

Comcast Franchise Compliance

*Report on Compliance and Performance Issues
2009-2010 MHCRC/ Comcast Franchise Renewal Process*

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I. Introduction

This report reviews franchise compliance and other performance issues related to the obligations of Comcast Oregon/ SW Washington (Comcast) under the current East Portland, West Portland and East Multnomah County cable franchises¹, which are regulated by the Mt. Hood Cable Regulatory Commission (MHCRC). The review is part of the process, currently underway, in which the MHCRC is considering Comcast's request to have the three franchises renewed. Federal cable law, in its description of the formal franchise renewal process, mandates that a performance review be done by local franchising authorities. As the franchises pre-date Comcast's ownership of the systems operated under them, our review makes some reference to the performance of the company's predecessor AT&T Broadband, whose obligations Comcast assumed when it began operating the systems.

II. Summary of Results

- The MHCRC is pursuing no current investigations involving a formal notice of possible franchise violation.
- The cable company has been formally found in violation of the franchise on three occasions. The MHCRC twice found Comcast's predecessor AT&T Broadband in violation of applicable telephone answering standards. Comcast was once found in violation of the franchise requirement to give timely notice to customers when there is a change of programming. These incidents resulted in fines paid by the company.
- Comcast has received several formal MHCRC notices of possible violation related to meeting applicable franchise standards. These have been resolved through the "notice and opportunity to cure" process provided for in the franchises.
- In three notable instances, the MHCRC granted variances according to which certain franchise requirements were replaced by obligations for specific alternative performance by the cable company: a) the requirement to provide "low capacity" institutional network (I-Net) site connections was replaced by the obligation to provide high-speed Internet connections; b) the obligation to provide cable FM radio service in West Portland was replaced with an obligation to provide customers an alternative technology for receiving FM radio; and c) the requirement to provide a ninth channel for

¹ Collectively referred to in this report as "franchise." The three franchises have mostly identical provisions. Certain provisions differ among the franchises, and there are certain section-numbering differences. Unless specifically noted, or made clear by the context, references in this report are to the East Portland franchise.

public, educational and government access (PEG Access, or Access) use under certain conditions was replaced by the obligation to provide working capacity at the Comcast facilities for 25 hours of video-on-demand Access programming, and to include a listing of Access programs in the company's program guides.

- A number of compliance and related performance issues have created difficulties or raised concerns among cable stakeholders, even if the problems have not risen to the level of calling for a notice of possible franchise violation. In franchise renewal discussions, the MHCRC may wish to address these issues, along with those which have received more formal regulatory attention.

III. Outline of Compliance and Performance Issues

Issues related to the above categories are discussed in detail in the "Issues and Findings" section below (Section V). They fall under the general headings of customer service, support of public, educational and government access, system upgrade, the institutional network, line extension, street use, private property, and franchise guarantee. From our investigations in these areas, a number of specific items emerge as franchise compliance and related performance matters under the current franchise agreements. These items, grouped according to the major headings in Section V, include, in brief, the following:

- A. Customer service concerns
 1. Telephone answering standards: not met by the company at all times during the term of the franchise
 2. Cable company notices to customers: not provided by the company as required at all times during the term of the franchise
- B. PEG Access concerns
 1. Recent recurring loss of audio and video on PEG channels; lack of adequate company testing of PEG transmissions
 2. Comcast's failure to reserve full digital capacity for PEG Access use from the beginning of the digital transition
 3. PEG Access narrowcast requirements, currently only partially fulfilled
 4. Lack of required stereo audio for PEG programming
 5. Live origination sites: concerns regarding maintenance, quality of signal, regular testing, readiness, company responsiveness to requests for service, and capacity for SD and HD digital transmissions
 6. Video on demand (VOD) system: relative slowness and inaccuracy of upload to the company headend
 7. High Definition (HD) program delivery: concern whether it can be done for PEG Access at the same level of quality as on commercial channels
 8. Inadequate training of company CSRs for responding to questions about PEG programming and signal transmission
 9. Undue delays in company response to information requests, and failure to perform needed tests or other required services in a timely manner
 10. Inadequate notice from the cable company when technological changes are made that affect PEG Access operations

11. Only partial listing of PEG programs in company on-screen listing, and unduly difficult requirements for PEG providers in supplying data for listings; company failure to meet applicable deadline for including PEG programming in listings
 12. Possibility that the company is not providing required parity between the capability for delivering PEG programming, and the capability for delivering commercial programming
- C. The need for a system upgrade
 - D. Institutional network (I-Net) concerns
 1. Undue delays in performing I-Net installations
 2. Difficulties in obtaining timely response from company representatives for resolving I-Net issues
 3. The need for demonstration that I-Net charges are calculated according to the methodology laid out in the franchise
 4. Possibility that company commercial I-Net activity and pricing may undermine the integrity of the public I-Net
 5. The need to demonstrate the extent to which I-Net reliability and performance meet industry standards
 - E. Line extension concerns
 1. Ongoing availability-of-service issues in the Portland downtown wiring district
 2. Need for the company to show compliance with all current franchises, and demonstrate that extension is available on a reasonable basis
 - F. The company's failure to follow established rules in locating facilities in the public right of way, and undue delays in responding to street agency communications
 - G. History of complaints about the company's treatment of private property when doing cable installations
 - H. Failure of the cable company to give required notice that the guarantor of the franchise was no longer viable
 - I. Public concern regarding the company's privacy policy

In our investigations, MHCRC staff also indicated a need for developing or clarifying language on several additional matters, in order to facilitate future franchise compliance enforcement. These matters include the form of cable company notices to subscribers, criteria for telephone answering exceptions, and procedures for variances.

IV. Regulatory Activity

Our review indicates that the particular mix of regulatory resources available to the MHCRC for resolving compliance and other performance issues is an effective one. Staff efforts to resolve issues through often intensive and persistent informal communications with the cable company have largely been successful, so that there have been only three instances of demonstrated franchise violations and accompanying fines during the term of the franchise. At the same time, the ability of the MHCRC to issue formal notices of possible franchise violation, and to impose substantial sanctions for established violations, gives informal staff efforts considerable weight. It is also helpful that, where necessary in support of its regulatory initiatives, the MHCRC is able to draw on legal and other professional resources provided from within the City of Portland or on a contract basis.

Clear correlations exist between specific regulatory activity on the part of the MHCRC and its staff, and improvements in compliance with franchise requirements by the cable company. For example,

subsequent to the 2001 fines related to telephone answering violations, company telephone answering performance met applicable standards with only infrequent exceptions. Following intensive MHCRC communications with the company in 2004 over a dozen documented complaints about the company's treatment of private property in the space of 18 months, the number of complaints received by staff reduced to 1-3 per year. Many other examples could be cited.

Cable franchise regulation takes place in accordance with broad standards set in federal law. However, the principal document for local regulation is the cable franchise. The renewal process offers an opportunity to revisit the specific language of the franchise and to adjust it to achieve a level of clarity and precision appropriate for addressing known or anticipated issues related to cable company performance. In cases where the three franchises serving the Jurisdictions may differ in language, the renewal is an opportunity to make requirements consistent among the documents. Some examples our review indicated as possibly helpful language clarifications are those dealing with the nature of notices to subscribers, standards for telephone answering exceptions, procedures for variances, requirements for installations inside the Urban Growth Boundary, and distinctions between standard and non-standard cable installations. Other examples are identified in the discussion of Issues and Findings below.

V. Issues and Findings

A. Customer Service

1. Telephone Answering Standards

- **Discussion**

Customer service standards adopted by the Jurisdictions, and specifically referred to as obligatory in the franchises, require in Section III that the cable company answer customer service telephone calls within 30 seconds, 90% of the time, measured on a quarterly basis. The standards also require that callers receive a busy signal no more than 3% of the time. The cable company keeps regular statistics on these measures, and provides them to the MHCRC for review.

- **Findings**

In the light of customer complaints and a review of statistics, the MHCRC, in two separate orders, found AT&T Broadband, Comcast's predecessor, in violation of telephone answering standards: 1) Order 2001-01, passed February 26, 2001, found the company failed the standards for the 3rd quarter 1999 and 1st, 2nd and 3rd quarter 2000, and called for a \$180,000 fine, which AT&T paid in October 2001; and 2) Order 2002-01, passed January 28, 2002, found the company out of compliance for the 3rd and 4th quarters 2001 and called for a \$120,000 fine, which AT&T paid in March 2002.

In addition, the MHCRC issued Comcast a notice of a possible franchise violation on three occasions—in 2005, 2007, and 2009—for failure to meet telephone answering standards, and the matter was resolved by the company's curing the failure within the time specified in the "notice and opportunity to cure" provisions in Section 23.2 of the franchise.

MHCRC staff and Comcast have had a number of meetings and other communications regarding what counts as an exception, related to weather conditions or other force majeure occurrences, and the closure of telephone queues on holidays for the purposes of the company's recording statistics on telephone answering performance. A particularly focused series of communications in 2004 resulted in

a working document—“Telephone Statistics Exceptions Guidelines”— and email communications in 2005 resulted in a policy—“Holiday Queue Closure Standard”— which helped clarify how the company was to calculate telephone answering statistics, but more formal clarification on the methodology for calculating telephone answering statistics may be needed.

2. Timeliness of Notices to Customers

- **Discussion**

Section V of the Jurisdictions’ customer service standards, dealing with communications between the cable company and cable subscribers, requires in part that customers must be notified in writing at least 30 days in advance of any changes in rates, programming services, or the channel position for cable programs. The MHCRC monitors these changes, and the notices that are provided by the company.

- **Findings**

In the light of subscriber complaints and a review of the pertinent facts, the MHCRC, in Order 2008-01, passed on March 17, 2008, found that Comcast had failed to provide the required advance written notice to subscribers regarding service changes the company made in October, 2007. The Order noted that the violation was the third incidence of such a failure called to the company’s attention by notice from the MHCRC within 24 months. The Commission assessed a fine of \$43,899, which Comcast paid on April 4, 2008.

The MHCRC carried out two additional regulatory actions relative to the timeliness of notices to customers. In December of 2007, the MHCRC issued a formal notice of potential franchise violation and opportunity to cure, to address the company’s apparent failure to provide required notice of new fees to be charged to customers if they paid their cable bill by telephone using a live operator for assistance. This was resolved through MHCRC approval of a plan for cure by the company. Then, in July of 2008, along with a formal notice of possible violation regarding the discontinuation of FM service in West Portland, the MHCRC requested Comcast to provide notice of the discontinuation. This issue was resolved through continued communications with the company and an eventual franchise amendment recommended in 2009 by the MHCRC, and approved by the Portland City Council.

3. Customer Service Complaints

- **Discussion**

Under its customer service obligations, the cable company is required to provide subscribers with an MHCRC phone number for registering complaints, and these complaints are tracked on a quarterly and annual basis for fourteen separate categories—among them billing, company telephone response, picture quality, company treatment of private property, rates, service and equipment, and repair problems.

- **Findings**

MHCRC staff reviews complaint trends, along with information from a variety of reports required by the franchise. The staff credits this review with alerting them to the need for specific regulatory activity regarding the existence of a variety of individual problems and patterns of problems over the term of the current franchise. These include telephone answering issues, failures of the company to provide required notices to customers, problems with FM radio service, improper installation practices, service and equipment issues, billing problems, issues with providing cable service in the Portland downtown area, and other problems. As has been noted above, the regulatory action taken in such areas can be clearly correlated with improvements in cable company performance under the franchise.

B. Public, Educational and Government (PEG) Access

As is described on the MHCRC website, two non-profit community media centers provide PEG Access services to residents throughout Multnomah County: Portland Community Media (PCM) and MetroEast Community Media (MetroEast). PCM's services generally focus on areas within the City of Portland, and MetroEast's services are generally targeted to the areas within the Cities of Gresham, Troutdale, Fairview and Wood Village, and unincorporated Multnomah County. In addition, Portland Public Schools and Portland Community College each have responsibilities for programming educational access channels in the City of Portland. The franchises require the cable operator to provide channels, capital support, and certain services in support of PEG programming; and to connect its system at the Access providers' sites, with the company bearing the cost for design, engineering, equipment and installation. In addition to the franchise provisions related to PEG Access, PCM has a specific contract with the City of Portland, and MetroEast a contract with the MHCRC, which govern aspects of the scope, manner and delivery of PEG Access services. The company's performance relative to its PEG Access obligations in a number of areas has raised concerns about compliance with current obligations and the need to address certain issues in the franchise renewal.

1. Quality and Reliability of Signal for PEG Access Transmissions

- **Discussion**

Section 7.11 of the franchise requires that the PEG channels be delivered according to the same standards of quality as those that apply to the rest of the residential subscriber channels. However we found a pattern of recurring difficulties and concerns in this area.

- **Findings**

Portland Community Media staff has documented a recurring loss of audio or video, as well as certain related difficulties, on one or more PEG channels, over months of operation; we reviewed a record of approximately 40 incidents in the first 8 months of 2009. All of the incidents we reviewed were resolved, with varying degrees of difficulty, through communications with reportedly cooperative Comcast staff. However, questions remain regarding the underlying reasons for the problems, and the extent to which they inappropriately affect PEG channels to a greater degree than they do the commercial channels.

PEG Access signal quality has been a staff concern at both PCM and PPS, based on their direct observation of television programs. Both reported that they do not believe the signal quality of PEG transmissions is comparable to the quality of commercial channels. Furthermore, PCM staff is concerned that Comcast has no regular and transparent program of testing the PEG channels to provide the data that could be used to assess the required parity between PEG and other channels. In response to our written question to Comcast, Comcast stated that PEG channels are processed and delivered in the same manner as the other channels, and that all channels undergo daily checks for quality. However, Comcast did not explain the specific nature of these checks. PCM staff is also concerned that no PEG channels were included in the sampling of channels chosen for the carrier-to-noise and other tests done at various points on the system as part of the most recent Winter and Summer FCC proof-of-performance tests.

MetroEast Community Media staff has had similar concerns about PEG channel reliability and signal quality, but indicated that recent equipment improvements in the transmission system linking MetroEast to the company's headend had addressed those concerns.

In addition to our questions to Comcast about testing the live origination points, and testing PEG channels at the headend, we also asked, in our followup request, for specific information about a number of other issues. These included: bandwidth to be used for PEG and commercial SD and HD digital channels, the methods of transport for PEG and broadcast VOD transmissions to the headend, the history of end-to-end testing of PEG channels similar to that the company does for commercial channels, and the extent to which current analog PEG Access bandwidth is available for digital use. In its written response to these questions, Comcast gave only partial answers at best. We were largely unable to use the information Comcast supplied to better understand the issues our questions addressed.

2. Digital Capacity for PEG Channels

- **Discussion**

Section 7.2 of the franchise requires that when the cable company transitions from analog to digital transmission of its commercial signals on the residential network, PEG Access channels will be transitioned as well. When 50% of the system channels are digitally delivered, then the company will deliver the PEG channels in both digital and analog format; this threshold was recently reached, and the simulcast of the channels is currently in effect. When 75% of the system channels have been converted, the company may decommission the analog PEG channels altogether.

The digital transition is linked to a possible change in the bandwidth or number of channels devoted to PEG Access. The franchise requires that from the beginning of the transition, the company must reserve 10 percent of its bandwidth capacity, or a quantity of 36 digital channels, whichever is less, for PEG use. The company must make this capacity available upon request by the Jurisdictions to meet a community need or interest identified by PCM or MetroEast. We requested confirmation from Comcast that the reservation of capacity for PEG use has been accomplished as required.

- **Findings**

According to Comcast, in its response to our request for information, "There are no channels 'in reserve,' to the extent that term implies channels that are not currently programmed. Future digital PEG channels would be placed in spectrum vacated by the existing analog version of the PEG channels." The company's interpretation of the requirement for reserving capacity creates potential problems. It implies that the actual reservation of channels depends upon the completion of the digital transition and the decommissioning of the analog PEG channels; whereas the franchise requires the reservation from the beginning of the transition. The company's interpretation does not accommodate expanded PEG channels utilizing the digital spectrum, as allowed for under conditions set forth in the franchise, so long as Comcast delivers the PEG channels in an analog format. At a minimum, this situation indicates the need for clarification of the franchise language, but also may indicate a need to examine this issue as a potential franchise violation.

3. Provision of Narrowcasting, Stereo Audio, and Closed Channels

- **Discussion**

The franchise, in sections 7.2 and 7.6, requires the cable company to make available, under certain conditions, three specific services for PEG: 1) narrowcasting certain PEG channels to specific franchise areas, within the boundaries of the jurisdictions, to individual school districts, and to community college service areas; 2) a stereo audio channel for audio programming or for simulcasting the audio to accompany video programming; and 3) up to three closed, scrambled channels that might be viewed only by certain designated viewers but not by the public. We discussed these requirements with staff of the MHCRC, PCM, MetroEast, Portland Community College, Portland Public Schools, and Comcast.

- **Findings**

With respect to the required PEG narrowcasting capability, our discussions indicate that the capability does currently exist to narrowcast within the boundaries of Portland and within the East County jurisdictions collectively. Narrowcasting can also be done within the boundaries of the Portland Public School District in Portland (any schools outside Portland receive East County programming), as well as within the respective boundaries of the Mount Hood and Portland Community Colleges. However, it is currently not possible to deliver narrowcast programming within individual East County jurisdictions, nor to individual school districts in East County. On the face of it, the company's system design appears to be lacking in part of its required capability. The MHCRC may wish to examine this issue both in the light of current franchise requirements and future community needs.

Neither the stereo audio channel, nor any scrambled channels, are currently activated for PEG use, and have not been activated during the term of the franchise. Access provider staff indicated that no specific need for the scrambled channels has arisen, and no formal requests for their activation have been made. This has been largely due to the availability of alternative technologies, the existence of the I-Net, certain technological constraints in the construction of the system, and the priorities and plans of the Access providers themselves.

However, PCM staff offered an interpretation of the franchise requirement for stereo audio according to which all of the PEG channels must be delivered with stereo audio included. The company is not providing stereo audio for the PEG channels. A clarification of this requirement is indicated, and perhaps an evaluation of franchise compliance.

4. Program Origination Sites

- **Discussion**

Section 7.6 of the franchises requires that the company provide permanent facilities for the live origination of programming for PEG Access distribution from a number of sites. These include PCM and MetroEast, I-Net sites, interconnection points, the Multnomah County Courthouse, the Portland Building, Portland City Hall and the Justice Center. Existing agreements also provide for the maintenance of "on-demand" sites which allow Access providers to connect mobile equipment to the system at various points within the franchise area to cover events as they occur in the near vicinity of the sites. The current list of sites includes approximately 80 such locations plus all of the schools in the school districts covered by the franchise area. We discussed these requirements with MHCRC staff and Access provider staff, and noted several questions and concerns. Our request for information from Comcast also addressed live origination sites.

- **Findings**

In our interviews, MHCRC and Access provider staff expressed concern that the quality and reliability of transmissions from the live origination sites is not consistent with the franchise requirement providing for parity between PEG Access transmissions and those associated with commercial programming.

Comcast provided information identifying the technology for transmissions from origination sites, and noted that the transmissions can be monitored for quality. Comcast also stated that it tested the on-demand sites prior to actual events. However we found concerns regarding the fact that Comcast apparently does no regular testing of the sites, despite the MHCRC having provided specific technical standards for site transmissions in 2004. Access provider staff also raised questions regarding the extent of site maintenance and the extent to which the sites are being equipped for digital and high definition transmissions as the rest of the system moves in that direction.

With respect to the maintenance of the sites, PCM staff provided documentation of an incident in which the live coverage of an event in Pioneer Courthouse Square—"One Web Day"—was prevented by a failure in the program origination site, which Comcast had apparently not adequately maintained or recently tested. PCM staff reports that several additional incidents of a similar nature have occurred, and they have been engaged in intensive efforts of communication with the company to try to achieve a higher level of readiness in the on-demand sites. PCM staff indicated it is also seeking a higher level of responsiveness from the company when PCM provides notice that programming is planned for a given site. MetroEast reports rarely if ever using the sites, partly in view of the difficulties anticipated in achieving successful connections.

Our investigation revealed that the permanent live origination sites are used regularly—generally on a weekly basis. No hard data is readily available on the usage of the on-demand sites, but PCM staff estimates that they do approximately 8 productions from the sites per year at present, with current PCM budgetary constraints the primary cause preventing attempts at wider usage.

5. VOD Technology

- **Discussion**

In November, 2005, the MHCRC approved a variance whereby the company provided 25 hours of video-on-demand capacity for PEG Access use, and agreed to list Access programs in its own program listings, in lieu of providing a ninth Access channel. PEG Access providers had requested activation of the ninth channel in accordance with Section 7.4 of the franchise, which describes the conditions for expanding the number of Access channels. We discussed with the Access providers how the use of the VOD capacity is proceeding.

- **Findings**

In our discussions, Access providers indicated that they have had largely satisfactory experience working with the cable company in the use of the VOD capacity. A document, "Protocols for PEG Access Video on Demand," was developed and adopted in consultation with Comcast, and generally has served its purpose. We have reviewed the statistics on usage, and determined that the service is in fact being used by viewers.

However, Access provider staff expressed definite concerns regarding the current technology for uploading PEG programming to the Comcast headend. According to Access provider staff, the technology is too slow and not accurate enough, especially by comparison with the high-speed upload systems employed by the commercial broadcasters. This raises the question whether the VOD system as currently configured is consistent with the requirement for parity between Access and commercial transmissions.

6. Other PEG Issues (HD, CSR Training, Responsiveness, Program Listings, Notice of Tech Changes)

- **Discussion**

A number of additional issues related to Comcast performance were raised by PEG Access staff in our discussions.

- **Findings**

HD Technology. We often heard the concern that the cable company could leave PEG Access behind as the system moves in the direction of High Definition program delivery. A representative of Portland Public Schools saw the development of HD delivery of educational programming as the highest priority in future educational access programming.

CSR Training. Access staff expressed concern about the level of training that company customer service representatives receive relative to the operation of PEG Access. For example, MetroEast staff recounted calls about public access program content in which company CSRs failed to explain to callers the fundamental fact that public access programming is not controlled for content by either the cable company or the Access provider. MHCRC staff also reported being aware of calls in which customers complaining about the technical quality of access channel transmission found cable company staff assuming that the problem was located with the Access provider, when the difficulty could just as well have been a general system technical problem. Adequate training could help CSRs respond to questions about PEG operations with more understanding.

Responsiveness. While Access stakeholders expressed appreciation for the generally high level of responsiveness and cooperation enjoyed with company technical staff, they also expressed concern at lapses documented, as discussed above, in accounts of long waiting periods to get company answers to important questions, or company failure to perform needed tests or other required services in a timely manner.

Program Listings. As described earlier, the MHCRC granted a variance that permitted Comcast, in lieu of providing a ninth Access channel, to provide specific alternative services. Along with providing PEG VOD access, the company is to include PEG program listings in its on-screen program guide. However, MHCRC and PEG Access staff have expressed concern and dissatisfaction over the fact that only a partial listing has appeared in the company's on-screen program guides. Access staff asserts that it is difficult to prepare listings in the format required by the company's listing contractor TV Guide, and that the Guide's prohibition on revising listings once submitted is unduly limiting. Detailed Access program listings are not provided on the Comcast website, but Access staff opined that this would be a relatively easy and effective place to put them.

With respect to this issue, MHCRC staff also noted, at the March, 2006 Commission meeting, that Comcast had failed to fully meet its February 1, 2006 deadline for including all PEG programming in the company's analog and digital on-screen program guides. The deadline is stipulated in the agreement called for in the November, 2005 variance resolution. Staff recommended that no regulatory action be taken, but that in any new franchise, provisions should be included to address the company's meeting similar deadlines.

Timeliness of Notice on Changes in Technology. MHCRC and Access staff often expressed concern that the cable company had not regularly given Access providers sufficient notice of important changes in system technology that would require technological or procedural modifications at PCM, MetroEast, Portland Public Schools, or other agencies using the PEG resources. A notable example occurred during the 2006 Comcast transition to digital platform. As part of the transition, the Access channels were to be provided by means of an all-digital simulcast, with the channels viewable in both analog and digital form. However, Comcast did not provide advance notice to the Access providers of the timing of the overall transition for the access channels, nor of the delayed transition of four of the channels. Technical difficulties occurred in the transition process, resulting in loss of audio and video on channels 23 and 30, and complaints from viewers. The incident resulted in a formal complaint from PCM to the MHCRC, which was discussed at four Commission meetings and an MHCRC Access Committee meeting over a period of six months. The issues related to lack of advance notice and the resulting technical problems were ultimately resolved through a series of MHCRC staff communications with Comcast and PCM.

7. Parity in Technology

- **Discussion**

Section 7.9 of the franchise requires that if the cable company makes any change in its own system or signal delivery technology, then it will, at its own expense, take all steps necessary to ensure that PEG program delivery is not diminished or adversely affected. The related section 7.11 requires that the Access channels be delivered at the same level of technical quality and reliability required for all residential subscriber channels.

- **Findings**

Our discussions with interviewees, particularly with MHCRC and Access provider staff, revealed concerns that the cable company may in fact not be living up to its obligation to provide for a level of technology and quality of signal delivery for PEG Access comparable to what is provided for commercial channels. We heard this concern expressed as a general one—that PEG Access should not be left behind as an orphan in the overall development of system capabilities. But this general concern emerged from more specific difficulties discussed in previous sections of this report—e.g., slow response from the cable company to certain PEG Access requests for technical assistance, the lack of adequate maintenance, inadequate readiness and testing of the live origination points, the failure of Comcast to include any of the Access channels in recent FCC proof-of-performance tests, the relative slowness and inaccuracy of the upload system for VOD, uncertainty about the ability to provide HD signals under the company’s interpretation of its obligation to reserve digital capacity for PEG Access, the merely partial listing of Access programs in company program listings, etc. It is clear from our discussions that the question of ensuring parity for PEG Access, relative to commercial programming, invites careful attention in the franchise renewal.

C. System Upgrade

- **Discussion**

Franchise Section 11, requires a system upgrade to be completed in 2000, which specifies that all replacement equipment be new and of the highest level of quality by commercial industry standards. The franchise requires construction of a hybrid fiber/coaxial system, with fiber extending to nodes. The system must meet all franchise requirements, including PEG Access and I-Net requirements. Section 11.5 authorizes the MHCRC to conduct a technology assessment to determine whether the system meets franchise requirements and is consistent with industry practices in other large systems nationwide and in the Portland area; if not, the MHCRC is authorized to terminate the franchise up to 4 years early under certain conditions and through a specified process. The required upgrade was completed and accepted by the MHCRC. The MHCRC has not undertaken the authorized technology assessment and consideration of early termination.

- **Findings**

Discussion with MHCRC staff, and our own independent observations, reveal a concern that the design and capacity of Comcast’s system, while it fairly represented the state of the art when it was proposed in 1997, no longer does so, and may not be able to adequately accommodate the level of services already emerging and anticipated for the future in modern cable systems.

There have been several indications that the Comcast system may be at or near capacity; e.g., the company’s strong interest in being relieved of the obligation to provide a ninth access channel, its similar interest in dropping FM radio service, and its unwillingness to respond to MHCRC staff requests for details regarding compression ratios for the digital channels on the system. Many 860 MHz systems, and a substantial number of 1 GHz systems, currently exist nationwide. The technology for extending fiber beyond the node to the curb or to the home has been successfully established by the industry, and

is represented in at least one system in the Gresham area. Providing for the full and highest quality development of high-bandwidth services such as HD—not only for commercial uses but for PEG Access and I-Net purposes as well—is likely to require revisiting system design and capacity in the MHCRC system.

The MHCRC may wish to explore this issue further for the franchise renewal.

D. Institutional Network

Section 8 of the franchise requires the cable company to install an institutional network as a communications resource for public, educational and government agencies in the franchise area, and describes the nature of the network and the conditions under which it will be provided. The technical design of the I-Net has evolved over time due to developments in regional communications planning, rapid changes in communications technologies, and needs of the agencies being served. However, the general franchise requirements continue to apply, with a number of variances approved by the MHCRC in resolutions enacted between 2001 and 2005. Currently, the Portland Bureau of Technology Services (BTS) provides I-Net services to a large number of public agencies, with many of the detailed conditions of the service spelled out in the June 2002 “Agreement To Provide Institutional Network Service To The City Of Portland, Oregon Bureau Of Communications And Networking,” (the I-Net Agreement) which was originally signed by AT&T Broadband. Our interviews with MHCRC and BTS staff, and examination of documentation provided by the Bureau and Comcast, revealed questions and concerns relative to Comcast performance in five areas.

1. Timeliness of Installations and Company Responsiveness.

- **Discussion**

In accordance with Franchise Section 8.3 and the I-Net Agreement Section 5, the cable company is required to install I-Net connections that expand the network, under specified conditions, within 4 months (120 days) from the date it receives specifications for the expansion from the Bureau. This is the timeframe the Bureau uses for estimates it gives to prospective I-Net users.

- **Findings**

According to our discussions with BTS staff, the cable company has not completed some recent installations in the required time, despite having a generally good record of timely installations in the past. BTS cited four specific current instances in which Portland Public School installations have not been completed within the 120 day period. We asked Comcast to provide a list of requested installations over the past 2 years which had not been completed within 120 days, and received a list of 14 such sites, with notations indicating reasons for the delays. These reasons included length or difficulty of the build, issues with crossing railroad rights-of-way, scheduling issues with the customer, and, most often, pole attachment issues. Comcast explained the delays generally as being a result of having most of the easier installations completed in the past, and having to deal now with more difficult ones.

BTS staff indicated that, along with experiencing recent delays in installation, they were having increasing difficulties in obtaining regular responses from Comcast to their inquiries regarding the status of certain installations. The Bureau provided a copy of recent correspondence to document this concern. We asked Comcast if there had been material recent changes in the staffing devoted to I-Net installation matters, and they responded that there had been no such changes.

2. I-Net Fees.

- **Discussion**

The franchise, in Section 8.3, sets forth a methodology for calculating the fees that the cable company may charge PEG Institutions and non-profit agencies for I-Net services.

- **Findings**

Our interviews with MHCRC and BTS representatives revealed concerns and questions about whether this methodology set forth in the franchise is being followed. We asked Comcast to provide documentation that it is in fact charging PEG Institutions according to the methodology laid out in the franchise, but received only a statement of the monthly fees it charges to BTS, and the percentage of annual increase applied to the fees. No documentation pertinent to the franchise methodology was provided. In a followup request for information, we asked additional questions about the extent to which Comcast's fee charged to Institutional I-Net users accords with the franchise. Comcast's response reiterates previous information, and identifies provisions of the I-Net Agreement upon which its fees to BTS are based. We are aware that Comcast provides I-Net services directly to some PEG Institutions and non-profit agencies within the franchise area (e.g., Metro and Albertina Kerr Centers, among possible others). With respect to how it charges these institutions for service, Comcast has been non-responsive to our questions, and franchise compliance implications may be indicated.

3. Discounted Broadband Services

- **Discussion**

Under a variance from Section 8 of the franchise approved by the MHCRC, the company is required to provide a discounted high-speed Internet service to a large number of public and non-profit agencies, in lieu of the "low capacity" I-Net service described in the franchise.

- **Findings**

We requested information from Comcast, both in our initial and follow-up request, regarding the extent of usage of the discounted broadband service. Comcast confirmed that their records showed no such users. In response to our request for information about the company's efforts to make non-profits aware of the service discount, Comcast was non-responsive and cited an irrelevant section of the franchise. Since there are some non-profit agencies commonly known to be using Comcast's high speed Internet service, who should qualify for the discounted rate under the franchise, this revelation raises potentially serious franchise compliance implications.

4. Cooperation in Maintaining the Integrity of the Public I-Net.

- **Discussion**

The franchise, and Section 6 of the I-Net Agreement, explicitly allow the cable company to use the I-Net to serve third parties under certain conditions. Recently the company has been marketing I-Net services putatively comparable to those offered by the BTS-managed network, to agencies which are potential public I-Net customers.

- **Findings**

In our interviews with BTS and MHCRC staff, the concern emerged that any significant expansion of this commercial company activity could undermine the integrity of the public I-Net in a manner contrary to the overall purposes of the franchise requirements. Interviewees also expressed concern that to the extent I-Net facilities are supported by I-Net fees from the MHCRC, the extended use of the facilities for independent commercial purposes may be inappropriate. As indicated above, we asked Comcast about the basis of the fees charged for I-Net services it provides directly to PEG institutions. However, the company did not respond to our question. Public records indicate that at least one public agency directly receiving I-Net service from Comcast is paying significantly less for specific services than public I-Net customers pay. This raises the question whether the company is engaging in pricing practices that

are predatory, designed to undercut the development of the public I-Net, and contrary to franchise requirements.

5. I-Net Reliability and Technical Standards

- **Discussion**

The I-Net agreement specifies a level of reliability comparable to the highest industry standards. We interviewed BTS staff, and included questions about this requirement.

- **Findings**

In our discussions with BTS staff, we were not made aware of any unresolved complaints about system reliability or performance in recent years. However, we did not directly investigate the nature and adequacy of technical standards applied to the I-Net, nor the extent to which these have been tested against. Discussion with MHCRC staff indicated a possible concern about this issue, and to the extent that this concern remains, it would be appropriate to consider engaging a further technical investigation.

E. Line Extension

1. Portland Downtown Wiring District

- **Discussion**

The West Portland franchise, in Section 8.3D, establishes a downtown Portland wiring district, and requires that, subject to certain conditions, residential cable service be made available to all potential customers in the district by the end of year 5 of the franchise. In our discussions with MHCRC staff, it became evident that the company's performance in the fulfillment of this requirement has been problematic, raising certain concerns.

- **Findings**

Potential customers have filed periodic complaints with the MHCRC, saying they have been unable to receive service, or to receive it in a timely manner, in the Portland downtown wiring district. MHCRC staff issued one letter to Comcast announcing its intention to send the company a formal notice of potential franchise violation pertaining to its obligations under section 8.3D of the franchise. In July of 2006, staff actually prepared and shared the draft notice with Comcast, but did not ultimately send it as a formal communication. In addition, staff has devoted substantial documented effort to communications with the company to resolve specific complaints and achieve satisfactory performance under the franchise in this matter.

In response to our request for a list of all businesses in the district having requested cable service but not having received it since year 5 of the franchise, Comcast provided a list of 35 sites, from files surveyed in 2009, with indications of the reasons service was not being provided. The most frequent reasons given were right-to-entry issues (12), the customer eventually declining service (8), or the customer not responding to the company's specific offer (8). Additional reasons given were the contract with the customer still being in process (5), installation pending (3), and construction currently in progress (2).

An additional issue that appeared in the examination of MHCRC correspondence files was concern over a lack of clarity regarding the extent to which the cable company and the customer were each severally responsible for the costs of line extensions in the Portland downtown wiring district. This is an issue for possible language clarification in a renewed franchise.

In general, while several specific complaints have been resolved, at this writing many entities requesting service still cannot get it; so issues related to the Portland downtown wiring district continue to invite questions about franchise compliance, and are a potential subject of concern for the renewal process.

2. General Line Extension

- **Discussion**

Section 8 in the West Portland franchise, and Section 10 in the East Portland and East County franchises, deal with service extension, as well as construction and interconnection issues. With respect to the requirements for service extension, the franchises are individually clear, but they differ, and in some cases conflict with one another. As indicated above, only the West Portland franchise discusses a downtown wiring district; only the East County franchise has sections dealing with new subdivisions and density requirements. Among the franchises there are additional inconsistencies, e.g., differences in the way that the requirement for universal service is expressed, the number of feet of drop cable that will be provided as part of standard installation, timing requirements for installation, and the formula for calculating financial responsibility in non-standard installations.

- **Findings**

Given the history of difficulties in the downtown Portland wiring district, and other periodic line extension questions necessitating staff attention, MHCRC staff indicated concern that Comcast may not be following current line extension requirements for all the franchises, and that some potential subscribers desiring service may be unable to receive it on reasonable terms. We requested information from the company regarding any subscribers requesting service but not receiving it, with an explanation for why service was not extended, but Comcast replied that to gather that information would be unduly burdensome and expensive. Comcast did indicate in their written response to our request for information that they would be willing to address the issue of line extension policy in franchise renewal discussions, and the MHCRC may wish to further investigate this issue for possible compliance implications.

F. Street Use

- **Discussion**

Section 16 of the franchise lays out the conditions under which the cable company may use the public rights-of-way for the operation of the cable system, and includes provisions dealing with such issues as construction, locating facilities, the restoration of streets, and the use of conduits, among others. We interviewed representatives of both the Portland Bureau of Transportation and the Gresham Transportation Division, to learn of the company's performance relative to these franchise requirements.

- **Findings**

With respect to the company's operations in Gresham particularly, we found an active concern about the company's practices in locating its facilities in the streets. A Gresham Transportation Division representative reports a consistent problem due to the company's contractors' failing to bore down to the depth of the full 30 inches required by the City to locate any possible lines or other facilities already buried in the right-of-way where the cable company wishes to install its own underground lines. The result is an undue risk of causing damage to existing lines in the course of installing the cable facilities. An accompanying concern expressed in our discussions was a failure of Comcast to respond in a timely and efficacious manner to communications from the Gresham agency about this problem. This raises questions about franchise compliance and adherence to Gresham's city codes.

G. Private Property

- **Discussion**

Section 16 of the franchise includes requirements prohibiting the cable company from installing its facilities in such a way as to unreasonably interfere with a private property owner's use of his or her property.

- **Findings**

Examination of documents and interviews with MHCRC staff reveal difficulties related to the company's treatment of private property, with the MHCRC receiving a number of complaints from private property owners who have had their property damaged or unduly disturbed by Comcast in the course of installing or repairing cable facilities. In July of 2004, staff documented a dozen cases of complaints received over the course of 18 months, alleging that the company had dug up private lawns with out permission, left spray paint on landscaped yards, left unburied cable in people's property, walked or driven across private property without permission, or committed other violations of applicable requirements. Staff considered issuing a formal notice of potential violation and opportunity to cure, but ultimately resorted instead to intensive discussions and written communications with Comcast to resolve the issue. Significant improvement has resulted, although the MHCRC continues to receive 1-3 complaints per year relative to this issue.

H. Guarantee of Franchises

- **Discussion**

Section 25 of the franchise requires that the franchisee provide a guarantor of the franchise. TCI West, Inc. became the guarantor of all the current franchises beginning with the transfer to Comcast in 2002. Section 25.3 provides that if the stockholders' equity of the guarantor falls below \$50 million, then the cable company must notify the MHCRC, and, subject to certain conditions, provide for a substitute guarantor.

- **Findings**

On the basis of a 2004 financial review, MHCRC staff determined that TCI West, Inc. was no longer viable as a guarantor under the terms of the franchise. The required notice of this situation had not been provided by the cable company. Staff initiated discussions with Comcast, who first proposed Comcast Holding Corporation as a substitute guarantor, and then, following additional discussion, the organizationally higher level Comcast Corporation. In January, 2005, the MHCRC adopted resolution 2005-01, accepting Comcast Corporation as guarantor for all the franchises regulated by the Commission. The MHCRC did not pursue regulatory action related to the failure of notice by the company in this instance, instead resolving the issue through staff communications with Comcast.

I. Privacy Policy

- **Discussion**

Section 22 of the franchise requires that the cable company meet certain requirements for protecting the privacy of individuals subscribing to cable service. Federal law also imposes obligations on the company in this regard. In 2002, Comcast developed a new privacy policy and began distributing it nationwide in 2003.

- **Findings**

The MHCRC, as well as the public, took an intense interest in Comcast's privacy policy, concerned that it was not sufficiently clear, and that it could lead to the violation of subscribers' privacy rights, particularly in the manner in which the company collected and used personally identifiable information from

subscribers. The policy was discussed at numerous MHCRC meetings from 2002 to 2006, with the Commission considering taking specific action to provide stronger local privacy protections. The Commission held a well-attended public hearing on the issue in September, 2003. A citizens' group collected signed petitions urging MHCRC action.

Through the authority provided by the existing franchise provisions, the MHCRC was able to join other interested jurisdictions nationwide to engage Comcast in discussions to urge changes in the new policy. Comcast rewrote the policy to make it clearer, but did not make substantive changes. Following a great deal of staff effort at the local and national level, the MHCRC ultimately decided not to take additional action unless there was a pattern of complaints regarding abuse of privacy by Comcast. So far, there has been no such pattern, but the level of public concern over a long period has made clear the need for strong, ongoing regulation in this area.

VI. Methodology

Our general methodology for the report involved the following activities:

- a) reviewing all material franchise requirements;
- b) interviewing officials of agencies most familiar with the cable company's performance;
- c) examining documents relating to the company's performance; and
- d) conducting follow-up discussions and seeking specific documentation where there were questions of possible franchise violation or other performance issues.

With respect to (a), we reviewed the franchises and summarized the material franchise obligations in a chart, noting differing obligations in the three franchises wherever those occurred.

With respect to (b), we interviewed one or more officials from the following entities: the Office of Cable Communications and Franchise Management (staff to the MHCRC); Portland Community Media (PCM), MetroEast Community Media (MetroEast), Portland Public Schools (PPS), Portland Community College (PCC), Portland Bureau of Technology Services (BTS), Portland Bureau of Transportation, Gresham Transportation Division, and Comcast.

With respect to (c), we reviewed, among others, the following documents: the franchises for East Portland, West Portland, and East Multnomah County; existing MHCRC technical reports and the results of cable company FCC proof-of-performance and cumulative leakage index tests; MHCRC proceedings during the term of the franchise, including actions relative to investigations of possible franchise violations, and actions relative to the interpretation or variances of franchise requirements; cable company telephone answering statistics; MHCRC correspondence relative to possible franchise violations and other cable company performance issues; the Protocols for PEG Access Video on Demand; MHCRC customer complaint logs; current customer service standards applicable to the cable company; the working document Telephone Statistics Exceptions Guidelines, the I-Net agreement between AT&T Broadband and the City or Portland's Bureau of Communications and Networking (predecessor of the Bureau of Technology Services).

With respect to (d), in addition to regular, ongoing discussion and document review with the MHCRC staff, we had additional correspondence and documentation from Portland Community Media, additional discussions with MetroEast Community Media, additional correspondence and

documentation from the Bureau of Technology Services, and additional discussions with Gresham Transportation Division.

We also submitted a fourteen-question request for information to Comcast, as well as an additional followup request, and we reviewed Comcast's responses to those communications.

VII. Addenda

Available with this report, for MHCRC use, are accounts of interviews conducted, and selected documents related to the substance of our discussions and findings.