

**Before the
Mt. Hood Cable Regulatory Commission
1120 SW Fifth Ave., #1305
Portland, OR 97204**

Establishing Penalties for Comcast's)	Order 2008-01
Failure to Meet Customer Service)	
Standards re: 30-day Advance Notice)	
To Subscribers for Programming and)	Passed by the Commission:
Channel Changes)	March 17, 2008

Section 1. Process

- 1.1 The Mt. Hood Cable Regulatory Commission ("MHCRC" or "Commission") was created by Intergovernmental Agreement (dated December 24, 1992) ("IGA") to carry out cable regulation and administration on behalf of Multnomah County and the cities of Fairview, Gresham, Portland, Troutdale, and Wood Village ("Jurisdictions".) Among other things, the MHCRC oversees compliance with the cable services franchise agreements, subject to discretionary review by the Jurisdictions as provided under §4.A. of the IGA.
- 1.2 For purposes of this Order, the franchises are: KBL Multnomah Cablesystems, LP., and the East County cities and Multnomah County ("East County franchise"); KBL Portland Cablesystems, LP., and the City of Portland ("East Portland franchise"); and TCI Cablevision of Oregon and the City of Portland ("West Portland franchise") (collectively "Comcast cable franchises"). The Jurisdictions approved an ownership transfer of these cable franchises to Comcast Corporation effective June 13, 2002.
- 1.3 As provided under §6.3 of the MHCRC's Rules of Procedure, MHCRC staff presented the Commission with a written request for a formal hearing. At the MHCRC meeting of December 17, 2007, MHCRC staff asked the Commission to schedule a formal hearing for January 28, 2008, on potential Comcast franchise violations of the Customer Service Standards. At the meeting, the Commission set a formal hearing date for January 28, 2008. The formal hearing was subsequently re-scheduled to February 4, 2008, with notice provided to all parties. As provided under §6.6 of the MHCRC's Rules of Procedure, the Commission sent out notice of the formal hearing.
- 1.4 In compliance with §6.7 of the MHCRC's Rules of Procedure, the MHCRC Chair, acting as Presiding Officer for the MHCRC's formal hearing, conducted a pre-hearing conference on January 17, 2008. The prehearing conference was attended by MHCRC Legal Counsel, MHCRC staff and a Comcast representative. At the prehearing conference, the Presiding Officer established and reviewed procedural rules for the formal hearing. Prehearing conference minutes were distributed to

conference participants and were subsequently included in the record of the formal hearing.

- 1.5 At its re-scheduled meeting on February 4, 2008, the Commission convened a formal hearing, as provided under §6 of the MHCRC's Rules of Procedure, to consider whether Comcast had violated Section V of the Customer Service Standards. MHCRC staff and Comcast prepared written testimony and evidence that was provided to all other parties and the Presiding Officer prior to the hearing. Both MHCRC staff and Comcast submitted additional evidence for the record at the commencement of the hearing. The Presiding Officer, upon reviewing all objections presented to the written testimony and evidence received, accepted all testimony and evidence submitted by the parties into the record. The Commission heard presentations from MHCRC staff and Comcast's representative. In addition, several members of the public offered testimony to the Commission. (Collectively, the "Hearing Record")
- 1.6 Having considered the record developed at the formal hearing, and the presentations from MHCRC staff, Comcast's representative and members of the public, the Commission adopts the following Findings of Fact and Conclusions of Law, as provided under §6.9 of the MHCRC's Rules of Procedure.

Section 2. Findings of Fact

- 2.1 Multnomah County and the Cities of Gresham, Troutdale, Fairview and Wood Village adopted customer service standards by ordinance in June 2001 and the same standard is applicable under Portland City Code 3.115.120.B, effective August 17, 2007 ("Customer Service Standards"). The Customer Service Standards are binding on Comcast under applicable franchise provisions (East County franchise §13.1 (requiring compliance with the applicable Jurisdictions' cable television consumer protection policy as adopted by ordinance), East Portland franchise §13.1 (referencing Portland City Code Chapter 3.115) and West Portland franchise §11.1 (referencing Portland City Code Chapter 3.115)).
- 2.2 Section V of the Customer Service Standards provides, in relevant part: "*Customers shall be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator.*"
- 2.3 Under prior MHCRC precedent and consistent with the Comcast cable franchises, the Commission considers compliance with the Customer Service Standards as material franchise requirements and any breach of such Standards as a material violation of the Comcast cable franchises.
- 2.4 Comcast implemented certain programming and channel changes effective October 30, 2007 in MHCRC franchise areas. Evidence in the Hearing Record supports a

finding that Comcast gave notice of the channel and programming changes by the following methods:

- a. Notice published in the classified section of *The Oregonian* on 9/28/07 (other area newspapers ran the notice between 9/26 and 9/28, but most were on 9/28);
- b. Bill stuffers sent in the 9/17-10/16 billing cycle - estimated by Comcast to have been in Comcast subscriber homes between 9/21-10/20;
- c. Crawl messages on the affected channels: Channels 18 (Hallmark), 68 (Oxygen), 47 (MSNBC) shortly before and after effective date of changes; and
- d. Letters mailed to subscribers between 10/1-10/5 - estimated by Comcast to have reached subscribers between 10/5-10/10.

Hearing Record: MHCRC Staff Exhibit 2; Comcast Exhibit 22.

- 2.5 On November 5, 2007, MHCRC staff notified Comcast of a potential franchise violation, stating concern regarding the lack of documentation as to whether Comcast had provided the required 30-day advance written notice to subscribers of the October 30 programming and channel changes, and also expressing concern about the lack of clarity of information provided by Comcast to subscribers.
Hearing Record: MHCRC Staff Exhibit 4; Comcast Exhibit 21.
- 2.6 The Commission had previously informed Comcast, and Comcast had acknowledged, that an ad in *The Oregonian* did not meet the requirement of Section V of the Customer Service Standards to provide 30-day advance written notice to subscribers. Hearing Record: MHCRC Staff Exhibits 6 and 7; Comcast Exhibits 16, 17, 18 and 19.
- 2.7 October 10, 2007 was the earliest date that Comcast could confirm that all Comcast subscribers in the MHCRC franchise area would have received notice within the meaning of Section V of the Customer Service Standards about the programming and channel changes. Hearing Record: MHCRC Staff Presentation, February 4, 2008.
- 2.8 By Comcast's account, in October 2007 when the channel changes became effective, there were a total of 43,899 Comcast analog subscribers in the MHCRC franchise areas (consisting of 19,843 Limited Basic customers and 24,056 Standard customers). These 43,899 customers ("Affected Subscribers") are the subscribers who were negatively affected by the programming and channel changes implemented by Comcast on October 30, 2007. These affected subscribers had a reduction in the number of channels with no commensurate fee adjustment and would have to pay more to receive the channels they previously received which had been moved by Comcast to higher priced digital service tiers. Hearing Record: MHCRC Staff Exhibit 13; MHCRC Staff Written Testimony dated January 22, 2008, Section 8.
- 2.9 Comcast had a recent record of failure to meet the 30-day advance notice requirement of Section V of the Customer Service Standards, and had been duly

notified by the Commission of such failure. The lack of notice to subscribers in the case of the October 2007 channel changes was the third instance in 24 months where Comcast had not provided the 30-day advance written notice to subscribers required by Section V of the Customer Service Standards. Hearing Record: MHCRC Staff Presentation, February 4, 2008; MHCRC Staff Written Testimony dated January 22, 2008, Section 13; and MHCRC Staff Exhibits 6, 7, 8 and 9.

- 2.10 Following initial notice from MHCRC staff regarding the potential franchise violation and after notice of formal hearing from the Commission, Comcast failed to undertake and continue efforts satisfactory to the Commission to ensure compliance with Section V of the Customer Service Standards.

Section 3. Conclusions of Law


- 3.1 Comcast failed to provide written notice to subscribers, in accordance with Section V of the Customer Service Standards, at least 30-days in advance of the October 30, 2007 programming and channel changes taking effect. Comcast's failure to comply with the Customer Service Standards constitutes a material violation of the Comcast cable franchises.
- 3.2 For any violation of a material provision of the franchise agreements, the franchises authorize remedies including but not limited to: (a) Impose reasonable penalties, up to \$1,000 per day, incident or other measure of violation; and (b) To the extent authorized by law, require Grantee to make payments or grant refunds to its Subscribers or Subscriber Classes in such amounts, and on such bases as are reasonable relative to damages sustained by Subscribers, for violations relating to Subscriber service. At Grantee's option, such payments or refunds may be made in the form of a credit against Subscriber service bills. In determining which remedy or remedies are appropriate, the Commission shall consider the nature of the violation, the Persons burdened by the violation, the nature of the remedy required in order to prevent further violations, and any other matters the Commission deems appropriate.
- 3.3 A penalty in the total amount of \$43,899 for Comcast's franchise violation is appropriate. In making this determination, the Commission considered the number of cable subscribers burdened by the violation, the nature of how these subscribers were affected in terms of the additional amount necessary to receive the same level of service, the extent of the failure by Comcast to provide the minimum 30-day notice, the history of similar failures by Comcast, and the amount of remedy required to deter future franchise violations by Comcast.

Section 4. Order

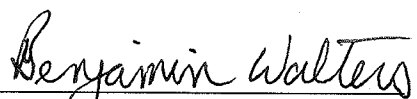
Based upon the Findings of Fact and Conclusions of Law set forth above, the Commission now orders as follows:

- 4.1 Comcast is assessed a penalty of Forty-Three Thousand, Eight Hundred and Ninety-Nine dollars (\$43,899.00) for a material franchise violation due to Comcast's failure to comply with the Section V of the Customer Service Standards by failing to notify subscribers 30 or more days in advance of the Comcast programming and channel changes implemented by Comcast on October 30, 2007.
- 4.2 Within 90-days of passage of this Order, Comcast shall either:
- 1) Take necessary steps to provide a billing credit of One Dollar (\$1.00) on subscriber bills for the 43,899 Affected Subscribers of record who were Standard and/or Limited Basic Service subscribers as of October 31, 2007, within MHCRC franchise areas; such billing credit (or commensurate refund to any Affected Subscriber of record who left the system after October 31, 2007) shall be provided and documented in a manner satisfactory to the Commission; such credit or refund must be fully completed to Affected Subscribers no later than 90 days from the date of this order; or
 - 2) Pay to the MHCRC the full amount of the penalty.
- 4.3 If Comcast fails, refuses or neglects to perform any or all of the conditions of this Order, the Commission reserves any and all rights to impose further remedies.
- 4.4 The Commission reserves the right to take such further actions on behalf of the Jurisdictions in applying additional appropriate remedies under the Comcast cable franchises to enforce this order as may be reasonable and necessary in order to ensure compliance with this order.
- 4.5 The Commission directs MHCRC staff to provide copies of this Order to the Jurisdictions for discretionary review, as provided under §4.A. of the IGA.

ADOPTED BY THE COMMISSION on March 17, 2008.


Norman Thomas, Chair

Reviewed by:


Benjamin Walters, Legal Counsel