

The Supreme Court described "the requirement to reserve capacity for [PEG] channels [as] similar to the reservation of a public easement, or a dedication of land for streets and parks, as part of a municipality's approval of a subdivision of land." *Denver Area Educ. Telcoms. Consortium v. FCC*, 518 U.S. 727, 760-61 (1996). Even if PEG channels enjoy a public right of way, the Court is not convinced that their "public right of way," without more, prohibits their relocation or transition from analog to digital format. Plaintiffs are not likely to succeed on the merits of this claim.

3. Federal Law Does Not Prohibit Defendants From Offering Digital And Analog On the Basic Service Tier

Michigan law is silent on the placement of PEGs. In contrast, federal law explicitly requires that a cable operator provide PEGs on a basic service tier containing:

- (1) a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following;
- (2) Statutorily required broadcast channels;
- (3) PEG channels;
- (4) Statutorily required noncommercial educational television stations.

47 U.S.C. §543(b)(7).

Plaintiffs seem to rely on this and legislative history to support their argument that Defendants cannot differentiate between formats they use for PEGs and broadcast channels.

Plaintiffs cite legislative history supporting the importance of delivery of PEG channels. See H.R. Rep. No. 98-934, 1984 U.S.C.C.A.N. at 4667 (1984); H.R. Rep. No. 102-628 (1992); see also 8 FCC Rcd 5631, 5738 (FCC 1993) ("The House provision was enacted into law, so the House Report is relevant in determining congressional intent."). Pointedly, one portion of the House Report states "PEG . . . [channels] are available to all community members on a nondiscriminatory basis [T]he Committee believes that it is appropriate that such *channels be available to all cable subscribers on the basic service tier and at the lowest reasonable rate.*" H.R. Rep. No. 102-628 at 85 (1992) (emphasis added). In addition, Plaintiffs note the FCC held that the Cable Act "require[s] a cable operator . . . to carry PEG channels on the basic tier unless the franchising authority explicitly permits carriage on another tier." *In the Matter of the Implementation of the Section of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, 8 F.C.C.R. 5631, 5737-38.

Nothing in the statute or legislative history prohibits a cable provider from including both digital and analog channels on the basic service tier, or from providing PEGs in one format and broadcast channels in a different format. In fact, Plaintiffs concede this, and it is unlikely they will prevail on the merits of this claim.

4. Additional Equipment Costs May Be Unreasonable

No additional equipment is currently needed to view PEGs at the basic service tier. After January 15, 2008, basic service tier customers who want to see PEGs must invest in additional equipment (beyond the one free converter box) because signals will only be digital and no longer available in analog. Defendants will impose additional

equipment costs on the basic service tier, and burden those basic service tier customers who want to view the PEG channels. Customers similarly situated – whose subscription says they are receiving the same service --will have different equipment costs imposed on them.

Federal law does not require that the basic service tier be the lowest priced tier. However, the total cost for the basic service tier (including service and equipment), must be reasonable, taking into account the cost of equipment for the basic service tier. 47 U.S.C. §§ 543(b)(3), 543(b)(1). The question becomes whether it is “reasonable” to burden some customers and not others, who subscribe to the same basic service tier, with the requirement to purchase additional equipment to access services they are similarly charged for. Defendants plan to charge a uniform rate for a basic service tier selection of channels, only a portion of which can be viewed without additional equipment at additional cost. Customers similarly situated – whose subscription says they are receiving the same service -- will have different equipment costs imposed on them, and those who choose not to incur additional cost will pay for channels they are not able to access. These costs may be unreasonable, and may support a likelihood of success on the merits for Plaintiffs on this issue.

5. Defendants May Have Provided Insufficient Notice

Plaintiffs argue Defendants' notice of the proposed changes is defective under the FCC's minimum customer service standards. 47 C.F.R. 76.309(c)(3)(i)(B). It does not appear that this subsection Plaintiffs cite governs anything but “refunds,” a concern not present here. See 47 C.F.R. 76.309(c)(3)(i)(B) (“(i) Refunds – Refund checks will be

issued promptly . . .”).

Despite this shortcoming, the parties referenced additional bases for notice requirements in oral argument, and the expectation that notice be accurate is fundamental. Defendants gave notice within the required 30 days, but their notice was inaccurate. Contrary to the notice provided by Defendants, not all current limited basic service tier customers will be able to find the PEG channels in the 900 channel range in which Defendants intend to relocate them. Evidence presented demonstrates customers who have more advanced television sets and intend to use their equipment's QAM tuners to access PEGs, may not be able to locate the PEGs in the 900 channel range. Customers with third-party equipment may face the same difficulties.

Defendants say they could not accurately state where these channels will show up after the transition for those customers using third-party equipment. At the hearing it became clear that Defendants could have easily indicated where the great majority of these QAM channels would be after the transition.

Further, Plaintiffs state that the notices failed to inform customers of the free converter box availability or that installation would be provided at no charge. Defendants did not rebut this at the hearing.

It is likely Plaintiff will prevail on the merits of this claim. Defendants' customers in Dearborn and Meridian did not receive accurate and sufficient notice.

6. Defendants Have Not Impermissibly Scrambled or Encrypted Signals

The Federal Communications Commission rules state that “[c]able system operators shall not scramble or otherwise encrypt signals carried on the basic service

tier." 47 C.F.R. § 76.630(a). Plaintiffs say they have reason to doubt that Defendants are in compliance with this requirement. A recent test conducted by Plaintiffs did not confirm that advanced televisions with QAM capability could receive the PEG channels. In any event, Plaintiffs do not rely heavily upon the explicit requirements in 47 C.F.R. § 76.630(a). Instead, they read it in light of the FCC's commentary, which states that 47 C.F.R. § 76.630(a) supports "significantly advanc[ing] compatability by ensuring that all subscribers are able to receive basic tier signals 'in the clear' and that basic-only subscribers will not need set-top devices at all." *In the Matter of Implementation of Section 17 of the cable Television Consumer Protection Act of 1992, First Report and Order*, 9 F.C.C.R. 1981, 1991 (1994). Relying on this interpretation, Plaintiffs argue that the basic service tier must be offered in a manner that minimizes the need for unnecessary equipment.

Plaintiffs also invoke 47 U.S.C. § 544A(c)(2)(B)(ii) to support the same argument. 47 U.S.C. § 544A(c)(2)(B)(ii) establishes a regulatory goal. This goal is "to require cable operators offering channels whose reception requires a convertor box . . . to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly . . . without passing through the convertor box." 47 U.S.C. § 544a (c)(2)(B)(ii). The statement is only a regulatory goal. The provision establishes factors to be considered in the promulgation of regulations, but does not create regulations. In addition, 9 F.C.C.R. 1981, 1991 do no more than state what 47 C.F.R. § 76.630 requires, which is that basic tier signals be provided in the clear. The Court is unable to cobble these provisions together to create an affirmative obligation upon cable providers where none currently exists.

Even if the Court were to consider the argument, it does not have a substantial likelihood of success on the merits.

7. The Franchise Agreement

Although Plaintiff Dearborn says a specific provision of its franchise agreement prohibits the unilateral change of PEG channel locations, Plaintiff Meridian's agreement appears to significantly differ. That agreement states that Defendants will be permitted to change the location of PEG stations after paying a small penalty. See Meridian Franchise Agreement § 17. Under the Meridian agreement, Defendants may unilaterally change the location of PEG channels. Plaintiff Meridian cannot succeed on the merits of its franchise claim.

Plaintiff Dearborn represents that its franchise agreement explicitly prohibits the unilateral relocation of PEG channels, and would be violated by Defendants' proposed actions. Defendants did not rebut this argument, and it is likely Dearborn will prevail on the merits.

B. Municipal Plaintiffs Will Suffer Irreparable Harm If the Status Quo Is Not Maintained

Municipal Plaintiffs and Gillette argue denial of their motion will result in irreparable harm.

The Court finds that any injury Gillette will suffer is not irreparable. She could request and receive Defendants' converter free of charge for one year. If she has more than one television she can be compensated in money damages for any rental fees she pays, if Plaintiffs ultimately wins this litigation.

Municipal Plaintiffs have more at stake. They argue that denial of this motion will result in their inability to communicate with the public through governmental PEG channels. According to the Municipal Plaintiffs, during the time the PEGs are not available in analog, Plaintiffs would lose a large portion of their audience because these viewers would be unable to: (1) receive the government access channel; (2) afford to pay the higher equipment cost; and (3) locate the PEG channel after they are moved. In addition, the Municipal Plaintiffs allege they may even lose current digital cable subscribers because the channels will be more difficult to find by channel surfing or through the use of the cable program guide. Plaintiffs also argue their educational programming will suffer irreparable harm through lost viewership, and the disruption of the educational uses these channels serve in school districts.

Defendants argue the harm will be minimal because they will provide a free converter for a year to each customer. Although this free converter box addresses harm to Gillette, it leaves unanswered Municipal Plaintiffs' argument that they will be injured because of disruptions to their viewership.

The Court finds that the effect of the additional inconvenience of requesting a new box, the relocation of the channels, and lost viewers cannot be adequately calculated and compensated through monetary damages.

Defendants question the delay in bringing this motion. Defendants notified Municipal Plaintiffs on November 15, 2007 of their plan. Plaintiffs assert they attempted to get information and mediate the controversy before filing these motions. Indeed, a member of Congress is involved in the dispute and, has scheduled a legislative hearing.

Because of these efforts the two month delay does not undercut the Municipal Plaintiffs' claim of irreparable harm.

C. Defendants and Others will not be Significantly Harmed and the Public Interest will be Served if the Status Quo is Maintained

Plaintiffs argue that Defendants will not be significantly harmed if their motion is granted. They say there is no reason why Defendants must transfer the PEG channels on January 15, 2008. Conversely, Defendants maintain they will face financial hardship if the Court grants Plaintiffs' motion because it will reduce their ability to introduce new products and remain competitive. According to Defendants, they must "meet [their] customers' needs" by digitizing channels to free up space and provide new channels and services. Witness David Bruhl testified that a grant of Plaintiffs' motion would hinder the ability to add four high-definition stations on January 15, 2008 as planned. Defendants also say the public has an interest in the transition from analog to digital.

To the extent the Court accepts Defendants' argument that it must digitize channels, it does not agree that the transition must occur on January 15, 2008. Indeed, Defendants indicated at the hearing they could go forward on January 15, 2008 with the addition of these new channels in most areas. Further, while the Court agrees there are some general benefits with digitizing channels, it finds the public interest is better served by the temporary preservation of the PEG channels in their analog format so the public may maintain access to vital information. Therefore, although consumers looking forward to Defendants' new channels and services may be inconvenienced by a delay, any harm they may suffer does not outweigh the harm to Plaintiffs and to the public.

V. CONCLUSION

Both sides in this dispute have substantive arguments on the merits which weigh in their favor. Until the merits of this case can be fully sorted, the Court finds the balance of the equities -- substantial harm to others, the public interest and harm to the municipal Plaintiffs -- weigh in favor of the relief sought by Plaintiffs. The status quo will be maintained.

Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction is **GRANTED**.

VI. ORDER

IT IS ORDERED that Defendants are prohibited, without the permission of the Court, from moving channels for public, educational and governmental use ("the PEG channels") from their current location or changing the format in which they are delivered to subscribers until further Order of the Court.

IT IS FURTHER ORDERED that Plaintiffs are not required to provide security since Defendants acknowledge that any damage claims they have against the Municipal Plaintiffs for their regulation of cable service are limited by 47 U.S.C. §555a(a) to injunctive or declaratory relief. *See also Time Warner Entertainment Co., L.P. v F.C.C.*, 93 F.3d 957, 980 (D.C. Cir. 1996)(noting franchising authorities' immunity from monetary damages); *Jones Intercable of San Diego, Inc. v City of Chula Vista*, 80 F.3d 320, 326 (9th Cir. 1996)(same).

IT IS ORDERED.

/s/ Victoria A. Roberts

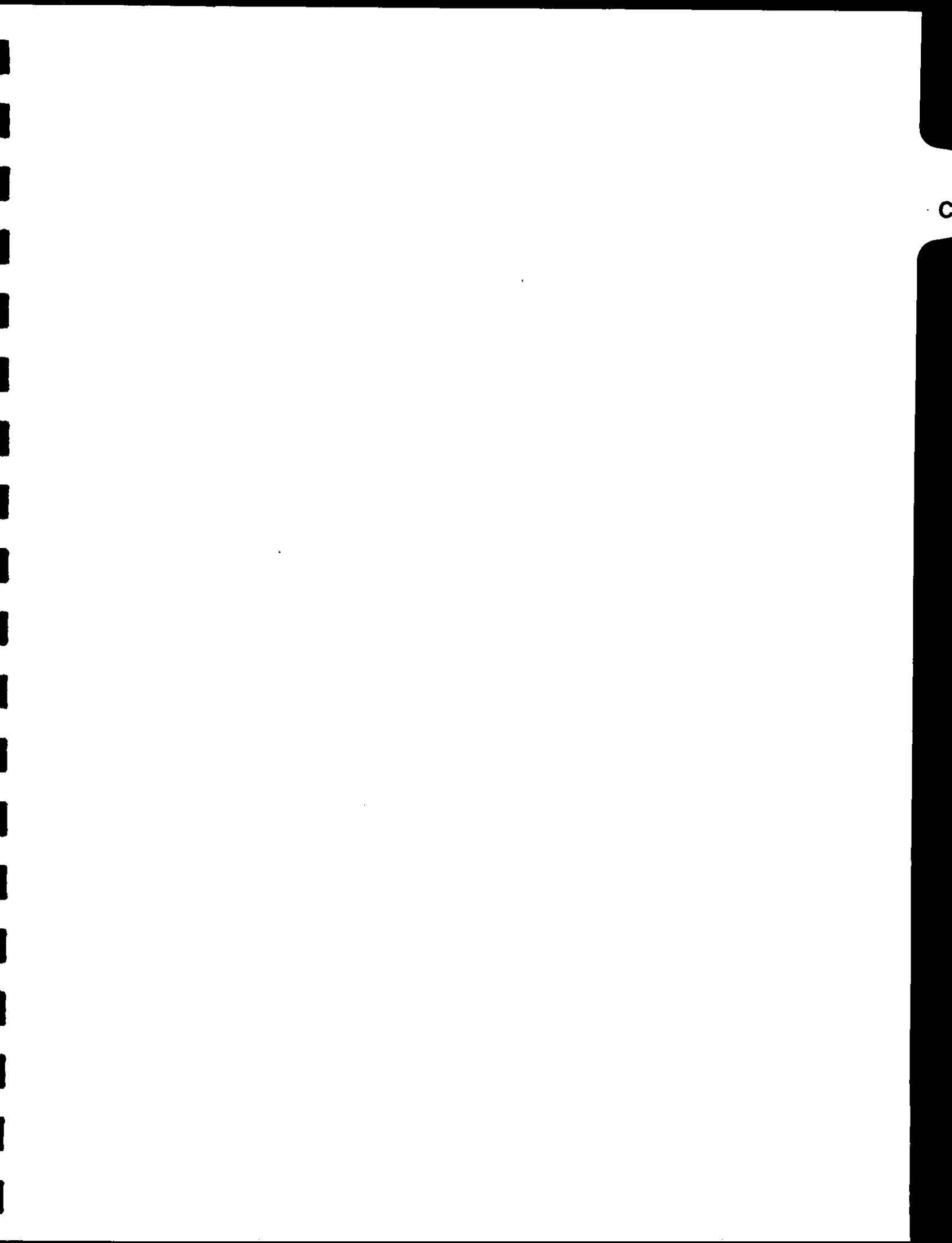
Victoria A. Roberts
United States District Judge

Dated: January 14, 2008

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on January 14, 2008.

s/Linda Vertriest

Deputy Clerk



1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 Case No. 08-10156

5 CITY OF DEARBORN, a Municipal
6 corporation, and CHARTER TOWNSHIP
7 OF MERIDIAN, a Municipal corporation
8 and SHARON GILLETTE, an individual,

9 Plaintiffs,

10 Detroit, Michigan
11 January 14, 2008

12 -vs-

13 COMCAST OF MICHIGAN III, INC., a
14 Delaware corporation, and COMCAST
15 OF THE SOUTH, INC., a Colorado corporation,

16 Defendants.

17 TRANSCRIPT OF HEARING
18 PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

19 BEFORE THE HONORABLE VICTORIA A. ROBERTS
20 UNITED STATES DISTRICT COURT JUDGE

21 APPEARANCES:

22 For the Plaintiffs: Joseph Van Eaton, Esq.
23 Michael Watza, Esq.
24 William Irving, Esq.

25 For the Defendants: Robert Scott, Esq.
Michael S. Ashton, Esq.
Anita Fox, Esq.

Proceedings taken by mechanical stenography, transcript
produced by computer-aided transcription

T A B L E O F C O N T E N T S

	<u>PAGE</u>
<u>WITNESSES:</u>	
<u>LOUISE BELLER</u> (Defense)	
Direct-Examination by Mr. Scott	63
Cross-Examination by Mr. Van Eaton	64
Redirect-Examination by Mr. Scott	66
<u>BRIAN TOWNE</u> (Plaintiff)	
Direct-Examination by Mr. Watza	68
Cross-Examination by Mr. Scott	77
Redirect-Examination by Mr. Watza	80
<u>MS. BROGAN</u> (Defense)	
Direct-Examination by Mr. Scott	81
Cross-Examination by Mr. Watza	84
<u>KEVIN McNICHOL</u> (Defense)	
Direct-Examination by Mr. Scott	88
Cross-Examination by Mr. Van Eaton	88
<u>DEBORAH GUTHRIE</u> (Defense)	
Direct-Examination by Mr. Scott	93
Cross-Examination by Mr. Watza	97
Redirect-Examination by Mr. Scott	99
<u>DAVID BUHL</u> (Defense)	
Direct-Examination by Mr. Scott	100
Cross-Examination by Mr. Van Eaton	119
<u>KEVIN McNICHOL</u> (Defense)	
Direct-Examination by Mr. Scott	134
Cross-Examination by Mr. Van Eaton	141
<u>E X H I B I T S</u>	
Def#1	(Comcast business record) 102
Def#2	(Satellite mailer) 118
Def#3	(Television ad transcript) 141
Def#4 & 5	(Graphics of bandwidth system) 141
Def#6	(Comcast newspaper notices) 144

1 Detroit, Michigan

2 Monday, January 14, 2008

3 (At about 9:00 a.m.)

4 - - -
5 (Call to Order of the Court)

6
7 THE CLERK OF THE COURT: Court calls case number
8 08-10156, City of Dearborn, et al versus Comcast of Michigan,
9 Inc., et al,.

10 MR. WATZA: Good morning, Your Honor. Michael Watza on
11 behalf of Meridian Township. To my right is Joe Van Eaton on
12 behalf of Meridian Township, and Bill Irving on behalf of the
13 City of Dearborn, as well as Sharon Gillette, Your Honor.

14 THE COURT: Thank you.

15 MR. ASHTON: Good morning, Your Honor. Michael Ashton
16 law firm of the law firm of Fraser, Trebilcock, Davis and
17 Dunlap on behalf of Defendants, and with me today is Mr. Scott
18 and Miss Fox who will be appearing on behalf of the
19 Defendants.

20 THE COURT: Thank you. You may take your seats. Mr.
21 Scott, I understand that you need to be sworn in to practice
22 before this Court?

23 MR. SCOTT: That's correct, Your Honor.

24 THE COURT: Have you completed the card? You have
25 it? Why don't you come to the podium? Mr. Ashton, are you

1 making this motion?

2 MR. ASHTON: Yes, Your Honor, I would. If it please
3 the Court, I'd like to move for the admission of Mr. Scott to
4 this Court based on the information on the -- our
5 application, and would just briefly point out that Mr. Scott
6 is a partner in the law firm of Davis, Wright & Tremain LLP
7 from -- located in Washington, D.C. He has been admitted to
8 the practice and licensed in the state of Virginia in 1987, as
9 well as Washington, D.C. in 1989. He's also a member of the
10 United States Supreme Court Bar, as well as numerous other
11 Bars in the Federal Court and we are able to certify that he's
12 of good character and reputation and is well qualified to
13 practice as a member of this Court.

14 THE COURT: Very good. That sounds like a good
15 endorsement of Mr. Scott.

16 MR. SCOTT: Thank you very much.

17 THE COURT: Did you acquaint yourself with our court
18 civility rules?

19 MR. SCOTT: I read them over dinner with local counsel
20 last night, Your Honor.

21 THE COURT: Thank you. In addition to the oath, I
22 need you to make this commitment to professional civility and
23 please repeat -- do you have a copy of this?

24 MR. SCOTT: I have it in my bag, if I could grab it.
25 Yes.

1 THE COURT: I don't know if you have the same one.
2 You can grab it. So Mr. Scott, I just need you to make this
3 Declaration first, then I'll give you the oath.

4 MR. SCOTT: Certainly. I will conduct myself in
5 accordance with the standards of professional integrity and
6 personal courtesy set forth in the Civility Principles of the
7 United States District Court for the Eastern District of
8 Michigan.

9 I will honor and respect the Constitution of the
10 United States, the Judicial System, the legal profession and
11 will strive to uphold the dignity of each.

12 I will be guided by a fundamental sense of integrity,
13 candor and fair play.

14 I will abstain from disrespectful, disruptive and/or
15 abusive behavior and will at all times act with dignity,
16 decency and courtesy.

17 I will seek to resolve and not prolong legal disputes
18 without lessening my obligation to clients' interest.

19 I will respect the time and commitment of others and
20 will be diligent and punctual in communicating with others in
21 fulfilling my own responsibilities.

22 I will exercise independent judgment and will not be
23 guided by ill-will, deceit or avarice.

24 I will further my profession's dedication to public
25 service.

1 I will strive to do honor to the search for truth and
2 justice.

3 As a lawyer, my word will be my bond.

4 THE COURT: Thank you, Mr. Scott.

5 MR. SCOTT: Thank you, Your Honor.

6 THE COURT: Please repeat after me.

7 (Attorney oath given by the Court at about 9:07 a.m.)

8 THE COURT: Thank you.

9 MR. SCOTT: Do I hand this card up?

10 THE COURT: You can give it to Miss Vertriest. Thank
11 you.

12 Let me get a sense of where we're going first in
13 terms of witnesses and evidence that you intend to present
14 other than argument and then before you begin, I do have some
15 questions that I just want answered very briefly, but you can
16 fill in the blanks and answer them in greater detail as you
17 present your arguments. So for the Plaintiffs, what is your
18 plan this morning?

19 MR. WATZA: Your Honor, the Plaintiffs, we have four
20 witnesses that we can present for Direct or for Cross-exam.
21 We are satisfied that we have presented to the Court
22 essentially our case through briefs, affidavits and exhibits.
23 In order to keep time to a minimum, we are willing to stand on
24 those and we offer the witnesses for cross-exam, if that's the
25 Court's pleasure and Comcast would agree.

1 In the alternative, we can present witnesses one at a
2 time. We have Deborah Guthrie, Sharon Gillette, Andrew
3 Afflerbach, all of whom have provided affidavits, and we also
4 have Brian Towne from the Haslett School System, Your Honor..

5 THE COURT: Brian -- what is the last name?

6 MR. WATZA: Brian Towne, T-o-w-n-e.

7 THE COURT: And Haslett you said?

8 MR. WATZA: Haslett Schools, yes, Your Honor. The
9 Mayor of the City of Dearborn is also available to testify.

10 THE COURT: Is the Mayor here?

11 MR. WATZA: I do not believe the Mayor is here at the
12 present time.

13 THE COURT: All right. Thank you.

14 MR. IRVING: I have him on-call, Your Honor. He can be
15 here in 20 minutes.

16 THE COURT: Thank you. And for the Defense?

17 MR. SCOTT: Your Honor, the Defense, we have obviously
18 nothing that I believe we must prove today. The burden is
19 entirely on Plaintiffs, but we did submit papers 24 hours
20 notice which represented that we would be able to prove today
21 with competent proofs from some elements that defeat their
22 claim and demonstrate the harm to Comcast and the loss of
23 benefits to consumers if this Injunction were to issue. So
24 we're prepared to go forward with the following witnesses:
25 Dave Buhl, who's Senior Regional Vice President for Comcast in

1 the Michigan area, Kevin McNichol, who's a Regional Vice
2 President of Engineering and Louise Beller, who is the Public
3 Relations and Communications Executive in charge of the
4 Michigan region.

5 THE COURT: Okay, thank you.

6 MR. WATZA: Your Honor, I apologize. I missed one
7 witness; Brian Dumont also from Meridian Television.

8 THE COURT: From where?

9 MR. WATZA: Meridian Television. And we also would
10 preserve the right to rebut with these witnesses, if
11 necessary.

12 THE COURT: Okay.

13 MR. SCOTT: Your Honor, Mr. Scott, if I may. One more
14 item is that we are obviously appearing here today on TRO
15 Preliminary Injunction status and make no concessions or
16 waivers obviously as to arguments we may make in the form of a
17 12(b)(6) type motion.

18 THE COURT: I understand.

19 MR. SCOTT: Thank you.

20 THE COURT: Yesterday there were questions that the
21 Court sent out to Defendant and a response was made.
22 Plaintiff took some exception to that response based on the
23 notices that had gone out to subscribers and a revised table
24 was presented to the Court today which seems to comport in
25 large part with what Plaintiff said, except that I don't see

1 Channel 16, the Dearborn Public Access Station listed here,
2 which Plaintiffs say the Notice said would go from Channel 16
3 to 918 and I'm just not seeing it on the Table A revision. Is
4 there a Channel 16?

5 MR. SCOTT: Your Honor, there is no Channel 16. The
6 confusion may have stemmed from the fact that the -- public
7 access by the way is Channel 18 on the material submitted this
8 morning.

9 THE COURT: Okay.

10 MR. SCOTT: And it goes from Channel 18 to Channel 917
11 public access.

12 THE COURT: Mr. Irving, your email is incorrect that
13 there was a Channel 16?

14 MR. IRVING: There are six public access -- I'm sorry
15 -- six PEG channels in the city of Dearborn, Your Honor. I
16 can't verify for you today as to whether there is a
17 programming on that or not. However, there are seven channels
18 listed on the Subscriber Notice, one of which is Comcast's
19 local channel. The other six, to my understanding, are the
20 six PEG channels in the city of Dearborn.

21 THE COURT: Yes, Mr. Scott.

22 MR. SCOTT: Information coming in all the time, Your
23 Honor. We have witnesses who can back this up, but I
24 understand that the Channel 16 was not in use in Dearborn as
25 of January 1, 2007 I believe is the information I'm provided,

1 and that because of that, the channel reverted to Comcast use
2 is the information I have.

3 THE COURT: Okay.

4 MR. SCOTT: Your Honor, just to be clear now that
5 we're on the record. The confusion in the channel lineup
6 submitting came from the fact that people working to create
7 that list pulled down a menu for Dearborn Heights instead of
8 Dearborn City and then we found the mistake and corrected it.

9 THE COURT: I understand everything was on a fast
10 track this weekend, so that's fine.

11 Let me just ask my questions and very brief
12 responses. Fill in the blanks during your argument. This
13 first -- and they're not in any particular order. First
14 question is for the Plaintiff. Does the Plaintiff take the
15 position that all of the channels on the basic service tier
16 are required to be in analog?

17 MR. VAN EATON: Your Honor, I believe that the
18 channels that would be on the basic service tier should be
19 treated as being on the basic service tier with one exception
20 would be analog and that would be the high definition.

21 THE COURT: No, no. You have to start again. I did
22 not understand that answer at all.

23 MR. VAN EATON: Joseph Van Eaton.

24 THE COURT: Let me ask it again. I understand that
25 based on this Table A, some of the channels are not analog.

1 My only question is are you taking the position that basic
2 service tier channels are required to be analog?

3 MR. VAN EATON: Let me see if I can answer the
4 question properly. The pay channels have to be analog if the
5 broadcast channels -- if broadcast channels are analog. The
6 operator has the option of delivering all channels on its
7 system in a digital format. So we're not taking the position
8 that all channels on basic have to be analog. We're taking
9 the position that they can't discriminate against PEG channels
10 as compared to the standard broadcast channels.

11 THE COURT: Okay. Defendants, are there any of these
12 channels on your Table A that you indicate are digital?

13 MR. SCOTT: The answer is yes, Your Honor. There are
14 a number of them that are digital.

15 THE COURT: No, no. I didn't finish my question. I
16 sort of lost my train of thought. Let me back up. Are there
17 -- these channels that you've indicated in this Table A that
18 are digital, do they require converter boxes or digital TV?

19 MR. SCOTT: The notes at the bottom try to clarify
20 that, Your Honor. One is a -- I'll call it an up symbol, an
21 arrow up and the other is a asterisk and the arrow up says
22 these channels marked with this symbol are available to
23 customers who subscribe to basic service and use a digital
24 converter. So those channels --

25 THE COURT: (Interjecting) Some of these channels

1 either require a converter box or the person has to have high
2 definition TV, is that true?

3 MR. SCOTT: That's correct. That's correct today.

4 THE COURT: Okay. So your customers today who only
5 have analog style televisions cannot access all the basic
6 service tier stations unless they have additional equipment?

7 MR. SCOTT: I believe that's true, and only because I
8 have an analog television that doesn't get a lot of channels
9 on my cable system, not because I know engineering.

10 THE COURT: Now when your customers today who have
11 this basic service tier package only, were they told that they
12 needed certain equipment to access certain of the channels
13 that they subscribe to?

14 MR. SCOTT: You mean in the past?

15 THE COURT: Yes.

16 MR. SCOTT: For example, for these channels that today
17 are delivered in digital?

18 THE COURT: Correct.

19 MR. SCOTT: I can't answer that; we have a witness
20 here who probably can.

21 THE COURT: Who is that witness?

22 MR. SCOTT: Perhaps Miss Beller? Miss Louise Beller,
23 Communications Director.

24 THE COURT: Miss Beller, do you know answer to that
25 question?

1 MS. BELLER: Yes.

2 THE COURT: You're not under oath yet, but perhaps we
3 can do that. Miss Beller, raise your right hand and talk
4 loud.

5 LOUISE BELLER,
6 Having been duly sworn under oath at about 9:18 a.m.,
7 testified as follows:

8 THE COURT: Miss Beller, existing customers with the
9 Basic Service Package only, were they told that they needed
10 certain equipment to access certain of these channels?

11 MS. BELLER: Yes. They are noticed annually. With
12 their lineup it has this information clearly on it.

13 THE COURT: Are there -- for the Defendant are there
14 channels other than the PEG channels that you propose to
15 change from analog to digital tomorrow?

16 MR. SCOTT: Yes.

17 THE COURT: And they're on this list?

18 MR. SCOTT: Yes. It's actually a channel that Comcast
19 itself programs called Comcast Television shown as Channel 25
20 on this Table A that we provided this morning. It's going
21 from Channel 25, Comcast Television moving to Channel 900. It
22 will be marked with that arrow up because it will only be
23 available to those who have a digital box.

24 THE COURT: Is that the only other change?

25 MR. SCOTT: To my knowledge.

1 THE COURT: Tomorrow?

2 MR. SCOTT: Tomorrow that's the only one.

3 THE COURT: Are your current, your today 900 channels
4 available only in digital format?

5 MR. SCOTT: Yes. The 900 series?

6 THE COURT: Yes.

7 MR. SCOTT: Yes.

8 THE COURT: And you don't have any 900 channels today
9 at the basic service tier?

10 MR. SCOTT: I'm not sure about that, Your Honor. I
11 know that there are none that would be available without a
12 converter, but I'm not sure that these are blank. I can't
13 personally answer that, but we do have someone that can answer
14 that for you, I believe.

15 THE COURT: Miss Beller, do you know the answer to
16 that?

17 MS. BELLER: Yes.

18 THE COURT: There are 900 -- are there 900 channels
19 at basic service tier level today?

20 MS. BELLER: No.

21 THE COURT: And what package does a customer have to
22 buy to get 900 channels today?

23 MR. SCOTT: There aren't any there.

24 THE COURT: You don't have any 900 level channels
25 today?