

# **CABLE SUBSCRIBER PRIVACY**

**PROPOSED AMENDMENTS - May 8, 2006**

**to MHCRC JURISDICTION CUSTOMER SERVICE STANDARDS**

*To be added as Section VII to MHCRC Customer Service Standards, with existing Section VII (Reporting) renumbered as Section VIII*

## **VII. CABLE SUBSCRIBER PRIVACY**

In addition to complying with the other requirements of the adopted MHCRC Customer Service Standards, the Cable Operator shall fully comply with all obligations under 47 U.S.C. 551 and with the following requirements.

### **1. Definitions**

As used in this Section VII, the following words, phrases, and terms shall have the meanings given below:

"Affiliate," shall mean any person or entity that is owned or controlled by, or under common ownership or control with, the cable operator, and provides any cable service or other Service.

"Cable Operator" shall have the meaning set forth in Section 602(5) of the federal Communications Act., 47 U.S.C. 522(5).

"Cable Services" shall mean (a) the one-way transmission to Customers of video programming, or other programming service, and (b) Customer interaction, if any, which is required for the selection and use of such video programming or other programming service.

"Cable System" shall have the meaning set forth in Section 602(7) of the federal Communications Act, 47 U.S.C. § 522(7).

"Complaint" shall mean any issue raised by a Customer that is a violation of the MHCRC Customer Service Standards.

"Customer" means any person who lawfully receives Cable Services or Other Services from the Cable Operator.

"Customer Service Representative" ("CSR") means any person employed by the Cable Operator to assist, or provide service to Customers, whether by answering public telephone lines, writing service or installation orders, answering Customers' questions, receiving and processing payments, or performing other Customer service related tasks.

"Necessary," shall mean required or indispensable.

"Non-cable-related purpose," means any purpose that is not Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to a Customer. Market research, telemarketing, and other marketing of services or products shall be considered Non-cable-related purposes.

"Other Service" means any wire or radio communications service, including, but not limited to, any interactive television or Internet Service, provided through the use of any of the facilities of a Cable Operator that are used in the provision of a Cable Service.

"Personally Identifiable Information," means specific information about a Customer, including, but not be limited to, a Customer's (a) login information, (b) extent of viewing of video programming or Other Services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, (h) web browsing activities, or (i) any other personal or private information. "Personally Identifiable Information" shall not mean aggregate information about Customers which does not identify particular persons.

## **2. Collection and Use of Personally Identifiable Information**

(a) The Cable Operator shall not use the Cable System to collect, record, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that, such information is: (a) used to detect unauthorized reception of cable communications, or (b) Necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer.

(b) The Cable Operator shall take such actions as are necessary to prevent any Affiliate from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an Affiliate unauthorized access to Personally Identifiable Information on the computer or other equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service. This Subsection 2 (b) shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this Section VII.

(c) The Cable Operator shall take such actions as are reasonably necessary to prevent a person or entity (other than Affiliates) from using the facilities of the Cable Operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to Personally Identifiable Information on the computer or other equipment of a Customer (regardless of whether such equipment is owned or leased by the Customer or provided by a Cable Operator) or on any of the facilities of the Cable Operator that are used in the provision of Cable Service.

### **3. Disclosure of Personally Identifiable Information**

The Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, except as follows:

(a) The Cable Operator may disclose for a Non-cable-related purpose the name and address of a Customer to any general programming tiers of service and other categories of Cable and Other Services provided by the Cable Operator if the Cable Operator has provided the Customer the opportunity to prohibit or limit such disclosure in accordance with this Section VII and Section 631 of the federal Communications Act, 47 U.S.C. section 551, and such disclosure does not directly or indirectly disclose:

1. A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator;
2. The extent of any other use by a Customer of a Cable Service or Other Service provided by the Cable Operator, including, but not limited to a disclosure of the particular viewing selections by a person subscribing to a Cable Service or Other Service, or the particular web sites visited by a Customer to cable modem service (i.e., a Cable Operator may only disclose the fact that a person subscribes to cable modem service); or
3. The nature of any transactions made by a Customer over the Cable System of the Cable Operator.
4. The nature of programming or sites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming).

A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer as provided in this Section VII 3(a), the Cable Operator shall notify in writing the Mt. Hood Cable Regulatory Commission and each Customer (that the Cable Operator intends to disclose information about) of the specific information that will be disclosed, to whom it will be disclosed, and notice of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may be included with or made a part of the Customer's monthly bill for Cable Service or Other Service or may be made by separate mailed notice. Each time that this notice is given to a Customer, the Cable Operator also shall provide the Customer with an opportunity to prohibit the disclosure of information in the future. Such opportunity shall be given in one of the following forms: a postage paid, self-addressed post card provided by the Cable Operator; a box that may be checked by the Customer on the Customer's monthly bill for Cable Services or Other Services; a toll-free number that the Customer may call; or such other equivalent methods as may be approved by the Mt. Hood Cable Regulatory Commission.

Additionally, within forty-five (45) days after each disclosure of Personally Identifiable Information of any Customer as provided in this Section VII 3(a), the Cable Operator

shall notify in writing the Mt. Hood Cable Regulatory Commission and each Customer (that the Cable Operator has disclosed information about) of the specific information that has been disclosed, to whom it has been disclosed, and notice of the Customer's right to prohibit the disclosure of such information for Non-cable related purposes. The notice to Customers may be included with or made a part of the Customer's monthly bill for Cable Service or Other Service or may be made by separate mailed notice. Each time that this notice is given to a Customer, the Cable Operator also shall provide the Customer with an opportunity to prohibit the disclosure of information in the future. Such opportunity shall be given in one of the following forms: a postage paid, self-addressed post card provided by the Cable Operator; a box that may be checked by the Customer on the Customer's monthly bill for Cable Services or Other Services; a toll-free number that the Customer may call; or such other equivalent methods as may be approved by the Mt. Hood Cable Regulatory Commission.

(b) A Cable Operator may disclose Personally Identifiable Information only to the extent that it is Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

(c) To the extent required by federal law, a Cable Operator may disclose Personally Identifiable Information pursuant to a subpoena or valid court order authorizing such disclosure, or to a governmental entity.

#### **4. Access to Information**

Any Personally Identifiable Information gathered and maintained by the Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information at the local offices of the Cable Operator or other convenient place within the Mt. Hood Cable Regulatory Commission.cable franchise areas designated by the Cable Operator. Upon a reasonable showing by the Customer that the information is inaccurate, a Cable Operator shall correct such information.

#### **5. Privacy Notice to Customers**

(a) The Cable Operator shall annually mail a separate, written privacy statement to Customers consistent with 47 U.S.C. section 551(a)(1), and shall provide a Customer a copy of such statement at the time the Cable Operator enters into an agreement with the Customer to provide Cable Service or Other Service. The written notice shall be in a clear and conspicuous format and be printed in ten point type or larger.

(b) In the statement required by Section VII 5(a), the Cable Operator shall state substantially the following regarding the disclosure of Customer information: "Unless a Customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service, is limited to:

(i) disclosure pursuant to a subpoena or valid court order authorizing such disclosure, or to a governmental entity, but only to the extent required by applicable federal law.

(ii) disclosure of the name and address of a Customer to any general programming tiers of service and other categories of cable and Other Services provided by the Cable Operator that do not directly or indirectly disclose:

(A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator,

(B) The extent of any other use by a Customer of a Cable Service or Other Service provided by the Cable Operator, including, but not limited to, a disclosure of the particular viewing selections by a person subscribing to a Cable Service or Other Service, or the particular web sites visited by a Customer of cable modem service (i.e., a Cable Operator may only disclose the fact that a person subscribes to cable modem service); or

(C) The nature of any transactions made by a Customer over the Cable System.

(D) The nature of programming or sites that a Customer subscribes to or views (i.e., a Cable Operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming)."

The notice shall also inform the Customers of their right to prohibit the disclosure of their names and addresses in accordance with Subsection (b) for Non-cable related purposes. This opportunity will be presented in the form of both a toll-free telephone number and a postage paid, self-addressed post card, provided by the Cable Operator with the privacy notice or other manner acceptable to the Mt. Hood Cable Regulatory Commission. If a Customer exercises his/her right to prohibit the disclosure of name and address as provided in Section VII.3(a) or this Subsection, such prohibition against disclosure shall remain in effect permanently, unless the Customer subsequently notifies the Cable Operator in writing that s/he wishes to permit the Cable Operator to disclose his/her name and address.

## **6. Privacy Reporting Requirements**

The Cable Operator shall include in its quarterly report to the City required by Section VIII of these MHCRC Customer Service Standards information summarizing:

1.(a) the type of Personally Identifiable Information that was actually collected or disclosed during the reporting period;

(b) for each type of Personally Identifiable Information collected or disclosed, a statement sufficient to demonstrate that the Personally Identifiable Information collected or disclosed was: (A) collected or disclosed only to the extent Necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator; (B) used only to the extent Necessary to detect

unauthorized reception of cable communications; (C) disclosed pursuant to a subpoena or valid court order or to a governmental entity to the extent required by federal law; (D) names and addresses disclosed in compliance with Section 3 (a) of this Ordinance; or (E) a disclosure of personally identifiable information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically.

c. the names of all entities to whom such Personally Identifiable Information was disclosed, except that the Cable Operator need not provide the name of any court or governmental entity to which such disclosure was made if such disclosure would be inconsistent with applicable federal law;

2. Describe measures that have been taken, or could be taken, to prevent the unauthorized access to Personally Identifiable Information by a person other than the Customer or the Cable Operator, including, among other things, a description of the technology that is or could be applied by the Cable Operator to prohibit unauthorized access to Personally Identifiable Information by any means.

7. Nothing in this Section VII shall be construed to prevent the Jurisdictions of the Mt. Hood Cable Regulatory Commission from obtaining Personally Identifiable Information to the extent not prohibited by section 631 of the Communications Act, 47 U.S.C.551.

8. Any aggrieved person may commence a civil action for damages for invasion of privacy against any Cable Operator.

### **9. Destruction of Personally Identifiable Information**

The Cable Operator shall destroy, within ninety (90) days, any Personally Identifiable Information if the Personally Identifiable Information is no longer Necessary for the purpose for which it was collected and there are no pending requests or orders for access to such Personally Identifiable Information under Subsection 3 of this Section VII, pursuant to a court order, or pursuant to Section 631 of the Communications Act, 47 U.S.C. section 551.

### **10. Rulemaking.**

The Mt. Hood Cable Regulatory Commission may adopt such rules as it deems necessary or advisable to implement these privacy provisions.

**RENUMBER EXISTING SECTION VII (REPORTING) AS SECTION VIII**