Federal Communications Commission
Washington, D.C. 20554

DA 04-1010
MB-ILR 04-1
Released: April 15, 2004

Mr. Matthew C. Ames
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Ave, N.W.
Suite 1000
Washington, D.C. 20036

Re: City of Mentor, Ohio

Dear Mr. Ames:

This letter is in response to a petition you filed on February 24, 2003, on behalf of the City of Mentor, Ohio. You request that the Commission determine whether Comcast, operator of a cable television system in Mentor, violated Section 624(d)(3)(A) of the Communications Act of 1934 by releasing certain premium channels, showing programming rated R, NC-17, or X, to subscribers who had not affirmatively requested those channels. The programming that initially led to the filing of the petition was said to have been transmitted at 12:30 a.m. on February 16, 2004. You indicate that Comcast did not notify subscribers of the free availability of such channels as required by the Act.

Comcast filed a response, asserting that it did not intentionally offer a free promotion of premium services to its subscribers; rather, the programming was received as a result of a series of technical errors. Comcast states that it subsequently advised subscribers of the situation, and that if they wanted to eliminate the possibility of receiving premium services, the system would install traps in their homes. While admitting its mistakes, Comcast states that it regrets this incident, the manner in which it was handled and the confusion which resulted, and that it has taken steps both at a system and company-wide level to ensure that it does not reoccur. On February 17, 2004, Comcast, according to the City, cured the problem by installing traps at the complaining citizen's residence and, from that point onward, he no longer had access to the premium channels in question.

Under the circumstances, we cannot conclude that further enforcement action would be appropriate. Section 624(d)(3)(A) applies to intentional, pre-planned promotions of premium channels where advance notice is possible. The record here reflects that Comcast did not offer the premium channels in question to subscribers as a deliberate free promotional preview. Comcast states that the events in question were the consequence of unplanned technical errors and, after being alerted to the problem, it appears to have made good faith efforts to block reception of these services. Comcast also indicates that it has recently instituted a more general nationwide initiative to educate cable subscribers on the technical means to block out even non-premium

programming that some subscribers may find objectionable. Given all the circumstances, we do not find further enforcement action to be warranted at this time.

Sincerely,

W. Kenneth Ferree
Chief, Media Bureau

cc: Zakee Rashid, Comcast Cable Communications, Inc.
Peter Feinberg, Comcast Cable Communications, LLC