

Pre-Hearing Conference Notes – Feb. 3, 2009 – FINAL
For Formal MHCRC Hearing scheduled Feb. 23, 2009
Submitted by: Rebecca Gibbons, MHCRC Cable Program Specialist

Attendance: MHCRC Chair Norm Thomas, Hearing Presiding Officer, Ben Walters, MHCRC Legal Counsel, and Rebecca Gibbons, Cable Program Specialist (recorder); MHCRC Staff: Julie S. Omelchuck, Cable Program Manager; Verizon: Ramona Monroe, Verizon Legal Counsel, Raymond Deede, Verizon Franchise Service Manager, and Josh Dillon (via telephone), Verizon Western Region Franchising.

Call to Order: Thomas convened the conference at 12:03 pm. The pre-hearing conference was audio recorded. These notes reflect the discussions on the audio record.

Thomas stated that the purpose of this pre-hearing conference was for the Presiding Officer to inform the parties, and for the parties to seek clarification, about the process and procedures by which the Formal Hearing will be conducted, in accordance with Section 6 of the MHCRC Rules of Procedure. Commissioner Thomas and the parties then discussed the following details for procedures to be followed at the Formal Hearing:

Procedural Elements:

- **Party Status:** MHCRC Staff and Verizon are parties in the Formal Hearing. The public will be allowed to offer comments at the Formal Hearing, but does not have party status in the proceeding.
- **Notice of Formal Hearing:** Thomas handed out the Notice of Formal Hearing, which will be mailed at the same time as the February MHCRC preliminary meeting agenda. Thomas noted that Verizon had received the Notice of Formal Hearing via email on January 22.
- **Hearing Conduct:** Thomas outlined a process for submitting evidence and written briefs and a process for conducting the Hearing.

Thomas Determined the Following Final Hearing Conduct:

- **Evidence, written briefs**
 - The parties must deliver their opening briefs to the Cable Office by 10:00 a.m. on Tuesday, Feb. 17. Each party must also submit by that date and time any written testimony and/or exhibits that the party plans to offer as evidence, together with a list of witnesses that it intends to call at the Formal Hearing. The list of witnesses should include witness's name, any work title and affiliation and a short description of the nature of the testimony that the witness will offer. The Cable Office will redistribute all documents received by 10am to the Parties by 12:00 p.m. (noon) on Feb. 17.
 - All exhibits should be labeled in the upper, right-hand corner of each exhibit in the following manner: MHCRC Staff - Exhibit 1 (2, 3, 4, and so on) or Verizon – Exhibit 1 (2, 3, 4 and so on), as appropriate.

- If either Party wishes to submit written questions directed to witnesses offering written testimony for the other Party, the written questions must be submitted to the Cable Office by 4:00 p.m. on Wednesday, Feb. 18. The Cable Office will redistribute the submitted questions to the other Party by 5:00 p.m., close of business, on Feb. 18.
 - Responses to the written questions posed to witnesses offering written testimony must be submitted to the Cable Office by 12:00 p.m. (noon) on Friday, Feb. 20.
 - The Parties shall submit final witness lists to the Cable Office by 12:00 p.m. (noon) on Friday, Feb. 20. The Parties will only be allowed to call witnesses identified on the final list at the Formal Hearing.
 - If either Party elects to submit a written reply brief, it must be submitted to the Cable Office by 12:00 p.m. (noon) on Friday, Feb. 20. No additional written briefs will be accepted from the Parties at the Formal Hearing.
 - The Cable Office will distribute any responses to written questions, reply briefs and final witness lists to MHCRC members and the Parties by 5:00 p.m., close of business, on Friday, Feb. 20.
 - The Parties may submit any documents by email in either Adobe .pdf or Word .doc format. Verizon will send its documents to MHCRC Counsel Walters and MHCRC Staff Gibbons. The Cable Office will distribute all submitted documents to Verizon's lawyer Monroe and designated representative Deede.
 - Any anticipated delays in redistribution shall be communicated to all Parties. The Parties may discuss and agree to reasonable extensions of the deadlines identified above.
- **Hearing Process**
- At the commencement of the Hearing, the Presiding Officer shall ask the Parties if they have any written exhibits that will be offered as evidence that were not available for distribution prior to the Hearing. The offering Party must provide an original and ten copies of any written exhibit.
 - Order of parties' presentations and time limits:
 - 1) Opening Statements and Presentations
 - a. Staff (20 minutes)
 - b. Verizon (20 minutes)
 - c. Witnesses - 10 minutes will be allotted for direct examination of a Party's witnesses and 10 minutes for cross examination of a Party's witnesses by the other Party.
 - i. Staff witnesses (examination and cross examination)
 - ii. Verizon witnesses (examination and cross examination)
 - iii. Commissioners may pose questions of any witness; questions shall be passed along in writing to the Presiding Officer. The Presiding Officer will pose questions to any witnesses.
 - d. Commissioner questions/clarifications of the Parties on their presentations
 - 2) Public Comment
 - a. Limit of 3 minutes/person; Presiding Officer may adjust the amount of allotted time based upon an evaluation of the number of public at the Formal Hearing.

- b. Commissioners may pose questions of any member of the public offering comment; questions shall be passed along in writing to the Presiding Officer and he shall pose questions to any members of the public.
- 3) Closing Statements
 - a. Staff (10 min)
 - b. Verizon (15 min)
 - c. Staff reply (5 min)
- 4) Commissioner questions/clarifications of Parties
- 5) Presiding Officer closes the hearing
- 6) Commission Determination and Direction to Staff. After a motion and decision by the Commission, the Commission may direct Staff to prepare a written order, consistent with the Commission's decision, to be submitted for consideration and adoption at the next regularly scheduled Commission public meeting. The Presiding Officer shall establish a timeline for the timely circulation of a draft Order among the Parties before the next regularly scheduled MHCRC meeting.

Additional Determinations:

Thomas determined that should the Parties reach agreement on a settlement proposal, MHCRC staff should inform him of this proposal prior to commencement of the Hearing. Thomas determined that MHCRC staff and Verizon would be given an opportunity to present any such proposal prior to the Formal Hearing being commenced.

Thomas determined that the scope of the Formal Hearing would be limited to Verizon's alleged failure to provide the PEG Access Channels required under the franchise agreement as part of its Basic Service tier when it began offering cable services to subscribers in its Gresham service area on November 25, 2008. Thomas struck from the scope of the Formal Hearing Verizon's alleged failure to inform its subscribers of the availability and/or location of PEG Access channels when it began offering cable services to subscribers in its Gresham service area, as being outside of the MHCRC's directions in deciding to initiate the Formal Hearing process at the MHCRC meeting on January 12, 2009.

Thomas determined that the scope of the Formal Hearing could include evidence about whether or not Verizon received adequate notice of the alleged noncompliance.

The Parties agreed that the *Franchise Requirements at Issue* section of the Formal Hearing Notice would be revised with the language from the final City of Gresham Franchise prior to public distribution.

Gibbons reviewed the Presiding Officer's final Hearing Conduct and Process as described above. Neither Party offered any objections.

Meeting Adjourned: 1:32 pm