

# **MT. HOOD CABLE REGULATORY COMMISSION (“MHCRC”) CFAR Competitive Cable Services Franchise Application**

FOR ALL OR ANY PORTION OF THE CITIES OF PORTLAND,  
GRESHAM, TROUTDALE, FAIRVIEW AND WOOD VILLAGE  
AND MULTNOMAH COUNTY, OREGON (“JURISDICTIONS”)

## **SECTION I: BACKGROUND AND INSTRUCTIONS**

### **A. INSTRUCTIONS**

1. This application form and process only applies to companies who wish to submit a formal cable services franchise application in accordance with 47 CFR §76.41 and the CFAR Local Rule. Any company may elect to submit a cable services franchise proposal to the Mt. Hood Cable Regulatory Commission (“MHCRC”) and/or engage in cable franchise negotiations without regard to the CFAR. In such cases, the MHCRC is authorized to negotiate competitive cable services franchises for recommendation to the Jurisdictions (MHCRC “Jurisdictions” include the cities of the Portland, Gresham, Troutdale, Fairview and Wood Village and Multnomah County).
2. A pre-application meeting with MHCRC staff prior to submitting a CFAR application is recommended in order to identify potential questions and to clarify issues. Meetings can be scheduled by contacting:  
Julie S. Omelchuck, Assistant Director  
Mt. Hood Cable Regulatory Commission  
1120 SW 5<sup>th</sup> Ave., Rm 1305  
Portland, OR 97204  
Telephone: 503.823.4188  
Fax: 503.823.5370  
Email: [julieo@mhcrc.org](mailto:julieo@mhcrc.org)
3. In order for the MHCRC to accept an application as complete, the CFAR Franchise Applicant must include the information set forth in this application. Please structure CFAR Franchise Applicant information to correspond with the sections and subsections of this application form.
4. If a CFAR Franchise Applicant asserts that any required information is not relevant to its application, it must identify the nature of the information and provide a statement on the basis for the omission.
5. Within five business days of receipt of an application, MHCRC staff will notify the CFAR Franchise Applicant whether or not additional information is required for the

MHCRC to consider the application complete. Submission of a CFAR application that does not include complete information or the application deposit (see Section C below) will not commence the time period for granting or denying the CFAR application.

6. In order to ensure the requisite information from the CFAR Franchise Applicant is complete and accurate, throughout the MHCRC's or the MHCRC Jurisdictions' review of the application, additional information may be required from the CFAR Franchise Applicant. If additional information is required 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.
7. Documents relevant to the competitive cable services franchise application are available on the MHCRC's website <http://www.mhcr.org>. CFAR Franchise Applicants should contact MHCRC staff if assistance is needed with obtaining access to documents or information necessary for the completion of the CFAR application.
8. The Jurisdictions served by the MHCRC are all Oregon Home Rule local governments with voter-approved charters and local legislative authority. The information that an applicant will have to provide may vary depending upon the requirements of local charters or ordinances.

## **B. SUBMISSION OF APPLICATIONS**

CFAR Franchise Applicants must submit one (1) electronic copy and five (5) hard copies of a completed application, containing all information required in the application, to the contact provided in Section A(2) above.

## **C. APPLICATION DEPOSIT**

1. Unless modified under C.3., below, a CFAR Franchise Applicant must include an initial \$5,000 deposit with its CFAR application to defray MHCRC costs in processing the application. Additional deposits, in increments of \$5,000, may be required as the initial and any additional deposits are depleted.
2. The MHCRC will document its reasonable costs related to processing the CFAR application. The MHCRC will provide written documentation of the MHCRC's costs to the CFAR Franchise Applicant on a monthly basis. If the documented costs exceed the initial \$5,000 deposit, the MHCRC will notify the CFAR Franchise Applicant and the CFAR Franchise Applicant, within 30 days of the notice, must submit additional deposits in \$5,000 increments. If the MHCRC's total costs are less than the total amount deposited by the CFAR Franchise Applicant, the excess will be refunded to the CFAR Franchise Applicant within 45 days of concluding the franchise application process.

3. Upon request of a CFAR Franchise Applicant, the MHCRC may reduce or waive the application deposit. Such a request must accompany the CFAR application. Such a request will automatically toll the time period set forth in 47 C.F.R. §76.41(d) to enable the MHCRC to evaluate and respond in a reasonable time to the request for such reduction or waiver. 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 deposit.
4. The MHCRC's CFAR franchise application deposit is in addition to, and does not replace any applicable fees or charges required by a Jurisdiction.

**D. BACKGROUND**

1. FCC Competitive Franchise Application Process Rule ("CFAR"). On December 20, 2006 the Federal Communications Commission ("FCC") adopted a Report and Order and Further Notice of Proposed Rulemaking on franchising in MB Docket No 05-311. In the Order, the FCC adopted an amendment to Part 76 of Title 47 of the Code of Federal Regulations to create a new rule regarding competitive cable franchise applications, designated as 47 CFR §76.41. The FCC's Order was published in the Federal Register on March 21, 2007. A challenge to the FCC's Order was denied by the 6<sup>th</sup> Circuit Court in the case of Alliance for Community Media v. F.C.C., --- F.3d ---, 2008 WL 2549008 (6th Cir June 27, 2008).
2. Jurisdictions CFAR Local Rule for Franchise Applications. In compliance with the FCC's mandates under the CFAR, and to ensure that the appropriate application process is followed by competitive cable services providers, the MHCRC Jurisdictions adopted a CFAR Local Rule in May 2007. Under the CFAR Local Rule, the MHCRC, on behalf of the MHCRC Jurisdictions, will process competitive cable franchise applications submitted pursuant to 47 CFR §76.41.
3. Mt. Hood Cable Regulatory Commission ("MHCRC"). The MHCRC was created by Intergovernmental Agreement (dated 12/24/92) among the Jurisdictions to administer and enforce cable services franchise agreements. The MHCRC is comprised of eight members appointed by each of the Jurisdictions. By agreement between the City of Portland and the MHCRC, the MHCRC is staffed by the City of Portland Office of Cable Communications and Franchise Management.

**E. FURTHER INFORMATION AND CLARIFICATIONS**

Requests for further information or clarifications of the application form or process should be directed to:

MT. HOOD CABLE REGULATORY COMMISSION  
1120 SW Fifth Avenue, Room 1305  
Portland, OR 97204  
Telephone: 503.823.5385  
Fax: 503.823.5370  
Email: [mhrcinfo@ci.portland.or.us](mailto:mhrcinfo@ci.portland.or.us)

**F. DEFINITIONS**

For the purposes of the CFAR Franchise application, the Applicant may rely on the definitions of terms and phrases as set forth in Attachment A – Standard Cable Services Franchise Provisions, and/or Attachment B – MHCRC Cable Customer Service Standards as applicable. If Applicant is using terms and phrases with meanings different from those provided in Attachment A and B, then Applicant should note such differences in its CFAR Application.

**SECTION II: REQUISITE INFORMATION**

**A. IDENTIFICATION AND OWNERSHIP INFORMATION**

1. IDENTIFICATION OF CFAR FRANCHISE APPLICANT

- a. Provide the name, address, telephone number and web site (if applicable) of the CFAR Franchise Applicant.
- b. Provide 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 publicly-traded corporation, provide the most recent Securities and Exchange Commission (SEC) filing; or
  - ii. If CFAR Franchise Applicant is a privately held corporation, provide information on shareholders owning five percent or more interest in the corporation; and

- iii. Provide information relating to the CFAR Franchise Applicant's authority to act as a corporation in the State of Oregon; and
- iv. 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 , ii and iii above concerning the controlling corporation.

b. Partnership:

- i. If CFAR Franchise Applicant is a partnership, please describe the structure of the partnership and identify partners owning five percent or more interest in the partnership.

### 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 CFAR application pending for a cable franchise. Include name of communities, contact information (as set forth in question A.1.a., above) and date of the franchise application.
- c. Attach a management/organizational chart, showing the management structure of the CFAR Franchise Applicant for the proposed cable system operation and delivery of cable services within the applicable MHCRC Jurisdiction(s).

## **B. LEGAL QUALIFICATIONS**

### 1. MEDIA CROSS-OWNERSHIP

- a. 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:
  - i. A national broadcast television network (such as ABC, CBS or NBC, etc.).
  - ii. 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.  
iii. A telecommunications or telephone company whose service area includes any portion of the MHCRC Jurisdictions' service area.

b. If the response to any of the above is affirmative, state 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 complying with the equal employment opportunity requirements of §634(e) of 47 U.S.C. §554(e). The CFAR Franchise Applicant must 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.

## C. **FINANCIAL QUALIFICATIONS**

Please document and demonstrate the CFAR Franchise Applicant's capability and financial qualifications to capitalize cable system operation and the delivery of cable services for the proposed franchise term. Acceptable forms of documentation might include audited financial statements together with any notes necessary to the understanding of the financial statements, or SEC filings, in connection with existing cable operations, or financial pro formas (3-5 years) for proposed cable system operations.

## D. **TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS**

Using the MHCRC Jurisdictions standard cable services franchise requirements (Attachment A) as a baseline reference for substantial equivalency and competitive neutrality, CFAR Franchise Applicants should describe the Applicant's technical qualifications and planned services as follows:

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 the Franchise area or portions of the franchise area as may be specified;

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 identified in D.1. above, describe the basis for such authority or asserted authority and provide documentation of such authority;
3. Describe the CFAR Franchise Applicant's planned cable services, including basic cable services (including PEG access services and capacity), 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 the CFAR Franchise Applicant's planned system technical design, including upstream and downstream capacity and speed, provision for analog and/or digital services or packages and distribution of fiber;
5. 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;
6. Describe the CFAR Franchise Applicant's plan to ensure that the safety, functioning and appearance of property, and convenience and welfare of other persons, not be adversely affected by installation or construction of the CFAR Franchise Applicant's facilities, and that property owners will be 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; and
7. Describe the CFAR Franchise Applicant's plan to comply with the subscriber privacy protections set forth in 47 U.S.C. §551.A.

### **SECTION III: JURISDICTIONS STANDARD CABLE SERVICES FRANCHISE REQUIREMENTS & CFAR APPLICANT'S PROPOSED FRANCHISE TERMS**

- A. The MHCRC and the Jurisdictions have developed standardized cable services franchise requirements and provisions to ensure substantial equivalency and competitive neutrality in the provision of competitive cable services to cable subscribers in MHCRC franchise areas. Current, baseline franchise provisions and requirements are set forth in Attachment A to this application, along with existing MHCRC Cable Customer Service and Consumer Protection Requirements as Attachment B to this application.

**B.** In order for the CFAR Franchise Application to be considered complete, and to enable the MHCRC to ascertain substantial equivalency and competitive neutrality, all CFAR cable services Franchise Applicants must acknowledge acceptance of, or detail the Applicant's proposed terms and/or modifications, as appropriate, to each section of the standard cable franchise requirements contained in Attachment A and the Customer Service requirements contained in Attachment B. In addition to including proposed terms where indicated, if the Applicant proposes any modification(s) to the MHCRC's standard cable franchise requirements set forth in Attachment A or Customer Service Standards of Attachment B, the Applicant should include specific alternative proposals and associated proposed franchise language, along with a detailed explanation and/or justification for the proposed modification(s). Such explanation should also include specific analysis of how such terms or alternatives will adequately address issues of particular importance (as summarized in paragraph C, below) to the Jurisdictions (related to Attachment A's standard franchise requirements or existing cable franchises for the Jurisdictions) or to cable customers (related to Attachment B's cable customer service standards).

**C.** In responding to Paragraph B of this section, above, the CFAR Franchise Applicant, should address items of particular importance, including the following:

1. Proposed Franchise Term. Initial proposed term of franchise, proposed Effective Date, and any proposed term extensions and/or conditions for such term extensions (see Section 1.2 and Section 1.3 of Attachment A).
2. Proposed PEG Access provisions; including:
  - a. Initial and reserved PEG Access channel capacity, including digital channel capacity and, if applicable, analog channel capacity;
  - b. Technical design to interconnect with the PEG Access providers at their headend sites in order to include PEG Access channels and programming in the residential cable services (Section 6.4(A) of Attachment A) as well as necessary carriage and routing of PEG Access programming and signals to and from other franchised cable service providers serving jurisdictions within and/or contiguous to the CFAR Franchise Applicant's proposed franchise area.;
  - c. PEG Access proposed channel assignments if different from those set forth in Attachment A (Section 6.3(A) of Attachment A);
  - d. Ability to narrowcast PEG Access channels to discrete areas such as Portland Community College and Mt. Hood Community College service boundaries, jurisdictional boundaries and public school district boundaries;
  - e. Inclusion of PEG Access channel and programming information in CFAR Franchise Applicant's on-screen, print and on-line program guides available to residential cable subscribers (Section 6.3(D) of Attachment A);
  - f. Inclusion of PEG Access programming in CFAR Franchise Applicant's video-on-demand platform and services (Section 6.5 of Attachment A); and
  - g. Applicant's proposal regarding the ability and capacity for PEG access



providers to originate a video programming signal from public, educational and government institutions in the CFAR Franchise Applicant's service area and transport those signals live to the access providers' headends for insertion in PEG Access channels (Section 6.6 of Attachment A).

3. Proposed PEG Access and I-Net Capital Support. Indicate acceptance of the PEG Access/I-NET Capital support requirement detailed in Section 8 of Attachment A, or Applicant's proposal if different.
4. Proposed Institutional Network. Describe the I-Net capacity and services to be provided by CFAR Franchise Applicant, including any applicable network design, interconnects with existing I-Nets, and/or potential sites to be served, if different or more specific than the provisions set forth in Section 7 of Attachment A.
5. Proposed Technical and Operational Standards. Indicate acceptance of technical and operational standards, including performance testing and appropriate sanctions for failure to meet standards, if different from Section 10 of Attachment A.
6. Customer Service Standards. The Jurisdictions have adopted customer service and consumer protection standards, included as Attachment B to this Application. List any proposed variances to the standards; any proposed limitations to availability of information for the MHCRC to evaluate performance under the standards; proposed reporting procedures; and proposed penalties for failure to meet standards.

**D.** For each item listed in response to Sections B and C, above, Applicants must provide a narrative summary with sufficient detail to demonstrate the manner in which each term proposed by the Applicant compares, as applicable, to corollary or reasonably related terms in Attachment A, or else to comparable provisions in any cable franchise currently in effect in the MHCRC Jurisdictions, or to the most recent needs ascertainment conducted by or on behalf of the MHCRC, or (as applicable) to the MHCRC Jurisdiction's adopted local cable customer service standards.

## **SECTION IV: AFFIDAVIT OF CFAR FRANCHISE APPLICANT**

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

**Affidavit**

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            , 20\_\_.

Notary Public for Oregon:

My Commission expires:            .

## **ATTACHMENTS TO CFAR FRANCHISE APPLICATION**

**ATTACHMENT A** – MHCRC STANDARD CABLE SERVICES FRANCHISE  
REQUIREMENTS (36 pages)

Web link: [www.mhcr.org](http://www.mhcr.org)

**ATTACHMENT B** – MHCRC CABLE CUSTOMER SERVICE STANDARDS (5 pages)

Web link: <http://www.mhcr.org/docs/CustProtectionSvcStds.pdf>

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