

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DEARBORN, a Municipal corporation,
CHARTER TWP. OF MERIDIAN,
a Municipal corporation, and SHARON GILLETTE,

Case No. 08-10156

Hon. Victoria A. Roberts _____

Plaintiffs,

vs.

COMCAST OF MICHIGAN III, INC.,
a Delaware corporation, and COMCAST OF
THE SOUTH, INC., a Colorado corporation,

Defendants.

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

I, ANDREW AFFLERBACH, being first duly sworn, deposes and states that:

1. I am the same Andrew Afflerbach that submitted an affidavit earlier in this proceeding.

2. There are at least two different issues before the court related to channel location. The first is whether the digital PEG signals Comcast intends to carry are encrypted or encoded in violation of federal regulations. If they are, the channels cannot be received solely with a digital television set with a QAM capable digital tuner—the viewer would require either a Comcast-provided set-top converter or a Comcast-provided Cable Card. It is also important to note that many digital television sets with QAM capable digital tuners do not contain interfaces for Cable Cards—requiring those viewers to purchase third-party set-top converters, in addition to leasing a Cable Card from Comcast.

3. Comcast claims that the channels can be received using such a TV, and argues that any argument to the contrary is frivolous. However, I am familiar with other Comcast systems where PEG is provided in both analog and digital formats, and the PEG signals as of the date of this affidavit are encrypted and encoded. So the issue is hardly frivolous. This is what the company is doing elsewhere.

4. However, in the initial papers, the communities took Comcast at its word and assumed that the signals could be received on a TV set with a QAM tuner. I said that the notice Comcast provided to customers was defective in that case. That is because Comcast's notice identified only the channels where PEG would be found if a properly authorized Comcast converter or Cable Card would be used. Comcast seems to argue that it would have been difficult to identify the channels on which those signals could be found, if they can be received via a TV with a QAM tuner....as if the channel locations would be random or vary from set to set. However, digital signals are transmitted using frequencies, and a QAM tuner typically assigns the frequencies to "channels" in accordance with a standard that must be used by all manufacturers. So, Comcast could have told subscribers where the channels would show up with a QAM tuner without a converter - it just didn't do so. It could have provided a single example of a television with a QAM tuner or a third-party set-top converter and described the appropriate way to select the PEG channel. It did not.

5. I have read Comcast's claim regarding the absence of bandwidth and its plans for service. I have reviewed notices sent to subscribers. Nothing that has been presented would require Comcast to shift the PEG channels to digital now. Longer term, the company can address any bandwidth problem directly by increasing bandwidth, or utilizing other technologies (multiplexing technologies) that permit it to use available bandwidth more efficiently. In the

1980s cable companies were installing systems with 550 MHz of capacity; in the 1990s, systems with 750 MHz capacity; in the mid to late -90's, with 870 MHz capacity; and now fiber-to the home systems are being installed with virtually unlimited capacity. Without going into the technical details, the point is that the company has many ways to provide new services to customers while continuing to provide PEG in an analog format.

Further, Affiant sayeth not.

ANDREW AFFLERBACH

Subscribed and sworn to before me
this _____ day of January, 2008.

Notary Public