

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Applications of Comcast Corporation,)	MB Docket No. 14-57
Time Warner Cable Inc., Charter)	
Communications, Inc. and Spinco)	
to Assign and Transfer Control of FCC)	
Licenses and Other Authorizations)	
)	
To: The Transaction Team)	
Office of General Counsel)	
and the Media and)	
Wireline Competition Bureaus)	

RESPONSIVE COMMENTS

Background and Good Cause Showing:

1. The information contained herein is responsive to new facts asserted by Comcast Corporation (“Comcast”) in its “Reply to Responses” filed December 23, 2014. This filing is necessitated by the fact that, while the allegations set forth in my August 25, 2014 Petition to Deny (“Feldman Petition”) were previously largely ignored and left entirely un rebutted by Comcast, the company has now chosen to use the device of its “Reply to Responses” to introduce new, but incomplete information that has a misleading effect in forming an accurate picture of the issues raised in the Feldman Petition. It is important to note that as a matter of procedure regarding items specific to the Feldman Petition, Comcast is, by its December 23, 2014 filing, “replying” to its own previously filed Opposition to the Feldman Petition¹. Stated

¹ By Public Notice, DA-14-986, released July 10, 2014, the Commission established August 25, 2014 as the deadline for filing Petitions to Deny, the date on which I filed my Petition to Deny. Oppositions to Petitions were due September 23, 2014. This same Public Notice had also originally set October 8, 2014 as the deadline for the filing of Replies to Oppositions. That date was then extended to October 29, 2014 (*See, Public Notice*, DA-14-1446, released October 3, 2014) and eventually further extended to December 23, 2014 (*See, Public Notice*, DA-14-1739, released December 3, 2014), the date of the above-referenced Comcast filing. Prior to submitting its “Reply to Responses,” the entirety of Comcast’s opposition text directly addressing my Petition had been set forth in a single footnote of its Opposition, namely, fn. 989, brushing off the facts contained in the Feldman Petition as “precisely the same claims” as those made in the NBCUniversal docket, notwithstanding that I expressly pled in my Petition that my complaint was about violations by Comcast of Section 541(a)(2)(C) of the Communications Act, as amended,

otherwise, Comcast is effectively supplementing its prior Opposition rather than replying to any response of Feldman. Given the partial, and therefore, misleading reporting of facts by Comcast as regards Feldman, it is appropriate that a response be entered in the record addressing and completing the new information reported by Comcast. In addition, a new ruling by a Florida court on the matters raised in my Petition occurred last month and addresses Comcast response that bears directly on the Commission's consideration of the Feldman Petition and on February 13, 2015 Comcast filed documents to the court showing the inability of the Public to redress grievances as documented in my petition. For the foregoing reasons, to the extent good cause is determined by the Commission to be a prerequisite to this filing; such good cause exists.²

Results of Florida Litigation:

2. Comcast reported in its December 23, 2014 filing that a jury verdict was recently reached in Dade County, Florida³ regarding that company's trespass and ensuing damage to my roof. In particular, Comcast reported to the Commission that the Feldman "dispute" had been judicially adjudicated at the state level, but in making this report saw fit to exclude any reference to the portion of the verdict addressing Comcast's trespass on my property. This adjudicated issue required to completely be reported to the FCC is concealed during a licensing procedure⁴ and a violation of 47 § 1.17. Comcast omitted from its report that the jury found in favor of Feldman and against Comcast⁵ on the trespass count and called it an intentional trespass. It is important for the Commission to be cognizant of the verdict in favor of Feldman on the trespass issue, given the facts alleged in the Feldman Petition and in my October 8, 2014 Reply. In those

"...occurring between the time of the consummation of the Comcast-NBC Universal merger and the present date." See, Feldman Petition, fn.6.

² Alternatively, the record in this Docket remains open for the filing of Comments and this submission may therefore be considered as a Comment.

³ This information is contained in Comcast's December 23, 2014 "Reply to Responses" at Footnote 89, where it is stated that "entirely unrelated to the transaction...this dispute has been adjudicated by a jury..." and it is further reported that "...Mr. Feldman was found to be 83 percent at fault for the damage, and Comcast was found to be 15 percent at fault (amounting to a \$7,500 award for Mr. Feldman.)"

⁴ 47 CFR 1.65 Each applicant is responsible for the *continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application*. Except as otherwise required by rules applicable to particular types of applications, whenever the information furnished in the pending application is no longer substantially *accurate and complete in all significant respects*, ...the applicant shall as promptly as possible *and in any event within 30 days*, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with § 1.47.....The terms adverse finding and adverse final action as used in paragraph (c) of this section include adjudications made by an ultimate trier of fact, whether a government agency or court, but do not include factual determinations which are subject to review de novo unless the time for taking such review has expired under the relevant procedural rules. *The pendency of an appeal of an adverse finding or adverse final action does not relieve a permittee or licensee from its obligation to report the finding or action.*

⁵ Verdict Form, Filed for the Record, Warehouse 1050 Corp. v. Fla. Sol Corp., No. 09-36802 CA (11) (Fla. Cir. Ct. Dec. 15, 2014)

pleadings I noted that Comcast intentionally trespassed by running its cables onto and over my roof and after doing so, refused for many months to remove them, even in the face of multiple requests to do so.

Character Issues Directly Related to Trespass:

3. In my Reply, I identified the issues that were left entirely un rebutted by Comcast in its Opposition, all of which relate to matters of Commission jurisdiction. The *bona fide* nature of the factual basis of at least five of those issues is directly addressed by the jury verdict reached in the Florida adjudication. These five issues are displayed below in the same format as they appeared in my Reply and must now be considered in light of the jury verdict. The issues are as follows:

<u>FELDMAN PETITION</u>	<u>COMCAST RESPONSE</u>
Comcast trespassed on Petitioner’s roof without permission in violation of §541(a)(2) of the Communications Act (Feldman Petition, ¶ 1)	Unrebutted
The trespass and unauthorized use of Petitioner’s property continued unabated for 7 months (Feldman Petition, ¶ 7)	Unrebutted
During this 7 month period three hurricanes exacerbated the roof damage (Feldman Petition, ¶¶ 2 & 4)	Unrebutted
Business records, office equipment and personal injury resulted from Comcast’s unabated trespass (Feldman Petition, ¶¶ 4, 5 & 13)	Unrebutted
§541(a)(2) of the Communications Act limits construction of cable systems to public rights of way and easements and there were no such rights of way on my roof (Feldman Petition, ¶ 9)	Unrebutted

The verdict against Comcast is a game-changer because it was Comcast itself that argued in its September, 2014 Opposition that when issues of character qualifications are being considered by the Commission (as is the case here) there should be lines of “separate analyses” applied as between “Commission related” bad conduct and bad behavior that is deemed to be “non-

Commission related.” Comcast further argued that any analysis of non-Commission related behavior should only be considered as bearing on character qualifications where the questionable conduct involves “adjudicated matters.” Well, the allegation of Comcast’s intentional trespass has now been “adjudicated.” So regardless of whether the bad conduct giving rise to my Petition is characterized as “Commission related” (which I believe it is) or as non-Commission related (which Comcast argues it is) the Commission must now consider the conduct as bearing on the character qualifications of Comcast, regardless of which of the two standards is applied.

4. Comcast apparently found it unnecessary to respond in any substantive manner to any of the above allegations, even remaining disengaged in its “Reply to Responses” of December 23, 2014. However, a jury of my peers has now determined that Comcast in fact committed an intentional trespass as alleged in this proceeding. Beyond that, the Commission should take note of the highly selective nature of Comcast’s reporting of the results of the Florida proceeding, failing to include as it did,⁶ any reference to the finding against the company on the trespass count. Required under 47 CFR 1.65 Comcast decided to pick and choose which part they wished to submit of the adjudication ignoring the finding of intentional trespass and refusal to remove the cable, as focused in my petition.

5. Comcast was evidently displeased and failing to disclose this issue of lack of character in their December 23 filing, with the verdict against it for trespassing on my property, so it argued to the Florida Circuit Court for a directed verdict that would have set aside the jury verdict on the trespass count. But on January 9, 2015, **Comcast has again failed to report** that Circuit Court Judge Diane Ward ruled against Comcast on its motion for directed verdict, holding that, “...the jury could reasonably find that the placement of Comcast’s cable utility line on Plaintiff’s property, for the purpose of supplying a neighboring building with cable, without Plaintiff’s knowledge and consent constitutes trespass for failure to remove.”⁷ Judge Ward explained why she so held in Paragraph 7 of her January 9, 2015 Order⁸:

The erroneous placement of a utility line on a property without the owner’s consent constitutes trespass. Florida Power Corp. v. Scudder 350 So. 2d 106 (Fla. 2d DCA 1977) (Florida Power Corp. trespassed on Scudder’s land

⁶ The FCC relies on the honesty of applicants because it has neither the staff nor the budget to verify the representations made by license applicants or its licensees. 214 F.3d 187, 193 (D.C. Cir. June 16, 2000), the court recognized, “The FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.” The Court also stated, “[I]t is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.” *Id.* at 196 (D.C. Cir. June 16, 2000), citing *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000). See also *FCC v. WOKO, Inc.* 329 U.S. 223, 225-27 (1946); *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1221-24 (D.C. Cir. 1994); *Garden State Broad. Ltd. v. FCC*, 996 F.2d 386, 393-94 (D.C. Cir. 1993).

⁷ Order Denying Comcast’s Ore Tenus Directed Verdict Motion, Warehouse 1050 Corp. v. Fla. Sol Corp., No. 09-36802 CA (11) (Fla. Cir. Ct. January, 9, 2015)

⁸ See, Exhibit A, attached hereto.

when it placed power lines and poles on Scudder's land without Scudder's consent in order to supply power to a neighbor's landlocked parcel.); Restatement (Second) of Torts at Section 161(1). (emphasis added).

Failure of the authorities to hold Comcast accountable

6. This trial now adjudicated making the courts documents public record and the court has concurred that State and Federal laws created barriers to the jurisdiction of the franchise authority (Dade County) ^{Exhibit B}. The FCC and the Franchise designated to police cable⁹ and broadband providers, proven powerless unless a licensing proceeding is in play. Formal Complaints with a \$190.00 check to the FCC powerless against Comcast¹⁰. Almost a decade has passed having to adjudicate this matter, to have the right to address this to the Commission, It is this misuse of the unbridled powers, unfettered by state and federal regulation given to Comcast that heightens this offence. Sadly, we will never know how many others Comcast harmed. This adjudication now shows Comcast violated their requirements to be a franchise Sections 541(a)(2)(A) & (C). My petition shown to be true and unrebutted, the primary industry regulator, the Commission now should determine the extent Comcast went to violate and conceal their actions and lacked candor to other governmental and regulating authorities, and if efforts were orchestrated to purposefully harm me.

Feldman Petition "Unrelated" to the Transaction

7. In its Reply to Responses, Comcast makes the blanket, unsupported assertion that the Feldman Petition is "entirely unrelated" to the transaction. Comcast does not explain why character questions or violations of the "Act"¹¹ of the type raised in my Petition are irrelevant to the consideration of the pending transfer applications. It side-steps the matter of Comcast's willfulness in violating laws and property rights, the requirements of the Communications Act, and its lack of regard to the franchise authority which limits network construction to public rights of way and granted easements. Comcast's lack of any backup whatsoever or to distinguish which part of the petition is unrelated, its view that the wrongs committed against me are "entirely unrelated" to factors meriting Commission review, speaks for itself.

Inability of the public to hold Comcast Accountable

8. My petition addressed the requirement to adjudicate. Comcast even though it was knowledge and stated in deposition I wish to adjudicate this matter, and demanded by Comcast in the NBC 10-56 Reply to Opposition in 2010, Comcast made an offer to settle this case that would have silenced me on July 2, 2013. Comcast on February 13, 2015 filed COMCAST

⁹ [47 U.S.C. 151] Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

¹⁰ The only "Formal Complaint" procedures referenced in the Commission's rules are those that apply to common carriers, and Comcast's high-speed Internet service is not a common carrier service. March 7 2008 letter to Chairman Keven J Martin from Comcast Executive Vice President David Cohen.

¹¹ "Act" The Communications act

DEFENDENTS MOTION FOR ATTORNEY.S FEES in the Florida Court *of \$1,641,597.50*, writing “The total amount of time expended in the defense of this case by White & Case on behalf of Comcast between July 2, 2013 and December 31, 2014 totals 4,237 hours, and results in fees incurred by Comcast from White & Case *in the amount of \$1,641,597.50.*”

9. One Million six hundred forty one thousand five hundred Ninety seven dollars and fifty cents for less than a year and a half of legal fees. Proven a victim, trespassed and damages caused. No money paid unless I sign a release that would allow the permanent occupation of my property or a release of *all claims asserted or which could be asserted in any criminal action*. Impossible to be justly compensated as required Section 54l(a)(2)(C) and shown by my petition, my rights, privileges, immunities secured by the Constitution to property rights taken without due process and to redress grievances proven in the United States don't existent. I am involved in this simply because on one day in 2005 Comcast decided to place its facilities where it had no legal right to do so and refused to vacate. How do we the public protect our rights and why do we need to when laws are in place to protect us. I beg this new FCC commission not embrace the principles of “Hear no Evil See no Evil”

Not an individual act

10. My Formal Complaint referenced in the my petition submitted previously to the FCC with affidavits of others adversely affected by Comcast, involving trespass and damage issues shows these acts are replicated and continuing. The cable that was removed from my property only through the assistance of the previous Presidents Brother, Governor Jed Bush, was placed in 2013 utilizing the property of my next door neighbor without benefit of any easement, furnishing the service to a third party that had previously been reached via my roof. Principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on abused constitutionally protected property rights.

Summary:

11. It is still incredible to me that a citizen of the United States has no place to redress a grievance in the face of such a clear wrongdoing. Adjudication required to get government attention to Comcast willful violations of law, while a trespasser, trespassing on Comcast's property goes right to jail¹². Only because this is a license issue am I *allowed* or have a place to acknowledge Comcast ability and wantonness to violate rights and laws. It is frankly still inconceivable to me why the company would obstinately refuse to take those facilities off my property, receiving repeated requests and even a flight by me to Philadelphia requesting that they do so.

¹² News articles show Comcast gets trespassers thrown in jail. Four teens caught breaking into Comcast building. <http://www.fox21news.com/news/story.aspx?id=762611>. Ten arrested at Occupy Philly sit-in at Comcast. <http://articles.philly.com/>

12. The juxtaposition of the existence of local laws that prohibit me from removing the trespassing Comcast wires from my own roof¹³ combined with the refusal or inability of Federal authorities to help me resolve the situation, set the stage for the complete failure of the regulatory system to date allows Comcast to be a Government Protected Criminal Organization. Government at every level disclaims jurisdiction over Comcast.

13. Comcast's character issues as shown with me, and in *Blocking and Lack of Character*¹⁴ by the CRS, Comcast many other indiscretions, Comcast willingness to conceal and downplay their actions, Violation of the Act, all shown true are all FCC issues. I beg this Commission whom an oath taken to protect our Constitutional Rights should act in favor of the public, and protect us. Do not expand Comcast's ability to pounce upon a public that can't fight back.

WHEREFORE, the undersigned respectfully requests that the Commission DENY the captioned applications seeking to effectuate the sale of certain cable systems and assets of Time Warner Cable, Inc. ("TWC") to Comcast and to make certain additional and ancillary transfers and assignments in support of the Comcast-TWC sale of systems and assets as requested in my Petition.

The undersigned declares under penalty of perjury that the facts referenced in the foregoing Reply are true and correct to the best of my knowledge, information and belief.

Executed on February 14, 2015



ELAN FELDMAN
1050 NW 21st Street
Miami, Florida 33127
305 545-6680

¹³ The right to exclude is the most important part of the bundle of sticks. This knowledgeable deprivation of my rights intensifies Comcast's wrongdoing.

¹⁴ Petition note: 16

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL
CASE NO.: 09-36802 CA 11

WAREHOUSE 1050 CORP., et. al.,

Plaintiffs,

v.

FLORIDA SOL CORP., et. al.,

Defendants.

**ORDER DENYING COMCAST'S
ORE TENUS DIRECTED VERDICT MOTION**

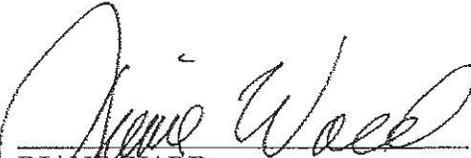
THIS CAUSE having come before the Court on Comcast's Ore Tenus Directed Verdict Motion, the Court having reviewed the file and being fully advised in the law and the premises, finds the following on the above motion:

1. The party moving for a directed verdict "admits every reasonable inference favorable to the opposite party that a jury might fairly and reasonably arrive at from the evidence." Burch v. Strange, 126 So. 2d 898, 901 (Fla. 1st DCA 1961).
2. Comcast argues that Plaintiff's theory hinges of Restatement sections 158 and 161. Comcast Defendants' Memo. in Support of Ore Tenus Directed Verdict Mtn. 3 (Dec. 15, 2014)("At the hearing on Comcast's motions for summary judgment, Plaintiffs stated that their failure to remove theory is based on Restatement (Second) of Torts §§ 158 and 161.>").
3. Comcast contends that Plaintiff's theory fails because Florida "cases addressing a trespass claim for failure to remove consistently involve facts were the property owner has withdrawn previously-given consent." Id.
4. A restatement is an authority which is often used to support a legal proposition. See Kirton v. Fields, 997 So. 2d 349, 359 (Fla. 2008)(restatement used along with case law to bolster legal proposition); Sharick Southeastern University of the Health Sciences, Inc., 780 So. 2d 136, 140 (Fla. 3d DCA 2000)(restatement used in string cite to bolster legal proposition); Smith v. Mayes, 851 So. 2d 785, 787 (Fla. 1st DCA 2003)("Because no Florida cases have been brought to our attention regarding the precise issue appealed, we have consulted other authority [Restatement (Second) of Agency] for its resolution.>"). A court may rely on a restatement it considers persuasive. Id.

5. Restatement (Second) of Torts section 161 titled "Failure to Remove Thing Tortiously Placed on Land" provides that: "A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor has tortiously placed there, whether or not the actor has the ability to remove it." Restatement (Second) of Torts § 161(1) (2014).
6. Because there is no Florida case directly addressing the issue of whether consent has to have first been given and then removed in order for a defendant to be liable for trespass for failure to remove when consent was never given, the court may properly rely upon the restatement in resolving this issue. This court is persuaded that whether consent was initially given or not, a defendant may be held liable for trespass for failure to remove.
7. The erroneous placement of a utility line on a property without the owner's consent constitutes trespass. Florida Power Corp. v. Scudder, 350 So. 2d 106 (Fla. 2d DCA 1977)(Florida Power Corp. trespassed on Scudder's land when it placed power lines and poles on Scudder's land without Scudder's consent in order to supply power to a neighbor's landlocked parcel.); Restatement (Second) of Torts at § 161(1).
8. Therefore, the jury could reasonably find that the placement of Comcast's cable utility line on Plaintiff's property, for the purpose of supplying a neighboring building with cable, without Plaintiff's knowledge or consent constitutes trespass for failure to remove. Id.

IT IS HEREBY ORDERED AND ADJUDGED that Comcast's Ore Tenus Directed Verdict Motion is DENIED.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 9 day of January 2015.


DIANE WARD
CIRCUIT COURT JUDGE

Copies Furnished to Parties of Record.

IN THE CIRCUIT OF THE 11TH JUDICIAL
CIRCUIT, IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

WAREHOUSE 1050 CORP., J & J
REFRIGERATION SUPPLY, INC.,
and AME MANUFACTURING, CORP.,

CASE NO.: 09-36802 CA 11

Plaintiffs,

vs.

WALTER J. WILLIAMS, FLORIDA SOL
CORP. COMCAST CABLE COMMUNI-
CATIONS HOLDINGS, INC., COMCAST
CABLE HOLDINGS, LLC, FLORIDA POWER
& LIGHT COMPANY, STATE OF FLORIDA,
CITY OF MIAMI, MIAMI-DADE COUNTY,
AND JOHN & JANE DOES 1-100.

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION TO VACATE ORDER SANCTIONING
PLAINTIFFS' ENTERED ON MARCH 22, 2011

THIS CAUSE, was properly noticed and came on to be heard on June 6, 2011 on Plaintiffs' Motion To Vacate Order Sanctioning Plaintiffs Entered On March 22, 2011 and the Court having reviewed and considered the motion and having heard or afforded argument to counsel and being otherwise duly advised in the premises, it is hereby,

ORDERED AND ADJUDGED: that such motion is GRANTED. The basis for the March 22, 2011 Order was found in this court's March 8, 2011 Order that Dismissed Plaintiffs claims against Defendant Miami Dade County, (hereafter "County") as the court concurred with the County's position that the County never authorized a 3rd party to place the subject cables on the subject property and federal and state laws created barriers to the jurisdiction of the County regarding cable regulation. That determination remains unchanged.

Separately, with this Order, Plaintiffs and County announced, and the court ratifies, the full settlement of all issues between them concerning this case, each party to that settlement to bear its own fees and costs; and such settlement not to impact any other party(ies) to this litigation.

DONE AND ORDERED, in Miami, Miami-Dade County, Florida, June 6, 2011.

Circuit Court Judge, The Honorable Barbara Areces

Copies provided:
All counsel of record

CONFORMED COPY

JUN 06 2011

JUDGE BARBARA ARECES

CERTIFICATE OF SERVICE

I, Elan Feldman, do hereby certify that a copy of the foregoing Petition to Deny was served on the following persons by the means set forth below on the 14th day of February, 2015.

BY ELECTRONIC MAIL

Office of General Counsel
Transaction Team
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
TransactionTeam@fcc.gov

Vanessa Lemme
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
vanessa.lemme@fcc.gov

Marcia Glauberman
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
marcia.glauberman@fcc.gov

William Dever
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
william.dever@fcc.gov
Best Copy and Printing, Inc.
FCC Document Contractor
445 12th Street, SW

Washington, DC 20554
fcc@bcpiweb.com

Francis M. Buono, Esq.
Counsel for Comcast Corporation
Willkie Farr & Gallagher
1875 K Street, NW
Suite 100
Washington, DC 20006
fbuono@willkie.com

Matthew W. Brill, Esq.
Counsel for Time Warner Cable, Inc
Latham & Watkins LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
matthew.brill@lw.com

Hillary DeNigro
Chief, Industry Analysis Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Hillary.DeNigro@fcc.gov

Elan Feldman

