

Before the  
Mt. Hood Cable Regulatory Commission  
1120 SW Fifth Ave., #1305  
Portland, OR 97204

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JUN 18 2009

Authorizing modification in the manner of )  
performance of Comcast provision )  
of FM radio signals in )  
West Portland franchise area )

Order 2009-02

OFFICE OF CABLE COMMUNICATIONS  
CITY OF PORTLAND

Passed by the Commission: June 15, 2009

Section 1. Findings.

- 1.1 The Mt. Hood Cable Regulatory Commission ("MHCRC" or "Commission") was created by Intergovernmental Agreement (dated December 24, 1992) ("IGA") to carry out cable regulation and administration on behalf of Multnomah County and the cities of Fairview, Gresham, Portland, Troutdale, and Wood Village ("the Jurisdictions"). Among other things, the Commission oversees cable franchise compliance in connection with the cable franchises administered by the MHCRC on the Jurisdictions' behalf.
- 1.2 The MHCRC administers the West Portland cable franchise, a franchise initially issued in 1993 to TCI, amended and extended by agreement of the parties in 1998, and ultimately transferred to Comcast in 2002 on the recommendation of the MHCRC and with the approval of the City of Portland. Among other things the West Portland cable franchise provides, in Section 5.2(A) that the franchisee (currently Comcast) is required to provide FM radio signals to residential subscribers in the West Portland franchise area. The provision of local radio signals is also listed in Section 5.3(N) as one of the broad programming categories which Comcast is required to "provide or enable the provision of".
- 1.3 According to information provided by Comcast, Comcast has duly included FM signals among the services provided to Westside cable subscribers, but under Comcast the FM radio band has been provided without charge, on a complimentary basis, and has not been separately advertised, tariffed or billed. Access to the FM band through Comcast has been obtained by interested Westside cable subscribers by means of a splitter and separate cable to the subscriber's sound system. Comcast has no separate records or technical means of ascertaining how many Westside cable subscribers have chosen to access the FM band by this means, but estimates the number of active users of the FM band among existing Westside cable subscribers may be very small, possibly less than 50 households out of a current Westside Portland cable subscriber base of 37,238 households.
- 1.4 According to information provided by Comcast, provision of FM radio signals to Westside cable subscribers consumes considerable bandwidth on the system. Comcast estimates that 12 MHz in bandwidth is utilized to provide the FM band in accordance with Westside franchise requirements. Such bandwidth is therefore not available for other uses, such as providing additional digital television programming channels or high definition channels to subscribers.
- 1.5 According to information provided by Comcast, as the current competitive video marketplace has evolved in recent years (e.g. where consumers have access to other video choices including, e.g. satellite, digital broadcasting, and video packages from incumbent telephone companies), the bandwidth constraint arising from the unique Westside franchise FM band carriage requirement has now become a significant negative business factor, constraining Comcast from

adding additional video channels (including high definition channels) in its entire regional service area (including communities from Vancouver, Washington to Salem, Oregon, and the greater Portland metropolitan area served by Comcast).

- 1.6 On May 14, 2009 Comcast requested a modification in its required performance under the Westside cable franchise, proposing to discontinue the direct delivery of FM signals on its West Portland cable system effective September 1, 2009, but offering to concurrently provide affected subscribers an acceptable technical substitute to enable such subscribers to obtain FM signals by other equal or better technical means, and reclaiming the bandwidth in order to provide additional channels and services (including high definition channels) throughout its regional service area.
- 1.7 Comcast is required under Section 5.5(A) of the Westside cable franchise to "not delete or so limit as to effectively delete" any category of programming without the consent of the MHCRC, acting on behalf of the City of Portland. Franchise Section 5.3(N) identifies local radio signals as one of the broad programming categories which Comcast is required to provide.
- 1.8 In light of the benefit to Comcast subscribers in West Portland (and regionally) to obtaining additional channels and cable services, and the reportedly very limited use of the FM band by West Portland households, MHCRC staff recommends that the MHCRC give consent to this modification in the manner of Comcast's specific performance of its Franchise obligations subject to certain conditions, including notification to subscribers, installation of equipment that enables affected subscribers to obtain equal or better access to the equivalent band of FM signals after discontinuation of direct carriage as before, while reserving the ability to revisit and re-evaluate the discontinuation of the Franchise obligation to provide FM signals in light of such circumstances as a population of FM band users substantially greater than anticipated or failure of the technical solution to adequately and effectively substitute for the FM band on an equal or better basis.
- 1.9 The MHCRC has determined that allowing Comcast's requested Franchise modification is in the public interest, is reasonable in light of all the circumstances, is fair to all interested parties, does not result in a substantial change in the West Portland Franchise terms, and should result in a net enhancement, not a reduction, in the overall level of service provided by Comcast to West Portland subscribers.

Now, therefore, the Commission resolves:


## Section 2.

- 2.1 Comcast may discontinue carriage of the FM service band in its West Portland franchise area, effective September 1, 2009, subject to complying with all other terms and conditions set forth in this order.
- 2.2 Comcast shall provide written notice to West Portland subscribers of the discontinuation of carriage of the FM band at least 30 days prior to discontinuation of the service through the current means.
- 2.3 Upon notification or request to Comcast by any West Portland Comcast subscriber, Comcast shall provide at its own expense an adequate technical substitute for the FM signals that shall


enable FM signals to be received by the subscriber at a level equal to or better than the level provided to the subscriber prior to the discontinuation of service. No service charge or other fee or charge shall be assessed by Comcast on any subscriber requesting such a technical substitute.

- 2.4 Comcast shall provide a report to the MHCRC on the implementation of this order, beginning on the first business day of the month following discontinuation of the service as provided in Section 2.1 hereof, and monthly thereafter through December, 2009. The report shall include the cumulative number of subscribers who have contacted Comcast to receive FM signals by alternate means, the technical solution provided, and the date the solution was implemented on a per subscriber basis.
- 2.5 Beginning on and after January 2010, if additional activity under Section 2.3 hereof occurs which was not previously reported to the MHCRC under Section 2.4 hereof, Comcast shall provide a report to the MHCRC containing the information set forth in Section 2.4 hereof. Such report, if required, shall be provided to the MHCRC not less often than quarterly in 2010 based on activity under Section 2.3, or within 30 days of the MHCRC's written request.
- 2.6 The Commission reserves the right to reopen, revise or terminate the provisions of this Order upon 30 days notice to Comcast, should the MHCRC conclude that circumstances materially different from the circumstances identified in this Order have become evident, such as a substantially greater number of households relying on the FM band than previously estimated by Comcast, the failure of the technical substitute to adequately provide equal or better FM service, or other pertinent circumstances as determined by the Commission.
- 2.7 Within ten (10) business days after this Order is approved by the Commission, Comcast shall file with the Commission a written acceptance, executed by a duly authorized representative of Comcast, in the form attached to this Order. Any failure on the part of Comcast to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and the Order shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Order.
- 2.8 This Order is not a waiver of the Commission's right to fully enforce the West Portland Cable Franchise in any and all respects, except as is otherwise specified herein.

PASSED BY THE COMMISSION on June 15, 2009.

  
Norman D. Thomas, Chair

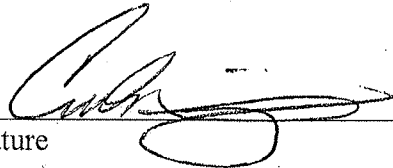
Reviewed by:

  
Ben Walters, Legal Counsel

Attachment: Form of Grantee Acceptance

## COMCAST ACCEPTANCE

This is to advise the Mt. Hood Cable Regulatory Commission that Comcast hereby acknowledges and accepts the terms and conditions of Order 2009-02, approved by the Mt. Hood Cable Regulatory Commission on June 15, 2009, authorizing a modification in the manner of providing carriage of FM radio signals in the West Portland franchise area, and in consideration of the benefits received, Comcast agrees to abide by and perform each and all of the terms and conditions applicable under the Order.

 6/16/09  
\_\_\_\_\_  
Signature Date

REGIONAL SENIOR VICE PRESIDENT  
\_\_\_\_\_  
Title

COMCAST  
\_\_\_\_\_  
Company