

IRU CAPACITY, EQUIPMENT, AND SERVICE AGREEMENT
ICESA (WORKING ROUGH DRAFT...)

This IRU Capacity, Equipment, and Service Agreement (the "Agreement") is entered into as of _____ (the "Effective Date") between Northwest Open Access Network ("NoaNet"), a Washington corporation with offices at 2327 Grand Avenue, East Wenatchee, WA 98802-8219, Millennium Digital Media ("MDM"), a ??? Corporation with offices at 3633 136th Place SE Suite 107, Bellevue, WA 98006 and Jefferson County Public Fiber Network Authority ("JCPFN") a Washington Public Development Authority with offices at 2xx West Patison, Port Hadlock, WA 98339.

BACKGROUND

This Agreement is made with reference to the following facts:

A. NoaNet operates a regional fiber optic communications system (as such system exists now, and as it is modified from time to time, the "NoaNet Network").

B. MDM operates a fiber optic communications system within Jefferson County, Washington (as such system exists now, and as it is modified from time to time, the "MDM Network").

C. JCPFN intends to operate a fiber optic communications system within Jefferson County, Washington (as such system will exist, and as it is modified from time to time, the "JCPFN Network").

D. MDM desires to provide, and NoaNet desires to obtain, an indefeasible right to use optical fibers on the MDM Network as part of the implementation of a NoaNet Point of Presence (POP) located in East Jefferson County.

E. JCPFN desires to provide network electronics and circuit electronics to be installed on the NoaNet Network as part of the implementation of a NoaNet Point of Presence (POP) located in East Jefferson County. In return, NoaNet desires to provide Network Operations Center (NOC) services on the JCPFN Network for the term of this agreement .

G. MDM desires to provide, and JCPFN desires to obtain, an indefeasible right to use optical fibers on the MDM Network as part of the implementation of the JCPFN Network in Jefferson County.

G. JCPFN desires to provide, and MDM desires to obtain, an indefeasible right to use optical fibers on the JCPFN Network in Jefferson County.

H. JCPFN desires to provide, and MDM desires to obtain, an indefeasible right to use network electronics and circuit electronics in each and every JCPFN Network POP in Jefferson County in return for the MDM service of maintaining the JCPFN Network for the term of this agreement.

TERMS OF AGREEMENT

1. Definitions

1.1 "JCPFN Backbone Network" shall mean, at any date, the JCPFN Routes as of that date (Described in the "JCPFN Catalog of Network Elements").

1.2 "Capacity" shall mean the fiber optic Capacity on the MDM Network including both (a) the circuit capacity, as measured in terms of transmission and (b) a portion of the relevant fiber strands necessary to transport such capacity.

1.3 "GigE Capacity" shall mean Gigabit Ethernet transmission capacity between JCPFN POPs and including JCPFN POPs, meeting the specifications set forth in JCPFN's Catalog of Network Elements Technical Reference Document and its addenda, as revised from time to time.

1.4 "GigE Electronics" shall mean the technology and components that enable GigE testing, multiplexing, and transmission, meeting the specifications set forth in JCPFN's Catalog of Network Elements Technical Reference Document and its addenda, as revised from time to time.

1.5 "Indefeasible Right to Use" or "IRU" shall mean the exclusive, unrestricted, and indefeasible right to use the relevant Capacity, Equipment, Service for any legal purpose. The granting of such IRU does not convey title or legal ownership of any fibers or equipment on the JCPFN Network or the MDM Network. Notwithstanding the occurrence of a breach by the receiving party of any legal duty or obligation imposed by any contract, by the law of torts (including simple or gross negligence, strict liability or willful misconduct), or by federal or state laws, rules, regulations, orders, standards or ordinances, during the Term, the granting party shall have no right to revoke or restrict in any manner or to any degree whatsoever, through injunctive relief or otherwise, the use of the IRU granted to the receiving party. The parties mutually understand and agree that any such breach shall be compensable, if at all, by a remedy at law and not at equity.

1.6 "Specifications" shall mean, the service specifications set forth in JCPFN's Catalog of Network Elements Technical Reference Document, as revised from time to time.

1.7 "JCPFN Routes" shall mean the routes between JCPFN POPs over which JCPFN obtains rights to use capacity under this Agreement, including the routes listed in the JCPFN Catalog of Network Elements.

1.7 "MDM Routes" shall mean the routes between JCPFN POPs over which MDM obtains rights to use capacity under this Agreement, including the routes listed in JCPFN Catalog of Network Elements.

1.8 "Total interruption" means any situation in which JCPFN suffers a total loss of connectivity in one or more JCPFN Routes, lasting two or more hours, which loss is not caused by JCPFN, and that does not occur within or as a result of equipment connections that JCPFN provides.

2. Indefeasible Right to Use. MDM hereby grants to NoaNet for the Term of this Agreement an IRU in the Capacity, in recognition of the operational cost savings to the MDM Network.

2.1 Indefeasible Right to Use. MDM hereby grants to JCPFN for the Term of this Agreement an IRU in the Capacity, in recognition of the operational cost savings to the MDM Network.

2.2 Indefeasible Right to Use. JCPFN hereby grants to MDM for the Term of this Agreement an IRU in the GigE Capacity, in return for the MDM service of maintaining the JCPFN Network over the full term of this agreement.

2.5 Sale of Equipment. JCPFN shall purchase network electronics and circuit electronics to be installed on the NoaNet Network as part of the implementation of a NoaNet Point of Presence (POP) located in East Jefferson County. In complete and full payment, NoaNet shall provide Network Operations Center (NOC) services on the JCPFN Network over the full term of this agreement .

3. Term. This Agreement is binding on the parties as of the Effective Date and, subject to the termination provisions of this Agreement, shall remain in effect until December 31, 2025 (such period is referred to as the "Term").

4. Implementation. NoaNet, MDM and JCPFN shall work together, in good faith, to develop a mutually agreeable implementation schedule for furnishing the Capacity and associated Electronics, and the parties agree to work together, in good faith, in the future to develop necessary implementation schedules, as appropriate.

5. Payment. In consideration for the IRUs and sale agreement granted hereunder no additional fees will be charged one party to another among MDM, NoaNet, and JCPFN.

6. Testing. Prior to making any Capacity or GigE Capacity available under this Agreement, NoaNet and/or MDM shall test the Capacity or GigE Capacity on a route-specific basis to ensure that it is in conformity with the Specifications. If any testing establishes that the Capacity or GigE Capacity does not conform to the Specifications, the supplying entity (JCPFN, NoaNet, or MDM) promptly shall correct such nonconformity and conduct additional testing prior to making the Capacity or GigE Capacity available.

7. Outage Credits. In the event of a Total interruption in a specific JCPFN Route that is due to circumstances within MDM's reasonable control (fiber cuts shall not be deemed to be within MDM's reasonable control), JCPFN shall be entitled to an outage credit. For each two hour period of such Total Interruption. JCPFN shall receive an outage credit at a rate of \$20.00 for each such period of a Total Interruption for each JCPFN Route where the Total Interruption occurs. The duration of such a Total Interruption will be measured from the time of notice from the NoaNet NOC to MDM's Jefferson County network repair center that a Total Interruption has occurred to the time of restoration of the Service. No credit will be provided for any scheduled Interruption.

An outage credit will be applied with other amounts due to JCPFN from MDM, or, to the extent such sums are not due to JCPFN, provided as a refund.

8. Chronic Failure. If there shall occur, within any period of 12 consecutive months, more than four Total Interruptions caused by factors within MDM's reasonable control, MDM will demonstrate to JCPFN actions taken by MDM to reduce such Interruptions. If there shall occur more than two additional Total Interruptions due to factors within MDM's reasonable control within the subsequent three month period. This shall be deemed a Chronic Failure for purposes of this Agreement.

9. Interference. In the event that MDM believes in good faith that JCPFN's use of the JCPFN Network is interfering unreasonably with the use of MDM service by others or the operation of the MDM Network, MDM shall immediately notify JCPFN. JCPFN shall take immediate action to cure the problem on the JCPFN Network. For purposes of the foregoing sentence, the normal usage by JCPFN of all or any part of the GigE Capacity shall be deemed to be reasonable.

10. Use of the JCPFN GigE Capacity and Restriction on Resale. JCPFN may use its GigE Capacity for any lawful purpose and JCPFN represents and warrants that its use of the GigE Capacity and its offering of services using the JCPFN Network will comply with all applicable government codes, ordinances, laws, rules, regulations and/or restrictions. JCPFN may sell, trade, exchange or otherwise make available to any Public Agency or entity any service provided over the JCPFN Network.

11. Use of the MDM GigE Capacity and Restriction on Resale. MDM may use its GigE Capacity for any lawful purpose and MDM represents and warrants that its use of the GigE Capacity and its offering of services using the JCPFN Network will comply with all applicable government codes, ordinances, laws, rules, regulations and/or restrictions. MDM may sell, trade, exchange or otherwise make available to any Person or entity any service provided over the JCPFN Network. MDM shall make all efforts to supply service to any person or entity that desires the service over the JCPFN Network.

12. Limitation of Liability. IN NO EVENT SHALL MDM OR JCPFN BE LIABLE IN CONNECTION WITH THE PROVISION, USE OR RESALE OF THE GigE CAPACITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR DIMINISHED BUSINESS VALUE, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, INDEMNITY WARRANTY, STRICT LIABILITY OF TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, PROVIDED THAT (A) THE LIMITATIONS OF LIABILITY DESCRIBED IN THIS SECTION SHALL NOT RENDER INAPPLICABLE ANY CHARGES OR OTHER LIABILITIES FOR WHICH A PARTICULAR AMOUNT, FORMULA OR OTHER METHOD OF CALCULATION IS SPECIFICALLY PROVIDED IN THIS AGREEMENT; AND (B) NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY IN TORT FOR (1) THAT PARTY'S WILLFUL OR INTENTIONAL MISCONDUCT OR (2) DAMAGES TO INDIVIDUALS OR THEIR ESTATES FOR BODILY INJURY OR DEATH PROXIMATELY CAUSED BY THAT PARTY'S NEGLIGENCE.

13. Termination.

13.1 Upon the expiration of the Term of this Agreement, use of the GigE Capacity shall terminate for all parties.

13.2 In the event MDM abandons or otherwise relinquishes use of the JCPFN Network, JCPFN shall be entitled to use the JCPFN Network for its own use or in the provision of capacity or services to others.

13.3 In the event JCPFN abandons or otherwise relinquishes use of the JCPFN Network, MDM shall be entitled to use the JCPFN Network for its own use or in the provision of capacity or services to others.

14. Default.

14.1 JCPFN has the right to terminate this Agreement upon thirty days' prior written Notice of Default in the event of a Chronic Failure (as defined in Section 8 of this Agreement). In the event of such default, a termination by abandonment against MDM shall be defined as under section 13.2 of this document. In the event that JCPFN is required to institute legal procedures, JCPFN will also be entitled to the reasonable attorneys' fees necessary to effect the procedures.

15. Incorporation of Terms by Reference. The following provisions of the ICESA are incorporated by reference and made part of this Agreement as if fully set forth. As used in these provisions as incorporated, the term "Agreement" shall be read as a reference to this Agreement, the term "Services" shall be read as a reference to Capacity under this Agreement, and the capitalized terms used shall have the meanings set forth in the ICESA.

MORE POSSIBLE BOILERPLATE SECTIONS>>>>

Indemnification.

Force Majeure.

Limitation of Actions.

Disclaimer of Warranties.

Exclusive Remedies.

Restrictions Against Use of Name and Brand Identification.

Inconsistent Use.

No Patent or Software License.

Confidential Information.

Protection of Confidentiality.

Disclosure to or by Affiliates or Subcontractors.

Return or Destruction of Confidential Information.

Disclosure to Consultants.

Required Disclosure.

Injunctive Remedy.

Assignment.

Third-Party Beneficiaries; Affiliates.

Relationship of the Parties.

Acknowledgment of Right to Compete.

Network Equipment.

Removal of Property.
Notices.
Compliance with Laws.
Choice of Law.
Severability.
Construction.
Survival of Terms.
Modification And Waiver.
Execution in Counterparts.

16. Entire Agreement Amendment. This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof, the granting of IRU Capacity, and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.

IN WITNESS WHEREOF, in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound thereby, the parties have executed this IRU Capacity Agreement on the dates shown below but effective for all purposes as of the Effective Date.

Signature section for the three entities...

EXHIBIT A

SPECIFICATION OF IRU PARTICULARS REGARDING EACH NETWORK ELEMENT DESCRIBED IN THE JCPFN CATALOG OF NETWORK ELEMENTS.
