

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

Recommend MHCRC Jurisdictions approve)	
competitive cable franchise application process)	Res. No. 2007-02
specifying application criteria and information)	Adopted by the Commission
required in connection with any franchise)	April 2, 2007
application submitted pursuant to §76.41 of the)	
Code of Federal Regulations)	

Section 1. Findings.

- 1.1 Authority. The Mt. Hood Cable Regulatory Commission (“MHCRC”) was created by Intergovernmental Agreement (dated 12/24/92) (“IGA”) to carry out cable regulation and administration on behalf of Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview, and Wood Village (“the Jurisdictions”). Among other things, the MHCRC acts in an advisory capacity to the Jurisdictions in connection with the proposed grant of any cable franchise. As set forth in the IGA (Section 4.B.1), the Jurisdictions have reserved to themselves authority to grant cable communications system franchises; while agreeing to consider the advice and recommendations of the MHCRC and to take no action in such matters until the MHCRC has had a prior opportunity to consider the matter. The IGA (Section 3) vests with the MHCRC all the powers, rights and duties necessary to carry out the purposes of the IGA, which includes the authority to create a competitive cable franchise application process for any applicant seeking a competitive cable franchise in any of the Jurisdictions.
- 1.2 Franchises non-exclusive; applicable law and policy favor competition. The cable franchises overseen by the MHCRC on behalf of the Jurisdictions are by their terms non-exclusive, in accordance with applicable law. Federal communications law and policy, as well as associated state and local policies and practice, have for more than two decades strongly encouraged the development of fair and robust competition in U.S. cable and telecommunications markets. Such competition, among other things, promotes technical innovation, reasonable prices, and consumer choice. Nevertheless, the cable operators originally franchised by the Jurisdictions, and their successors, although separately owned and managed for nearly 20 years prior to June, 1999, chose not to extend their cable facilities and compete with each other for customers, despite formal and informal encouragement from the Jurisdictions from time to time. As of June 1, 1999, effective with the final acquisition of the Paragon (Time Warner) cable system by AT&T Broadband, subsequently acquired by Comcast, the consolidation of cable systems and franchises throughout the Portland metropolitan area under single ownership was complete and any remaining possibility for facilities-based competition in the Portland area by separate, incumbent cable operators was effectively extinguished.
- 1.3 FCC Competitive Franchise Application Process (“CFAR”) rule. On December 20, 2006, the Federal Communications Commission (“FCC”) in MB Docket No 05-311, adopted an

amendment to Part 76 of Title 47 of the Code of Federal Regulations (“CFR”) creating a new rule (hereafter “Competitive Franchise Application Rule” or “CFAR”) set forth as 47 CFR §76.41 Franchise Application Process. The FCC CFAR was released March 5, 2007, and is expected to take effect on April 20, 2007. The Order creating the FCC CFAR, among other things, purports to preempt any local franchising laws, regulations and agreements to the extent they conflict with the FCC CFAR. The FCC CFAR provides a separate, nonexclusive process for the issuance of cable franchises for areas currently served by another cable operator in accordance with 47 U.S.C. §541(a)(1). This process includes time limits on negotiating a franchise with a competitive provider. If the local franchising authority does not reach agreement with the applicant on the terms of a franchise agreement or deny the application within the time limit, the FCC CFAR authorizes competitive providers to begin offering service under an interim franchise consisting of the terms of its application.

- 1.4 MHCRC Requirements for Franchise Applications. The MHCRC has previously issued formal Requests for Information (RFI) including criteria for competitive cable franchise applicants based on the timing and nature of applications received (e.g. *MHCRC RFI for Competitive Franchise Applicants*, February 4, 2000). The FCC CFAR, to the extent it provides a separate, nonexclusive, continuing alternative application process for competitive franchise applicants and includes provisions that apply only to such applicants, requires that the MHCRC embody its prior RFI processes and criteria into a CFAR Local Rule setting forth an application and review process that protects the Jurisdictions in light of the new competitive franchising rules. Specifically, because applicants may be deemed to have been granted an interim franchise based on the terms set forth in their application with no opportunity for the MHCRC or the Jurisdictions to alter or amend these terms, the application process must be sufficient to protect the Jurisdictions’ right to regulate access to local rights of way; the Jurisdictions’ federal authority to assure that the cable operator meets community needs and interests; and the Jurisdictions’ authority to ensure compliance with federal, state and local laws.
- 1.5 MHCRC processing of CFAR franchise applications. The MHCRC shall, on behalf of the MHCRC Jurisdictions, process any competitive cable franchise application submitted pursuant to 47 CFR §76.41 under the provisions of the attached CFAR Local Rule and related forms, processes, rules, administrative procedures and application fees subsequently established by the MHCRC. Because the FCC CFAR only applies to new entrants seeking to provide cable service, the CFAR Local Rule will correspondingly apply only to new entrants into the cable services market. Further, although the FCC CFAR purports to preempt existing franchise agreements to the extent they conflict with the FCC CFAR, the MHCRC does not intend to take any action that abrogates any provision of an existing cable franchise agreement.
- 1.6 MHCRC processing of non-CFAR franchise applications. Notwithstanding the CFAR Local Rule, any competitive cable services franchise applicant may elect to submit a cable franchise application to the MHCRC and/or engage in cable franchise negotiations without regard to the application of the FCC CFAR. In such cases, on behalf of the Jurisdictions, the MHCRC is authorized to negotiate the terms of a competitive cable franchise for recommendation to and consideration by the Jurisdictions without regard to 47 CFR §76.41 and the CFAR Local Rule. Agreement by any applicant to negotiate a franchise without regard to 47 CFR §76.41 and the CFAR Local Rule shall not be deemed by the MHCRC to effect a waiver of any franchise applicant’s right under applicable law to trigger application of 47 CFR §76.41 and the CFAR Local Rule, where applicable.

- 1.7 Prompt Jurisdiction Action Recommended on CFAR Local Rule. Implementing the CFAR Local Rule prior to the effective date of the FCC CFAR will protect the Jurisdictions' interests in the event a competitive cable services provider applies for a cable franchise under the FCC CFAR. While the IGA provides the MHCRC with the authority to adopt and implement the CFAR Local Rule and related rules, forms and procedures, adoption of the terms of the CFAR Local Rule by ordinance of each Jurisdiction will prevent confusion and ensure that the appropriate application process, consistent with the IGA, is followed by competitive providers, and that any such application is duly submitted to the MHCRC for consideration, appropriate action, or recommendation to one or more of the Jurisdictions, as applicable, pursuant to the authority vested in the MHCRC by the IGA.

Now, therefore, the Commission resolves:

Section 2.

- 2.1 The MHCRC adopts the CFAR Local Rule, attached hereto as Exhibit A.
- 2.2 Due to the imminent effective date of the FCC CFAR, the MHCRC recommends prompt adoption by the MHCRC Jurisdictions of the CFAR Local Rule by ordinance so that competitive cable franchise applicants are notified of the process that will be carried out by the MHCRC on the Jurisdictions' behalf in the event a competitive cable franchise application pursuant to 47 CFR §76.41 is submitted to the MHCRC or any one or more of the Jurisdictions on or after the effective date of the FCC CFAR..
- 2.3 The MHCRC shall, on behalf of the Jurisdictions, process any competitive cable franchise application submitted pursuant to 47 CFR §76.41 under the provisions of the attached CFAR Local Rule and related forms, processes, rules, administrative procedures and application fees subsequently established by the MHCRC.

RESOLVED BY THE COMMISSION on April 2, 2007.

Norman D. Thomas, Chair

Reviewed by:

Ben Walters, Legal Counsel

Attachment: Exhibit A to MHCRC Res. 2007-02: CFAR Local Rule