") conduit from DoIT's MH in the right-of way into Town Hall's maintenance closet; 2) a junction box in the maintenance closet; and 3) one inch flex steel, or some other surface mount conduit, from this junction box to a location agreed upon by Daryl Peck (Seattle Channel) and Sheila Smith (Town Hall) in the Great Hall Auditorium (upstairs). Daryl and Sheila have another location that the fiber (12 single mode "SM") needs to be extended and terminated at also in the "Downstairs at Town Hall" Auditorium. Sheila Smith from Town Hall shall determine whether flex-steel is used and painted to match the walls or another surface mount conduit is used. The total distance is estimated at under 400 feet.

2.2.5 Contractor shall also: 1) terminate 12 SM fibers (strands 1-12) with ST connectors; 2) install an Ortronics wall mount panel; and 3) label, test and supply OTDR test documentation for the length of the cable installed.

### ARTICLE 3

#### CONTRACT TIME

##### 3.1 Time.

3.1.1 Contractor shall commence the Work pursuant to the terms of Article 2 above when given written notice by Owner after the Effective Date and shall achieve Substantial Completion of the Work, as defined under Section 3.2, no later than three (3) months from such written notice.

##### 3.2 Substantial Completion.

3.2.1 "Substantial Completion" shall mean that stage when the Work performed is ready for final inspection and is subjected to and passes a technical performance test in accordance with Section 3.2.2.

3.2.2 When the Work is completed and the Contractor is ready for a final inspection, the Contractor shall notify the Owner in writing and propose a date for Owner's inspection. On the inspection date, the Contractor shall conduct a technical performance test in the Owner's presence to demonstrate the Work done is in full compliance with the Contract. If the Work passes the technical performance test to the reasonable satisfaction of the Owner, then the Work shall be deemed to have reached "Substantial Completion." If the Work fails to pass the test, the Contractor shall correct the problem promptly and propose a date for a second inspection.

## ARTICLE 4

### CONTRACT PRICE

4.1 Contractor Costs. Attached as Attachment 2.2 is a City Estimate of Town Hall Fiber Connection Costs prepared by the Owner. Contractor shall be responsible for covering the costs of the un-highlighted items, namely: Permit; Innerduct; Install innerduct; Labor to pull underground cable; Police safety watch; Truck rental; Building entrance at Town Hall; Flex steel inside Town Hall; Fiber panel (wall mounted); Fiber connector; Labor to terminate; Labor to test; Interior fiber box. Contractor shall not be responsible or liable for any costs or expenditures beyond those in Attachment 2.2 as described above. Any savings by Contractor from "Cost" set forth on Attachment 2.2 shall be for the benefit of and belong to Contractor.

4.2 Owner Costs. The Owner shall be responsible for covering the costs of the highlighted items shown on Attachment 2.2 and any other costs to complete the Work. In particular, the Owner is responsible for the following: fiber cable; fiber splice case; splice tray; labor to splice; van rental; splice into Battery Street Tunnel cable at 5<sup>th</sup> and Seneca (ends are SMT and EOC). Contractor shall reimburse Owner for Owner's actual costs (properly and completely documented) incurred for these items, provided that Owner shall use its best efforts to incur the minimal costs reasonable under the circumstances and in no event shall Contractor reimburse Owner for more than \$15,000.

4.3 Cost of Repair and Maintenance.

4.3.1 After Substantial Completion, the cost of any and all repair and maintenance shall be Owner's responsibility and borne by Owner, including the cost of relocation of any portion of the Fiber Connection, emergency restoration repairs, or utility construction or repair.

## ARTICLE 5

### THE OWNER

5.1 Information Required From Owner.

5.1.1 Owner shall furnish Contractor all information reasonably needed for Contractor to complete the Work under this Agreement .

5.2 Permits and Fees.

5.2.1 Owner shall use best efforts to ensure that the necessary permits for construction of the Fiber Connection are issued to Contractor in a timely and nondiscriminatory manner. Contractor shall not be responsible for any delays caused by the permitting process unless such delays are caused by Contractor.

5.3 Owner Conduit.

5.3.1 Owner warrants that the Owner Conduit is in good repair and sufficient to be used as contemplated in this Agreement.

**ARTICLE 6**

**THE CONTRACTOR**

6.1 Contractor shall perform the Work strictly in accordance with this contract.

6.2 Warranty.

6.2.1 Contractor warrants to Owner that, as of Substantial Completion, the Work will be in material compliance with the requirements of this Agreement, unless modified in writing by Contractor and Owner. The remedies set forth in this Agreement at Section 6.8 are the exclusive remedies for any breach of this Agreement. The warranties made in this Agreement are IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.3 Contractor shall obey and pay for all permits, fees and licenses necessary and ordinary for the Work. Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

6.4 Supervision.

6.4.1 Contractor shall supervise and direct the Work. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the contract.

6.5 Access to Work.

6.5.1 Owner shall have access to the Work at all times from commencement of the Work through Substantial Completion. Contractor shall take whatever steps are necessary to provide access when requested.

6.6 Indemnity.

6.6.1 Contractor agrees to forever indemnify the Owner, its employees and elected officials, against any liabilities, claims, damages, judgments, costs and expenses, including attorneys' fees, of any kind, whether direct or indirect, incurred by the Owner connected to or incident to Contractor's, including Contractor's employees, agents and subcontractors, negligence or breach of this Agreement.



6.7 Contractor shall not pass through to its Subscribers any of the costs associated with the Fiber Connection either as a line item on Subscriber bills, as an external charge in FCC rate forms, or as an offset against past, present or future franchise fees or any other fees or taxes owed by Contractor to the Owner.

6.8 Remedies. Neither party shall be in default of any obligation in this Agreement (the "Defaulting Party") unless and until the other party (the "Non-defaulting Party") shall have given the Defaulting Party written notice of such default and the Defaulting Party shall have failed to cure the same within thirty (30) days after receipt of such notice; provided, however, that where such default cannot reasonably be cured within such thirty (30) day period, if the Defaulting Party shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default shall be extended for a period no longer than sixty (60) days from the date of the receipt of the default notice. Any event of default by a Defaulting Party may be waived under the terms of this Agreement at the Non-defaulting Party's option. Upon the failure by the Defaulting Party to timely cure any such default after notice thereof from the Non-defaulting Party, the Non-defaulting Party may (i) take such action as it determines, in its sole discretion, to be necessary to correct the default, and (ii) pursue any legal remedies it may have under applicable law or principles of equity relating to such breach.

## ARTICLE 7

### SUBCONTRACTORS

#### 7.1 Definition.

7.1.1 A subcontractor is an entity which has a direct contract with the Contractor to perform all or a portion of the Work.

#### 7.2 Award of Subcontracts.

7.2.1 All subcontracts shall afford Contractor's rights against the subcontractor which correspond to those rights afforded to Owner against the Contractor herein.

## ARTICLE 8

### INSURANCE

8.1 During the term of the Contract, Contractor shall provide Owner with proof of insurance and comply with all the insurance provisions as required in the Franchise Agreement.

## ARTICLE 9

### MISCELLANEOUS

9.1 The Contract shall be governed by the law of State of Washington.



9.2 Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this contract. Neither Contractor nor Owner shall assign this Contract without the written consent of the other party which shall not be unreasonably withheld.

9.3 If Contractor shall be delayed or interrupted in the performance or completion of the Work hereunder by an embargo, war, fire, flood, earthquake, epidemic or other calamity, act of God or of the public enemy, or by any strike or labor dispute, or by the inability to secure governmental licenses, permits or priorities, or by the unavailability of sources of supply to Contractor, or by any other outside cause which is beyond the control of Contractor and without its fault or negligence, then it shall be excused from any delay or failure to perform under the Contract. Contractor shall employ commercially reasonable efforts to mitigate or eliminate the cause of any delay or to avoid any foreseeable events which may lead to a delay.

9.4 If Contractor shall be delayed or interrupted in the performance or completion of the Work hereunder by any neglect or default of Owner, then it shall be excused from any delay or failure to perform under the Contract caused by such neglect or default of Owner.

CITY OF SEATTLE, WASHINGTON

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

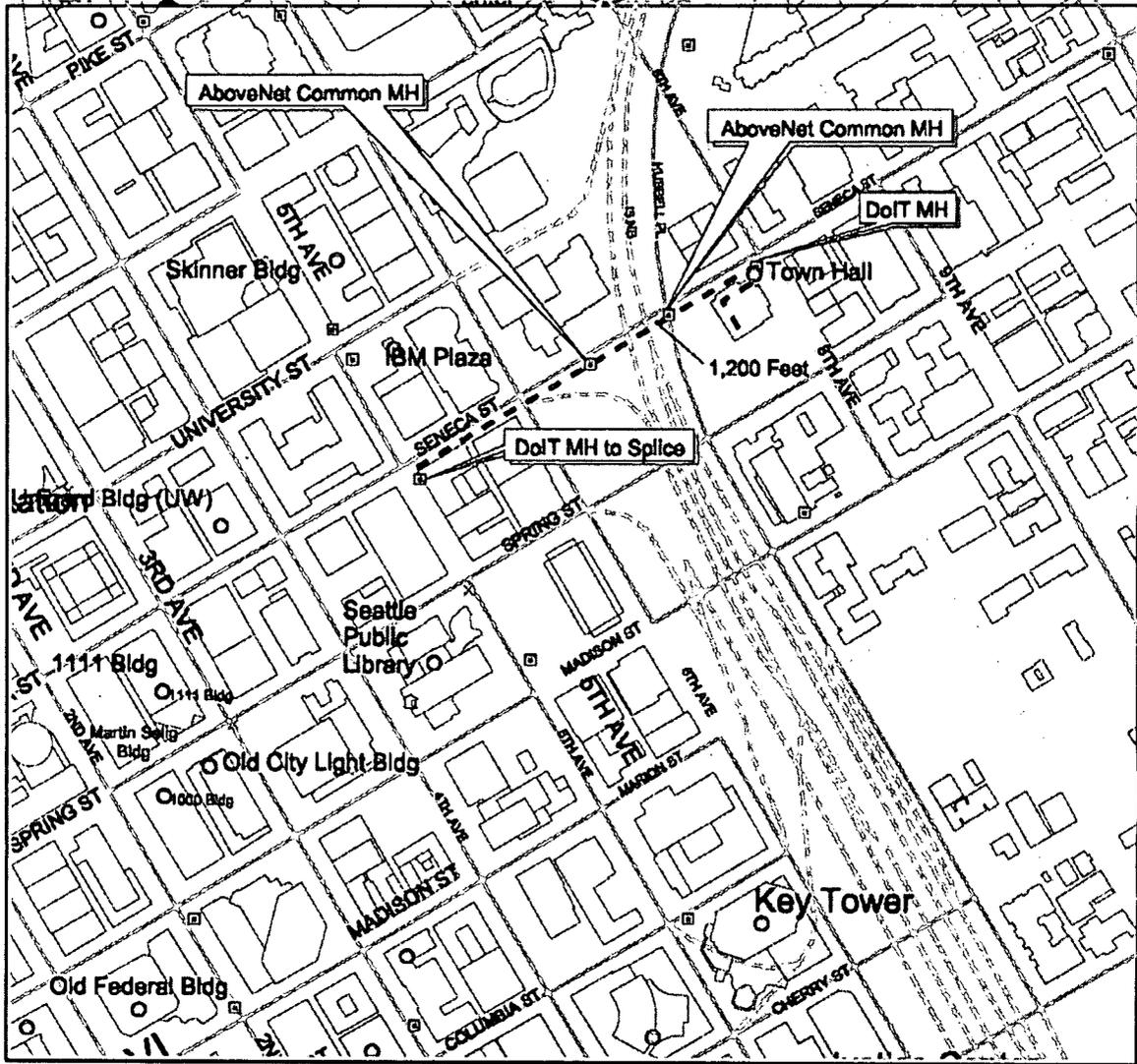
MILLENNIUM DIGITAL MEDIA SYSTEMS,  
L.L.C.

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

Attachment 2.1 – Map  
Attachment 2.2 - City Estimate of Town Hall Fiber Connection Costs



# Map For Fiber from Town Hall To Splice Location @ 5th & Seneca St



**Legend**

- Metered 12 strands
- Fire Station
- Schools Public
- Community Centers
- Neighborhood Services
- Fiber patch locations
- Library
- SPB Fiber Routes to Elementary Schools
- Fiber Termination Sites
- DoIT MHs in MetroMedia Run
- Splice Points
- Proposed Fiber Route
- Ambient Way Vandalist Holes

The City of Seattle



Produced by the City of Seattle, DeIT

2:\InformationSystems\GIS\Projects\2007\2007\_03\_14\2007\_03\_14\_01\2007\_03\_14\_01\_01.apr 04-0000 jobs along already on

March 14, 2007

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No guarantee of any sort is made, including accuracy, completeness, or fitness for use.



**Attachment 2.2**

**City Estimate of Town Hall Fiber Connection Costs**

<b>Items</b>	<b>Size</b>	<b>Type</b>	<b>Unit \$</b>	<b>Unit</b>	<b>Qty</b>	<b>Cost</b>
Permit			\$1,500.00	each	1	\$ 1,500.00
Fiber cable	48 SM(IO)		\$ 0.50	feet	2100	\$ 1,050.00
Innerduct	1"		\$ 0.50	feet	3600	\$ 1,800.00
Install Innerduct	4x10x50x1.5	OT at night	\$3,000.00	night	1	\$ 3,000.00
Labor to pull underground cable	6x10x50*1.5	OT at night	\$4,500.00	night	0.5	\$ 2,250.00
Police safety watch		2 cops	\$ 900.00	day	2.5	\$ 2,250.00
Trunk rental			\$ 250.00	day	2	\$ 500.00
Bldg Entrance @ Town Hall			\$5,500.00	each	1	\$ 5,500.00
Flex Steel Inside Town Hall	2 runs, 400' total		\$3,000.00	each	1	\$ 3,000.00
Fiber splice case			\$ 600.00	each	2	\$ 1,200.00
Splice tray			\$ 50.00	each	2	\$ 100.00
Labor to splice	2x8x50x1.5	OT at night	\$1,200.00	day	1	\$ 1,200.00
Van rental			\$ 150.00	day	1	\$ 150.00
Fiber panel (Wall Mounted)	12-36 SM	Positions	\$ 450.00	each	1	\$ 450.00
Fiber connector	SM, ST		\$ 10.00	each	12	\$ 120.00
Labor to terminate			\$ 25.00	each term	24	\$ 600.00
Labor to test	2x8x50		\$ 800.00	day	1	\$ 800.00
Interior fiber box			\$ 5,000			\$ 5,000.00
Splice into Battery St Tunnel Cable @ 5th & Seneca St (ends are SMT and EOC)						\$ 7,115.47
<b>Subtotal</b>						\$37,585.47
<b>w/sale tax</b>						\$40,817.82
<b>w/ 5% Proj Management</b>						\$42,858.71
<b>w/ 10% Contingency</b>						\$47,144.58

= City Costs



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Department of Information Technology (DoIT)	Tony Perez /386-0070	Matthew Eng/684-8157

**Legislation Title:**

AN ORDINANCE related to cable television; approving the transfer of control, subject to conditions, of the franchises held by Millennium Digital Media Systems, L.L.C. (“Millennium”); repealing Ordinance 122179; approving the transfer of control of Millennium’s franchises; authorizing the Chief Technology Officer to execute a Settlement Agreement, which includes a Town Hall Fiber Construction Agreement, for the purpose of resolving outstanding compliance issues related to the transfer; accepting funds from Millennium; and increasing appropriations in the 2007 Adopted Budget; all by a three-fourths vote of the City Council.

• **Summary of the Legislation:**

This Council Bill authorizes a transfer of control of the cable franchises held by Millennium Digital Media, L.L.C. (“Millennium”) from three previous Millennium equity owners (TSG Cable Investment Corporation, TSG Cable Investment Corporation III, and Millennium Digital Media, L.L.C.) to three new equity owners (Highland Crusader Offshore Partners, L.P., Credit Suisse International, and Bear Stearns Credit Products, Inc). Additionally, the legislation authorizes the Chief Technology Officer to enter into a Settlement Agreement for the purpose of resolving outstanding franchise compliance issues with Millennium, repeals Ordinance 122179, accepts funds from Millennium, and increases appropriations in the Information Technology Fund and Cable Television Franchise Subfund. Transfer of the franchises is subject to execution of the Settlement Agreement, which provides several cable-related community benefits, such as a lower-priced cable service offering, complimentary cable modem service to City-sponsored community technology centers, a video-on-demand (VOD) offering, complimentary advertising for the Seattle Channel on Millennium’s cable system and KIRO-TV, a \$20,000 grant fund to be used by SCAN to assist communities underrepresented on the channel, and a commitment by Millennium to various planned customer service and system upgrades. Attachment 2 to the Settlement Agreement is a Town Hall Fiber Construction Agreement that will allow the Seattle Channel to air live and interactive programming of Town Hall events, which are frequently covered by the Seattle Channel. A separate Council Bill that authorizes a renewed Millennium franchise and is to be introduced concurrently with this Bill, is conditioned upon authorization of this transfer and execution of the Settlement Agreement in its entirety. The actual transfer is technical in nature and has no negative implications for subscribers.

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



Millennium holds two franchise agreements to provide cable television services in various Seattle neighborhoods: the Central Area, Beacon Hill, downtown Seattle, and parts of Capitol Hill and Queen Anne. Millennium recently restructured its corporate ownership, which resulted in a transfer of control of Millennium's Seattle franchises. Pursuant to SMC 21.60.520, Millennium must request the City's prior consent to transfer its franchises, and the City may not unreasonably deny the transfer. Federal law requires the City to act within 120 days of a completed application unless an agreement is reached to extend the date, otherwise consent by the City is implied. Millennium has agreed to extend the federal deadline for a decision on the transfer until December 1, 2007, so that the franchise and transfer legislation may be considered concurrently.

In 2006, the City Council authorized a transfer of Millennium's franchises to WaveDivision V, L.L.C. ("Wave Broadband") under Ordinance 122179. Ordinance 122179 provided that, in the event the sale of Millennium's assets to Wave Broadband did not close for any reason or, in the event the sale closed on terms substantially or materially different from Millennium's FCC Form 394 filing or other information relied upon by the City; then the City's consent would be null and void, and the City deemed to have disapproved the transfer. Millennium informed the City on August 2, 2006, that the sale to Wave Broadband had been cancelled (see Exhibit A to the Ordinance), thereby voiding Ordinance 122179. This Council Bill formally repeals Ordinance 122179.

Millennium subsequently secured financing through a series of transactions that affected the capital structure and equity ownership of Millennium's parent company, Millennium Digital Media Holdings, L.L.C. ("MDM Holdings"). These transactions resulted in a transfer of control on or about October 26, 2006 which, according to Millennium's franchises and federal law, required prior City consent. To resolve this and other compliance issues, the City and Millennium agreed to enter into a Settlement Agreement (see Exhibit B to the Council Bill), which provides for several cable-related community benefits such as a lower-priced cable service offering, complimentary cable modem service to City-sponsored community technology centers, a vide-on-demand (VOD) offering, complimentary advertising for the Seattle Channel on Millennium's cable system and KIRO-TV, a \$20,000 grant fund, a fiber connection to Town Hall so the Seattle Channel can air live programming from Town Hall events (see Attachment 2 to the Settlement Agreement), and a commitment from Millennium to various planned customer service and system upgrades.

In accordance with SMC 21.60.520, the City may not unreasonably refuse a request to transfer a franchise. The City Council must make a decision to approve the transfer, approve it with conditions, or deny the transfer within 120 days of receipt of the Application. In the absence of these actions, the request shall be deemed granted pursuant to federal regulations unless an agreement is reached to extend the date. Millennium has agreed to extend the 120 day deadline to December 1, 2007, so the transfer and franchise legislation may be considered concurrently.

The Office of Cable Communications has conducted a legal, financial, and technical review of the transfer and has provided a report to the City Council. The Council Bill and Settlement Agreement address certain issues found in the report, and allow Millennium to resolve these issues so that a renewed franchise may be considered by the City Council. A second Council Bill to be introduced concurrently with this Bill authorizes a renewed Millennium franchise, and is conditioned upon the authorization of this transfer and the execution of the Settlement Agreement.

- Please check one of the following:

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

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

**Appropriations:** This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2007 Appropriation	2008 Anticipated Appropriation
Information Technology Fund (50410)	DoIT	D4400 Office of Electronic Communications	\$20,000	\$0
Cable Television Franchise Subfund (00160)	DoIT	D160B Cable Fee Support to Information Technology Fund	\$20,000	\$0
<b>TOTAL</b>			<b>\$20,000</b>	<b>\$0</b>

\*See budget book to obtain the appropriate Budget Control Level for your department.

**Notes:** DoIT requires appropriation authority in two different funds to disburse the \$20,000 from the Millennium Settlement Agreement. The \$20,000 in funds will first be appropriated from the Cable Television Franchise Subfund (00160) for the Cable Fee Support to Information Technology Fund Budget Control Level (D160B), and then in turn from the Information Technology Fund (50410) for the Office of Electronic Communications Budget Control Level (D4400). The table above does not total \$40,000 because this Council Bill only appropriates \$20,000.

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:** This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or



*budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2007 Revenue	2008 Revenue
Cable Television Franchise Subfund (00160)	DoIT	Millennium Settlement Agreement	\$20,000	\$0
<b>TOTAL</b>			<b>\$20,000</b>	<b>\$0</b>

**Notes:** Under the terms of the Town Hall Fiber Construction Agreement (Attachment 2 to Exhibit B of the Council Bill), the City will incur certain costs (estimated to be approximately \$11,000 in 2007/2008) under its existing budget authority, and Millennium will reimburse the City's costs up to a maximum of \$15,000.

**Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE**

**Impact:** *This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2007 Positions	2007 FTE	2008 Positions**	2008 FTE**
<b>TOTAL</b>							

\* List each position separately

\*\* 2008 positions and FTE are total 2008 position changes resulting from this legislation, not incremental changes. Therefore, under 2008, please be sure to include any continuing positions from 2007.

**Notes:** None.

- **Do positions sunset in the future?** (If yes, identify sunset date):

N/A



**Spending/Cash Flow:** *This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.*

Fund Name and Number	Department	Budget Control Level*	2007 Expenditures	2008 Anticipated Expenditures
<b>TOTAL</b>				

\* See budget book to obtain the appropriate Budget Control Level for your department.

Notes: N/A

- **What is the financial cost of not implementing the legislation?** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)*

If this legislation is not implemented, the City will not be able to collect the \$20,000 grant to provide funds for SCAN to assist communities underrepresented on the public access channel or benefit from the installation of a fiber connection to Town Hall. In addition, issues that are resolved under the Settlement Agreement will remain unresolved, and Millennium will not be in compliance with its current franchises. The City cannot renew a franchise that is out of compliance, which has other indirect financial implications.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

None.

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

Yes. At least one public hearing will be scheduled prior to passage of this legislation.

- **Other Issues** *(including long-term implications of the legislation):*

None.

**Please list attachments to the fiscal note below:**





# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

July 12, 2007

Honorable Nick Licata, President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Licata:

I am pleased to transmit the attached proposed Council Bill that authorizes a conditional transfer of the cable franchises held by Millennium Digital Media, L.L.C. ("Millennium"); repeals Ordinance 122179; authorizes the Chief Technology Officer to enter into a Settlement Agreement with Millennium; and appropriates funds in the Department of Information Technology's 2007 budget. The actual transfer is technical in nature and has no negative implications for subscribers.

Millennium currently holds two franchise agreements with the City of Seattle to provide cable television services in various neighborhoods, including the Central District, Beacon Hill, downtown Seattle, and parts of Capitol Hill and Queen Anne. In October 2006, Millennium failed to obtain mandatory Council consent prior to transferring control of its franchises. In lieu of liquidated damages, the City and Millennium have arrived at a Settlement Agreement, which includes a Town Hall Fiber Construction Agreement. The Agreement provides several cable-related community benefits, such as a lower-priced cable service offering, complimentary cable modem service to City-sponsored community technology centers, a video-on-demand (VOD) offering, complimentary advertising for the Seattle Channel on Millennium's cable system and on KIRO-TV, a fiber connection to Town Hall to enable the Seattle Channel to air live programming of Town Hall events, a \$20,000 grant for SCAN to assist underrepresented communities, and various other customer service and system upgrades. After completing a legal, financial, and technical review, the Office of Cable Communications believes the terms negotiated under the Settlement Agreement will be of greater benefit to the City and its residents than the limited financial compensation that might otherwise be imposed.

Accompanying this proposed Bill is a companion Bill that renews Millennium's franchises subject to the passage of this legislation. Millennium has agreed to extend to December 1, 2007, the federal deadline for the City's decision on the transfer so that both Bills may be considered concurrently.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over a large, stylized flourish that extends across the page.

GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7<sup>th</sup> 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](mailto:mayors.office@seattle.gov)

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STATE OF WASHINGTON – KING COUNTY

--SS.

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216496  
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 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:122515 ORDINANCE

was published on

10/17/07

The amount of the fee charged for the foregoing publication is the sum of \$ 362.70, which amount has been paid in full.



*McClintock*  
\_\_\_\_\_  
Subscribed and sworn to before me on  
10/17/07 *Jennifer Pater*  
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

State of Washington, King County



# City of Seattle

## ORDINANCE 122515

AN ORDINANCE related to cable television; approving the transfer of control, subject to conditions, of the franchises held by Millennium Digital Media Systems, L.L.C. ("Millennium"); repealing Ordinance 122179; approving the transfer of control of Millennium's franchises; authorizing the Chief Technology Officer to execute a Settlement Agreement, which includes a Town Hall Fiber Construction Agreement, for the purpose of resolving outstanding compliance issues related to the transfer; accepting funds from Millennium; and increasing appropriations in the 2007 Adopted Budget; all by a three-fourths vote of the City Council.

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, Ordinance 122179, passed by the City Council on July 31, 2006, authorized the transfer of Millennium's Franchises to WaveDivision V, L.L.C. (a/k/a Wave Broadband); and

WHEREAS, Ordinance 122179 provided that in the event the sale of Millennium's assets to Wave Broadband did not close for any reason or, in the event that the sale closed on terms substantially or materially different from Millennium's FCC Form 394 filing or other information relied upon by the City, then the City's consent would be null and void, and the City deemed to have disapproved the transfer; and

WHEREAS, Millennium informed the City on or about August 2, 2006, that the sale to Wave Broadband had been cancelled and would not close (see Exhibit A), thereby voiding Ordinance 122179; and

WHEREAS, Millennium subsequently secured financing through a series of transactions that affected the capital structure and equity ownership of Millennium's parent company, Millennium Digital Media Holdings, L.L.C. ("MDM Holdings"); and

WHEREAS, the City maintains that Millennium's actions to restructure its financing constitutes a "transfer of control" under Millennium's Franchises; and

WHEREAS, in accordance with Section 14 of the Franchises and SMC 21.60.520, cable franchises may not be transferred without prior consent of the City; and

WHEREAS, the City maintains that Millennium effectively transferred control of the Franchises on or about October 26, 2006, and Millennium is therefore in violation of its Franchises for not obtaining prior consent from the City; and

WHEREAS, pursuant to Section 19.2 of the Franchises, the City maintains that it has a right to assess liquidated damages against Millennium for Millennium's failure to obtain prior transfer approval required by Section 14 of the Franchises and SMC 21.60.520, among other available remedies; and

WHEREAS, in lieu of liquidated damages, the City and Millennium have agreed to enter into a Settlement Agreement (Exhibit 3 to this ordinance), wherein Millennium agrees to provide certain benefits such as a \$20,000 Community Technology Grant to be used to assist segments of the Seattle community who are underrepresented on the public access channel and cable modem service for City-sponsored community technology centers; and

WHEREAS, the City and Millennium have also agreed to enter into a Town Hall Fiber Construction Agreement to allow the Seattle Channel to air live programming from Town Hall events (see Attachment 2 to the Settlement Agreement in Exhibit B to this ordinance); and

WHEREAS, on December 11, 2006, Millennium provided the City with FCC Form 394 "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" (the "Application"), wherein Millennium described a series of transactions creating new financing and ownership of Millennium (the "Transaction"); 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, requested additional information from Millennium necessary to evaluate the Application, and following receipt of such information, deemed the application complete on May 1, 2007; 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, in this case by August 8, 2007, unless an agreement is reached to extend the date, or the City's consent is implied; and

WHEREAS, Millennium has agreed to extend the 120 day time period until December 1, 2007; and

WHEREAS, the Transaction contemplated under the Application must be approved by City Council prior to or concurrently with the City's authorization of a renewed Millennium franchise, which is the subject of another Council Bill to be considered by the City Council in 2007, so that Millennium is in compliance with its existing Franchises; and

WHEREAS, the City wishes to make the approval of the Transaction retroactive to October 26, 2006, to coincide with the date when the alleged transfer of control effectively occurred; and

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

WHEREAS, the City has determined that the Transaction contemplated in the application is not contrary to the public interest or federal, state, or local law; NOW

HEREFORE

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Repeal of Ordinance 122179, Ordinance 122179, entitled:

<b>RES (Residential Low-</b>	Tr \$0
residential service provided City Light residential and that they:	<u>Schedule</u>
Income pursuant to	<u>Schedule</u>
the annual income of all below the poverty level for the U.S. Government or the	<u>RATES E</u>
the annual income of all the Washington State published annually by the state	<u>Energy Ch</u> <u>All</u> <u>Minimum</u> <u>23</u> <u>North Cit</u> <u>All</u> <u>Discounts</u> <u>Tr</u> <u>.5</u> <u>Tr</u> <u>\$0</u>
program as a result of a provisions of 42 USC Section	<u>Schedule</u>
which utilizes mechanical or	Sc
	<u>RATES E</u>
	<u>Energy Ch</u> <u>All</u> <u>Minimum</u> <u>23</u> <u>Discounts</u> <u>Tr</u> <u>.5</u> <u>Tr</u> <u>\$0</u>
<b>REH (Residential Low-</b>	Se to read as
residential service provided City Light residential and that they:	<b>21.49.055</b>
Income pursuant to	A.
the annual income of all below the poverty level for the U.S. Government or the	previous c maximum thousand (1 the Depart
the annual income of all the Washington State published annually by the state	<u>Schedule</u>
program as a result of a provisions of 42 USC Section	Sc
which utilizes mechanical or	<u>RATES E</u>
	<u>Energy Ch</u> <u>All</u> <u>Demand C</u> <u>All</u> <u>Minimum</u> <u>system car</u> <u>60</u> <u>Discounts:</u> <u>Tr</u> <u>17</u> <u>Tr</u> <u>\$0</u>
	<u>Schedule</u>
	Sc
	<u>RATES E</u>
((and))RLS, REH and RLH residential rate assistance and in the manner determined	<u>Energy Ch</u> <u>All</u> <u>Demand C</u> <u>All</u> <u>Minimum</u> <u>system car</u> <u>60</u> <u>Discounts:</u> <u>Tr</u> <u>17</u> <u>Tr</u> <u>\$0</u>
and RLH and any other not available to those electric heat as defined in (2) but who have not conservation measures Program described in (8). Customers who own on the date of application to complete the energy continued by the failure to complete the to furnish or properly Municipal Code Section	<u>Schedule</u>
and RLH shall not apply to the issuing Authority of the as provided.	Sc
, RLT, RES, ((and))RLS, and RLH are applied to in the name of the owner	<u>RATES E</u>
will be considered as a single RES, ((and))RLS, REH each residence shall be	<u>Energy Ch</u> <u>All</u> <u>Demand C</u> <u>All</u> <u>Minimum</u> <u>system car</u> <u>60</u> <u>Discounts:</u> <u>Tr</u> <u>17</u> <u>Tr</u> <u>\$0</u>
under Schedules REC, double-type insulated tank per element wattage shall	<u>Schedule</u>
residential account, including electricity added together for and RLH.	Sc
	<u>RATES E</u>

AN ORDINANCE related to cable television; authorizing the Mayor to approve the transfer of control, subject to conditions, 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 a Assignment of Cable Franchise Consent Agreement for the purpose of implementing and administering the transfer.

is hereby repealed.

Section 2. The City, subject to Millennium Digital Media, L.L.C. ("Millennium") complying with the requirements of Section 6 of the ordinance, approves the transfer of control of the cable franchises of Millennium, including the franchises authorized under Ordinance 117955 and 118361, as amended, from TSC Cable Investment Corporation, a Delaware Corporation, TSG Cable Investment Corporation III, a Delaware Corporation (the "Redeeming Members"), and Millennium Digital Media, L.L.C., a Missouri Limited Liability Corporation to Highland Crusade Offshore Partners, L.P., an entity created and in good standing, under the laws of Bermuda; Credit Suisse International, a foreign corporation organized under the laws of England and Wales; and Bear Stearns Credit Products Inc., a Delaware corporation, retroactive to October 26, 2006.

Section 3. The Chief Technology Officer is authorized to execute a Settlement Agreement in substantially the form attached to this ordinance as Exhibit B, accept grant funds in the amount of \$20,000 from Millennium, and to take such further action as may be necessary to implement the Settlement Agreement. The funds, when received, shall be deposited into the Cable Television Franchise Subfund.

Section 4. The Chief Technology Officer is authorized to enter into an agreement with Millennium regarding installation of fiber from the Seattle Channel to Town Hall substantially the form attached to this ordinance as Attachment 2 to Exhibit B ("Town Hall Fiber Construction Agreement") and to take such further action as may be necessary to implement the Town Hall Fiber Construction Agreement.

Section 5. In order to pay for necessary costs and expenses to be incurred in 2007 but for which insufficient appropriations were made, the appropriations for the following in the 2007 Budget are hereby increased as follows:

Fund -- Department -- Budget Control Level -- Amount

Information Technology Fund (5041) -- DoIT -- D4400 Office of Electronic Communications -- \$20,000

Cable Television Franchise Subfund (00160) -- DoIT -- D160B Cable Fee Support to Information Technology Fund -- \$20,000

The above appropriations are made for the purpose of implementing certain terms of the Settlement Agreement (found in Exhibit B) pertaining to the public access channel.

Section 6. An original Settlement Agreement, which includes a Town Hall Fiber Construction Agreement, substantially in the same form as Exhibit B to this ordinance shall be signed and filed by Millennium with the City Clerk and the Office of Cable Communications no later than thirty (30) days after the City Council passes Council Bill 115946, which authorizes the Mayor to enter into a renewed franchise agreement with Millennium, or this ordinance 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 and applicable law shall be available to the City.

Section 7. Any acts consistent with this ordinance prior to the effective date of this ordinance are hereby ratified and confirmed.

Section 8. 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; but only if Millennium signs and files the agreements described in Section 6 within thirty (30) days after the City Council passes Council Bill 115946 which authorizes the Mayor to enter into a renewed cable television franchise agreement with Millennium.

Passed by three-fourths (3/4) vote of the members of the City Council the 1st day of October, 2007, and signed by me in open session in authentication of its passage this day of October, 2007.

Nick Licata

President of the City Council

Approved by me this 11th day of October 2007.

Gregory J. Nickels, Mayor

Filed by me this 11th day of October 2007.

(Seal) Judith Pippin

City Clerk

Exhibit A: Letter dated August 2, 2007 from Millennium re cancelled contract

Exhibit B: Settlement Agreement (includes Town Hall Fiber Construction Agreement)

Attachment 1 - Goodwill Commitment to Explore Use of New Technologies

Attachment 2 - Town Hall Fiber Construction Agreement

See City Clerk for Attachments

Publication ordered by JUDITH PIPPIN, City Clerk

Date of publication in the Seattle Daily Journal of Commerce, October 17, 2007.

10/17/2007

Blind, or  
Sixty-five (65) years of age or older, or  
Disabled and receive funds from a disability  
program from working consistent with the requirements  
Require medical life support equipment  
restore, or supplant a vital function.

JANUARY 1, 2007:

Seasonal (April -- September)  
1.57¢ per kWh  
2.93¢ per kWh  
Seasonal (October -- March)  
1.57¢ per kWh  
2.93¢ per kWh

per day

**Special Elderly/Disabled: Tukwila) and R**

RLT are available for separately metered  
show satisfactory proof that they have a  
unit where the account is billed and that  
include RLT, receive Supplemental Security  
83; or

include RLT, reside in a household in which  
does not exceed two hundred (200) percent  
of the household as computed annually by

include RET, reside in a household in which  
does not exceed seventy (70) percent of  
of individuals in the household as com

nd, or  
Sixty-five (65) years of age or older, or  
disabled and receive funds from a disability  
program from working consistent with the require

quire medical life support equipment wh  
store, or supplant a vital function.

JANUARY 1, 2007:

Seasonal (April -- September)  
1.83¢ per kWh  
3.26¢ per kWh  
Seasonal (October -- March)  
1.83¢ per kWh  
3.26¢ per kWh

per day

**Special Elderly/Disabled: Suburban) and R**

RLS are available for separately metered  
show satisfactory proof that they have a  
billing unit where the account is billed and  
include RLS, receive Supplemental Security  
83; or

include RLS, reside in a household in which  
does not exceed two hundred (200) percent  
of the household as computed annually by the

include RES, reside in a household in which  
does not exceed seventy (70) percent of the  
of individuals in the household as com

nd, or  
Sixty-five (65) years of age or older, or  
disabled and receive funds from a disability  
program from working consistent with the require

quire medical life support equipment wh  
ore, or supplant a vital function.

JANUARY 1, 2007:

Seasonal (April -- September)  
1.70¢ per kWh  
3.06¢ per kWh  
Seasonal (October -- March)  
1.70¢ per kWh  
3.06¢ per kWh

per day

**Special Elderly/Disabled: Shoreline) and R**

RLH are available for separately metered  
show satisfactory proof that they have a  
billing unit where the account is billed and  
include RLH, receive Supplemental Security