



Federal Communications Commission
Washington, D.C. 20554

March 10, 2009

Mr. Elan Feldman
1050 NW 21 Street
Miami, Florida 33127

In re: Formal Complaint: Elan Feldman and
Family against Comcast Corporation

Dear Mr. Feldman:

On February 19, 2009, you filed a formal complaint against Comcast Corporation, seeking compensation for damages to your property allegedly caused by Comcast and requesting the Commission "to investigate the behavior of providers that infringe on the rights of property owners and the safety of their properties."

Please be advised that the type of investigation you are requesting and the compensation you are seeking are not matters that are within the jurisdiction of the Commission. As such, we are returning the copies of your complaint so that you may more properly seek redress through your local courts. If you wish to seek a refund of the fee associated with your complaint, you may contact our Financial Operations section at (202) 418-1925.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Broeckaert", with a long horizontal flourish extending to the right.

Steven A. Broeckaert
Senior Deputy Chief
Policy Division, Media Bureau

ELAN FELDMAN AND FAMILY
Occupation Air-conditioning and Refrigeration
1050 NW 21 ST
Miami, FL 33127
Phone: (305) 326-7661
Fax: (305) 325-1966

FEDERAL COMMUNICATIONS COMMISSION
445 12th Street SW
Washington, D.C. 20554

Attn: Ms. Marlene H. Dortch, Secretary, and FCC

Formal Complaint: Elan Feldman and Family against Comcast Corporation
Violation of federal law 47 U.S.C. 541(a) (2) (A), 47 U.S.C. 541(a) (2) (C)
Constitutional rights: Violation of the Fifth and Fourteenth Amendment

Formal Complaint

Dear Mr. Chairman and Commissioners of the FCC:

We seek the investigation of Comcast's practices for their illegal use and damage of private property. Our complaint to the FCC is not of a policy statement, it is of law and of constitutional right. We feel that an investigation on whether the laws and authority that exist are sufficient or too confusing to protect the rights of the American People in the methods and manner of which cable providers are held accountable for their behavior. We ask to investigate if we need to change law or create a separate division for the purpose to review, monitor, and supervise the cable providers are necessary. Our legislators and framers felt property rights were important, which is why they included protections in the 1934 Communications Act and amended it in 1996, 47 U.S.C. 541(a) (2). Our past Presidents felt so strong for property rights that they made executive orders protecting the Property Rights of the American people.

This letter serves as our complaint against Comcast, a cable operator and utility. Comcast trespassed onto our private property, caused damage and were negligent. Negotiation resulted in aggravation and unfulfilled promises. Doing nothing to repair the damages on our property, their gross negligence resulted in the permanent injury of one of our workers. Due to their negligence, the infrastructure of my building was weakened, which resulted in massive damages during Hurricanes Katrina, Rita and Wilma. We fought for 3.5 years for compensation, we have sought the protection of our local and state governments, but it would appear that broadband providers are free of state regulation and protected by Federal and State law of their unlawful trespass.

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just

government, which impartially secures to every man, whatever is his own. James Madison

The moment the idea is admitted into society that property is not as sacred as the laws of God and that there is not a force of law and public justice to protect it anarchy and tyranny commence. If 'Thou shalt not covet,' and 'Thou shalt not steal,' were not commandments of heaven, they must be made inviolable precepts in every society before it can be civilized or made free. John Adams

We request the FCC to investigate the behavior of providers that infringe on the rights of property owners and the safety of their properties. Legislators placed the rules in the requirements of the provider in the FCC communication act of 1934 (amended in 1996). We beg the FCC to see if Comcast is ignoring the rights of the people and if they are serving in the best public interest, to paraphrase from the first paragraph of the FCC Act, "***For the purpose of promoting safety of life and property***". We ask for an investigation of violations and if there was a misuse of power from a corporation that affects 48 million homes and countless businesses. Is Comcast misusing the trust given to them by our government? Comcast controls the majority of America's highway of information. (I believe their effect is far greater than half the homes supplied in the Country by this one Company).

A taxpayer and father of five children, I am the President of Warehouse 1050 Corp. and owner of the property located at 1050 N.W. 21st Street in Miami, FL, where we operate our Air Conditioning and Refrigeration business. About mid 2005, I discovered utility wires owned by Comcast on our building's roof. The wires cut and stuck into our roof, causing water to enter and the roof to lift. Puzzled by the intrusion of such wires, we discovered that the wire belonged to Comcast, which was odd, as we are not Comcast subscribers. Thus, we contacted Comcast and asked them to remove the cables. Comcast denied ever placing the wiring on our roof and blamed the wiring and damage on "pirates." We filed a police report (case #050725003910) for vandalism. It was then that we were warned if we cut the cables, we could go to jail, so we presented Comcast with proof that the wiring not only belonged to them, but that they were using our property to service their customers. Comcast then agreed to appraise and pay for the damage, directing 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 we requested proof of insurance, and all three times we received car insurance documents. We learned later that Liberty Mutual was not in fact Comcast's insurance company, but rather was hired to manage claims for Comcast. Comcast appears to not have the required insurance.

Regardless, Comcast agreed to remove the cables and pay me to repair our roof. We agreed. Time passed. Comcast had not fulfilled their agreement by the time Hurricane Katrina hit Miami in August 2005. Due to the resulting increase in roof repair prices, our roof could not be repaired for the agreed price. We requested that Comcast adjust their valuation of the repairs. Comcast agreed to take bids, but we never received a promised partial payment check, and the cables were never removed.

Then, in September 2005, Hurricane Rita hit Miami. In late October, a third, Hurricane Wilma, also struck us. The strong winds of the Hurricanes caused the lifted roof to fold like a blanket at the location of the damage caused by the wires. The resulting water and wind damage was devastating for our business. The extensive damage to the structure of our building - as well as to our offices, inventory, computers, alarm, electricity, telephone system and files - caused significant business interruption. To

mitigate damage to our inventory, we installed a temporary roof. We made multiple demands to Comcast to repair or compensate for the damage to our roof, equipment, inventory and the general interior of our building, but Comcast not only refused to accept responsibility, but they did not even remove the cables from our roof to allow repairs!

Comcast's negligence was instrumental to one of our employees falling through the defective second floor. This caused his back to break in two locations. He has not worked since. I am left to live with the guilt of his change in life.

Frustrated, I personally made a trip to Comcast's headquarters in Philadelphia to request compensation and the removal of the cable from our building. I signed into the visitor's book as requested, and after entering Brian Robert's office to discuss this matter, I was rudely dismissed without a meeting and escorted out by security. Upon return to Miami, I received a call from Comcast asking what I wanted. I asked for a reappraisal of the damage Comcast caused to our property and the removal of the cable. Eventually, Comcast sent an appraiser. However, the "appraiser," obviously working on behalf of Comcast, came with a check for the original settlement amount, trying to convince me to sign a *release of claims* that would allow Comcast to permanently occupy our property. I refused the check, showing the appraiser the significant damages since the hurricanes.

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

We 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 our situation to Miami-Dade County Manager George Burgess' office. Within days, the wires were removed by Dade County cable.

Within hours of the cables being removed, we 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, we contacted Dade County and Comcast to determine why Rudd was contacting me, since I had no attorney, nor had we discussed legal action. We were told by both to give Rudd a chance.

Our negotiations with Rudd for the repair of the damage to our property did not advance far. When Dade County contacted Rudd while investigating our claim, Rudd said he could not discuss our case, implying we were under investigation for insurance fraud related to this matter (*Reference A*), which caused Dade County to cease their investigation.

Comcast more than doubled their offer first offer but still refused to explain how they got to that value, as there was no reappraise of the damages with a company independent of both of us. Wishing to focus on our family problems and business, we were given names of companies that Comcast would allow to appraise the damages. We used two of the companies. These appraisals were made without consideration of damage to office equipment, inventory, and business interruption. A request for payment was made with releases, but Comcast denied payment (*Reference B1 & B2*).

Comcast's unfair advantage and influence have tarnished all of our negotiations with Comcast and its agents. They are trying to extort a lower settlement. Their arrogance is so great that just to get an appraisal they demanded confidentiality for their trespass (*Reference C*). How many others were forced to keep silent because they needed the money and had no one to turn to? We have made repeated requests to Comcast to either

repair the damages or get a truly independent appraisal, an appraiser that has not worked for Comcast, Liberty Mutual, or us, to be used to arrive at a fair, binding, estimate of the damage to our property. Comcast has refused even a meeting of resolution. All we wished for was rightful compensation for the damage to our 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”).

When we asked for the arbitration contract or what Comcast would require for this arbitration, we were told there is no contract for arbitration. Months later, when the given 2008 deadline arrived, they said if we agreed to arbitration, they would make a contract for this arbitration. (*Reference D*)

What's more, Comcast's actions of maintaining the wires on our property without just compensation amount to a taking of our property under color of law that also requires that we be compensated. In the case of *Loretto vs. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the 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 that 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. The threat of criminal prosecution, Florida Statutes section 812.14(2) (a), prohibited us from removing the unauthorized Comcast wires from our building and makes the government a partner in this trespass.

Moreover, an owner suffers a special kind of injury when a stranger directly invades and occupies the owner's property. As Part II-A, supra, indicates, property law has long protected an owner's expectation that he will be relatively undisturbed at least in the possession of his property. To require, as well, that the owner permit another to exercise complete dominion literally adds insult to injury. See Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of Just Compensation Law*, 80.

We had to wait over half a year for the cables to be removed by intervention of Governor Jeb Bush. With our hands tied behind our back, we had to witness three hurricanes exacerbate the damage caused by Comcast to our roof and interior. If the cables would have been removed and the damage repaired before these storms occurred, we would not have suffered the extent of hurricane damage to our building and business that we did suffer. No one can deny that the depletion of capital would have a negative influence on our personal life and business. I personally was sent to the hospital with chest pains due to stress problems.

Comcast has been negligent and negotiated in bad faith. They lied about owning the wires, about having insurance and the supplying of such policies. 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 our constitutional and civil property rights. Mr. David Cohen, I believe, said to the FCC that they are an open book. I believe it is time you read this book. I believe negotiations with Comcast would be fruitless.

The right of property is before and higher than any constitutional sanction; 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.

At end, we seek the investigation of Comcast's behavior and actions causing the damage to our property and behavior after. We also urge the initiation of an investigation into Comcast's practices. A cursory review of the Dade County public records and department of agriculture reveals that there are others complaints against Comcast for violating citizen's rights. Comcast's actions seem like they believe that they are above the law, as there is no authority for us to turn to for protection. *(Reference E)* Comcast's "what we offer you or sue me attitude," we believe, is extortion. They admit they owe us money but refuse to pay even the undisputed amount. *(Reference F)*. Unless I accept their amounts and conditions, we get nothing – even the amount they admit they owe.

Comcast implies that this is just a civil matter. Who would deny that if I trespassed on Comcast property, refused to leave and caused damage that I would not be placed in jail. Who is forcing Comcast to pay for the damages it admits to causing as was Mona Shaw an older woman who damaged a Comcast keyboard, was placed in jail, handed a bill to pay or be prosecuted?

- 1 *Could Mona force Comcast to dismiss any cause of action for the trespass or behavior, force confidentiality, demand of Comcast to assist in the prosecution of others to get reimbursed for the damage she caused? (Reference C)*

An authority got involved and Comcast receive Just Compensation? Who is the authority protecting the American peoples rights? Is there an Authority? It is clear to me that we are not equal under the law, and that is outrageous and fundamentally wrong.

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 us that the largest provider, Comcast (48 million home supplied with essential communications infrastructure), Owners of news (CNM), vehicle sales (vehix), and Comcast entertainment group is behaving in an ethical manner. Assure us that Comcast is not a governmentally protected enterprise that does not have to respect the Constitution or care for the rights of the citizens of the United States. Their influence is in more than half our homes provided by broadband. If this company disrespects Human Rights, Constitutional Rights, State Statue, Ethics, and contracts - and has won the honor of tied for second place as Customer Service Hall of Shame by MSM Money for poor service - should we not review our trust in 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 it's broken and that we lack the necessary safeguards.

I wish a future where our children have all the rights I enjoyed until my Comcastic experience. We should carry forth the great gift of freedom and deliver it to future generations. Are we free nation if our assets can be stripped from us by big

corporations with no were to redress our grievances.

If government ignores the property rights of individuals with no authority to redress our grievances, then I envision a bleak future for our children. They will have no choice but to live with whatever scraps of freedom the big corporations leave them. I can see no greater cause for you to focus on than returning the taken rights of the Constitution back to the people. *The Liberty Principle, one of John Stuart Mill's greatest achievements, stated that everything has complete liberty, until they begin to harm someone.*

We were trespassed upon and had nowhere to turn, forced to write letters, complaints, read law and rights, creating a hardship for supporting our family. There is no question of responsibility. (*Reference G*). The question is, did we have the bundle of rights promised to us under the constitution, even when we requested the undisputed amount to be played they refused. This is not a dispute of amount. We implore you to investigate if Comcast trespassed, engaged in unreasonable delays and used their superior size and wealth to intimidate me, if they used the undisputed amount to attempt to extort conditions that are not required and to under-settle the claim. Check to see if they interfered in a governmental investigation (Dade Cable). Is there an authority over Comcast for this type of behavior, as Dade cable, the department of agriculture and the FCC refuse to say? *The owner of the property shall be compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator, so that the safety, functioning, and appearance of the property, and the convenience and the safety of other persons, are not adversely affected.* My right, as property owner, to exclude from the property was denied (a right of the protected and so important *Bundle of Rights* of Americans).

We believe any more efforts to resolve this after 3.5 years would be fruitless. Is Comcast's control of our highways of information truly in the best public interest? Do the owners of the infrastructure intentionally disadvantage people? Do they insure our rights under the law? I believe these allegations require investigation. The relief we ask is a declaratory statement and congress be informed of any or all violations that Comcast may have done so that they may decide weather the laws and who has authorities to protect the American people from cable and broadband providers, needs to be changed.

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 January 30, 2009.

Elan Feldman

Email COMCASTWENT2FAR@GMAIL.COM

Attn: Ms. Marlene H. Dortch, Secretary, and FCC
CC: Chairman Michael J. Copps
CC: Chairman elect Julius Genachowski
CC: Commissioner Deborah Tate
CC: Commissioner Jonathan S. Adelstein

CC: David Cohen Comcast Vp
CC : Marna Salimena (Comcast Counsel)
CC: John Norton (Media beuro)

Enclosed \$190.00 Check