

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

In the Matter of)
)
Application of Comcast Corporation,) MB Docket No. 10-56
General Electric Company)
And NBC Universal Inc.)
For Consent to Assign Licenses or)
Transfer Control of Licensees)

**OPPOSITION TO COMCAST ACQUISITION OF NBC UNIVERSAL
DUE TO COMCAST'S FAILURE TO SERVE THE PUBLIC INTEREST,
CONVENIENCE AND NECESSITY**

April 19, 2010

Elan Feldman
1050 NW 21 Street
Miami, Fl.33127
Telephone: (305) 545 6680
Facsimile: (305) 325 1966

**OPPOSITION TO COMCAST ACQUISITION OF NBC UNIVERSAL
DUE TO COMCAST’S FAILURE TO SERVE THE PUBLIC INTEREST,
CONVENIENCE AND NECESSITY**

The following Informal Objection is submitted against the Application for the proposed transfer of broadcast licenses to COMCAST CABLE HOLDINGS, LLC and COMCAST CABLE COMMUNICATIONS HOLDINGS (hereinafter referred to as “COMCAST”). Section 309(k) (1) of the Federal Communications Act allows the FCC to grant a license application if:

“(A) the station has served the public interest, convenience and necessity; (B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and (C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.”

However, the inquiry concerning an Applicant’s fitness for renewal includes examination into an Applicant’s ‘character,’ as well as financial, technical, and other qualifications of the applicant. See 47 USC § 308(b). Misconduct which violates the Communications Act or a Commission rule or policy is among the factors considered when evaluating a licensee’s character.¹

This objection cites two important arguments in conjunction with the presentation of certain facts, to support the notion that proposed licensee COMCAST fails to serve the public interest, convenience and necessity. The intent of this objection is to direct the Commission’s attention to COMCAST’s unconscionable evasion of its responsibility for violations of the law, questionable corporate ethics and near total absence of corporate moral character when dealing with members of the public, and to bring to light COMCAST’s anti-competitive and socially detrimental objectives in pursuing the proposed merger transaction with NBCU.

¹ *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.” *Id.* at 1190-91. **The relevant non-FCC-misconduct was limited to adjudicated cases involving: fraudulent representations to government agencies, 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.* Other courts have further noted that Petitions to Deny are an integral part of the FCC procedure for determining if the grant of a license to a tentative selectee is in the public interest; by bringing to the FCC’s attention pertinent facts and problems these petitions are said to play a role similar to that of briefs and legal memoranda in court cases. [Citations and internal quotations omitted.]

Point No. 1: COMCAST's proposed merger with NBCU will only enlarge the dichotomy presently created between the FCC's growing discretionary vacuum and COMCAST's increasing monopoly power.

On April 6, in *Comcast Corp. v. F.C.C.* --- F.3d ----, 2010 WL 1286658 (C.A.D.C. 2010), the United States Court of Appeals sitting in the D.C. Circuit overruled an earlier finding by a lower court that this Commission may use its powers under its "ancillary jurisdiction" in order to prohibit COMCAST from discriminating against certain varieties of Internet data and thereby contravening fundamental principles of Net Neutrality.² What remains "up for grabs" post-*Comcast v. F.C.C.* is the increasingly unavoidable issue of whether or not the FCC is left with sufficient authority to execute the mission so explicitly articulated by its National Broadband Plan (the "Plan") and supervise corporate licensee conduct of this nature.³

It is important to note that the fact that COMCAST arbitrarily slowed its customers IP traffic is not disputed. The question considered by the D.C. court was only whether or not the FCC had the power to do anything about it. This undisputed fact was contradicted by COMCAST in testimony given by David Cohen (a high-ranking COMCAST corporate officer) before the Committee on the Senate Judiciary United States Senate about blocking: "We have a proven track record. We have never blocked our customer's access to lawful content and repeatedly have committed that we will not block our customers ability to access any lawful content, application, or service available over the internet." To put it bluntly, David Cohen and COMCAST lied to the U.S. Senate. Additionally, with the outcry of people, an FCC meeting regarding this problem was ordered. According to reports, COMCAST paid people to fill seats. As a result, scores of COMCAST critics and other members of the public were denied entry because the room filled up well before the beginning of the hearing, depriving the American people of their right to redress their Grievances. Upon discovery, the FCC was force to make a new meeting at the expense of the American people. Whether as a result of recent trends or the culmination of more remote deregulatory events, the FCC now finds itself stripped of its enforcement powers, armed only with the investigatory authority and the right to make recommendations. While the manager and shareholders of COMCAST may welcome this decision, how are the interests of the public served by an arbitrary slow-down of their network traffic for the sole purpose of increasing Comcast's profitability?

It has been noted that short of Congress delegating new powers to the Commission (or reclassifying all of Internet broadband as governed by a different set of statutory provisions), the agency will be seriously ill-equipped to regulate the likes of

² See full text of the April 6, 2010 decision in COMCAST vs. FCC, available at <http://pacer.cadc.uscourts.gov/common/opinions/201004/08-1291-1238302.pdf>.

³ The Plan states over 200 recommendations for bringing high-speed service to underserved communities and promoting socially beneficial goals of the agency via broadband.

COMCAST, much less a merged COMCAST-NBCU entity.⁴ It is also observed that COMCAST has little reason to be dissatisfied with the federal court's decision to abandon the Plan and the Commission's Open Internet proceeding to a type of regulatory "limbo".

I believe, as others do, that the D.C. Circuit's holding will serve to vitiate some of the Plan's most deservedly lauded pro-consumer recommendations, specifically those aimed at increasing consumer privacy and public safety, promoting cybersecurity and transparency, accelerating access in low-income and rural U.S. communities, lowering barriers that preclude the deployment of broadband technology and encouraging the adoption of broadband by small businesses.

Point No. 2: COMCAST's Complete Lack of Legal Ethics or Candor in Dealing with Individuals or Public Entities.

The further erosion of the right to address grievances via the forum of the FCC is a particularly alarming prospect in light of Comcast's capacity for illegal, morally questionable, socially detrimental and generally non-exemplary conduct exhibited during multiple cases of trespass upon private property. In my specific case, Comcast's trespass⁵ resulted in extensive property damage and serious physical injury. COMCAST further compounded these injuries with a series of actions designed to silence me and disclaim any responsibility, all while employing tactics that would have made Machiavelli both quite proud and seem like Snow White in comparison. Based upon my involvement with COMCAST and its counsel, it is my understanding that all actions were done with the full and expressed knowledge and complicity of Comcast's CEO, Brian Roberts, and executive V.P. David Cohen.

I own a small air conditioning company in Miami, and COMCAST used the roof of our premises as a shortcut to supply service to its subscribers in the neighborhood, trespassing upon and damaging extensive portions of my private personal and real property while running the cables⁶. The weakened portion of the roof gave way during Hurricane Katrina, resulting in a violent accident, in which one of my employees fell through a weakened section of the second floor damaged by Comcast's installation and suffered permanent and debilitating bodily injuries, including, among other life-threatening conditions, a fractured spine. COMCAST's actions of disclaiming any responsibility in this accident and legal gamesmanship has literally "broken the back" of an honest family-owned American small business and its workers.

⁴ See Klassen, *FCC's Open Internet Defeated: Commission Undergoes Uncomfortable Neutering Procedure*, April 8, 2010, available at <http://www.thetelecomblog.com/2010/04/08/fcc%E2%80%99s-open-internet-defeated-commission-undergoes-uncomfortable-neutering-procedure/>

⁵ This is not an allegation, it is a fact. Please refer to Attachment #1, a report containing details of an on-site investigation by the Miami police, and Attachment #2, which is a pair of letters from COMCAST's attorney's to the contractor who performed the unauthorized installation on their behalf. In these letters COMCAST admits that the cables were theirs, that they were placed without permission, and that the faulty installation of the cables resulted in the damage to the roof.

⁶ Please refer to Attachment #2 for evidence of this fact. See note 5 for explanation.

COMCAST ultimately could not be forced off my premises by me, as local ordinances of both the City of Miami and Miami Dade County, and the laws of the state of Florida and federal law prohibit the cutting of utility cable and/or make it a criminal offense to interfere with Comcast's cables *even when they are trespassing*. Ultimately, I was left completely without recourse as the City of Miami, Miami Dade County, the State of Florida and this Commission all at one time or another disclaimed the authority to intercede on my behalf.⁷ My subsequent good-faith efforts to negotiate and cooperate with COMCAST in the resolution of this problem were met with stonewalling, deceit, and in the context of an agreement on the UNDISPUTED amount for the damages, an unreasonable demand by COMCAST that I sign release waivers before they would even consider removing their cables from my property.

COMCAST initially made misrepresentations to me as to their ownership of the telecomm wires in question, first disclaiming ownership, and then asserting that the damage done to my property was the work of cable pirates. Further misrepresentations as to their insurance coverage followed, as they sent out an appraiser from a company with whom COMCAST had no policy under cover of the deceit that his work was to process a claim. Comcast's attorneys then proceeded to conduct settlement negotiations, intentionally delaying the provision of requested insurance information.

In the course of this questionable conduct, COMCAST representatives went so far as to defame my reputation to local government officials. At one point COMCAST attorneys resorted to implying to Dade County employees that I was in the midst of committing insurance fraud⁸, while violating my constitutional and civil property rights. Their actions, upon information and belief, were acceptable with the full knowledge of COMCAST officers David Cohen and Brian Roberts. In the course of their representation of proposed licensee COMCAST and I believe with the full knowledge of both Mr.'s Cohen and Roberts, COMCAST's attorneys have lately exhibited a near total lack of truthfulness and reliability and a willful and continuous evasion of their company's tort liability. COMCAST's attorneys had also declined to supply me with insurance information about their contractors as required by Florida law or information of their contractors actions. Comcast is a **big** bully.

Section 621 [47 U.S.C. 541] of the Communications Act of 1934, as amended by the Telecom Act of 1996 (See Part III of the Act, "General Franchising Requirements, Franchising and Regulation) limits the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure—

⁷ Please see the following Attachments: #1 – note that the police officer actually informed me at the time of his investigation of the criminal liability that I would incur if I disturbed the cables that were placed on my property without my permission. #3 is a Letter from Nancy Murphy of the FCC to the state of Florida disclaiming the authority of the FCC in this matter. #4 is an e-mail from Richard Otway disclaiming the authority of the state of Florida.

⁸ Please refer to Attachment #5, a report from Dade County which indicates that Comcast's attorney implied to the county that I was committing insurance fraud and never corrected this injustice

(A) 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;

(B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and

(C) That the owner of the property 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.

COMCAST violated the above provision of the Act and displayed a corporate character that is highly unlikely to make upholding the public interest a corporate priority. Pursuant to the more direct wording of the FCC's 1986 Character Policy Statement, COMCAST manifestly "lack the character traits of 'truthfulness' and 'reliability' that [the Commission] found relevant to the qualifications to operate a broadcast station in accordance with the requirements of the Communications Act and of [Commission] rules and policies." COMCAST has demonstrated a moral character that should preclude FCC licensure, at least until COMCAST's capacity for acting like a law-abiding citizen of the communities it purports to serve can be more closely examined by the Commission.

The two-part argument presented here leads to the inference that the FCC should not, at this juncture, expand the effective reach of a company that it increasingly has no ability to govern and that is willing to endanger rights sacred to private citizens.⁹ As one industry watchdog has already suggested, "Regulatory intervention is the outgrowth of companies doing underhanded and unethical behavior on a consistent and long term basis. So if we don't want regulation why are there no calls for these companies to act ethically to begin with?"

Indeed both in public and in court, the FCC has proclaimed a mandate to treat broadcast licenses (required for both radio and terrestrial TV stations) as a form of public trust. It should not be such a huge leap from the Commission's public stance to infer that this goal should apply to licensees, as well.

Based on the foregoing, I therefore respectfully request that the Federal Communications Commission reject COMCAST's license application based on the licensee's lack of truthfulness, honesty, reliability and its documented failure conduct its affairs in the public interest.

⁹ In light of these arguments and recent uncertainty surrounding the extent of the FCC's jurisdiction over broadband under the Communications Act, the FCC should be taking the steps necessary to build a complete evidentiary record and list of providers to confirm the necessity of the agency's continued oversight authority. Based on my current belief that the problem is not the state of the law but this company's insistently arrogant disregard for the rights of ordinary people, this record should further be made available for public viewing.

Thank you, in advance, for your attention to this Petition.

Sincerely,

/s/ Elan Feldman

License Information: See Attachment

Legal Name of Applicant: COMCAST

City and State: Multiple Broadcast Locations, COMCAST Headquarters: Philadelphia, PA.

MB Docket Number: 10-56

I declare under penalty of perjury that the foregoing is true and correct. That to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose.

Executed on April 19, 2010.


Elan Feldman