

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

In the Matter of)	Proceeding 14-57
Transfer of Licensee Comcast)	
of Miami Transfer Application)	File Number SES-T/C-20140703-00569
for Satellite Space and)	
Earth Station Authorizations)	Call Sign E5845
for Transfer of Control)	
or Assignment From Comcast)	
Corporation)	
To: Comcast Corporation)	

EXECUTIVE SUMMARY

The Petitioner was damaged as a result of Comcast's failure to adhere to Section 541 (a)(2) of the Communications Act of 1934, as amended. This statute limits the construction of cable television networks to public rights of way and easements. It further mandates that reimbursement be made by any cable television operator to persons that have suffered damages as a result of the construction of cable systems. Also It requires the cable provider *shall insure* that the safety, functioning, and appearance of the property and the convenience and the safety of other persons not be adversely affected by the installation or construction of facilities. This requirement to be a franchise was ignored by Comcast.

This Petitioner has spent nearly an entire decade seeking recompense from Comcast Corporation ("Comcast") for damages resulting from the willful and repeated violation of Section 541(a)(2). Petitioner believes there may be other persons similarly aggrieved throughout the Comcast service footprint and that, as to the matter affecting the Petitioner, such violation has been flagrant, willful, ongoing and repeated. Accordingly, the Commission should DENY the above-referenced pending applications for transfer of control of cable systems and assets to Comcast until the Commission can satisfy itself that the company is in compliance with Sections 541 (a)(2). Granting the requested authority without first accomplishing such review would be against the public interest. This would negate the necessary public interest finding that must precede the grant of the requested authority.

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PETITION TO DENY

ELAN FELDMAN hereby respectfully submits this Petition to Deny to the Commission in opposition to the above-captioned applications that seek grant of the above styled transfer. This Petition is being submitted pursuant to the rules of the Commission and the procedures and time line requirements set forth in Public Notice, SES01717, released May 6, 2015. This Public Notice states that the proposed transfers must be in the public interest pursuant to Section 310(d) of the Communications Act of 1934, as amended.¹

¹ Section 310 (d) of the Communications Act of 1934, as amended, states: “No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 for the permit or license in question...” Among other things, this requires that in the case of Title III licenses (such as are some of those included in the proposed transfer) that character be considered as an issue.

Under Section 310(d) of the Communications Act, the Commission must find that a proposed transaction serves the public interest, convenience, and necessity before we can approve the transfer of control of authorizations or licenses.² Under any such finding, the Commission must weigh **any potential public interest harms** against any potential public interest benefits, considering competitive effects and **other public interest factors** pursuant to 47 USC § 310 . (Emphasis Added) This objection to the proposed transfer is premised on two important issues in conjunction with certain facts, to support the contention that proposed licensee COMCAST Corporation (“COMCAST”) fails to serve the public interest, convenience and necessity as related to Candor and non-FCC misconduct which demonstrates the proclivity of COMCAST to deal truthfully with the Commission. The intent of this objection is to direct the Commission's attention to historical character and candor issues that arose with COMCAST Corporation in relation to its dealings with this Petitioner in order to illustrate certain practices of COMCAST in dealing with the public that may also include consumers of its services. The underlying issue of this objection is simple and straightforward: how has COMCAST dealt with members of the public who are not of comparable economic-scale when it may be found COMCAST has violated established rights, laws and applicable rules – be they through the Federal Communication Act of 1934, as amended, or that apply generally to all.

This Petitioner’s contact, and first-hand involvement, with COMCAST came uninvited and a result of significant damages suffered because of COMCAST’s cable trespass to Petitioner’s property and the violation of ³47 U.S.C. § 541(a)(2)(A)⁴ and 47 U.S.C. § 541(a)(2)(C)⁵ as well as other Florida laws. In light of the facts, it should have been a matter recognized and resolved by COMCAST with a member of the general public quickly, but unfortunately it was

²47 U.S.C. § 310(d).

³ Both requirements to be a franchise. SEC. 621. [47 U.S.C. 541] GENERAL FRANCHISE REQUIREMENTS.

⁴ 47 U.S.C § 541(a)(2)(A) in pertinent part states that " that the safety, functioning, and appearance of the property and the convenience and the safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system; (Multiple request to Comcast in writing plaintiffs requested Comcast to repair the damages, yet Comcast refused.

⁵47 U.S.C § 541(a)(2)(C) in pertinent part states that " ... the owner of the property [damaged] be justly compensated by the cable operator for any damages caused by the installation, construction, operation or removal of such facilities by the cable operator." The explanation and importance of the Act is clarified by the FCC themselves stating "*the law requires just compensation to property owners who have suffered damages as a result of a cable operator's construction, operation, installation, or removal of its cable television facilities*"

not. It should be questioned why Comcast instead of filing a claim with their Insurance carrier, preferred to spend untold millions of Dollars of stockholders money to fight Mr. Feldman when a claim would have paid either the claim or litigation.⁶ The matter eventually resulted in litigation for many years, with this Petitioner prevailing at trial on the merits.⁷ However during the course of that litigation, statements were made and facts were characterized and submitted to this Commission by COMCAST that purely suited its own self-interest, and not, in candor the actual situation occurring. This Petitioner has raised concerns of this nature before to the Commission in past proceeding, specifically under MB Docket No. 10-56 (FCC 11-14). However at that time, final adjudication of the litigation against COMCAST had yet to occur. Citing the Commission's *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-91, ¶ 23 (1986) ("*Character Policy Statement*"), the then-submitted objections were found to not be ripe for character consideration as they were at the time "absent an ultimate adjudication by an appropriate trier of fact, either by a government agency or court"⁸ and were denied. Likewise COMCAST characterized the issues as trifle stating [what]: "a single episode of trespass or property damage could bear on the question of Comcast's fitness to hold a Commission license." However the issues raised in objection in the past by this Petitioner were not merely directed to the fact that COMCAST trespassed and cause damage to a member of the public in the furtherance of its business, but instead concerned the candor, character and misconduct of COMCAST afterward and particularly in relation to this Petitioner. If it can be done to one, it can be done to anyone. That is what this Petitioner sought to bring to the attention of the Commission. The Commission indeed holds the authority to scrutinize the candor, character and misconduct of any licensee or applicant. Misconduct which violates the Communications Act or a Commission rule or policy is among the factors considered when evaluating a licensee's character..⁹ Now that a competent court of law has found COMCAST

⁶ It is public record that Comcast spent in just over the last year of litigation almost 2 million dollars. This issue has been going on almost a decade.

⁷ Exhibit B. These issues have reach the highest tier. All other issues have not.

⁸ *Character Policy Statement*, 102 FCC 2d at 1205, ¶ 48

⁹ *Policy Re: Character Qualifications*. 102 FCC 2d at 1109-91; *Contemporary Media Inc vs FCC*. 214 F.3d 187. 192 (DC Dir 2000), *cert.denied* 532 US 920 (2001); See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179 (1986) [hereinafter 1986 Character Policy Statement]. The statement announced that the FCC's character analysis would focus on "misconduct which violates the Communications Act or a Commission rule or policy, and ... certain specified non-FCC-misconduct which demonstrate[s] the proclivity of an applicant to deal truthfully with the Commission and to comply with [its] rules and policies." rd. at 1190-91. The relevant non-FCC misconduct was limited to adjudicated cases, involving: fraudulent representations to government agencies,

accountable and liable to this Petitioner for the underlying harm and damage, these very same issues and these objection are relevant and timely.

**OBJECTIONS RAISED TO BOTH COMCAST AND COMCAST OF MIAMI, INC. AS TO
TIMELINESS OF PETITION AND DATE OF ACTUAL CONSUMPTION PRIOR TO THE COMMISSION’S
AUTHORIZATION**

The underlying Petition by COMCAST seeks transfer of license of Comcast of Miami, Inc (“Comcast of Miami”). Both COMCAST and Comcast of Miami were parties of interest in dealings with this Petitioner and his Company, and parties to the lawsuit with the Petitioner. Both are fully aware and apprised of events that transpired subject to the matter and litigation.¹⁰ The matter originally involved Comcast of Miami, Inc. until it was merged with COMCAST on December 19, 2012 – a time more than two (2) years before trial on Warehouse 1050 Corp v. Walter J. Williams et. al. case number 09-036802 (CA 01), Miami-Dade County, Florida. Petitioner became aware of the finalization of the merger in the course of admissions by COMCAST in the Florida litigation. Present records with the State of Florida, Department of Corporations reflect that Comcast of Miami, Inc. (Florida Profit # F24401) is no longer an active corporation due to the 12/19/2012 Merger and Comcast of Miami ceased to exist¹¹. In litigation, COMCAST has admitted that Comcast of California/Colorado/Florida/Oregon, Inc. was a successor in full Interest to Comcast of Miami at the time of the merger.¹² Within the four corners of the present application, the apparent timing of this application is well over two (2)

criminal false statements or dishonesty, and broadcast-related violations of antitrust laws or other laws concerning competition. See *id.* at 1195-1203. The FCC noted, however, that “there may be circumstances in which an applicant has engaged in non-broadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation.” *Id.* at 1205 n. 60. “Such misconduct,” the Commission stated, **“might, of its own nature, constitute prima facie evidence that the applicant lacks the traits of reliability and/ or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to adjudication by another body.”** *Id.* (Emphasis Added)

¹⁰ See Warehouse 1050 Corp v. Walter J. Williams et. al. Case Number 09-036802 (CA 01) in and for the Circuit Courts of Miami-Dade County Florida. Final Judgment January 16, 2015.

¹¹ Merger documents exhibit D

¹² *Id.* See Docket Motion: **“DEFENDANTS COMCAST CABLE COMMUNICATIONS HOLDINGS, INC. AND COMCAST CABLE HOLDINGS, LLC’S MOTION TO DISMISS AND SUBSTITUTE DEFENDANT”**. Dated July 19, 2013 stating “Comcast of Miami, Inc. was served through its registered agent, CT Corporation Systems. *Id.* At the time the Complaint was filed, It was merged into Comcast Cable Communications, LLC on that date. See Exhibit C .Comcast of Miami, Inc. was the only Comcast entity that arguably was a party-in-interest in this action, as Defendants have repeatedly informed Plaintiffs. Nonetheless, Plaintiffs did not name Comcast of Miami, Inc. as a defendant in the Complaint. Subsequently, Comcast of Miami, Inc. has since merged into Comcast of California/Colorado/Florida/Oregon, Inc. “

years after the consummation of merger, and that, COMCAST has operated without approval of its already effectuated transfer of control required during this period.

Under Section 310(d) of the Act, COMCAST was required to seek and obtain Commission consent prior to assigning or transferring control of FCC issued licenses or permits. This means that prior to consummation of an assignment of license or a transfer of control of a license (*as in the case of Comcast of Miami, Inc.*), the parties must file the appropriate application(s) with the Commission. In this Petition, Petitioner raises his primary objection to the candor, character and misconduct, one cannot but stumble over the obvious fact that the present application seeks a grant of authority for a merger that was already consummated, and that apparently did not seek the Commission's prior approval. Within the four corners of the Application, COMCAST fails to state or reference that the transaction underpinning the application was already consummated (as reflected on public records with the State of Florida) and was previously without the Commission prior approval of such transfer, or, that in lieu of such approval it has sought or previously sought Special and Temporary Authority from the Commission to cover any lapses with regard to the Earth Stations of Comcast of Miami, Inc. With regard to any review of the applicant(s) candor, this Petitioner respectfully requests that the Commission review the timing of the application for violations of the Act due to unauthorized substantial transfer of assets.

**OBJECTIONS RAISED TO BOTH COMCAST AND COMCAST OF MIAMI, INC. AS TO
PAST LACK OF CANDOR, CHARACTER AND MISCONDUCT**

Previously Petitioner made objections as to candor, character and misconduct relevant to the applicants under proceeding related to FCC 10-56 and FCC-14-57. Prior objections and character disqualification allegations were primarily denied due to constraints on the Commission's review or consideration under its prevailing *Character Policy Statement* and the fact that matters alleged had not fully been adjudicated by a court or a government agency. See 102 FCC 2d at 1205, ¶ 48. After January 16, 2015, allegations made as to COMCAST under proceedings in FCC 10-56 and FCC-14-57 were determined with final adjudication, in favor of this Petitioner. Petitioner respectfully re-alleges all previously preserved written objections in FCC 10-56 and FCC-14-57 that may have been denied due the Commission's *Character Policy Statement*, as a result of lack of ripeness as such allegations were then "absent an ultimate adjudication by an appropriate trier of fact," but now are. Petitioner further draws the Commission's attention to the following events that demonstrate the

applicant's lack of candor and the apparent misconduct, that illustrates a pattern of behavior toward smaller-sized persons and companies within the public with whom they may be at odds as well as statements about those persons to the Commission in application proceedings before the Commission.

3. In RE: the NBC merger under FCC 10-56

During the NBC merger FCC 10-56, Comcast filed Opposition to Petitions to Deny and Response to Comments that was sworn and signed by a representative with the most knowledge¹³ under penalty of Perjury. In the instance of the Petition to Deny by Elan Feldman, such Objections were signed by COMCAST Vice President, Mr. David Cohen. In that reply to the Feldman Petition to Deny, David Cohen made misstatements of the alleged trespass and damaged; that good-faith offers to settle had been made. However, only months after the merger application was granted and the merger consummated, the same COMCAST Vice President, Mr. David Cohen signed an affidavit submitted in the course of litigation of Warehouse 1050 Corp v. Walter J. Williams et. al. Case Number 09-036802 (CA 01) in the Circuit Courts of Miami-Dade County Florida denying any knowledge as described in that NBC proceeding.¹⁴ The question remains which version of the statement of COMCAST Vice President, Mr. David Cohen is true and correct: the one made to the Commission under NBC merger FCC 10-56; or the one sworn to the Miami-Dade Circuit Courts. This objection respectfully requests that the Commission inquire further to COMCAST as to the correct statement and statements made by COMCAST in that proceeding.

4. In RE: the Time Warner Merger FCC 14-57

The Commission should take note that in Responses to Objections raised by Elan Feldman's Petition to Deny in this proceeding, COMCAST repeatedly represented facts in a highly selective nature when reporting to the Commission of the results and progress of litigation in Warehouse 1050 Corp v. Walter J. Williams et. al. Case Number 09-036802 (CA 01) in the Circuit Courts of Miami-Dade County Florida.

¹³ Act 309(d)(1)Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

¹⁴ See Exhibit 1,

Comcast has failed to disclose to the Commission in supplements its December 14, 2014 filings in opposition that:

- a.) A Directed Verdict was granted against it for trespass in that case and objections previously denied by COMCAST before the Commission;
- b.) In litigation it was discovered that since discovery in 2005 COMCAST refused to remove the trespassing cable. In 2006 after the cable devastated the property, wiping in the winds of 3 hurricanes (as described by Comcast's attorney to their subcontractor ^{Exhibit C 15}. The Intervention and assistance of the Florida Governor caused the removal of the trespassing cable from the property damaging Elan Feldman and his business. Subsequently Comcast unlawfully placed the said cable on a neighboring property without permission or compensation. In effect, the issue of the 47 U.S.C. § 541(a)(2)(C) violation with Feldman was resolved by: doing it to someone else.

Petitioner respectfully requests that in the course of reviewing this application that the abovementioned allegations be fully investigated by the Commission prior to any approval of this application.

CONCLUSION

Petitioner respectfully requests that the above-styled application of COMCAST be **denied** for issues related to lack of candor, and as a result unqualified character, or in the alternative, that formal inquiry be made in the interests of the public. Petitioner requests the Commission further question COMCAST as to the particulars stated and raised in this Petition, and that, before granting any authority under this application, the Commission fully review the character, candor and possible misconduct COMCAST in previous dealings with this Petitioner; responses to Objections raised by this Petitioner; and statements made about this Petitioner before the Commission or its representatives. Petitioner respectfully further requests that the Commission address the above in a formal hearing before the Commission to allow Comcast to more fully respond and/or decide if any transfer or renewal to Comcast truly serves the public purpose stated in the application.

¹⁵ Discovery and Comcast admittance now shows that Florida Sol Systems did not install the cable. Comcast did.

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Elan Feldman', written over a horizontal line.

ELAN FELDMAN
1050 NW 21st Street
Miami, Florida 33127

Executed on June 4, 2015

305 545-6680