

November 20, 2009

Via Electronic Filing System

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW - Room TW-A325
Washington, DC 20554

Re: Petition for Declaratory Ruling -- MB Docket Number 09-13, CSR-8128

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, this *Ex Parte* Notice is filed on behalf of Comcast Corporation ("Comcast") in connection with the Petition for Declaratory Ruling filed in the referenced docket by the City of Dearborn et al. (CSR-8128).

This notice updates Comcast's November 10, 2009 letter on the status of the litigation between four Michigan municipalities and Comcast regarding Comcast's former plan to digitize its Michigan PEG channels, now pending in the United States District Court for the Eastern District of Michigan (*City of Dearborn et al. v. Comcast of Michigan III, Inc.*, Case Number 08-10156 (E.D. Mich., filed Jan. 12, 2008)).

Subsequent to Comcast's November 10, 2009 filing with the court of a status report and request for a conference, the communities opposed that request for a conference on November 12, 2009 (copy attached). In their filing, the communities implied that the court need not do anything, and emphasized press reports of "rumors that the Commission is prepared to rule soon on the court's questions." They also suggested that Comcast's change of plans as to PEG digitization in Michigan was insufficient to resolve this matter because it is not an "enforceable proposal." The communities surmised that Comcast "is apparently reserving the right to take actions inconsistent with its promise in the status report."

We are pleased to report that in the enclosed order dated November 18, 2009, the court set a "status and scheduling conference" for January 7, 2010. The judge further ordered the parties to meet face-to-face prior to December 23, 2009 (fourteen days before the hearing).

Further, to address the communities' concerns and facilitate the upcoming court-ordered meetings, Comcast forwarded to the communities a proposed consent order that the court could enter to give the force of law to Comcast's pledge not to digitize Michigan PEG channels until

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we digitize the broadcast channels in Michigan. A copy of Comcast's proposed consent order and letter to the communities is enclosed.

Specifically, the consent order proposed by Comcast would require that, "[w]ith respect to each Comcast cable system in Michigan, Comcast has agreed to continue to deliver existing public, educational and governmental ("PEG") channels in analog format on the basic service tier until such time as Comcast digitizes the entire basic service tier on that cable system, unless otherwise agreed by the local franchise authority."

We also made clear to the communities in our transmittal letter that, apart from the PEG digitization plan that was the subject of the litigation and that we now agree we will no longer pursue, Comcast has never expressed an intention, and has no current intention, to move any analog PEG channel to a different channel number in Michigan. Should we ever seek to make such a change, we will do so only in a manner that is consistent with all applicable laws.

Finally, we once again asked each of the communities to meet with Comcast representatives to resolve the matter, and offered to meet in Michigan the week after Thanksgiving. Meetings with two of the communities are already scheduled.

Please direct any questions or correspondence to the undersigned.

Very truly yours,

Davis Wright Tremaine LLP

Handwritten signature of Wesley R. Heppler in black ink, with the initials "RGS" written at the end.

Wesley R. Heppler

Enclosures

cc: Sherrese Smith, w/enclosures
Rosemary Harold, w/enclosures
Jamila Bess Johnson, w/enclosures
Rick Kaplan, w/enclosures
Brad Gillen, w/enclosures
Bill Lake, w/enclosures
Bob Ratcliffe, w/enclosures
Nancy Murphy, w/enclosures
Mary Beth Murphy, w/enclosures
Joshua Cinelli, w/enclosures

IT IS THE RESPONSIBILITY OF COUNSEL TO READ THIS ENTIRE NOTICE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CITY OF DEARBORN et al,

Plaintiff(s),

vs

Case No: 08-10156
Honorable Victoria A. Roberts

COMCAST OF MICHIGAN III, INC. et al,

Defendant(s),

NOTICE OF FRCP 16(b) STATUS AND SCHEDULING CONFERENCE

IF THE PARTIES have not already done so, you are directed to **meet face-to-face** to prepare a **joint** proposed discovery plan in accordance with FRCP 26(f).

The Rule 26(f) plan must be electronically filed **FOURTEEN (14) DAYS PRIOR TO THE CONFERENCE.**

In addition to the requirements set forth in Rule 26(f), your proposed plan must address:

- The background of the action, and the principal factual and legal issues, including the nature of and basis for all claims and defenses;
- Proposed amendments to the pleadings;
- Admissions of facts and stipulations to the authenticity of certain documents;
- Whom you propose to depose, whether you propose to depose more than ten (10) witnesses, and whether you expect any deposition to last longer than seven (7) hours in one day (See amendment to FRCP 30(d)(2));
- Whether you seek leave to serve in excess of twenty-five (25)

interrogatories, including sub-parts;

- Areas which may require expert testimony;
- Electronic discovery, and include procedures and protocols for disclosure or discovery of electronically stored information;
- Any issues (including procedures and protocols) relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;
- Any issue relating to preserving discoverable information.
- Outstanding or anticipated discovery disputes, and the basis you have for any objection;
- Whether either party believes any of the initial disclosure requirements under FRCP26(a)(1) are not appropriate, and the basis for the parties' objection;
- An appropriate management plan, including a recommended discovery cut-off date;
- State whether your client will consent to the imposition of costs and sanctions if the case is referred to state court case evaluation under authority of LR 16.3; and
- Each side's view of what it would take to resolve this matter.

The parties shall not use their failure to promptly hold a Rule 26(f) meeting, or the Court's failure to promptly schedule a Rule 16 conference, as the basis for not making disclosures required under Rule 26(a)(1).

And, an attorney's failure to participate in the scheduling of a Rule 26(f) meeting, thereby delaying discovery, shall be brought to the attention of the Court immediately by opposing counsel.

YOU ARE NOTIFIED TO APPEAR ON: JANUARY 7, 2010 at 2:00 PM
for the Status and Scheduling Conference.

Counsel are advised to familiarize themselves with the requirements of FRCP 16 and 26 and Local Rules 16.1, 16.2, 16.3, 26.2 and 26.3 prior to this conference (Please note that parts of LR 26.2, Filing of Discovery Material, and LR

26.3(a), Disclosures Required by Fed. R. Civ. P 26(a)(1), are now in conflict with the federal rules and were repealed effective December 1, 2000).

At the Scheduling Conference, counsel should be prepared to:

- A. Identify and narrow issues;
- B. Discuss pleading amendments;
- C. Discuss settlement;
- D. Discuss control of discovery;
- E. Identify issues which may appropriately be resolved by motion;
and
- F. Estimate trial length.

Counsel are advised to bring their calendars for the scheduling of dates.

S/Carol A. Pinegar

Carol A. Pinegar, Case Manager
United States District Court
(313) 234-5230

Dated: 11/18/09

IT IS THE RESPONSIBILITY OF PLAINTIFF TO NOTIFY ALL COUNSEL KNOWN AND NOT LISTED BELOW OF THIS STATUS AND SCHEDULING CONFERENCE.

The court does not grant adjournments of Status and Scheduling Conferences because trial counsel is not available. Substitute counsel must appear who is knowledgeable about the case and who can meaningfully discuss the issues outlined above. In some instances, requests for trial counsel to hold this conference by telephone will be granted.

(Revised 9/06)



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Via Facsimile & U.S. Mail

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Kitch Drutchas Wagner et al
One Woodward Avenue
Suite 2400
Detroit, MI 48226

Re: **PEG Channels & Digital Service**

Dear Counselors,

This letter is to follow up on my letter of November 6th and Comcast's subsequent request for a status conference with Judge Roberts, which has now been set for January 7, 2009. I am writing to respond to issues raised in the recent court filing by Bloomfield, Dearborn, and Meridian, and to Mr. Irving's comments at the November 18 Dearborn Cable Commission meeting.

We have heard concerns that Comcast's commitment to leave public, educational and governmental ("PEG") channels in analog format in its Michigan cable systems until Comcast converts all of its broadcast channels to digital format is not enforceable, and suggestions that Comcast should make a settlement offer. In an effort to address these concerns, Comcast is prepared to enter into a consent order that incorporates our commitment. A draft of such an order is enclosed for discussion purposes. Such a consent order would provide an enforceable order as to Comcast's commitment in the event the Plaintiffs feel at any time in the future that Comcast is not in compliance.

To be clear, apart from the PEG digitization plan that was the subject of this litigation and that we now agree we will no longer pursue, Comcast expressed no intention, nor do we have any current intention, to move any analog PEG channel to a different channel number in Michigan. Should we ever seek to make such a change, we will do so only in a manner that is consistent with all applicable laws.

Echoing Mr. Irving's comments at the recent Dearborn Cable Commission meeting, we hope to meet with each of you as soon as possible to consider the feasibility of such a consent order. To that end, for those of you with whom we have not already arranged a meeting, we will contact you shortly to try and schedule a time for meetings in Michigan during the week after Thanksgiving.

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I am available at your convenience to discuss this further. Thank you for your consideration and courtesy.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Jacobs". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jeffrey A. Jacobs

Enclosure

cc: Robert G. Scott, Jr., Esq.
Michael S. Ashton, Esq.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DEARBORN, et als,

PLAINTIFFS,

v.

COMCAST OF MICHIGAN III, INC.
COMCAST OF THE SOUTH, INC.

DEFENDANTS.

Case Number: 08-10156
Hon. Victoria A. Roberts

[PROPOSED] CONSENT ORDER OF DISMISSAL

Before the Court is the parties' Joint Motion for Entry of Consent Order. The Court has concluded that the entry of this Consent Order is a proper exercise of the policy favoring settlement of controversies. Upon the Complaints in these consolidated cases, and the entire record in this matter, for good cause shown, the Motion for Entry of Consent Order is hereby **GRANTED**, and the Court hereby **ORDERS** that:

A. Defendants Comcast of Michigan III, Inc., et al. (collectively "Comcast") and all its agents, officers, employees, representatives, successors, assigns, attorneys, and affiliates, and all other persons acting for, with, by, through, or under authority from Comcast, or in concert or participation with Comcast, and each of them, are enjoined permanently, as follows:

With respect to each Comcast cable system in Michigan, Comcast has agreed to continue to deliver existing public, educational and governmental ("PEG") channels in analog format on the basic service tier

until such time as Comcast digitizes the entire basic service tier on that cable system, unless otherwise agreed by the local franchise authority.

B. A copy of this Consent Order shall be filed with the Federal Communications Commission in the proceeding opened in response to this Court's Order Referring Seven Questions to the Federal Communications Commission Pursuant to the Primary Jurisdiction Doctrine.

C. Except for the relief granted herein, all claims for relief in the Complaints are dismissed pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

D. Each of the parties to this action shall bear its own costs and attorneys fees.

IT IS ORDERED

United States District Judge

Dated: November __, 2009