

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 07-053

Adopting a Competitive Franchise Application Rule in Connection with any Cable Franchise Applications Submitted Under 47 CFR §76.41

The Multnomah County Board of Commissioners Finds:

- a. The Mt. Hood Cable Regulatory Commission (“MHCRC”) was created by intergovernmental agreement (“IGA”), dated 12/24/92 and amended March 1998, to carry out cable regulation and administration on behalf of Multnomah County and the Cities of Portland, Gresham, Troutdale, Fairview and Wood Village (Jurisdictions).
- b. Section 3 of the IGA vests with the MHCRC all the powers, rights and duties necessary to carry out the purposes of the IGA, which includes authority to create a competitive cable franchise application process for any applicant seeking a competitive cable franchise in any of the Jurisdictions.
- c. On December 20, 2006, the Federal Communications Commission (“FCC”) adopted a new rule, 47 CFR § 76.41, released March 5, 2007, that, among other things, provides a separate, nonexclusive process for the issuance of cable franchises for areas currently served by another cable operator (the “Competitive Franchise Application Rule” or “CFAR”). The new FCC rule is expected to take effect on April 20, 2007.
- d. To ensure compliance with the new FCC rule and protect the Jurisdictions’ right to regulate access to local rights of way, on April 2, 2007, by Resolution 2007-02, the MHCRC adopted a Local Rule setting forth a competitive franchise application form and process (“CFAR Local Rule”).
- e. While MHCRC has authority under the IGA to adopt and implement the CFAR Local Rule and related rules, forms and procedures, the County’s adoption of the CFAR Local Rule will prevent confusion and ensure that the appropriate application process, consistent with the IGA, is followed.

The Multnomah County Board of Commissioners Resolves:

1. The County adopts the CFAR Local Rule, attached as Exhibit A, and any amendments hereafter made to the CFAR Local Rule by resolution of the MHCRC under the authority delegated to the MHCRC by the IGA.

2. Any application to provide competitive cable services within the County shall be directed to and processed by the MHCRC in accordance with the MHCRC's rules and regulations, including the CFAR Local Rule and related forms, processes, rules, administrative procedures and application fees subsequently established by the MHCRC related to competitive cable franchise applications.

ADOPTED this 12th day of April 2007.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Katie A. Lane, Assistant County Attorney

SUBMITTED BY:

Lonnie Roberts, Commissioner, District 4

Exhibit A to MHCRC Res. 2007-02

CFAR LOCAL RULE

Application Form, Instructions and Application Review Process
for Competitive Franchise Applications
Submitted to the Mt. Hood Cable Regulatory Commission (MHCRC)
or Referred to the MHCRC by MHCRC Jurisdictions
under 47 CFR §76.41

A. Application of Rule

Any application for a cable franchise agreement submitted to the MHCRC or an MHCRC Jurisdiction pursuant to 47 CFR §76.41 shall contain the requisite information set forth herein. The MHCRC shall evaluate and make recommendations to the MHCRC Jurisdictions based on the criteria set forth herein.

B. Definitions

As used in this local rule, definitions shall be as follows:

- (a) *CFAR Franchise Applicant* means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule ("CFAR") set forth in Part 76 of Title 47 of the Code of Federal Regulations, §76.41.
- (b) *MHCRC* means the Mt. Hood Cable Regulatory Commission created by Intergovernmental Agreement (dated 12/24/92) to carry out cable regulation and administration on behalf of the MHCRC Jurisdictions.
- (c) *MHCRC Jurisdictions* means Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview, and Wood Village, or any one or more MHCRC Jurisdictions, as applicable, whose corporate limits are included, in whole or in part, in a CFAR franchise application.

C. Competitive Franchise Application Requirements

CFAR APPLICATION

I. INSTRUCTIONS AND DEFINITIONS

A CFAR Franchise Applicant shall include the requisite information set forth below, in writing, in its franchise application, in addition to any information required by 47 CFR §76.41 and applicable state and local laws and the application fee set by resolution of the MHCRC. A CFAR Franchise Applicant shall also provide any additional information requested by the MHCRC that is relevant to the evaluation of the application under the criteria adopted herein and applicable law.

The MHCRC shall accept and review only those applications that include complete responses to every element of the information required in this application. Submission of an application that does not include the requisite information set forth below and the application fee shall not commence the time period for granting or denying the application set forth in 47 C.F.R. §76.41(d). If the MHCRC requests any additional information from the CFAR Franchise Applicant, the time period set forth in 47 C.F.R. §76.41(d) shall be tolled from the date the information is requested until the date it is received by the MHCRC.

The CFAR Franchise Applicant shall immediately submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the MHCRC's or the MHCRC Jurisdictions' review of the application.

Upon request, the MHCRC will promptly provide access to documents or information in its possession or control that are necessary for the completion of this application, provided that the CFAR Franchise Applicant does not otherwise have access to such documents or information and that such documents or information are subject to disclosure under Oregon public records laws.

For the purposes of this application, the terms, phrases, and their derivations set forth below shall have the meanings given unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "Affiliated Entity" or "Affiliate" means any entity having ownership or control in common with the Grantee, in whole or in part, including, without limitation, Grantee's Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.
- B. "CFAR Franchise Applicant" means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule ("CFAR") set forth in Part 76 of Title 47 of the Code of Federal Regulations, §76.41, and includes the Parent Corporation, its subsidiaries and Principals.
- C. "Control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
- D. "Interest" includes officers, directors and shareholders owning five percent or more of the CFAR Franchise Applicant's outstanding stock or any equivalent voting interest of a partnership or joint venture.
- E. "MHCRC" means the Mt. Hood Cable Regulatory Commission created by

Intergovernmental Agreement (dated 12/24/92) to carry out cable regulation and administration on behalf of the MHCRC Jurisdictions.

- F. “MHCRC Jurisdictions” means Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview, and Wood Village, or any one or more MHCRC Jurisdictions, as applicable, whose corporate limits are included, in whole or in part, in a CFAR franchise application.
- G. “Parent Corporation” includes any entity with ownership or control of the CFAR Franchise Applicant.
- H. “Principal” includes any person, firm, corporation, partnership, joint venture, affiliates, or other entity, who or which owns or controls five percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of the CFAR Franchise Applicant.
- I. “Regulatory Authority” includes any governmental or quasi-governmental organization or entity with jurisdiction over all or any portion of the CFAR Franchise Applicant or its operations.

II. REQUISITE INFORMATION

A. IDENTIFICATION AND OWNERSHIP INFORMATION

1. IDENTIFICATION OF APPLICANT AND PROPOSED FRANCHISEE

- a. State the name, address, telephone number and web site (if applicable) of the CFAR Franchise Applicant and the proposed franchisee (if different from CFAR Franchise Applicant).
- b. State the name, address, primary telephone number and primary e-mail address of all individual(s) authorized to represent the CFAR Franchise Applicant before the MHCRC and/or the MHCRC Jurisdictions during their consideration of the franchise(s) requested, including the CFAR Franchise Applicant’s primary contact and any additional authorized contacts.

2. BUSINESS STRUCTURE

- a. Corporation:
 - i. If CFAR Franchise Applicant is a corporation, please list all officers and members of the Board of Directors, their principal affiliations and their addresses;
 - ii. Attach a certified copy of the Articles of Incorporation and Bylaws of the corporation; and
 - iii. State whether the CFAR Franchise Applicant is directly or indirectly controlled by another corporation or legal entity.

If so, attach an explanatory statement and respond to questions 2.a. (i) and (ii) above concerning the controlling corporation.

- b. Partnership:
 - i. If CFAR Franchise Applicant is a partnership, please describe the structure of the partnership and the Interests of general and limited partners.
 - ii. State whether the CFAR Franchise Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, respond to 2.a. (i) – (ii) or 2. b. (i) above, as applicable, concerning the controlling entity.

3. EXPERIENCE

a. Current Franchises

Please list all cable systems in which the CFAR Franchise Applicant or any Affiliate owns more than five percent of the system. For each system include name of system, address, communities served, number of subscribers, number of homes passed, date of system award, duration (start and end date) of franchise, status of construction, and percent of penetration of homes passed as of most recently available date (indicate date). Also include name, title, and telephone number of system manager.

b. Potential Franchises

List communities where the CFAR Franchise Applicant or any Affiliate currently has a formal or informal request pending for an initial franchise, the renewal of a franchise, or the approval of a transfer of ownership. Include name of communities, date of application, date of expected action, estimated number of homes.

4. MANAGEMENT STRUCTURE

Attach a management/organizational chart, showing the management structure of the CFAR Franchise Applicant. Also, provide a similar chart showing the relationship of the CFAR Franchise Applicant to all general partners, Parent Corporations, subsidiaries, Affiliates and all other subsidiaries of Parent Corporations, including a brief description of each entity's relationship to the CFAR Franchise Applicant.

5. MANAGEMENT AGREEMENT

State whether there are any management agreements existing or proposed between the CFAR Franchise Applicant and any Parent Corporation or Affiliate related to construction and operation of the CFAR Franchise Applicant's planned system in MHCRC Jurisdictions. If yes, attach a copy of any such agreement.

6. MANAGEMENT FEES

List all entities entitled to receive management or other fees for the income produced by the CFAR Franchise Applicant's planned systems. Identify amounts or percentages of fees for each such entity.

B. LEGAL QUALIFICATIONS

1. MEDIA CROSS-OWNERSHIP

Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. §533 (a), and applicable FCC rules prohibit certain forms of media cross-ownership. Please state whether the CFAR Franchise Applicant or an Affiliate directly or indirectly owns, operates, controls or has an Interest in any of the following, OR whether the CFAR Franchise Applicant holds or operates any company or business operating jointly with any of the following:

- a. A national broadcast television network (such as ABC, CBS or NBC, etc.).
- b. A television broadcast station whose predicted Grade B contour, computed in accordance with Section 73.684 of the FCC's rules, overlaps in whole or in part the MHCRC Jurisdictions' service area, or an application for license to operate such a station.
- c. A telecommunications or telephone company whose service area includes any portion of the MHCRC Jurisdictions' service area.

If the response to any of the above is affirmative, state the name of the CFAR Franchise Applicant or Affiliate, the nature and percentage of ownership or Interest and the company that is owned or in which the Interest is held.

2. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Federal Law requires cable system operators to be certified by the Federal Communications Commission (FCC) as being in compliance with the equal employment opportunity requirements of §634(e) of the Cable Communications Policy Act of 1984, 47 U.S.C. §554(e). The CFAR Franchise Applicant shall attach any current FCC certification(s) for its

existing cable system holdings, if any, or indicate its intention to apply for and abide by same.

3. FRANCHISE VIOLATIONS

State whether the CFAR Franchise Applicant or any Affiliate been found in violation by a Regulatory Authority or franchising authority of any franchise ordinance or agreement, contract or regulation governing a cable system. If so, identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

4. OTHER VIOLATIONS

State whether the CFAR Franchise Applicant been found in violation by a Regulatory Authority of any other type (e.g. utility) of franchise, ordinance, agreement, permit, contract or regulation. If so, identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

C. FINANCIAL QUALIFICATIONS

1. For CFAR Franchise Applicants with existing operations: provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three fiscal years for the CFAR Franchise Applicant and any Parent Corporation.
2. For CFAR Franchise Applicants who are new (start-up) entities: provide pro forma projections for the next five fiscal years, if available, but at a minimum the next three fiscal years from the date of the application.

D. TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS

1. Describe the CFAR Franchise Applicant's planned initial and proposed cable services geographic area, including a map and proposed dates for offering service to each area;
2. If the CFAR Franchise Applicant has or asserts existing authority to access the public right of way in any of the initial or proposed service areas listed in D.1. above, state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority;
3. Describe with particularity the CFAR Franchise Applicant's planned residential Cable services, including basic cable services, cable programming service tier, and any additional pay-per-view, on-demand or digital services; and the projected rates for each category or tier or service;
4. Describe with particularity the CFAR Franchise Applicant's planned

- system technical design, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, and planned count of households per residential node;
5. Describe with particularity the CFAR Franchise Applicant's planned non-residential cable services;
 6. Describe the CFAR Franchise Applicant's planned construction and extension or phase schedule, as applicable, including system extension plans or policy; describe current status of the CFAR Franchise Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable;
 7. Describe the CFAR Franchise Applicant's plan to ensure that the safety, functioning and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the CFAR Franchise Applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation or removal of the facilities; also state the proposed allocation of costs of installation, construction, operation or removal of facilities between the CFAR Franchise Applicant and the subscriber;
 8. Describe the availability and cost of a device to enable a subscriber to block obscene or indecent programming; and
 9. Describe the CFAR Franchise Applicant's plan to comply with the subscriber privacy protections set forth in 47 U.S.C. §551.

E. PROPOSED FRANCHISE TERMS

State the franchise terms proposed by the CFAR Franchise Applicant for each of the following:

1. Term of Franchise;
2. With respect to PEG:
 - a. PEG access, including channel capacity, programming, a description of proposed services, facilities and equipment, and the CFAR Franchise Applicant's plan for interconnections with existing PEG facilities and designated PEG providers in existing MHCRC cable franchise areas to provide PEG programming of adequate technical quality; and
 - b. PEG capital support;
3. With respect to Institutional Networks:
 - a. Capacity and services to be provided, including a description of the network and equipment to be installed, activated, maintained or interconnected with existing institutional networks, potential sites to be served, and proposed technical means of interconnection, where applicable; and
 - b. Institutional network capital support;
4. Franchise fee payments, including a statement of all planned categories of cable revenue included in "gross revenues" for purposes of the fee (or a

detailed description of the fee base if not based on gross revenues), and any proposed limitation on the MHCRC's and MHCRC Jurisdiction's access to relevant books and records to verify timely and accurate payment;

5. Amount of insurance coverage planned for CFAR Franchise Applicant operations, services and activities on behalf of the MHCRC Jurisdictions in whose corporate boundaries the CFAR Franchise Applicant proposes to provide service; the scope of the coverage; and the length of time the policy is planned to be effective;
6. Amount of performance bond in favor of the MHCRC Jurisdictions in whose corporate boundaries the CFAR Franchise Applicant proposes to provide service to ensure the CFAR Franchise Applicant observes, fulfills and performs each term and condition of the franchise; any limitations on the exercise of the bond; and length of time the bond is planned to be effective;
7. Terms of indemnity to be provided to the MHCRC Jurisdictions in whose corporate boundaries the CFAR Franchise Applicant proposes to provide service;
8. Existing right of way authority, if any, and terms of use of the rights of way in the MHCRC Jurisdictions in whose corporate boundaries the CFAR Franchise Applicant proposes to provide service;
9. Technical and operational standards, including performance testing and appropriate sanctions for failure to meet standards; and
10. Customer service and consumer protection standards or policies, including but not limited to telephone, billing and repair response times, customer service representative (CSR) ratio to subscriber base, the method of evaluating the adequacy of customer service, reporting procedures and penalties for failure to meet standards.

For each item listed above, the CFAR Franchise Applicant shall provide a summary with sufficient detail to demonstrate the manner in which each term proposed by the CFAR Franchise Applicant compares to corollary or reasonably related terms in any cable franchise currently in effect in any of the MHCRC Jurisdictions, the most recent needs ascertainment conducted by or on behalf of the MHCRC or the MHCRC Jurisdictions, and local customer service standards.

F. MISCELLANEOUS PROVISIONS

1. State whether the CFAR Franchise Applicant contemplates the provision of any cable services on its system under an Open Video Systems ("OVS") regulatory regime, within the meaning of Section 653 of the 1934 Communications Act (47 U.S.C. §573).
2. Provide a short narrative describing the CFAR Franchise Applicant's experience in and plans for providing Equal Employment Opportunity, Affirmative Action and Minority Business Enterprise utilization.

3. Provide a short narrative describing the CFAR Franchise Applicant's experience in and/or goals for satisfactory cable subscriber customer service.

III. AFFIDAVIT OF APPLICANT

Each application shall be accompanied by an affidavit substantially in the form set forth below:

This application of the CFAR Franchise Applicant is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the CFAR Franchise Applicant and certifies the representations are true and correct.

The CFAR Franchise Applicant recognizes that all representations are binding on it and that material misrepresentations or omissions, or failure to adhere to any such representation may result in a negative MHCRC recommendation to the MHCRC Jurisdictions, or denial of a CFAR franchise application by a MHCRC Jurisdiction.

Consent is hereby given to the MHCRC, the MHCRC Jurisdictions, and their representatives to make inquiry into the legal, character, technical, financial and other qualifications of the CFAR Franchise Applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

The CFAR Franchise Applicant recognizes that information submitted is open to public inspection and subject to the Oregon Public Records Law. We advise the CFAR Franchise Applicant to be familiar with the Oregon Public Records Law. The CFAR Franchise Applicant should specifically identify any information it considers proprietary. In the event that the MHCRC and/or the MHCRC Jurisdictions receive a request from another party to disclose any information which the CFAR Franchise Applicant has deemed proprietary, the MHCRC and/or the MHCRC Jurisdictions, as appropriate, will tender to the CFAR Franchise Applicant the defense of any request to compel disclosure. By submitting information which the CFAR Franchise Applicant deems proprietary or otherwise exempt from disclosure, the CFAR Franchise Applicant agrees to defend and hold harmless the MHCRC and the MHCRC Jurisdictions from any claim for disclosure including but not limited to any expenses including out-of-pocket costs and attorneys' fees, as well as any judgment entered against the MHCRC or the MHCRC Jurisdictions for the attorney fees of the party requesting disclosure.

Name of CFAR Franchise Applicant's Authorized Representative:

Affiant's Signature:

Official Position:

Date:

NOTARIZATION

Subscribed and sworn before me this _____ day of _____, 200__.

Notary Public for Oregon:

My Commission expires: _____.

D. Application Fee

The MHCRC shall, by resolution, set an application fee sufficient to cover the reasonable cost of processing applications under this Local Rule. Upon request of the CFAR Franchise Applicant, the MHCRC may reduce or waive the application fee. In evaluating such a request, the MHCRC will consider the following factors: (1) the size of the proposed franchise area; (2) the number of potential subscribers in the proposed franchise area; (3) the financial hardship to the CFAR Franchise Applicant (including any parent corporation or affiliate); and (4) other information relevant to the cost of processing the application and/or the CFAR Franchise Applicant's ability to pay the fee.

E. Review Process

I. Acceptance of Application.

Within 5 business days of receipt of an application, MHCRC staff shall review the application to ensure all requisite information is included in the application.

- A. If the application is not complete, staff will immediately notify the CFAR Franchise Applicant in writing, listing the requisite information that is required to complete the application and notifying the CFAR Franchise Applicant the that time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will not begin to run until such information is received.
- B. If the application is complete, staff will immediately notify the CFAR Franchise Applicant in writing that all requisite information has been received.

II. Staff Review.

MHCRC staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff requires additional information from the CFAR Franchise Applicant, staff will promptly request the information from the

CFAR Franchise Applicant, in writing, along with a notification that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the MHCRC. After completing the review, staff shall provide an analysis of the application to the MHCRC.

III. Public Hearing.

The MHCRC shall hold a public hearing affording participants a process substantially equivalent to that required by 47 U.S.C. §546(c)(2) governing renewal of cable franchises.

IV. Review Criteria.

The MHCRC may recommend to the MHCRC Jurisdictions that they deny and MHCRC Jurisdictions may deny an application if, based on the information provided in the application, at the public hearing and/or any terms of a proposed franchise agreement:

- A. The CFAR Franchise Applicant does not have the financial, technical, or legal qualifications to provide cable service;
- B. The CFAR Franchise Applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support, as evidenced by the most recent needs ascertainment conducted by or on behalf of the MHCRC or the MHCRC Jurisdictions, or other relevant study of community needs; or
- C. The CFAR Franchise Applicant's proposed terms do not comply with applicable federal, state and local laws and regulations including, but not limited to, local customer service standards, or relevant existing contractual obligations of the MHCRC Jurisdictions.