

Formal Complaint

January 29, 2008

Dear Mr. Chairman and Commissioners:

This letter serves as my complaint against Comcast, a cable operator and utility. Comcast has trespassed onto my private property, caused damage, and has failed to compensate me for the damage. My negotiations with Comcast have resulted in nothing but aggravation and inadequate and unfulfilled promises. I have sought the protection of my local and state governments and the Federal Communication Committee (FCC), to no avail. I now turn to you as my last resort as I seek just compensation for the use and damage of my private property by Comcast.

I am the President of Warehouse 1050 Corp., owner of property located at 1050 N.W. 21st Street, Miami, FL 33127 (the "property" or "building"). I operate my business from that location. About June 2005, I discovered utility wires owned by Comcast on my building's roof. The wires cut into my roof causing water to enter and the roof to lift. Eventually, I discovered that the wire belonged to Comcast. I am not a Comcast subscriber, so I contacted Comcast and asked them to remove it. Comcast denied ever placing the wiring on my roof and blamed the wiring on pirates. I filed a police report (case #050725003910) for vandalism.

I then confronted Comcast with proof that the wiring belonged to them at that they were using my property to service their customers. Comcast then agreed to appraise and pay for the damage and directed me to their purported insurance company, Liberty Mutual. According to Comcast's contract with the City of Miami, Comcast is required to be insured against claims for property damage. Three times I requested proof of insurance, and all three times I received car insurance documents. I learned that Liberty Mutual was not in fact Comcast's insurance company, but rather was hired to manage claims against Comcast.

No matter, eventually, Comcast agreed to remove the wires and pay me \$49,000 to repair my roof. I agreed. Months passed and Comcast did not fulfill their agreement by the time Hurricanes Katrina hit Miami in August 2005. Due to the resulting increase in roof repair prices, my roof could not be repaired for the agreed price. I requested that Comcast adjust their valuation of the repairs. Comcast agreed to take bids, but I never received a check, even for the \$49,000. The wires were never removed.

Then, in September 2005, Hurricane Rita hit Miami. The strong winds of the Hurricane caused a gap in my roof at the location of the damage caused by the wires. The resulting water and wind damage was devastating for my business. The extensive damage to the structure of my building as well as to my inventory, computers, alarm, and telephone systems caused significant business interruption. To mitigate damage to my inventory, I installed a temporary roof. I made multiple demands to Comcast to compensate me for the damage to my roof, equipment,

inventory and the general interior of my building. Comcast refused to accept responsibility, and did not even remove the wires from my roof to allow repairs.¹

Frustrated, I personally made a trip to Comcast's headquarters in Philadelphia to demand compensation and the removal of the wires from my building. I was thrown out of the building by security guards. On my return, I received a call from Comcast asking what I wanted. I asked for a reappraisal of the damage Comcast caused to my property. Eventually, Comcast sent an appraiser. However, the appraiser came with instructions to appraise the building only if I insisted. He also brought a check for the original settlement amount of \$49,000 with a release of claims that would allow Comcast to permanently occupy my property. I refused the check and the appraiser appraised the damage. The assessed amount clearly showed that the appraisal was not independent, but rather conducted by an interested party, either a Comcast employee or subcontractor.

Seeing that Comcast's efforts were not in good faith, I contacted the City of Miami Manager's office to assist me in removing the wires and to protect me from Comcast's continued placement of the wires on my property. They stated that they couldn't help me because they don't have the power to force Comcast to do anything².

I then wrote to the FCC and to Florida Governor Jeb Bush. The FCC responded by stating that this is a local government matter, not the FCC's. Governor Jeb Bush's office stated the same, and personally forwarded information about my situation to Miami-Dade County Manager George Burgess' office. Within days, the wires were removed by Dade County.

Within hours of the wires being removed, I received a call from Michael P. Rudd (Fla. Bar # 782416), an attorney whose website at the time claimed his experience is in fraudulent insurance claims. Confused and in fear, I contacted Dade County and Comcast to determine why Rudd was contacting me. I was told by both to give Rudd a chance. Mr Rudd assured me that he and his client wished only to resolve this. I said I wished an independent appraisal.

My negotiations with Rudd for the repair of the damage to my property did not advance far. I soon learned that this was because he was hired by Comcast to investigate me for insurance

¹ Under threat of criminal prosecution, Florida Statutes prohibit me from cutting or removing wires owned by a utility company such as Comcast. Florida Statutes section 812.14(2)(a) states:

(2) It is unlawful to:

(a) Willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage . . .

² Florida Statutes section 364.013, "Emerging and advanced services," states that : "Broadband service and the provision of voice-over-Internet-protocol (VoIP) **shall be free of state regulation**, except as delineated in this chapter or as specifically authorized by federal law, regardless of the provider, platform, or protocol." (emphasis added).

fraud. This was confirmed when Dade County, investigating my claim of damages, contacted him regarding this matter and he told them that he could not discuss the matter as I am under investigation for insurance fraud related to this matter. As a result, Dade County ceased their investigation. Comcast then bettered their offer to \$104,000 but still refuses to repair or reappraise the damages independently.

All of my negotiations with Comcast and its agents have been tarnished by Comcast's unfair advantage and influence. I have made repeated requests to Comcast to repair the damages or for a truly independent appraisal. I have asked that an appraiser that has not worked for Comcast, Liberty Mutual or myself be used to arrive at a fair, binding, estimate of the damage to my property or that they repair the damage. Comcast has refused these offers. All I ask for and have asked for is just compensation for the damage to my property as required by federal law. 47 U.S.C. 541(a)(2)(C) ("the owner of the property [shall] 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.").

What's more, Comcast's actions of maintaining the wires on my property without just compensation amount to a taking of my property under color of law that also requires that I be compensated. In the case of *Loretto vs. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the United States Supreme Court found that a physical taking occurred as a result of a New York statute that permitted cable television companies to install their facilities on roof tops without payment. *Id.* at 438. Based on the authority of the state statute and a City franchise license, a cable company installed very small equipment onto the side and top of Plaintiff Loretto's property. Although it was not the government which installed and operated the cable equipment on Loretto's building, the Supreme Court nonetheless found that a physical taking occurred, holding the government cannot authorize permanent occupation of property by a third party. *Id.* at 440. Loretta did not challenge the regulation itself or allege the government physically invaded her property, but the regulation and actions of the government led to the physical invasion.

Similarly, by threat of criminal prosecution, Florida Statutes section 812.14(2)(a) prohibited me from removing the unauthorized Comcast wires from my building, therefore a taking occurred. I had to wait for almost a year for the wires to be removed by intervention of Governor Jeb Bush. With my hands tied behind my back, I had to witness two hurricanes exacerbate the damage caused by Comcast to my roof. If the wires would have been removed and the damage caused repaired, I would not have suffered the extent of hurricane damage to my building and business that I did suffer.

My property rights are fundamental. They are preeminent and greater than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation. A taking, in turn, may be either for public use, which is forbidden unless just compensation is paid, or for private use, which is unlawful regardless of the compensation paid. Whether deemed for public or private use, my property was taken, and I have not been justly compensated.

Comcast has repeatedly lied to me and negotiated in bad faith. They lied about owning the wires, about having insurance, and about supplying me with proof of the insurance policy. They repeatedly deceived me into believing that the matter would be settled and an agreement reached. They also attacked my reputation by implying to Dade County that I am a criminal involved in insurance fraud. All this, while violating my constitutional and civil property rights.³

At end, I seek the investigation of Comcast's behavior and actions causing the damage to my property. I also urge the initiation of an investigation into Comcast's business practices. A cursory review of the Dade County public records reveals that there are many other complaints of Comcast for violating citizen's property rights. In this age, where the free-flow of information is so vital to the survival of our society and economy, I urge that this government assure that the largest proprietor of essential communications infrastructure, Comcast, is behaving in an ethical manner, and not as a criminal enterprise without respect or care for the constitutional rights of the citizens of the United States. Not to mention their perch atop the MSN Customer Service Hall of Shame,⁴ if Comcast disrespects Human Rights,⁵ Constitutional Rights, State Statutes, Ethics and ignores accountability how can we trust them? David Cohen of Comcast said it well before the Committee on the Judiciary "if it ain't broke, don't fix it." Here is the proof that it is broken, ordinary citizens are not protected, and it needs to be fixed.⁶

If you have any questions, please feel free to contact me at 305-324-8555.

³ The United States Supreme Court stated in *Jones v. Mayer Co.*:

Private property is owned and controlled by private individuals. There is no monetary or proprietary interest that a government at any level has in controlling property belonging to a private individual. The property owner decides with whom he/she wishes to negotiate, procure a contract, dispose of or improve property. The property owner has guaranteed full control over his property and **no ordinance, law, or person under the color of law, is to interfere with, violate or deprive the property owner this Civil Right.** 392 U.S. 409 (1968) (emphasis added).

⁴ See <http://articles.moneycentral.msn.com/SavingandDebt/Advice/TheCustomerServiceHallOfShame.aspx>

⁵ The Universal Declaration of Human Rights, adopted by the United Nations on December 10, 1948 states:

Article 12 No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 17 (1) Everyone has the right to own property alone as well as in association with others.
(2) No one shall be arbitrarily deprived of his property

⁶ The Liberty Principle was one of John Stuart Mill's greatest achievements. He stated that everything has complete liberty, until they begin to harm someone.

Sincerely,

Elan Feldman
President
Warehouse 1050 Corp.
1050 NW 21 ST Street
Miami, Florida 33127

CC: Chairman Kevin J. Martin
CC: Commissioner Deborah Tate
CC: Commissioner Jonathan S. Adelstein
CC: Commissioner Michael J. Copps
CC: Commissioner Robert McDowell

