

MEETING NOTIFICATION

June 24, 2019

6:30 p.m.

**MetroEast Community Media
829 NE 8th St.
Gresham, OR 97030**

AGENDA - REVISED

- Roll Call
(Commission Participation: One or more members of the Commission may attend and participate by electronic means. The public will be afforded an opportunity to listen to the participation at the meeting site.)
- Agenda Review
- Disclosures
- Public Comment (non-agenda items)

***CONSENT AGENDA – NO DISCUSSION**

All items listed below may be enacted by one motion and approved as consent agenda items. Any item may be removed from the consent agenda and considered separately if a member of the Commission so requests.

C1. April 22, 2019 Meeting Minutes

C2. June 3, 2019 Meeting Minutes

REGULAR AGENDA

- *R1. Election of Chair and Vice-Chair 5 min
- *R2. Preliminary Funding Decisions - 2019 Community Technology Grant Pre-Applications 45 min
- *R3. Contingency Request: Consulting Services - Frontier Franchise Transfer 10 min
- *R4. Contingency Request: Alliance for Community Media Conference Sponsor 5 min

- Staff Activity Reports and Updates
 - FCC/Federal/State Public Policy
 - FY2019-20 Budget Process
 - MHCRC Annual Report
 - TechSmart Initiative
 - Alliance for Community Media Conference – Portland, July 10-12
 - Frontier Transfer of Ownership Announcement
 - OCT Staffing Update/ Priorities
 - MetroEast Executive Director - Update
 - Other

- Committee Reports
 - Finance Committee
 - TechSmart Grant Committee
 - Community Ascertainment Committee
 - Open Signal Board Appointee
 - MetroEast Board Appointee
- New Business; Commissioner Open Comment

Meeting Schedule:

July/August – Tentative Meetings
 September 16 – Open Signal
 October 21 – MetroEast
November – recess
 December 16 – Open Signal
 January 27 – MetroEast
February – Annual Planning Retreat (TBD)
 March 16 – Open Signal
April – recess
 May 18 – MetroEast

- Franchisee Activity Report
 - Frontier
 - Comcast
 - CenturyLink
- PEG Provider Activity Report
 - Open Signal
 - MetroEast Community Media
- Public Comment
- Adjourn

*Denotes possible action item

Please notify the MHCRC no less than five (5) business days prior to our event for ADA accommodations at 503-823-5385, by the City of Portland's TTY at 503-823-6868, or by the Oregon Relay Service at 1-800-735-2900.

CONSENT AGENDA – NO DISCUSSION

All items listed on the consent agenda may be enacted by one motion and approved as consent agenda items. Any item may be removed from the consent agenda and considered separately if a member of the Commission so requests.

Mt. Hood Cable Regulatory Commission
Location: MetroEast Community Media
April 22, 2019 Meeting Minutes – **DRAFT**

Summary Minutes

Call to Order: 6:36pm

- Roll Call
Commissioners Present: Leif Hansen (Chair), Carol Studenmund, Scott Harden, Norm Thomas, Jacquenette McIntire, Jeff Dennerline

Commissioners Absent: Sue Dicile

Staff Present: Julie Omelchuck, Program Manager

- Welcome New Appointees
Jacquenette McIntire – Gresham Appointee
Jeff Dennerline – Fairview Appointee

- Agenda Review: None

- Disclosures: None

- Public Comment (non-agenda items): None

- **CONSENT AGENDA – NO DISCUSSION**

*C1. January 28, 2019 Meeting Minutes

*C2. March 16, 2019 Planning Retreat Minutes

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

Vote: 6-0 passed

- **REGULAR AGENDA**

*R1. Contract Amendment: Manley Consulting

Omelchuck noted the need to increase Paula Manley's contract amount by \$5,000 to accommodate her facilitation of the MHCRC 2019 retreat.

Motion: Harden moved to amend the contract with Paula Manley Consulting to increase the total contract amount by \$5,000 to include the work related to the facilitation of the MHCRC 2019 retreat. Studenmund seconded.

Vote: 6-0 passed

***R2. Community Technology Needs Ascertainment Consultant Contract**

Omelchuck said staff conducted a competitive Request for Proposals (RFP) process and negotiated final contracts with both top proposers. The Ascertainment Consultant will oversee the overall ascertainment data collection and analysis processes and will engage with established MHCRC stakeholders, such as municipal and educational partners. The Community Engagement Consultant will focus on participation by communities of color, people with disabilities, seniors, English language learners, and groups where there is a need for more specific engagement activities to ensure they are included.

Omelchuck noted that the last ascertainment was completed in 2009-10. She expects data collection to be completed by December.

Motion: Thomas moved to adopt the Community Technology Needs Ascertainment consultant contract not to exceed \$90,000. Studenmund seconded.

Vote: 6-0 passed

***R3. Ascertainment Community Engagement Consultant Contract**

Motion: Thomas moved to adopt the Ascertainment Community Engagement consultant contract not to exceed \$44,000. Harden seconded.

Vote: 6-0 passed

***R4. FY18-19 MHCRC Operations Budget Amendment**

Omelchuck said staff is projecting about \$92,000 under expenditure in personnel in the MHCRC FY18-19 operations budget due to vacancies in staff positions that support the MHCRC and are included in the budget. The MHCRC has budget needs that were not anticipated at the time of FY18-19 budget development. Staff requested moving funds underspent in the personnel line item as follows:

- 1) \$50,000 to Internal Materials & Services to support the physical move of staff out of the Portland Revenue Division to reflect the structural change of the office within the City. Staff noted the need for moving expenses at the MHCRC planning retreat; and,
- 2) Any remaining amount to External Materials & Services to cover MHCRC contracted legal services and other resource and consulting needs due to unfilled personnel positions.

Motion: Harden moved to authorize amending the MHCRC FY18-19 operations budget by moving underspent personnel funds in the amount of \$50,000 to Internal Materials & Services, and moving the remaining amount from the under expenditure in the personnel line item to External Materials & Services. Dennerline seconded.

Vote: 6-0 passed

Omelchuck said that in May 2018, after MHCRC FY18-19 budget development, Portland noted that it would no longer be able to provide legal services to the MHCRC. The funds for legal services were included in the Internal Materials & Services line item in the FY18-19 operations budget. Staff recommends that the MHCRC move \$18,180 for City-provided legal services in

Internal Materials & Services to External Materials & Services to cover MHCRC contracted legal services.

Motion: Harden moved to authorize amending the FY18-19 MHCRC operations budget by moving \$18,180 from Internal Materials & Services to External Materials & Services.

Studenmund seconded.

Vote: 6-0 passed

Omelchuck said staff requests that the MHCRC authorize the Commission Chair to enter into contracts through September 2019 on behalf of the MHCRC up to \$10,000, to address MHCRC work needs in light of unanticipated, significant vacancies in staff positions that support the MHCRC. Current financial policies allow direct payment of invoices up to \$5,000 per year, per vendor; contracts or letter agreements are required for amounts over \$5,000. Staff will provide Commissioners any agreements entered into by the Chair.

Motion: Studenmund moved to authorize the Commission Chair to enter into contracts through September 2019 on behalf of the MHCRC up to \$10,000. Dennerline seconded.

Vote: 6-0 passed

- Staff Activity Reports and Updates

Omelchuck reported on the following items:

- FY19-20 Budget Process/Information: Budget presentations to jurisdictions will occur in June. Dates and information will be shared with commissioners.
 - Comcast's Annual I-Net End-Fund Report: No expenditures this year. Staff is working with Comcast on a digital inclusion-oriented initiative that will use this fund. In response to a question from Dennerline, Omelchuck said that the funds would retain existing restrictions after the end of the franchise term, and would likely be part of the negotiation for renewal franchise.
 - TechSmart Initiative: Final round of grants is delayed due to limited staff capacity.
 - Alliance for Community Media Conference – Portland, July 10-12: Funds are available in the budget for Commissioners to attend.
 - OCT Staffing Update/Priorities: Due to limited staff capacity some items will be delayed, including the final round of TechSmart grants, and the Community Technology grants process, while staff focuses on the highest priorities such as the budget and the annual report. Thomas said TechSmart grants are important and would not want this to be a hardship for schools' planning. Commissioners agreed to meet in July and August to move grants forward as needed.
 - Other: In response to a question from Thomas, Omelchuck said staff capacity and jurisdictional scheduling has constrained the available dates on a jurisdiction's agenda for MHCRC budget consideration.
- Committee Reports
 - Finance Committee: Thomas said the Committee met to develop the budget and review budgets for Open Signal and MetroEast. The next Committee meeting is scheduled for April 30 to recommend budget for MHCRC approval.

- TechSmart Grant Committee: None
- Community Ascertainment Committee: None
- Open Signal Board Appointee: None
- MetroEast Board Appointee: Thomas said he didn't attend the last Board meeting. Thomas noted May 3 is MetroEast's Volunteer Appreciation event.

- New Business; Commissioner Open Comment:
 - Commissioners agreed to move the regular May meeting to June 3.
 - MHCRC Committee Appointments: Chair Hansen identified new committee appointments: Dennerline and McIntire appointed to Finance Committee; all other committee assignments remained the same.

- Franchisee Activity Report
 - Frontier: Jessica Epley, Frontier Government and External Affairs Manager, said Frontier is monitoring the proposed changes to the Oregon Universal Service Fund in process at the state legislature. She said that the state legislature repeal of the gigabit tax exemption will affect Frontier and it will be reviewing the gigabit service provision to MetroEast related to the franchise extension in light of this change. She also noted that Frontier is building out with Connect America funds; currently 65% toward target, and on track for 100% of infrastructure build out state-wide.
 - Comcast: Tim Goodman, Senior Director, Government and Regulatory Affairs, noted that *Comcast Cares Day* is May 4. Comcast crews are participating with the Oregon Food Bank, Portland Rescue Mission, E-cycle (electronics recycling) and Free Geek, Lents Elementary School, and Solv on a neighborhood cleanup project in the Brooklyn neighborhood. Goodman noted that the Leaders and Achievers scholarship program for high school seniors this year was providing fewer scholarships, but in larger amounts. Goodman said Comcast is working with City of Portland to install free Wi-Fi in Pioneer Square in exchange for locating facilities under the square.
 - CenturyLink: Samantha Ridderbusch, State & Local Government Affairs Director, said CenturyLink's *Teachers and Technology* grant awards will be announced in June.
 - Reliance Connects: Omelchuck said that, on MHCRC recommendation, Multnomah County extended the franchise through June 30, after which time Reliance Connects will no longer have a cable franchise in the MHCRC service area.

- PEG Provider Activity Report
 - MetroEast Community Media: None
 - Open Signal: None

- Public Comment: None

Adjourned: 7:52pm

Respectfully submitted:
Bea Bedard, Program Coordinator

Mt. Hood Cable Regulatory Commission
Location: Open Signal
June 3, 2019 Meeting Minutes – **DRAFT**

Summary Minutes

Call to Order: 6:36 pm

- Roll Call
Commissioners present: Leif Hansen (Chair), Carol Studenmund, Scott Harden, Sue Dicile, Norm Thomas, Jacquenette McIntire, Jeff Dennerline

Commissioners absent: None

Staff Present: Elisabeth Perez, Staff Director; Julie Omelchuck, Program Manager; Rebecca Gibbons, Program Coordinator; Bea Bedard, Program Coordinator; Gail Karish, Best Best & Krieger, Legal Counsel; Mark Wolf, Local Gov't Law Group, Legal Counsel

- Agenda Review: None
- Disclosures: None
- Public Comment (non-agenda items):
Martin Jones, CEO, MetroEast Community Media, announced his resignation from MetroEast as of June 30. The MetroEast leadership team will manage operations during the transition period. Commissioners expressed their esteem and appreciation for Jones' leadership, direction, and creativity. MetroEast has been nominated for three Emmys. The *Rockwood DIY* program is entering phase two with *Rockwood Rising*, which will launch June 12. The program has served over 700 Rockwood neighborhood residents with digital literacy services. Jones will continue as co-chair of the Alliance for Community Media conference, which will take place in Portland this Summer.
- ***CONSENT AGENDA – NO DISCUSSION**
None
- **REGULAR AGENDA**

*R1. MHCRC FY 2019-20 Goals

Omelchuck said the goals reflect discussion at the MHCRC planning retreat along with projects currently underway, which include the community technology needs ascertainment, franchise and PEG/I-Net fee reviews, and an impact report for the TechSmart initiative.

Motion: Thomas moved to adopt the FY2019-20 Goals and Objectives. Studenmund seconded.

Vote: 7-0 passed

***R2. MHCRC FY2019-20 Fund Budget**

Thomas presented the MHCRC Finance Committee recommended budget to forward to the Jurisdictions for approval.

Commissioners discussed the modest and reasonable budgeting year over year. Commissioners also noted the increased professional services, which will support general legal counsel, the Comcast franchise negotiations, and advocacy.

Omelchuck noted that the budget preserves full capital funding for the two community media centers, staff capital compliance program, and community technology grants in the next fiscal year. The annual capital funding allocation for TechSmart Initiative will be curtailed in FY2019-20 so as to wrap up the Initiative grants by FY2021-22.

Justen Harn, Executive Director, Open Signal, presented the organization's budget, identifying continued growth in earned revenue.

Studenmund commented that Open Signal's earned income from production services is up 20% in the current fiscal year.

Jessica Holliday, Finance Director, MetroEast Community Media, presented MetroEast's budget, highlighting focus on revenue growth in production services fees. Jones commented that MetroEast continues to focus on sustainability while looking at ways to push the envelope and experiment in creation of new revenue streams.

In response to a question from Dicile, Holliday said MetroEast is focusing on being less reliant on the investment fund to maintain the principle and is using it on an as-needed basis.

Motion: Dicile moved to adopt the MHCRC FY2019-20 Fund Budget and forward it to the member Jurisdictions with a recommendation for approval. Harden seconded.

Vote: 7-0 passed

- Staff Activity Reports and Updates
 - MHCRC 2018-19 Annual Report
Omelchuck said the MHCRC Annual Report is nearly complete. Printed copies will be available to distribute at the jurisdictional meetings for MHCRC budget approval.
 - Alliance for Community Media Conference – Portland, July 10-12
Omelchuck reminded Commissioners to indicate soon if they want to attend the conference. Dicile encouraged attendance to experience all the amazing things happening in community media on the national scale.
 - OCT Staffing Update/ Priorities
Omelchuck noted the new employees that support the MHCRC work: Bea Bedard, Program Coordinator, and Cinthia Diaz Calvo, who will begin as the Administrative Specialist June 4. She said both are temporary appointments with the plan to hire permanently in these positions as soon as possible.

Perez said she is committed to the Portland Office for Community Technology (OCT) as Acting Director and will work with OCT staff to develop a strategic plan to be completed by end of Summer. She will work closely with Omelchuck to determine how to best support the City bureau and the Commission.

- **Frontier Transfer of Ownership**

Omelchuck note the news release contained in the meeting packet, announcing Frontier's ownership transfer deal with Wave Division Capital LLC. The MHCRC will need to undertake a transfer of ownership regulatory process, which entails a Commission recommendation to the East County cities. Portland and Multnomah County do not have franchises with Frontier. She said staff is currently engaged with Frontier in a franchise and PEG/I-Net Fee audit, which will need to be resolved prior to ownership transfer.

- **Committee Reports**

- Finance Committee: None
- Open Signal Board Appointee: Dicile said fundraising continues apace and noted the enthusiasm for Black Filmmakers program. She added that the Board has new members who seem experienced and engaged.
- MetroEast Board Appointee: None

- **New Business; Commissioner Open Comment**

Hansen checked with Commissioners availability to move the June meeting from June 17 to June 24. He also noted that July/August meetings are still tentative.

- **Public Comment: None**

- **EXECUTIVE SESSION**

Hansen convened the Executive Session at 7:20pm, pursuant to ORS 192.660(2)(f), which allows the Commission to meet in executive session to consider information or records that are exempt by law from public inspection, specifically: ORS 192.355.

Representatives of the news media and designated staff (Perez, Omelchuck, Gibbons, Bedard) were allowed to attend the Executive Session. All other members of the audience were asked to leave the room. Representatives of the news media were specifically directed not to report on or otherwise disclose any of the deliberations or anything said about these subjects during the Executive Session, except to state the general subject of the session as previously announced. No members of the news media were in attendance. No decisions were made in the Executive Session.

The MHCRC considered and reviewed information and records exempt from public inspection related to the MHCRC special legal counsel, BBK, and general counsel, Wolf, legal review of federal and local franchises related to public benefits provided under the franchises.

Executive Session adjourned at 8:24pm and Hansen reconvened the regular MHCRC meeting.

Adjourned: 8:24pm

Respectfully submitted:
Bea Bedard, Program Coordinator

REGULAR AGENDA

COVER SHEET – AGENDA ITEM #R1

For Commission Meeting: June 24, 2019

“Election of MHCRC Chair and Vice-Chair”

Commissioner Term Status

Currently all Commissioners are eligible for the Chair position, and all Commissioners are eligible for the Vice Chair position.

Background

The Intergovernmental Agreement empowers the Commission to adopt Rules of Procedure governing its conduct of business. With regard to the election of officers, the Commission’s Rules of Procedure state:

Officers. The Commission shall elect a Chair and Vice Chair (Officers) from among its members.

Term of Office. The Officers' terms of office shall be for one year from July 1 through June 30. Officers may be elected to no more than three full consecutive terms.

Election. Commissioners may nominate Officers by oral motion. After the close of nominations, the Commission shall vote in writing or by oral motion upon the names nominated. The election of officers shall be by a majority of Commissioners.

Chair. The Chair shall have the duties and powers to:

- A. Direct the preparation and distribution of an agenda for all Commission meetings;
- B. Preside over all deliberations and meetings of the Commission;
- C. Vote on all questions before the Commission;
- D. Call special meetings of the Commission in accordance with these Rules of Procedure;
- E. Sign all resolutions, orders, contracts and other documents memorializing Commission action;
- F. Establish committees and appoint members and chairs.

Vice Chair. During the absence, disability or disqualification of the Chair, the Vice Chair shall assume all the duties and powers of the Chair. In the absence of both Officers, the Commission shall elect an acting Chair.

Prepared by: Bea Bedard
June 24, 2019

COVER SHEET – AGENDA ITEM #R2
For Commission Meeting: June 24, 2019

“Preliminary Funding Decisions: 2019 Community Technology Grants”

The Commission has about \$700,000 to grant in the 2019 competitive grant cycle under the Community Technology Grants program.

Under separate cover, Commissioners received information for its decision-making process, including the grant Pre-Applications and evaluation instructions.

Background

The Commission’s decision-making process is as follows:

1. 12 Pre-Applications were received by the Dec. 6 deadline; 11 Pre-Applications met the grant eligibility criteria and were forwarded to the Commission for review.
2. Each Commissioner reads, evaluates and scores each Pre-Application in preparation for the preliminary funding decision making meeting.
3. At the June 24 meeting, the MHCRC will decide which Pre-Applications it would like to invite to apply for funding within the approximate \$700,000 funding guideline. *(Please note that one pre-application forwarded to the Commission for review has since been determined to not qualify for funding based on the definition of I-Net Institution under the Franchise Agreements. Therefore, the Commission will not be considering the Verde Pre-Application in its preliminary funding decisions.)*
4. Selected applicants are invited to fill out a full online grant application.
5. MHCRC staff drafts grant contracts for applicants who have successfully completed an online grant application to staff’s satisfaction. Not all applicants who are selected in the Pre-Application process will necessarily receive a grant award.
6. The MHCRC approves grant contracts.

Prepared By: Rebecca Gibbons
June 18, 2019

COVER SHEET – AGENDA ITEM #R3

For Commission Meeting: June 24, 2019

“Contingency Request: Consulting Services - Frontier Franchise Transfer”

Staff Recommendation

Staff recommends the MHCRC move \$20,000 from contingency to External Materials and Services, for professional consulting associated with legal, financial, and technical services necessary to process the Frontier ownership transfer of its franchise agreement.

Background

On May 29, MHCRC staff received an email and press release from Frontier regarding its intent to sell its cable system to NW Fiber, LLC.

Following submission of completed, required documentation by Frontier and NW Fiber, staff will need professional expertise to evaluate the legal, technical and financial qualifications of NW Fiber, LLC, and to address any issues.

Under the IGA, the jurisdictions retained approval authority of cable franchise transfers of ownership. The jurisdictions look to the MHCRC to undertake a transfer process and make a recommendation to the jurisdictions. In the case of Frontier, the cities of Fairview, Gresham, Troutdale, and Wood Village will need to consider and act on the franchise transfer request.

Prepared By: Bea Bedard
June 19, 2019

COVER SHEET – AGENDA ITEM #R4

For Commission Meeting: June 24, 2019

“Contingency Request: Alliance for Community Media Conference Sponsor”

Staff Recommendation

Staff recommends the MHCRC move \$5,000 from contingency to External Materials and Services, to support a sponsorship for the 2019 Alliance for Community Media national conference to be held in Portland.

Background

The MHCRC has long been a supporter of the Alliance for Community Media and its education, professional development, and advocacy work both at the federal and local levels. The Alliance national conference is being held in Portland this Summer. Conference sponsorships are an opportunity to further demonstrate local pride in the MHCRC’s commitment to community media and our two media centers that service our communities.

Follows is an excerpt from the Alliance conference materials:

Portland and the Cascade region are known for creativity, innovation, great food and drink, and spectacular natural beauty. It’s a place that is firmly grounded in its sense of place and what’s fresh and local, plus it’s a beautiful place to visit in the summer. In some circles, the Portland region is also known as the home of the most forward-looking telecommunications and digital literacy policy and community media operations in the United States. It’s a place that cares about the future of community. As community media gathers in the shadow of Mt. Hood, we’ll be exploring the “new paths” that PEG access channels and community media centers must take in 2019 and beyond to ensure our futures. The trail may seem steep at times but the journey ahead is filled with discovery and exhilaration!

ACM embraces our partners who align with and believe in our vision of promoting civic engagement and community change through local media. This conference sets the stage for you to come together with over 400 executives and other professionals from locations throughout the United States who work in community-based media production centers and facilities, university-based programs, youth media programs, digital arts and online groups, and policy-related centers.

Budget

With approval of the other contingency request on the MHCRC June 24 agenda, the MHCRC has allocated \$25,000 of \$45,000 contingency in the FY2018-19 budget.

Prepared By: Julie S. Omelchuck
June 21, 2019

INFORMATION ONLY

Editor's Note :

We expect the Supreme Court to issue opinions on Thursday at 10 a.m. We will start live-blogging at 9 a.m. at this link, where readers can sign up for an email reminder when we begin the live blog.



Amy Howe *Independent Contractor and Reporter*

Posted Mon, June 17th, 2019 6:09 pm

[Email Amy](#)
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Opinion analysis: Court holds that First Amendment does not apply to private operator of public-access channels

The First Amendment bars the government from restricting freedom of speech, but it does not generally apply to private actors, like corporations. However, private actors can be held liable for violating the First Amendment when they are acting on behalf of the government or doing something that the government would normally do – a doctrine known as the “state action” doctrine. Today the Supreme Court ruled that a private nonprofit corporation that runs a public-access TV channel is not a state actor and therefore cannot be sued for violating the First Amendment.



Justice Kavanaugh with opinion in *Manhattan Community Access Corp. v. Halleck* (Art Lien)

The dispute at the center of today’s ruling occurred in 2012, when Manhattan Community Access Corporation, known as “MNN,” which operates the public-access TV channels in Manhattan, refused to put a video by DeeDee Halleck, an award-winning producer, and Jesus Melendez, a poet and playwright, on the air again after its initial broadcast. Explaining that the video contained threatening language from Melendez, MNN also barred Halleck from submitting content to MNN for a year and banned Melendez for life.

Halleck and Melendez went to court, arguing that MNN’s actions violated the First Amendment. The U.S. Court of Appeals for the 2nd Circuit allowed their lawsuit to go forward, ruling that MNN is a state actor because the local government chose MNN to operate public-access channels on Manhattan’s cable system.

MNN asked the Supreme Court to weigh in, and today the justices – by a vote of 5-4 – reversed. Justice Brett Kavanaugh wrote for the majority, in an opinion that was joined by Chief Justice John Roberts and Justices Clarence Thomas, Samuel Alito and Neil Gorsuch. Kavanaugh began by stressing that a private entity can be a state actor only when it is doing something that only the government has traditionally done. Very few things fall into this category, Kavanaugh noted, and the operation of public-access cable channels is not one of them, because both public and private entities have historically operated the channels.

Halleck and Melendez can’t get around this fact, Kavanaugh emphasized, by turning the court’s attention to the broader question of whether the operation of a public forum – places like streets and parks, where people are able to speak freely, and where the First Amendment protects speech – is a traditional public function. Providing a forum for speech does not, standing alone, make a private entity a state actor.

explained, “private property owners and private lessees often open their property for speech. Grocery stores put up community bulletin boards. Comedy clubs host open mic nights.”

Nor is MNN a state actor just because New York City has authorized it to operate the public-access channels on Time Warner’s cable system and regulates its operations. The key question, Kavanaugh made clear, is still whether MNN is performing a traditional government function, which it is not.

Kavanaugh pointed out that the majority’s opinion today was not necessarily a broad one: New York could still limit MNN’s editorial discretion as long as it did not violate federal law or the Constitution in doing so. But, Kavanaugh concluded, “MNN, as a private actor, is not subject to First Amendment constraints on how it exercises editorial discretion over the speech and speakers on its public access channels.”

Justice Sonia Sotomayor dissented, in an opinion that was joined by Justices Ruth Bader Ginsburg, Stephen Breyer and Elena Kagan. Sotomayor began by observing wryly that Kavanaugh’s opinion “tells a very reasonable story about a case that is not before us.” In her view, the actual facts would lead to a very different conclusion: Because New York City has a property interest in the channels, and the state’s regulations require that the public be given access to the channels, the public-access channels are indeed a public forum. “Just as the City would have been subject to the First Amendment had it chosen to run the” channels itself, MNN “assumed the same responsibility when it accepted the delegation” to run the channels and must comply with the First Amendment.

This post was originally published at [Howe on the Court](#).



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Posted in [Manhattan Community Access Corp. v. Halleck](#), [Featured](#), [Merits Cases](#)

Recommended Citation: Amy Howe, *Opinion analysis: Court holds that First Amendment does not apply to private operator of public-access channels*, SCOTUSBLOG (Jun. 17, 2019, 6:09 PM), <https://www.scotusblog.com/2019/06/opinion-analysis-court-holds-that-first-amendment-does-not-apply-to-private-operator-of-public-access-channels/>