

**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 Licenses)

**COMMENTS OF THE CITY OF DETROIT, MICHIGAN IN OPPOSITION TO
COMCAST'S APPLICATION AND PROPOSED JOINT VENTURE**

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Attachment A: *City of Detroit v. Comcast of Detroit, Inc.*, Case No. 2:10-cv-12427 (E.D. Mich. 2010).

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Attachment E: *Dearborn et al. v. Comcast et al.*, 2008 U.S. Dist. LEXIS 108053 (E.D. Mich. 2008).

SUMMARY

The City of Detroit, Michigan ("City" or "Detroit") asks the Commission to reject the proposed transaction and joint venture between Comcast and NBC. "Actions speak louder than words," and Comcast's repeated actions show that it will not comply with federal law or its public interest obligations, despite fine words to the contrary in this proceeding.

As the local cable franchising authority, the City has had a long history with Comcast's operations and oversees Comcast's current cable operations in the City. That local history includes oversight of Comcast's performance of its commitments to local programming and to providing local access to its cable system. The City's history, experiences with Comcast and knowledge about Comcast's actions in the State of Michigan are therefore relevant to this inquiry, where the Commission must determine whether the proposed transaction would serve the public interest and promote the Commission's policy goals of diversity, localism, and competition.

Over its history in Michigan, Comcast has distinguished itself by refusing to perform the public interest obligations it agreed to in its cable franchises. For example, although Congress has stressed the importance of channels for local public, educational and governmental use ("PEG channels"), Comcast has repeatedly violated franchise provisions supporting such channels, such as by refusing to pay (or timely pay) fees to support PEG programming. Comcast's intransigence in this regard has finally culminated in the City filing suit against Comcast in Federal Court, seeking, in part, to force Comcast to live up to its franchise obligations with respect to local access to its cable system and support for local programming. *See City of Detroit v. Comcast of Detroit, Inc., Case No. 2:10-cv-12427 (E.D. Mich. 2010), Attachment A.*

One recent example of this "scofflaw" behavior by Comcast has been its closing of approximately thirteen local PEG studios throughout Michigan. These studios served approximately 1 million people, and were where residents, schools and cities would go to record local programming for carriage on PEG channels. Comcast was required by its franchises to provide these studios for public use, but in 2007 unilaterally closed all of them, violating both its franchises and Cable Act Section 625. While Section 625 allows franchise modifications under certain limited circumstances, it absolutely forbids the modification of franchise requirements for PEG services. 47 U.S.C. 545(e). Comcast claimed the authority to shut down local PEG studios under a state video law which it claimed superseded federal law, despite 47 U.S.C 556's express preemption of all contrary state laws. When a Federal Court rejected Comcast's claim that federal law had been superseded, Comcast still refused to reopen the studios.

In addition, Comcast has stopped providing complimentary drops and service to municipal buildings in Michigan, which it is required to provide under its franchises, and which gives municipalities the ability to monitor franchise compliance and ensure that their PEG channels are being adequately carried. Comcast has repeatedly demonstrated its lack of commitment to local programming by its impairment or elimination of PEG channels and programming in Michigan. Comcast's violations of its franchises and federal law (the Federal Cable Act) demonstrate that Comcast cannot be trusted to keep its commitments or comply with the law.

"Actions speak louder than words." Comcast's actions show that the commitments it has made to this Commission with respect to PEG will not be honored. For the same reason, the Commission now cannot make the assumption that Comcast will comply with applicable

provisions of the Communications Act and other federal, state and local laws relevant to this proceeding. Comcast has forfeited the right to that assumption by its actions in Michigan.

The Commission must therefore disapprove the proposed transactions and Joint Venture.

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**COMMENTS OF THE CITY OF DETROIT, MICHIGAN IN OPPOSITION TO
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I. INTRODUCTION.

On January 28, 2010, Comcast Corporation ("Comcast"), General Electric Company ("GE"), and NBC Universal, Inc. ("NBCU", and together with Comcast and GE, the "Applicants") jointly submitted applications to the Commission seeking consent to assign and transfer control of certain broadcast, broadcast auxiliary, satellite earth station, and private land mobile and private fixed microwave licenses to a new limited liability company that would constitute a joint venture of GE and Comcast (the "Joint Venture"). The Commission is reviewing the proposed transaction to determine whether it is in the public interest, and whether it serves the Commission's policy goals of diversity, localism, and competition.

The City of Detroit ("City" or "Detroit") is an interested party in this proceeding, having a long-standing cable franchise with Comcast. The City asks the Commission to reject the proposed transaction and Joint Venture, as not being in the public interest, due to Comcast's repeated violations of its franchises and federal law. In fact, the City has had to file a Federal

Court suit against Comcast, in order to, among other things, force Comcast to comply with the Federal Cable Act and provide PEG channels and the support for them required under its franchise with the City.

II. CONTROL OF A LARGER PORTION OF THE LOCAL COMMUNICATIONS MARKET BY COMCAST IS NOT IN THE LOCAL PUBLIC INTEREST.

Based on the City's knowledge and experience with Comcast, providing Comcast with a larger share of the local communications market will not be in the public interest, but quite the reverse. Comcast's past and present actions in the City and the State of Michigan have demonstrated a consistent pattern of disregard for applicable law, its franchise contracts, the public interest and the established and documented needs of local communities. Furthermore, Comcast has demonstrated a hostility toward local programming that has been manifested in its efforts to cut off funding and support for public, education, and government access ("PEG") channels and programming in the City and throughout Michigan. To understand why the City believes that Comcast will not live up to its 16 "voluntary public interest commitments" – and particularly to those commitments related to PEG programming – it is necessary to understand a bit of Comcast's history of operations in Detroit.

By way of background, cable franchises authorize a cable company to construct and operate a cable system in, and authorize the use of the public streets and rights of way for, the company's wires. Franchises also set forth the terms and conditions on which cable service is to be provided to residents of the community, including those regarding PEG discussed below.

One of the primary purposes of the Federal Cable Act is to establish a uniform, national process for issuing, renewing, and modifying franchises, which replaces the prior cable regulatory regime where each of the fifty states or their thousands of local units of government had their own standards and processes. See 47 U.S.C. § 521(1) & (5). To that end the Federal

Cable Act requires the "franchising authority" and cable operator to follow the requirements of that Act regarding cable franchises, and expressly preempts all state laws to the contrary. 47 U.S.C. § 556.

The Federal Act also requires a cable operator to obtain and have a franchise from the "local franchising authority" in order to provide service. 47 U.S.C § 541(a) & (b). The City is the local franchising authority for cable service within its limits, because the Michigan Constitution gives the cities, townships and villages within the State the exclusive authority to grant franchises. Mich. Const. 1963, Art. 7, § 29.

A. Comcast has a History of Blatant Disregard for its Public Interest Obligations and the Needs of the Community.

The federal cable franchising process requires that a cable franchise be designed to meet the local community's cable-related needs and interests. *See*, 47 U.S.C. § 521(2), 546(a)(2), 546(c)(I)(B) & (D), and 572. To meet community needs in Detroit, Comcast agreed to a number of public interest obligations in its cable franchise with the City, including commitments to support for PEG. It also agreed to similar provisions in other franchises across Michigan.

To be blunt, Comcast has been a serial violator of the Federal Cable Act and many of those public interest obligations, and of its PEG commitments in particular. As is set forth below, its "actions speak louder than words" regarding its purported commitments to PEG and localism.

Comcast's Lack of Support for PEG Channels: Comcast has been operating in the City under a 1985 franchise.¹ That franchise provides several local channels, commonly called PEG channels, for use by the public, educational institutions (schools), and local government (the

¹ The 1985 franchise by its terms expired on February 28, 2007, but Comcast has not followed the renewal process mandated by either 47 U.S.C. 546 (a)-(g) or 546 (h), and is currently operating as a holdover tenant under its expired 1985 franchise. *See, Attachment A.*

City), as well as significant financial and in-kind support from Comcast for studios and other facilities to create local programming for the PEG channels. However, Comcast has failed to meet these franchise obligations in ways such as the following: by refusing to provide a required PEG channel; by refusing to pay its required PEG fees; by refusing to keep open, maintain, and operate the required PEG studios; by refusing to keep PEG studios inside the City; by refusing to provide the PEG equipment and in-kind support required; and by refusing to provide complimentary service to the City as required by its franchise so that the City might monitor its PEG channels.

Importance of PEG Channels Under Federal Law: By way of background, when Congress amended the Federal Cable Act in 1992, it discussed the important local role of PEG channels:

Public access provides ordinary citizens, non-profit organizations, and traditionally underserved minority communities an opportunity to provide programming for distribution to all cable subscribers. Educational access allows local schools to supplement classroom learning and to reach those students who are beyond school age or unable to attend classes. Governmental channels allow the public to see its local government at work, thus contributing to an informed electorate, which is essential to the proper functioning of our democratic form of government. PEG channels serve a substantial and compelling government interest in diversity, a free market of ideas, and an informed and well-educated citizenry.

H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 85 (1992). PEG channels thus provide a readily available means for local residents to view civic, governmental, educational and other valuable local programming about their own community, and provide local residents, local governments, and local educational institutions with a means to reach and inform residents in their community. Under the Federal Cable Act, the number of and rules for PEG channels and their operation, and the enforcement of the provider's PEG support requirements are the responsibility of the

franchising authority, and are to be determined in accordance with community needs. *See* 47 U.S.C. § 531.

PEG Fee: Under its 1985 franchise, Comcast agreed to pay Detroit's Public Benefit Corporation (a non-profit corporation) \$250,000 per year, escalating with inflation, to support local PEG programming in the City, and agreed to enter into a contract with the Public Benefit Corporation setting forth specific terms and conditions for the financial support to be provided. However, rather than Comcast readily making the payments it had contractually agreed to in support of local PEG programming, the City was forced to expend great effort and expense in attempting to get Comcast to even partially fulfill its contractual obligations.

For example, Comcast repeatedly disputed both the amounts it was required to pay and the due dates for such payments and did not make all the required payments. Since 2006, Comcast has failed to make any additional payments to the Public Benefit Corporation or to the City in support of PEG. Comcast's actions have had the predictable effect of crippling the production of locally produced public access programming at a time when the City's own resources are stretched such that the City has not been able to make up the shortfalls.

PEG Studios: Comcast is also required under its 1985 franchise to provide and operate studios for public, governmental, and educational access programming so that local people can record local programming to be broadcast on the PEG channels. The studios are required to be located inside the City limits of Detroit, in order to be readily accessible to its residents and educational institutions for creating and distribution of local programming.

Instead Comcast shut down its studios in the City in violation of its Franchise. Again, this action has had the predictable effect of creating a significant barrier to local producers of programming for PEG channels, leading to a marked decrease in locally produced programming.

PEG In-Kind Services: Under its 1985 franchise, Comcast agreed to provide a number of in-kind services in support of PEG programming. These included making certain of its skilled employees available to assist with training, and aiding in the shooting and production of new programming. In addition, Comcast undertook to maintain and repair certain facilities and equipment. Comcast unilaterally ceased providing these services, and together with its cessation of PEG funding and closure of the studios, this has had a devastating effect on the City's efforts to have high-quality local programming created and distributed within the City.

In addition, Comcast has stopped providing complimentary drops and service to municipal buildings in Michigan, which it is required to provide under its franchises, and which gives municipalities the ability to monitor franchise compliance and ensure that their PEG channels are being adequately carried.

Closing Other PEG Studios: Unfortunately, Comcast's systematic attacks on PEG in the City are not an isolated or one-time event confined to the City of Detroit. Instead they are part of a broader pattern of deliberate violation by Comcast of its public interest and local programming obligations in Michigan. Among other things, as discussed more below, Comcast has violated its franchises with numerous Michigan communities by unilaterally closing approximately one dozen PEG studios located throughout the State of Michigan. It was obligated by its franchises in these communities to own, provide and operate these PEG studios so that the public, cities and schools in the communities could use them to create programming to be broadcast on local PEG channels. (See Michigan newspaper articles on Comcast's closing of thirteen PEG studios attached as **Attachments B-D**, and the City of Flint lawsuit against Comcast, discussed below, to restore a local PEG studio which Comcast improperly closed, among other things.)

Customer Service: In addition to this history of intransigence with respect to living up to its commitments to PEG access and local programming on its cable system in Michigan,

Comcast has a poor record of customer service generally in the City and throughout Michigan. This has in the past left the City in the position of having to handle a very large number of customer complaints about Comcast's service, requiring the City to employ several employees for this task alone.

Comcast has not responded to this by increasing its customer service efforts, as one might expect. Instead, Comcast has since 2007 shut down a number of customer service offices in Michigan, arguing that state law gives it the authority to ignore the Federal Cable Act and local franchise commitments. For instance, apparently residents in the West Bloomfield and adjacent portions of the Detroit metropolitan area must now drive one to two hours and wait in lengthy lines to pay bills or pick up or drop off equipment at one of the few remaining Comcast service centers.

Comcast's past history of poor customer service in the City and throughout Michigan with respect to its cable operations is emblematic of the company's real attitude toward its local markets.

Actions Speak Louder than Words: The City believes that better than Comcast's protestations in its Applications to the Commission, these actions show Comcast's real corporate PEG commitment - - which is the following: Comcast appears to be committed to the reduction or elimination of local PEG programming

B. Comcast's Scofflaw Behavior Violates the Public Interest. Comcast has routinely and explicitly violated the Federal Cable Act and multiple local franchises in its operations in Michigan. A recent and notorious example is Comcast's closure of multiple PEG access studios in Michigan without even attempting to go through the franchise modification procedure required by the Federal Cable Act, or heeding that Act's prohibition on franchise modifications affecting PEG channels and services. *See*, 47 U.S.C. § 545.

As noted above, in franchise renewals communities are required to obtain franchise terms which meet the future needs of their communities.² In many communities these needs included having the cable company operate one or more studios ("PEG studios") where local residents, schools and units of government may come to create video programming to be broadcast on PEG channels. As the Commission can appreciate, having a cable company provide PEG channels for use by the community is of little benefit unless there is a local studio with cameras, and other equipment where the community can go to create programming to be broadcast on the PEG channels. In thirteen metropolitan areas in Michigan, Comcast agreed in its franchises with communities to own and operate PEG studios for community use.

Once in a franchise, such PEG studio terms were intended by Congress to be sacrosanct, so that cable operators could not disregard community needs by doing "through the back door," i.e. a franchise modification, what they could not do "through the front door," i.e., during the franchise renewal process.

To this end, the Federal Cable Act sets forth a procedure that must be followed by a provider seeking to modify its existing franchise. *See*, 47 U.S.C. § 545. That procedure specifies that the provider may not act unilaterally, but must "obtain from the franchising authority modifications of the requirements in such franchise." 47 U.S.C. § 545(a)(1) (emphasis added). The Cable Act sets forth the standard that the provider must meet to obtain the franchising authority's consent ("commercial impracticability") and requires that a decision to modify the franchise be made in a public proceeding and within 120 days of receipt of a request for modification from the provider. 47 U.S.C. § 545(a)(1)&(2).

² During the initial public proceeding, the community is required to "[identify] the future cable-related community needs and interests," and then during the review of the operator's proposal to the community, the community is to determine whether "the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests." 47 U.S.C. § 546(A)(1) and (c)(1)(D).

Furthermore, and of key importance with respect to Comcast's provision of PEG services and studios, the Federal Cable Act flatly prohibits modifications of PEG access-related services: "A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access." 47 U.S.C. 545(e).

Despite these provisions of federal law, in 2007 Comcast unilaterally modified its franchise terms in many Michigan communities, and among the unilateral changes it made was to shut down PEG studios and other facilities required by franchise in approximately thirteen communities³, including the City of Detroit. These studios served approximately 1 million people.

Comcast never even attempted to obtain a modification of its franchises under the Federal Cable Act, but ignoring both the Supremacy Clause⁴ and the express provision of the Federal Cable Act preempting all contrary state laws, 47 U.S.C. 556(c), it claimed that a newly passed state law authorized its unilateral actions by superseding the Federal Communications Act.

Comcast's claims that state law somehow preempts federal law were promptly addressed and rejected by the Federal District Court in Michigan. *See City of Dearborn, et al. v. Comcast of Michigan, III, et al.*, No. 08-10156, 2008 U.S. Dist. LEXIS 108053, at *13-15 (E.D. Mich. November 2, 2008) (**attached as Attachment E**) (holding that where the state act conflicts with the federal act, the state act is preempted). Nonetheless, Comcast has refused to recognize the validity of the Federal Cable Act or local franchise requirements and reinstate the PEG studios in

³ See the description of the closing of the PEG studio in the Port Huron/New Haven, Michigan "along with 12 others across the state [of Michigan]" in "Comcast Stations to Shut Down", December 2, 2007 *Port Huron Times Herald*, see, Attachment C.

⁴ "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." United States Constitution, Article VI, Clause 2.

any of the communities. As a result, the City has recently filed suit against Comcast in Federal District Court in Michigan seeking, in part, to enforce the PEG support and other provisions of its franchise with Comcast, which Comcast has unilaterally disavowed. *See, Attachment A.*

Detroit is not the only Michigan city which has had to resort to taking Comcast to court to force Comcast to comply with PEG and other franchise requirements, and the Federal Cable Act's modification provisions. See for example, City of Flint v. Comcast of Flint, Case No. 2:08-cv-14871 (U.S. District Ct., ED Mich, 2008-2009), in addition to the Dearborn et al. case.⁵ Simply put, if Comcast were a responsible local operator, Michigan cities would not have to repeatedly go to court to force it to comply with its franchises and federal law. And yet, despite a Federal Court order two years ago rejecting Comcast's patently specious claims that federal law trumps contrary state law, Comcast persists in rejecting both federal law and franchise obligations that are protected under federal law.

In its actions regarding the public interest requirement for it to own and operate local PEG studios, Comcast has thus violated each of the following:

- Local franchise requirements
- Section 625 of the Cable Act
- The Supremacy Clause of the U.S. Constitution.

In light of such experiences as those of the City of Detroit and other Michigan communities with Comcast's failures to live up to its public interest obligations, and with its disregard for governing law, the City objects to the proposed Joint Venture, which would give Comcast even more control over local programming.

⁵ The parties in the Flint v. Comcast suit eventually reached a settlement agreement, so no court order binding on Comcast that would affect other communities resulted.

In sum, actions speak louder than words. Comcast is a "scofflaw" that abides by applicable law and franchise requirements only so long as it determines that it is in its interest to do so. Despite franchise provisions in which it agreed to support PEG channels and programming, Comcast has systematically removed the supports from local PEG operations in Michigan. Due to this ingrained corporate attitude - - especially as it relates to Comcast's violation of its public interest obligations - - the Commission should reject the proposed transaction and Joint Venture.

III. COMCAST HAS NOT PROMOTED DIVERSITY AND LOCALISM IN PROGRAMMING AVAILABLE TO RESIDENTS IN THE CITY AND ITS CURRENT PEG-RELATED COMMITMENTS DO NOT DO SO EITHER.

As described above, Comcast has not sought to promote diversity and localism in the programming available to the City's residents, but rather has sought to undercut these values. It has done so by its systematic choking off of support for PEG in the City and throughout Michigan. Despite this history, Comcast now asserts that it will make "voluntary public interest commitments," among which are two directed at PEG.

Comcast's "Commitment #11" is merely a commitment to not do further harm to PEG by not relegating those channels to the digital desert. Comcast merely promises that in the short term it will not move those channels from their established places as analog channels to seldom-accessed channels high in the digital tier. After choking off support for funding, facilities, and in-kind services, Comcast's promise that it will not deliver the coup-de-grace of moving the channels to where viewers will not find them – at least until its channels are all digital – does nothing to promote diversity or localism, but merely allows PEG channels to remain on life support for a little longer.

Comcast's "Commitment #12" uses PEG as a basis for Comcast to show its commitment to localism. Comcast promises to "enhance localism" by providing a platform to host PEG

content on its On Demand services. While providing additional platforms for PEG programming content is certainly welcome, the Commission should ensure that Comcast does not do so to the exclusion of providing actual channels for that programming on its cable system. It is no "enhancement" to gain an "On Demand" slot, but lose a channel, and the City is concerned that Comcast is seeking to continue its policy of pushing PEG channels off its cable system by moving them to an On Demand-only format. It is also more than a little ironic for Comcast to say it is enhancing localism by providing new outlets for PEG programming, when its own actions (as discussed above) are hindering that programming from being produced in the first place.

IV. CONCLUSION.

For the reasons stated above, the City of Detroit, Michigan asks this Commission to reject Comcast and NBCU's Application, and to not approve the proposed Joint Venture, as the Commission cannot make the assumption that Comcast will comply with applicable provisions of the Communications Act and other federal, state and local laws nor with its contractual requirements and the "Commitments" it has made in this Proceeding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2010, I caused a true and correct copy of the foregoing Opposition to Petition for Reconsideration to be sent by electronic mail to:

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