



MT. HOOD CABLE REGULATORY COMMISSION

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Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

EXHIBIT
MHCRC STAFF
EXHIBIT 5

NOTICE OF FORMAL HEARING

Regarding Verizon's Failure to Provide MetroEast PEG Channels When Offering Cable Services to Gresham Residents On and After the Verizon Service Date of November 25, 2008

February 23, 2009

6:30pm

Portland Community Media

2766 NE Martin Luther King Jr., Blvd.

Portland, OR

In accordance with the Mt. Hood Cable Regulatory Commission's ("MHCRC") Rules of Procedure, the Commission announces a Formal Hearing in order to consider evidence from the parties regarding alleged noncompliance related to Verizon's PEG Access Channel obligations under the Cable Services Franchise Agreement.

Issue Statement:

Verizon provided the MHCRC with notice that the Service Date for Gresham was November 25, 2008 (the Service Date). MHCRC staff asserts Verizon failed to provide the required eight (8) PEG Access Channels as part of its Basic Service tier of cable service when it began offering cable services to subscribers in its Gresham service area on November 25, 2008 and that Verizon does not appear to be informing its subscribers of the availability and/or location of PEG Access channels. Staff believes that this failure to carry the PEG Access Channels and to inform its subscribers of the availability and/or location of PEG channels is a demonstrable franchise violation.

The formal hearing process under MHCRC Rules of Procedure allows Verizon the opportunity to respond and/or rebut the information provided by staff prior to the Commission making a final determination. The Commission's final determination, if it results in a finding of a violation and sanction, will be subject to discretionary review by the MHCRC Jurisdictions.

Franchise Requirements at Issue:

- 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.

7.2.2 The Jurisdictions or their designee shall cause to be provided suitable signals for the PEG Access Channels to Grantee at MetroEast Community Media, 829 NE Eighth Street, Gresham, Oregon 97030-5643 (the "PEG Access Headend"). The Access Channel signal for each PEG Access Channel shall be provided as composite video on a coaxial cable and two balanced audio +4dBm on two shielded audio cables to the Grantee's encoding device at the PEG Access Headend. Grantee shall provide, install, and maintain in good working order the equipment necessary for transmitting the PEG Access Channel signal from the PEG Access Headend, or other signal source locations designated under Subsection 7.1.3.3, for distribution to Subscribers. Grantee's obligation with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Grantee, of: (a) suitable required space, environmental conditions, and electrical power supply; (b) access to and pathway within the facility housing the PEG Access Headend; and (c) such cooperation of the Jurisdictions and any designee(s) as is reasonably necessary for Grantee to fulfill such obligations. The Jurisdictions represent and warrant that to the best of their knowledge, no incumbent cable operator consent is necessary for the Grantee to transmit PEG signals, including but not limited to, any consent related to the facilities of any incumbent cable operator used to transmit PEG content to an origination or other point from auxiliary locations. If the PEG Access Headend relocates or if the Jurisdictions designate a different signal source location for an Access Channel, the Jurisdictions or their designee shall fund all direct costs to construct a connection from the new site or location to the nearest point on the FTTP Network.

Under the Verizon Gresham Franchise and under federal law, Verizon is required to make "Cable Service" available in Gresham under the terms specified on and after the Service Date of November 25, 2008 (as specified by Verizon). By its terms, "Cable Service" is required under the franchise and applicable law as including "Basic Service", which is defined under Section 1.4 of the Verizon Gresham franchise as follows:

1.4 *Basic Service:* Any service tier that includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

Furthermore, under the MHCRC/Gresham/Verizon Customer Service Standards, Section V, Communications between cable operators and cable subscribers, Verizon is required to inform its subscribers of the availability and/or location of PEG channels.

Authority:

The Mt. Hood Cable Regulatory Commission was created by intergovernmental agreement to carry out cable regulation and administration on behalf of Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview, and Wood Village ("Jurisdictions"). Among other things, the Commission oversees compliance with the cable services franchise agreements, subject to discretionary review by the Jurisdictions as provided under § 4.A. of the IGA. The franchise in question is the Cable Franchise Agreement between the City of Gresham, Oregon and Verizon Northwest, Inc. dated November 18, 2008.

Counsel Representation:

Verizon may be represented by counsel at the hearing.