

BY-LAWS OF THE MID-WILLAMETTE VALLEY CABLE REGULATORY COMMISSION

September, 1991

ARTICLE 1 - PREAMBLE

Section 1.1. Explanation. Through an Intergovernmental Agreement, certain units of local government have formed in accordance with the laws of the State of Oregon as well as the laws of the various member units of local government, the Mid-Willamette Valley Cable Regulatory Commission (the Commission) to operate a unified cable communications system. By that Agreement the Commission is empowered to adopt these Bylaws governing its procedures and the conduct of its business.

Section 1.2. Responsibilities. The purpose, objectives and responsibilities of the Commission shall be to carry out the general purposes of the Intergovernmental Agreement in accordance with the terms and conditions contained therein.

Section 1.3. Interpretation. These Bylaws shall be liberally construed to accomplish the purposes and responsibilities set forth in §1.1 and §1.2 of these Bylaws, the Intergovernmental Agreement creating the Commission, and the franchise enabling ordinances of the several member jurisdictions. These Bylaws shall not be construed to grant any authority in lieu of or in conflict with such Agreement or ordinances.

ARTICLE 2 - OFFICERS

Section 2.1. Governing Body/Composition, Officers. The governing body of the Commission shall consist of representatives from each member unit of local government selected according to the Agreement. The required officers shall be a Chair and a Vice-Chair.

Section 2.2. Selection of Officers.

2.2.1. The Chair shall be appointed by and serve at the pleasure of the Common Council of the City of Salem.

2.2.2. The Vice-Chair shall be selected as provided in Section 6.3 of the Agreement.

Section 2.3. Chairperson. Except as otherwise provided herein, the Chair shall have the duties and powers to:

2.3.1. Direct the preparation and distribution of an agenda for all Commission meetings;

2.3.2. Preside over all deliberations and meetings of the Commission;

- 2.3.3. Vote on questions before the Commission.
- 2.3.4. Call special meetings of the Commission in accordance with these bylaws;
- 2.3.5. Sign all resolutions or other documents memorializing Commission action; and
- 2.3.6. Establish committees and appoint members thereof.

Section 2.4. Vice-Chairperson. During the absence, disability or disqualification of the Chair, the Vice-Chair shall exercise or perform all the duties and be subject to all the responsibilities of the Chair.

Section 2.5. Cable Officer. The Cable Officer shall be the principal administrative staff person supporting the Commission, and shall be appointed as provided in Section 4.2.

ARTICLE 3 - MEETINGS

Section 3.1. Regular Meetings. Regular meetings of the Commission shall be held quarterly each year at such time and place as may be determined by the commission or its Chair. A regular meeting may be canceled or rescheduled by the Chair if lack of a quorum is apparent or for other good cause. At regular meetings the Commission shall consider all matters properly brought before it without the necessity of prior notice thereof given to any members except change in meeting location. The Commission shall, however, assure that public notice of its meetings is given as required by the Oregon Public Meetings Law.

Section 3.2. Special Meetings. The Chair of the Commission may, upon his or her own motion, and shall, upon the written request of at least two members of the Commission, call a special meeting of the Commission. Unless otherwise specified in the call, notice of all special meetings shall be given personally or by mail to all members of the Commission not less than forty-eight (48) hours in advance thereof. In case of an emergency, a special meeting may be held upon such notice as is appropriate under the circumstances; provided, however, that reasonable effort is made to contact all members of the Commission.

Section 3.3. Agenda.

3.3.1. The acting or appointed Cable Officer shall cause the agenda to be prepared and delivered to members and interested parties at the direction of the Commission Chair. It shall be the responsibility of the Cable Officer to forward to the Commission all support materials relating to any item on the agenda.

3.3.2. The Commission will not be expected to take action on issues for which support materials have not been mailed in advance. The Commission reserves the right not to act on an item on the agenda until it has received a written staff report.

3.3.3. The Commission Chair may alter the order of agenda items to accommodate the public, subject to objection of a majority of the other members of the Commission during a meeting. Any other changes or alterations in the agenda, particularly introduction of items not included in the meeting notification, will require unanimous consent of the Commission.

3.3.4. The public will be given an opportunity to speak on agenda items prior to any Commission action, and on non-agenda items at the end of the meeting. The Chair, at his or her discretion, may limit such remarks to three minutes per person or five minutes for representatives of groups. An effort will be made by staff and Commission members to answer questions or respond to concerns raised by the public at the time those concerns are raised.

Section 3.4. Public Meetings. All meetings of the Commission shall be open to the public and conducted pursuant to the Oregon Public Meetings Law after notice as required by that law.

Section 3.5. Attendance. If a member of the Commission is unable to attend a meeting, he or she is expected to notify the Cable Officer.

Section 3.6. Quorum; Emergency Business. A majority of the duly appointed and qualified members of the Commission shall constitute a quorum; provided, however, that Commissioners appointed by at least two Jurisdictions are among that majority. No action shall be taken by the Commission except on a majority vote of a quorum of the Commission; provided, however, that if only one Jurisdiction is represented at a duly called meeting of the Commission, the Commissioners present shall constitute a quorum for the transaction of emergency business. "Emergency business" means:

3.6.1. Any action required by law to be taken on or before a specific time where it will be, in the judgment of the Chair, unlikely that a quorum can be convened within the time required for action; or

3.6.2. Any action in default of which the Commission will be foreclosed from exercising any right, privilege, power or authority conferred upon it by law or contract; or

3.6.3. Any action in default of which the Commission will incur any direct expense greater than \$500 in the aggregate, or will forfeit any income or benefit of a value greater than \$500 in the aggregate.

Section 3.7. Voting; Rules of Order. No "second" shall be required for any motion proposed by any member of the commission, including motions proposed by the Chair. The chair shall have all privileges of proposing and debating motions as are enjoyed by any other member of the Commission. The Chair shall put each question to a vote after what, in the Chair's judgment, has been sufficient discussion on the question unless a motion is made to extend discussion, table, or refer to committee, or the motion is not debatable under applicable parliamentary rules. *Robert's Rules of Order, Newly Revised* govern Commission meetings and actions except as otherwise specifically provided in these Bylaws. Each member of the Commission is entitled to

vote on all matters at all meetings of the Commission. Legal Counsel and Commission staff members are entitled to participate in discussion, but do not have the right to vote. Each Commission member is deemed to have notice of all prior deliberations and proceedings.

Section 3.8. Action of Commission. Action of the Commission shall be by motion, resolution or order. The Commission shall determine which decisions, if any, shall be by resolution.

Section 3.9. Notice of Jurisdictions and Cable Company. The Cable Officer shall notify the jurisdictions within ten days of any action by the Commission that is subject to review or approval by the Jurisdictions pursuant to the Intergovernmental Agreement. Similar notice shall be given to the Cable Company of any notice affecting any right of the Cable Company under the franchise agreement. Similar notice shall also be given to the private non-profit corporation of any notice affecting any right of the corporation.

Section 3.10. Purchasing and Contracting.

3.10.1. The Commission shall annually designate either the City of Salem or the Marion County Purchasing Manual as the rules and procedures for acquisition of personal property and services by the Commission during that year. The Commission shall have all authority reserved to the Salem City Council or the Marion County Commissioners under the Purchasing Manuals. All other authority therein granted to City or County administrative officers is hereby delegated to the Cable Officer. The Commission may, by majority vote, suspend the rules set forth in the Purchasing Manuals where necessary and otherwise lawful.

3.10.2. Except for emergency purchases as provided in the Purchasing Manuals, the authority of the Cable Officer to acquire any property or service, whether by direct purchase or by contract, without prior approval of the Commission, is limited to \$500. A single group of related purchases or services which could be acquired from a single vendor or provider at the same time shall be considered a single purchase subject to the above limitation.

3.10.3. Subject to the limitations of this Section, the Cable Officer is authorized to issue purchase orders and sign contracts on behalf of the Commission for the acquisition of property and services.

ARTICLE 4 - COMMITTEES AND STAFF

Section 4.1. Committees. The Chair may create committees and subcommittees as necessary to assist the Commission in carrying out its purposes. The composition, function, officers, procedure and duration of committees and subcommittees shall be determined by the Chair. Meetings of committees and subcommittees shall be conducted in accordance with the provisions of the Oregon Public Meetings Law.

Section 4.2. Staff. Administrative staff support to the Commission shall be provided by separate contract, or by appointed staff of one or more Commission members as approved by the Commission. The Commission shall appoint a "Cable Officer" from the administrative staff. The Cable Officer shall be responsible for primary staff support functions. The Commission may delegate such administrative powers and duties to the Cable Officer as it deems proper, consistent with these Bylaws and the Intergovernmental Agreement; provided that final authority and responsibility for all functions expressly delegated to the Commission in the Intergovernmental Agreement shall remain with the Commission.

Section 4.3. Legal Counsel. The Commission shall annually designate either the Marion County Counsel or the City Attorney of the City of Salem to serve as its General Counsel. The Commission may retain the services of special legal counsel as to matters which require highly specialized knowledge or expertise. In such event, the Commission's general counsel shall be co-counsel with the special counsel so selected.

4.3.1. In the event the designated General Counsel determines that a conflict or potential conflict of interest exists, or that there is any other situation under which ethical obligations would prevent representation, then the Commission may engage the services of legal counsel of its choice for advice and representation on the matter.

4.3.2. If both the Salem City Attorney and the Marion County Counsel decline to serve or continue service as General Counsel, the Commission may retain legal counsel of its choice to serve as General Counsel.

ARTICLE 5 - HEARINGS

Section 5.1. Hearings Generally. The Commission, at the request of a member, may conduct such hearings as that member jurisdiction would be authorized to conduct on issues relating to cable franchise agreements, and to PEG cable access (see Article 7). The Commission shall have only such authority to act on behalf of the member jurisdiction as that jurisdiction lawfully and specifically delegates to the Commission. In general, these hearings fall into three separate categories:

5.1.1. **ADMINISTRATIVE HEARINGS.** The first type of hearing, governed by Section 5.2, is to consider requests by the Cable Company for approval of certain changes from the specific terms and conditions of the cable franchise agreement. These matters include, but are not limited to, requests for approval in changes in equipment or system design, requests for approval of variances in the terms, conditions and the manner and performance of the terms and conditions of the agreement, or excuse of violations of the conditions of the agreement.

5.1.2. **SUBSCRIBER COMPLAINTS.** The second category of proceedings concerns the Commission review and hearing of subscriber complaints against the Cable Company. Such hearings are governed, first, by the provisions of the applicable cable enabling ordinances; and, second, by the procedures prescribed for contested case hearings under Article 6 of these Bylaws.

5.1.3. ENFORCEMENT HEARINGS. The third category of hearings pertain to the assessment of penalties for violations of the franchise agreement on the part of the Cable company. Procedures for contested case hearings and the imposition of penalties in general are contained in Article 6.

Section 5.2. Administrative Hearings.

5.2.1. DETERMINATION OF NEED FOR HEARING. The Commission may consider and approve written requests by the Cable Company for changes in system design, equipment or variance of the terms and conditions of the franchise agreement or excuse of violation thereof without conducting a formal public hearing pursuant to this article if the request has been placed on its meeting agenda, due notice of the meeting has been given and the Commission finds that no subscribers, programmers or other members of the public will be adversely affected by approval of the request. Any request from the Cable Company pursuant to this section shall be accompanied by a factual statement from the Cable Company specifying what individuals, groups or classes of subscribers are adversely affected by the request. If it is the Company's position that no individuals, groups or classes of subscribers are adversely impacted by the request, the Company shall set forth the reasons for its belief and support its position with appropriate documentation. Prior to the first Commission meeting on the request, the staff shall review and recommend to the Commission whether a public hearing is appropriate. When considering the request from the Cable Company at the initial meeting, the Commission shall decide by vote whether a hearing is appropriate and, if so, shall set the date for a hearing, or whether action may be taken without a formal hearing. The Commission shall direct staff to obtain any information it deems relevant and shall request the Cable Company to furnish any additional information found necessary for the Commission's consideration of the request.

5.2.2. NOTICE OF HEARING. If a hearing is to be held, the Commission, through its staff, shall cause notice to be given of the hearing at least ten (10) days in advance of the date of the hearing. Notice shall comply with the Oregon Public Meetings Law. The hearing shall be held within thirty (30) days of the Commission's receipt of the request. At the time it sets a matter for hearing, the Commission may direct the Cable Officer, legal counsel or consultants to prepare appropriate reports and recommendations.

5.2.3 CONDUCT OF HEARING. Hearings held pursuant to this article shall be conducted informally. The Cable Company will be entitled to give an oral presentation of the nature of the request and the facts supporting its request. At the hearing, the Commission shall receive any reports on the Company's request submitted by its staff, legal counsel and consultants, if any. Following presentation of the staff report, members of the public, subscribers and other interested parties will have the opportunity to make oral or written presentations to the Commission. Depending on the number of people in attendance at the hearing, the Commission, through its Chair, may require people who intend to speak to enter their names on a speaker's list and limit the time for each speaker to no more than three minutes

of individuals and five minutes for representatives of groups. Staff members, consultants, legal counsel and representatives of the Cable Company will be directed by the Chair to respond to questions or concerns raised by members of the public either immediately or by a specified date, in writing.

5.2.4. COMMISSION ACTION. Following the close of public testimony, the Commission may take whatever action it deems appropriate, including continuance of the hearing for the purpose of receiving additional written testimony on the matter in question. The Commission shall consider, but is not bound by, precedent set by prior actions it has taken in similar cases. All Commission actions shall be consistent with the Intergovernmental Agreement, and shall not conflict with laws of the State of Oregon, applicable ordinances of the member jurisdictions, or regulations of the Federal Communications Commission.

5.2.5. EFFECT OF FRANCHISE AGREEMENT. Nothing in this article shall be construed to supersede any of the specific provisions of any cable communications franchise agreement regarding hearings, the conduct thereof, notice requirements or provisions limiting the periods of time following certain events in which hearings must be held and decisions reached.

ARTICLE 6 - CONTESTED CASE HEARINGS

Section 6.1. Pre-Hearing Procedures.

6.1.1. DISCUSSION OF POSSIBLE VIOLATIONS WITH CABLE COMPANY. All information concerning possible violations of the franchise agreement shall be referred to the Commission staff. The Cable Officer shall be responsible for complying with the terms of the franchise agreement and enabling ordinance and discussing the apparent violation with the appropriate representative of the Cable Company. A report concerning the subject matter of the apparent violation and the substance of the discussions with the Cable Company shall be given to the Commission at its next regularly scheduled meeting or at a time as directed by the Commission.

6.1.2. NOTICE OF VIOLATIONS. The Commission, upon recommendation of the Cable Officer or on its own, may direct the Cable Officer to give notice to the Cable Company that a violation may have occurred. Such notice shall specify the nature of the possible violation and the way it transgresses the cable franchise agreement. Such notice shall be in writing and shall comply with the requirements of the cable franchise agreement. Following within thirty (30) days after the giving of notice to the Cable Company of the apparent violation, the Cable Officer shall report to the Commission at its regularly scheduled meeting the response received from the Cable Company.

6.1.3. REQUEST FOR HEARING. Within ten (10) days after receipt of the written notice of violation, the Cable Company may request a public hearing from the Commission. If the Cable Company neither requests a hearing nor remedies the violation, the Commission may direct the Cable Officer and legal

counsel to pursue whatever administrative or judicial remedies are available pursuant to the terms of the franchise agreement against the Cable Company.

Section 6.2. Notice of Hearing. Upon receipt of the request for a hearing from the Cable Company, a contested case hearing shall be held within thirty (30) days of receipt of the request by the Commission and notice of the hearing shall be given in accordance with the Oregon Public Meetings Law. The Commission shall determine whether to conduct the hearing itself or refer the matter to a hearings officer at the time it schedules the hearing.

Section 6.3. Conduct of Hearings. The hearing shall be conducted by or shall be under the control of the Chair if the hearing is held by the entire Commission; otherwise the hearing shall be conducted by the hearings officer. The hearings officer may be any person designated by the Commission. The hearing shall be recorded. At the discretion of the Chair or the hearings officer, as the case may be, the hearing shall be conducted in the following manner:

6.3.1. Staff shall present an opening statement and evidence supporting imposition of a penalty. The Cable Company shall be afforded an opportunity to examine any witnesses called by staff.

6.3.2. The Cable Company shall then be given opportunity for an opening statement and presentation of evidence in support of its position with respect to the existence of a violation, the proper sanction, if any, or both. Staff shall be given the opportunity to examine any witnesses called by the Cable Company.

6.3.3. Staff shall then be invited to present any evidence in rebuttal to the Company's case.

6.3.4. Closing statements summarizing the arguments of the staff and Company in support of their respective positions shall then be heard. The Commission or hearings officer may direct that closing statements be provided in writing either in addition to or in lieu of oral argument at the close of presentation of evidence.

6.3.5. The hearings officer, the affected parties and the Commission or attorneys therefor shall have the right to examine any witnesses, subject to the authority of the chair or hearings officer presiding over the hearing to limit cumulative, repetitious or irrelevant matter, and to rule on the admissibility of evidence as provided in this section and Section 4 of this Article.

6.3.6. The hearing may be continued by recesses.

6.3.7. Reasonable time limits may be set for oral presentation and cumulative, repetitious or immaterial matter may be excluded or limited.

6.3.8. Exhibits shall be marked and the markings shall identify the person offering the exhibit. The exhibits shall be preserved as part of the record of the proceedings and shall be retained until all applicable periods of limitations on judicial review have expired and the matter is no longer pending.

Section 6.4. Rules of Evidence. Testimony shall be given under oath administered by a public officer authorized by law to administer oaths. Evidence (including testimony) of a type commonly relied upon by reasonable and prudent persons in the conduct of their serious affairs shall be admissible. Cumulative, repetitious or irrelevant evidence shall be excluded. The Chair or hearings officer presiding over the hearing shall be the judge of admissibility of evidence, whether or not objected to, and shall announce all rulings on evidence subject to a motion by any member of the Commission to refer the decision of the Chair to a vote of the Commission in hearings held by the Commission. Evidence objected to may be received subject to later ruling on the objection. In such an event, the determination on the objection shall be made in writing either before or as part of the written determination of the case.

Section 6.5. Preparation of Proposed Order on Contested Cases, Filing of Exceptions and Argument.

6.5.1. At the direction of the Commission or hearings officer, as the case may be, a proposed order, including findings of fact and conclusions of law shall be served upon the Cable Company prior to a final order being entered.

6.5.2. The parties shall be given the opportunity to file exceptions and arguments with the Commission prior to Commission adoption of any proposal.

6.5.3. The Commission may direct the prevailing party (staff or Cable Company as the case may be) to prepare and serve on the other party and the Commission a proposed order, which the Commission may adopt if no objects are filed within ten days of service of the proposed order on the other party, and may otherwise adopt with or without amendments after considering any objections presented in writing the other party within ten days of service of the proposed order.

Section 6.6. Final Orders on Contested Cases, Notifications. Final orders on contested cases shall be in writing and include the following:

6.6.1. Rulings on admissibility of evidence received under object where a separate ruling has not previously been made.

6.6.2. Findings of Fact. Those items which are either agreed as facts or which, though disputed, are determined by the fact finder on substantial evidence to be fact.

6.6.3. Conclusions of Law. Applications of the controlling law to the facts found and legal results arising therefrom.

6.6.4. Order. The action taken by the Commission as a result of the findings of fact and conclusions of law. Parties to the case and their attorneys of record shall be served a copy of the order.

ARTICLE 7 - PEG ACCESS

Section 7.1. Notice to PEG Access Services Provider. Prior to taking any action on any matter affecting public, educational or government access services ("PEG access"), the Commission shall notify the PEG access services provider of the Commission's intention to take such action and of any supporting materials, including any requests from the Cable Company relevant thereto. With such notice the Commission shall request a report and recommendation from the PEG access services provider concerning the proposed action.

Section 7.2. Hearings. The PEG access services provider may request that any matter being considered by the Commission that will have an effect on public, educational or government access services shall be subject to a public hearing as provided for in Article 5. In such case, the PEG access services provider shall have the same rights to a hearing as the Cable Company. Notice of such hearings may be carried by the PEG access services provider on access channels.

ARTICLE 8 - AMENDMENTS

Prior to amending these Bylaws or recommending any amendment to the Intergovernmental Agreement or the franchise agreement, the Commission shall conduct a hearing pursuant to Article 5 hereof. Amendments to these Bylaws may be adopted by majority vote of the Commission at a regularly scheduled meeting, or at a special meeting where notice of the intent to act on a proposed amendment was given along with the notice required by Section 3.2.

**** END ****