

**Mt. Hood Cable Regulatory Commission
September 17, 2018
METROEAST ROCKWOOD DIY**

Summary Minutes

THESE MINUTES ARE UNOFFICIAL UNTIL APPROVED BY THE COMMISSION AT A SUBSEQUENT MEETING.
PLEASE REFER TO SUBSEQUENT MINUTES FOR APPROVAL OR CHANGES

Call to order 6:36

- Roll Call
Commissioners present: Leif Hansen (Chair), Carol Studenmund, Scott Harden, Rich Goheen, Mike Bennett, Sue Dicile,

Commissioners absents: Norm Thomas

Staff present: Julie Omelchuck, Program Manager; Scott Ellertson, Program Coordinator;
Tyler Dice, Assistant Program Coordinator
- Agenda Review: Hansen introduced Amanda Watson, Policy Advisor for Portland Mayor Ted Wheeler. Hansen stated Watson is here to discuss the transition of the Office for Community Technology out of the Revenue Division to a stand-alone bureau reporting to Mayor Wheeler's Office.
- Disclosures: None.
- Public Comment (non- agenda items): None.
- ***CONSENT AGENDA – NO DISCUSSION**

C1. June 18, 2018 Meeting Minutes

Motion: Harden moved to approve consent agenda. Studenmund seconded.

Vote: 6-0 passed

- **REGULAR AGENDA**

R1. Community Technology Grant Cycle Funding Allocation & Pre-Application Deadline

Omelchuck reviewed the Community Technology Grant funding allocation, grant cycle and pre-application process and stated staff is recommending Dec. 6, 2018 as the application deadline date. In response to a question from Studenmund, Omelchuck said the amount allocated for the Community Technology Grant cycle is lower than last year due to an anticipated decline in PEG/I-Net Fees.

Responding to Harden's question regarding unspent funds from the prior year's grant cycle, Omelchuck clarified that, under the MHCRC's PEG/I-Net Fee distribution model, unspent funds from the Community Technology Grant cycle roll into the TechSmart Initiative allocations to school districts. For the prior-year grant cycle, the Commission set a target grant amount of \$1 million; about \$700,000 was granted in this cycle and the full amount was allocated.

Motion: Dicile moved that the Commission allocate \$700,000 for Community Technology grants in the FY2018-19 competitive process and establish a Pre-Application deadline of December 6, 2018. Harden seconded.

Vote: 6-0 passed

R2. MHCRC General Counsel Legal Services Agreement

Omelchuck stated the City of Portland Attorney's Office had provided legal counsel since the MHCRC's creation but due to the retirement of City Attorney Ben Walters and changes within the Portland City Attorney's office, the City is no longer providing legal services to the Commission. Commission staff has followed the City of Portland procurement services guidelines and process in seeking outside general counsel and cable content-specific counsel.

Omelchuck presented two separate but related scopes of work. The first contract is for MHCRC general counsel, related to municipal law in Oregon. The firm selected as general counsel to represent the MHCRC in matters relating to municipal law in Oregon, Local Government Law Group (LGLG), is a member of the Oregon Bar, serves at the pleasure of the Commission, and may participate via phone or in person at Commission meetings. LGLG was the firm that provided the MHCRC short-term legal counsel in June and the firm's focus is local municipal law.

Omelchuck explained the second contract for cable-specific expertise is with Best, Best and Krieger (BBK). BBK began work with the MHCRC on the Frontier Franchise Agreement extension, is familiar with the Commission's work, and is recognized nationally as a premier law firm with subject matter expertise in cable regulation and public policy.

Responding to Chair Hansen's question, Omelchuck stated general counsel will be "on call", and that staff or Commission will take issues to them as needed. Staff has allocated \$30,000 for the current fiscal year, which may or may not be spent in its entirety.

Omelchuck explained that BBK's contract is general, but work will proceed for a specific scope of work. Staff will request an amount be allocated for a specific legal need, much like the contingency fund request on tonight's agenda.

In response to a question from Goheen, Omelchuck reviewed the contracts contained in the meeting packet. She explained the \$30,000 for general counsel is the amount allocated for Portland City Attorney costs plus the savings from personnel vacancies in the FY18-19 MHCRC budget. Hansen stated that with the new billing structure, staff will need to closely monitor legal service costs. Omelchuck stated she doesn't anticipate exceeding \$30,000; however, staff will address any issues with the new structure moving forward.

In response to a question from Studenmund, Omelchuck stated that it is common for legal counsel to represent multiple affiliated organizations. When that happens, the legal firm provides a *Conflicts Waiver* letter where the organizations agree that counsel will work on everyone's behalf. If there is a direct conflict, the legal firm notifies each party and neither organization is represented. If the firm

believes a potential conflict may arise, the firm explains how the firm will “wall off” other parties to prevent a conflict.

Bennett requested that staff provide a bi-annual update with how much has been spent on legal services and in what areas for the first couple years.

Hansen mentioned that general counsel will join the Commission at its next meeting but will not attend all meetings or may attend some meetings by phone.

Motion: Dicile moved to approve a contract with the Local Government Law Group, a member of Speer Hoyt LLC, to provide general counsel legal services. Bennett seconded.

Vote: 6-0 passed

R3. MHCRC Special Counsel (Cable Specific) Legal Services Agreement

Motion: Dicile moved to approve a contract with Best Best & Krieger LLP to provide cable-specific special legal counsel services. Harden seconded.

Vote: 6-0 passed

R4. Contingency Request: FCC Rule Making re: Cable Franchise Agreements and Fees

Omelchuck introduced the FCC Second and Further Notice of Proposed Rulemaking (FNRPM) that would allow cable companies to offset franchise fee payments by the value of in-kind contributions such as providing community media channels, live transport costs of putting city council meetings on the channel and placing community channels on the electronic guide. Capital fees are carved out of the in-kind contributions, so the threat is aimed at the franchise fees collected by the jurisdictions.

Omelchuck explained the second part of the FNRPM is known as the mixed-use rule. The NPRM would prohibit local regulation of the non-cable services provided by the cable company. Cable companies that provide multiple services over their systems would continue to pay cable franchise fees for use of the public right-of-way based only on gross revenues from cable TV services and wouldn't pay fees for use of the public right-of-way for the additional services.

The contingency request would pay for comments to the FCC prepared by BBK on behalf of the MHCRC. Comments would be made as either a part of a coalition or separately for the MHCRC.

Motion: Bennett moved to authorize up to \$5,000 from contingency to file comments in the FCC proceeding regarding in-kind offsets by cable companies to cable franchise fees and regulation of mixed-use networks. Goheen seconded.

Vote: 6-0 passed

R5. Media Centers Annual Activity Reports

MetroEast Community Media

Marty Jones, Executive Director, MetroEast Community Media, provided an overview of the Rockwood DIY location and services. Jones mentioned several MetroEast changes and accomplishments, including MetroEast headquarters' remodel; fundraising efforts; and staffing changes. Jones shared a short video. Jones stated that MetroEast's next goal is workforce development. MetroEast presented at the

NATO national conference. Bennett thanked Jones for his vision, his ability to implement that vision, and his good stewardship of the monies entrusted to MetroEast.

Open Signal

Justen Harn, Executive Director, Open Signal, presented on Open Signal's growth over the last six months, including significantly increased workshop participation and certification rates; scholarships; studio time booked; hours of programming; and production of city council meetings. He also noted funds raised. Open Signal recently won a 'Light a Fire' award which is given to seven local nonprofits dedicated to improving our communities. Open Signal's new membership program was featured in the Willamette Week, and thus far, Open Signal has 200 members and the average contribution of \$39. Harn stated he is most proud of the equity work Open Signal is doing and the culturally-specific programming being offered to the community.

- Staff Activity Reports and Updates

- MHCRC Staff Services

- Amanda Watson, Policy Advisor to the City of Portland Mayor Ted Wheeler, stated that mid-year budget adjustments and code changes should be finalized in November for the Portland Office for Community Technology to become a standalone bureau. Elisabeth Perez, who couldn't attend the meeting tonight, is the current acting director, until a director can be hired. In response to a question from Bennett, Omelchuck explained that the mission and goals of the office have not changed. In response to a question from Hansen, Watson stated that once a new director is appointed, OCT will move forward strategic planning with partners internal and external to the City. In response to a question from Dicile, Omelchuck stated that the budget request from OCT to the Portland Budget Office is for the current fiscal year and will add a new director position and funds for the physical move of the office. In response to a question from Harden, Omelchuck said, at this point, the OCT change to a standalone bureau would not impact the Open Signal budgeting process and Open Signal's operating budget development would continue to be the responsibility of the OCT.

- FCC/Federal/State Public Policy

- Scott Ellertson, Program Coordinator, referenced Agenda Item #R4 as the primary FCC action concerning cable regulation. Regarding net neutrality, Ellertson highlighted California Senate Bill 822 which passed earlier this month. The Bill bans blocking, throttling, paid prioritization, and zero rating passed in the state assembly by a 58-18 vote. Described as the "gold standard", the bill is unlike other state net neutrality bills in that the neutrality requirements are not limited to state contracts, but instead applies to all ISP offerings in the state.

- Ellertson stated that the FCC is on an all-out assault on local government authority to protect the public right-of-way (ROW). The FCC is working to restrict local governments from receiving fair compensation for small cells in the ROW and permit fees, as well as implementing reasonable review periods for small cell applications. In response to a question from Hansen, Ellertson stated FCC rules typically go into effect with 30-60 days after passage, unless the FCC is sued, which can lead to delays.

- TechSmart Initiative

- Omelchuck stated that she has finished the end of the school year grant status report reviews from each district. She is working with Pacific Research & Evaluation (PRE) on the three-year evaluation report. Work has begun with Reynolds School District on the second round of funding and anticipates having a proposed project plan to the Commission in March. Omelchuck attended the David Douglas School District Board Meeting and the Board was excited about the second round of funding.

- Digital Equity Action Plan (DEAP)

Omelchuck stated that OCT staff has wrapped up year two of the Plan and will be presenting to Portland City Council and the Multnomah County Commission in October. The second-year report will be published early October and will be shared with the Commission.

- Frontier Franchise Extension

Omelchuck stated staff is working with Frontier on a franchise extension, with certain conditions, and now that legal counsel is in place, hopefully the process will move quickly. She stated it appears the MHCRC will need a November meeting in order to allow public comment and get a Commission recommendation for the franchise extension to present the to the affected jurisdictions. Jurisdictions would then consider the Frontier Extension recommendation at one of their December 2018 council meetings.

- Frontier Rate Increase

Ellertson stated that staff received a timely notice from Frontier advising of a rate increase. He also provided a handout showing year-over-year rate increases which averaged roughly 10%.

- Frontier HD PEG Channel Activation

Ellertson reminded the Commission that Frontier was given notice to activate the PEG Channels in HD by the end of this month. If that activation does not take place, staff plans to issue a non-compliance notice and opportunity to cure.

- Comcast Rate Increase

Ellertson stated that staff received a timely notice from Comcast advising of a rate increase. He also provided a handout showing year-over-year rate increases which averaged roughly 2.5%.

- Other

Omelchuck stated that she and Lexi Meek, MHCRC compliance assistant, will be attending the Grantmakers of Oregon and Southwest Washington's conference located just outside Salem. She also stated that she and Ellertson will be attending the Oregon Connections conference in Hood River.

- Committee Reports

- Finance Committee: None.

- TechSmart Grant Committee: None.

- Community Ascertainment Committee

Dicile stated the committee had met several times in the last couple months to map out the community needs ascertainment structure and scope of work for consultant Request for Proposals.

- Open Signal Board Appointee

Studenmund stated that Open Signal's energy is great, inspired and motivating.

- MetroEast Board Appointee: None

- New Business; Commissioner Open Comment: None.

Meeting Schedule:

October 15 – Open Signal

November 19 – TBA

December 17 – MetroEast

January 28 – Open Signal

February – Annual Planning Retreat

March 18 – MetroEast

April – Recess

May 20 – Open Signal

June 17 – MetroEast

July/August – Recess

- Franchisee Activity Report
 - Frontier

Jack Phillips, Director, Frontier Government and External Affairs, stated that a new local Government Affairs representative, Jessica Epley, will attend the next meeting. Phillips stated that he will still handle the franchise extension. Frontier is finishing its buildout to the Brickworks subdivision in Gresham that includes 186 lots and should be completed by the end of the calendar year. He highlighted several Frontier sponsorships including the Gresham Art Fair, Gresham Farmers' Market, the Portland Timbers, Hillsboro Hops, and the Portland Pickles. Phillips stated that even though Frontier disagrees that the franchise agreement requires activation of HD PEG channels, Frontier reorganized channels on the network to free up space for the HD PEG channels. He stated that HD channel launch is unlikely to occur by October 1 and he intends to send a letter advising of this. He is confident the channel activation can be completed by the end of year, but he does not want to make any commitments at this time. In response to a question from Hansen, Phillips explained the rate increases are mostly driven by the cost of content and especially with local broadcasters that are requesting ten-fold increases. Omelchuck recognized the creative effort of Frontier to find solutions for the activation of the PEG channels in HD. Commission staff are in full communication with Frontier and anticipate activation around the first of 2019.
 - Comcast: None.
 - CenturyLink

Samantha Ridderbusch, Director, CenturyLink Government and External Affairs, stated that CenturyLink sponsored the Blazers three-on-three tournament that benefits the Special Olympics. In doing so, they raised just over \$31,000. Additionally, CenturyLink was a sponsor for the NATOA conference, Greater Portland Inc.'s annual economic summit, the League of Oregon Cities conference, and the Oregon Connections conference.
 - Reliance Connects: None.
- PEG Provider Activity Report
 - MetroEast Community Media

Marty Jones, Executive Director, MetroEast Community Media, stated that four videos produced at MetroEast won national awards at the Alliance for Community Media conference. Three of the videos were created by independent producers.
 - Open Signal

Justen Harn, Executive Director, Open Signal, encouraged staff and the Commission to explore the art installation in the Open Signal lobby. This artist plans to join the Board and has become one of Open Signal's best volunteers.
- Public Comment: None.
- Adjourn 8:35