

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
ERRATUM to Ex Parte Notice**

Dear Ms. Dortch:

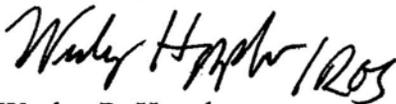
Pursuant to Section 1.1206 of the Commission's Rules, this is an Erratum to an *ex parte* notice filed earlier today on behalf of Comcast Corporation ("Comcast") in connection with the Petition for Declaratory Ruling filed in the referenced docket by the City of Dearborn et al. (CSR-8128).

The earlier *ex parte* notice referenced a filing three communities made on November 12, 2009 in *City of Dearborn et al. v. Comcast of Michigan III, Inc.* pending in the United States District Court for the Eastern District of Michigan in which they opposed Comcast's request for a conference. That court filing was inadvertently omitted from our earlier filing, and is submitted herewith. Please associate this document with my letter filed earlier today.

Please direct any questions or correspondence to the undersigned.

Very truly yours,

Davis Wright Tremaine LLP



Wesley R. Heppler

Enclosures

Marlene Dortch
November 20, 2009
MB 09-13 Erratum
Page 2

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

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

CITY OF DEARBORN, et al.,

PLAINTIFFS,

v.

**COMCAST OF MICHIGAN III, INC., et
al.**

DEFENDANTS.

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

**PLAINTIFFS CITY OF DEARBORN, CHARTER TOWNSHIP OF
BLOOMFIELD AND CHARTER TOWNSHIP OF MERIDIAN RESPONSE TO
COMCAST OF MICHIGAN III, INC.'S
REQUEST FOR RULE 16 CONFERENCE**

Plaintiffs City of Dearborn, Charter Township of Bloomfield and Charter Township of Meridian herewith respond to opposing Defendant's "Status Report and Request for a Rule 16 Conference."

This Court will not be surprised to learn that each of the Plaintiffs face severe budgetary issues, which makes it extremely important that any litigation be handled efficiently, without unnecessary hearings, and certainly without hearings whose main purpose may be to delay the ultimate resolution of a case. A Rule 16 conference would be appropriate here if it would expedite the "disposition of the action," or if it would facilitate settlement. Rules of Civ. Pro. 16(a)(1), (a)(5).

However, a conference as suggested by Comcast would not expedite disposition. Comcast contends the case is moot because it has revised its plans for PEG channels. Status Report, 1-2. However, while Comcast is obviously free to file a motion for

dismissal on grounds of mootness, its alleged voluntary change in plans at this late date is not likely to deprive the court of jurisdiction over this matter. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283 (1982) (“It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” Nor (despite its characterization of the purposes of this litigation) does its proposed action substitute for a judgment in this matter that would give *res judicata* and *collateral estoppel* effect to the court’s rulings even to date. As Comcast seems to concede by its offer to seek a dismissal of our claims without prejudice, it is apparently reserving the right to take actions inconsistent with its promise in the status report, and inconsistent with existing orders in the case. (For example, the court’s injunction in this case prevents the company from either changing the channel location or digitizing the plaintiffs’ PEG channels. Both are important; Comcast only addresses the latter, and certainly does not propose to reduce the existing order to permanent status).

Moreover, there is a risk that a conference will actually delay resolution of this case. Before it ever filed a motion with this court, and indeed before it ever even filed its request for a status conference, **Comcast visited the Commission offices *ex parte*, and told the Commissioners that it was no longer necessary for the FCC to respond to the Court’s questions** *because* the case was moot and *because* the company was seeking a conference with the court and requesting the communities to join in filing a joint order of dismissal.. See Attachment 1, *ex parte* notice filed by Comcast November 11, 2009]. Contemporaneously, the communications press in Washington called plaintiff’s counsel

and asked for reaction to rumors that the Commission is prepared to rule soon on the court's questions.

The other reason for a conference is to facilitate settlement. However, in this case, Comcast has presented no settlement proposal. Its notice to the attorneys for plaintiffs simply suggests that they join in a motion to have the case dismissed on mootness grounds. We do stand prepared to consider any enforceable proposal for settlement and actually communicated that to Comcast.

Thus, the late hour notice seems less an effort to settle, than an effort to delay and add expense. If Comcast does wish to settle, it should submit written proposals to the plaintiffs. The Court need not otherwise expend its resources at this point.

Plaintiffs urge the Court to act consistent with the foregoing.

Respectfully submitted,

KITCH DRUTCHAS WAGNER
VALITUTTI & SHERBROOK

/s/ with consent of William H. Irving

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Dated: November 12, 2009