



**MT. HOOD CABLE REGULATORY COMMISSION**

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**STAFF REPORT – AGENDA ITEM #20**

For Commission Meeting: January 12, 2009

“Potential Verizon Franchise Violation – Failure to Provide MetroEast PEG Channels”

**Recommendation**

Staff recommends that the Commission schedule a formal hearing, in accordance with MHCRC Rules of Procedure, for the February 23, 2009, MHCRC meeting in order to make a determination on a potential franchise violation with respect to Verizon’s failure to include MetroEast PEG channels as part of Basic Service when Verizon began offering cable services to subscribers in its Gresham service area on November 25, 2008 (the Service Date).

**Background**

Staff believes Verizon's failure to provide MetroEast PEG access channels as required is a potential violation of Section 7.1.1 of the Verizon Gresham franchise. Other franchise provisions may also be implicated, as detailed below.

Section 7.1.1 of the Verizon Gresham franchise states:

7.1.1 Subject to Section 3.10.2, Grantee shall provide eight (8) PEG Access Channels as part of Basic Service which shall be fully accessible to all Subscribers within the Service Area. Grantee shall provide one additional Access Channel as part of Basic Service, to be used by the Jurisdictions or their designee for the distribution of PEG Access Channel programming information to Subscribers.

Verizon provided the MHCRC with notice that the Service Date for Gresham was November 25, 2008. Verizon failed to provide the required PEG Access channels to Gresham subscribers on its Service Date. In conversations with MHCRC staff and MetroEast, Verizon has indicated that it will not commit to providing the required PEG channels any earlier than March 2009, and possibly as late as April 2009.

Moreover, in addition to failing to provide cable services in Gresham in a manner consistent with the requirement of Section 7.1.1, it also appears to staff that:

- Verizon is offering Cable service without the required PEG channels in a manner inconsistent with federal law and the terms of the Verizon franchise (Section 1.4 and Section 1.6) which incorporates applicable federal law requiring all cable operators to provide a Basic tier of cable service that, at a minimum must include both local broadcast and PEG channels required by the franchise agreement.

- Separately, Verizon does not appear to be informing its subscribers of the availability and/or location of PEG channels, as required under the MHCRC/Gresham/Verizon customer service standards, Section V, Communications between cable operators and cable subscribers.

### **Notice and Opportunity to Cure and Verizon response**

Pursuant to applicable franchise provisions, MHCRC staff sent Verizon a Notice and Opportunity to Cure letter on these subjects on November 26, 2008. Verizon responded to the staff letter by letter dated December 23, 2008 (“Reply Letter”), received at the MHCRC office on December 29, 2008.

Verizon’s Reply Letter disagreed that the Verizon franchise requires PEG channels to be included in its cable service when service was offered to subscribers, and asserts that because Section 7.1.1 is “silent” on the PEG deployment timeframe, that a “reasonable period of time” is implied to activate the PEG channels, and not any date certain. Verizon cited other franchise sections setting specific deadlines as support for this argument.

### **Staff Analysis**

Staff’s opinion is that Verizon’s response contained in the Reply Letter is without merit, and does not represent a good faith response to the notice of potential franchise violation, nor a reasonable effort to take prompt steps to cure the franchise violation.

Verizon’s argument in the Reply Letter contradicts the plain language of Section 7.1.1. Verizon’s claim of “implied” delay is contradicted by Verizon’s own arguments pointing out that when the parties contemplated later deadlines, such deadlines were explicitly provided for in the Franchise. No later deadline was provided for within Section 7.1.1, and therefore the intent of the parties was that this requirement be implemented without delay as of the Service Date. Verizon’s position is not supported by the plain language of the Franchise.

### **Formal Hearing required to review findings and exercise remedies.**

Under the Verizon Franchise Section 14.6, the next procedural step is to schedule a formal hearing in the event that Verizon fails to remove or cure the alleged noncompliance, or does not undertake good faith efforts to remedy the noncompliance in a manner satisfactory to the Commission. The Commission is required to provide 30 days prior written notice to Verizon of such hearing. Staff recommends that the MHCRC schedule the hearing and provide the required notice to Verizon. The formal hearing process allows staff and Verizon to present evidence regarding the asserted violation in order for the Commission to make a final determination, including any fines or sanctions. The Commission’s final determination, if it results in a finding of a violation or a fine (sanction), is subject to discretionary review by MHCRC Jurisdictions.

## Potential MHCRC Options

In consultation with Commission's Legal Counsel, staff presents the following potential options for Commission consideration:

**Option 1:** Schedule a formal hearing, in accordance with MHCRC Rules of Procedure, for the February 23, 2009, MHCRC meeting in order to make a determination on a potential franchise violation.

**Option 2:** Accept Verizon's assertion in its reply letter that because Section 7.1.1 is "silent" on the PEG deployment timeframe, that a "reasonable period of time" is implied to activate the PEG channels, and not any date certain. *For the reasons stated above, staff does not recommend this option.*

**Option 3:** Find that Verizon has undertaken, and continues in good faith, efforts satisfactory to the Commission to remedy the alleged noncompliance. *Staff recommends that, although this is a possible option for the Commission, the actual results of Verizon's efforts will be better understood in another seven weeks. Therefore, staff recommends that the formal hearing be scheduled and the Commission can make a determination at that time whether Verizon has continued to make significant progress to address the noncompliance issues.*

### Attachments:

- Staff letter to Tim McCallion of Verizon dated November 26, 2008 (notice & opportunity to cure)
- Verizon reply letter dated December 23, 2008 (received December 29, 2008)

Web Links: MHCRC Rules of Procedure

[http://www.mhcr.org/docs/about\\_rules\\_of\\_procedure.pdf](http://www.mhcr.org/docs/about_rules_of_procedure.pdf) )

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