

Before the
Federal Communications Commission
Washington, D.C. 20554

| | | |
|-------------------------------------|---|------------------------|
| In the Matter of |) | |
| |) | |
| Comcast Corporation |) | |
| |) | File No. EB-10-TC-010 |
| Compliance with the Commission's |) | Acct. No. 201132170004 |
| Closed Captioning Pass-Through Rule |) | FRN: 0015401581 |
| |) | |
| |) | |
| |) | |

ORDER

Adopted: January 18, 2011

Released: January 18, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau of the Federal Communications Commission ("Bureau") and Comcast Corporation ("Comcast"). The Consent Decree terminates investigations initiated by the Bureau regarding Comcast's compliance with section 79.1(c) of the Commission's rules, 47 C.F.R. § 79.1(c).

2. The Bureau and Comcast have negotiated the terms of a Consent Decree that would resolve these matters and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. We also conclude that, in the absence of material new information not previously disclosed to the Commission, the matters raised in the investigation do not raise any substantial and material questions of fact regarding Comcast's qualifications to hold an authorization or license issued by the Commission.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 151(i), and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the attached Consent Decree **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

Before the
 Federal Communications Commission
 Washington, D.C. 20554

| | | |
|-------------------------------------|---|------------------------|
| In the Matter of |) | File No. EB-10-TC-010 |
| |) | Acct. No. 201132170004 |
| Comcast Corporation |) | FRN: 0015401581 |
| |) | |
| Compliance with the Commission's |) | |
| Closed Captioning Pass-Through Rule |) | |
| |) | |
| |) | |
| |) | |

CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau of the Federal Communications Commission and Comcast Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's Investigation regarding Comcast's compliance with the Closed Captioning Pass-Through Rule, as defined below.

II. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:
 - a. "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq.
 - b. "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - c. "Comcast" or "Company" means Comcast Corporation and its predecessors-in-interest and successors-in-interest.
 - d. "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - e. "Closed Captioning Pass-Through Rule" means 47 C.F.R. § 79.1(c).
 - f. "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.
 - g. "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - h. Investigation means the Bureau's investigation regarding Comcast's compliance with the Closed Captioning Pass-Through Rule initiated by an April 20, 2010 letter of inquiry.

- i. "Parties" means Comcast and the Bureau, each of which is a "Party."
- j. "Rules" means those rules and regulations codified in Title 47 of the Code of Federal Regulations.

III. BACKGROUND

3. Section 79.1(c) of the Commission's rules states:

All video programming distributors shall deliver all programming received from the video programming owner or other origination source containing closed captioning to receiving television households with the original closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards of part 15 of this chapter unless such programming is recaptioned or the captions are reformatted by the programming distributor.¹

4. On April 20, 2010, the Enforcement Bureau issued a letter of inquiry regarding Comcast's compliance with the Closed Captioning Pass-Through Rule.² Comcast responded on June 7, 2010 and described four different situations in which particular manufacturers' equipment failed to deliver closed captioning data intact.³ It supplemented its response on July 21, 2010 to report an additional situation.⁴ The Parties entered into an agreement to toll the statute of limitations for four of the situations on September 22, 2010.

IV. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion. Comcast's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order.

6. **Jurisdiction.** Comcast agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate

¹ 47 C.F.R. § 79.1(c).

² Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Comcast Corporation, dated April 20, 2010.

³ See Letter from Jonathan A. Friedman, Willkie Farr Gallagher LLP, counsel for Comcast, and David H. Solomon, Wilkinson Barker Knauer, LLP, counsel for Comcast, dated June 7, 2010.

⁴ See Letter from Jonathan A. Friedman, Willkie Farr Gallagher LLP, counsel for Comcast, and David H. Solomon, Wilkinson Barker Knauer, LLP, counsel for Comcast, dated July 21, 2010.

violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations contained herein, and to avoid expenditure of additional public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of these matters and in accordance with the terms of this Consent Decree, Comcast agrees to the terms, conditions, and procedures contained herein. The Bureau agrees that, in the absence of new material evidence related to these matters, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, or refer to the Commission, any new proceeding, formal or informal, or take on its own motion, or refer to the Commission, any action against Comcast, concerning the matters that were the subject of the Investigation, or with respect to Comcast's basic qualifications, including its character qualifications, to be a Commission licensee or hold other Commission authorizations.

9. **Compliance Plan.** To resolve and terminate the Investigation, Comcast agrees to implement a Compliance Plan that shall include the terms set forth below.

A. **Review of, and Changes to, Closed-Captioning Pass-Through Testing Procedures.** Within 120 days of the Effective Date, Comcast shall conduct and complete a review of its procedures for testing equipment to ensure compliance with the Closed Captioning Pass-Through Rule. Within 60 days thereafter, Comcast shall make all changes identified in its review and testing procedures that are necessary to ensure compliance with the Closed Captioning Pass-Through Rule, and shall use the revised procedures to test any equipment (including models already in use by customers) as necessary to ensure compliance with such rule. During the period of this Compliance Plan, Comcast shall regularly monitor the effectiveness of its testing procedures, and shall make additional changes in its testing procedures as necessary for compliance with the Closed Captioning Pass-Through Rule.

B. **Reporting Non-Compliance.** Comcast shall report any non-compliance with this Consent Decree, or the Closed Captioning Pass-Through Rule, to the Bureau within thirty (30) days after the discovery of such non-compliance or violation. For purposes of this Paragraph 9.B., Comcast need not report an incident of non-compliance with the Closed Captioning Pass-Through Rule involving an individual set top box (as opposed to a model of a set top box), so long as the incident is isolated and not part of a pattern that reasonably suggests a defect in the model of the set top box.

C. **Compliance Report.** Comcast shall provide a Compliance Report from an officer, as an agent of the Company, one (1) year after the Effective Date, and two (2) years after the Effective Date, stating that the officer has personal knowledge that the (i) Company has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's certification; (ii) the Company has been utilizing those procedures for the entire term of the Consent Decree; and (iii) the officer is not aware of any instances of non-compliance with this Consent Decree that have not otherwise been disclosed pursuant to subsection (B) above. The certification must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. Such certification must be mailed within fifteen (15) days of the one (1) and the two (2) year anniversary of the Effective Date, and Comcast must mail its certification to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal

Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and must include the file number listed above. Comcast shall also send an electronic copy of its certification to other Telecommunications Consumers Division staff as directed by the Division Chief.

D. **Term of the Compliance Plan.** The term of the Compliance Plan shall expire two (2) years after the Effective Date.

10. **Voluntary Contribution.** In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, Comcast agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of five hundred thousand dollars (\$500,000) within thirty (30) days after the Effective Date. This voluntary payment does not constitute a forfeiture under the Act or FCC rules. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York and account number 27000001. Comcast will also send electronic notification to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, on the date said payment is made.

11. **Waivers.** Provided the Bureau issues an Adopting Order, Comcast waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Comcast shall retain the right to challenge the Commission's interpretation of the Consent Decree or any terms contained herein, and of the Closed Captioning Pass-Through Rule. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, neither Comcast nor the Bureau shall contest the validity of the Consent Decree or the Adopting Order, and Comcast and the Bureau shall waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree. Comcast hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters contained in this Consent Decree.

12. **Invalidity.** In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void, and may not be used in any manner in any legal proceeding.

13. **Privileged and Confidential Documents.** By this Consent Decree, Comcast neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree is inconsistent with any subsequent rule or order adopted by the Commission, that provision will be superseded by such Commission rule or order.

15. **Successors and Assigns.** Comcast agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the above-described Investigation. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Comcast with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only, and that by agreeing to this Consent Decree, Comcast does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent Decree.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both parties.

18. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

20. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

For: Comcast Corporation

Date

Lynn R. Charytan
Vice President, Legal Regulatory Affairs

For: Federal Communications Commission

Date

P. Michele Ellison
Chief, Enforcement Bureau