IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF ARKANSAS

Curtis J Neeley Jr., MFA **Plaintiff**

v

CASE NO. 12-5208

Federal Communications Commission,
Microsoft Corporation,
Google Inc. **Defendants**

OPPOSITION/RESPONSE TO FCC MOTION TO DISMISS

Introduction

At the time of writing this, there are still two near-frivolous Motions to Dismiss and one near-frivolous Motion for Rule 11 Sanctions. The Federal Communications Commissions Motion to Dismiss was well done and was educational for this Plaintiff.

RESPONSE

1. Federal sovereign immunity is a defense to liability rather than a right to be free from trial. The United States, or an agency established thereby, can not order itself to pay money and thereby violate the Constitution. The debt limitation ceiling being a current obvious example.

2. The Plaintiff Motion to Amend now plead does not seek a specific monetary amount and did not name a person at the FCC who harmed the Plaintiff. Clearly, -all people who work at the FCC, and particularly Maureen Duignan, have failed to follow United States laws and have harmed the Plaintiff and caused outrageous damages. The trouble with this clearly waived tort is that none of these people at the FCC could possibly have realized the harm caused by their malfeasance in order to create the scienter necessary for a tort seeking damages.

3. The Plaintiff seeks only a public JURY or public judicial admonishment of the FCC such that the ensuing political processes can then begin to END the malfeasance of the FCC. The United States' public will then motivate changes of law or creation of rules that require tagging suggested by the Supreme Court in 1996 like seen in the rule set attached already.

4. There is no law requiring movies be rated or "tagged". The general public has demanded this though it is NOT required by law. If the public were aware indecent adult material would still be publicly accessible by identified adults, the [sic] "internet" would quickly be properly tagged. If the public were aware that sending wire communications of SPAM could result in incarceration or fines, the pervasive annoyance of SPAM would quickly disappear.

RATIONAL

1. The reason the Plaintiff seeks creation of a safe [sic] "internet" is that technology has reached the point where broadband Wi-Fi could be as pervasive as FM commercial radio is today.

2. The FCC duty to protect the safety of pervasive distant wire communications must be performed because wire communications have now joined with radio communications. The FCC recently required digital modulation of television broadcast and this same type modulation will eventually make bandwidth or spectrum unlimited.

3. Commercial radio stations of today could transmit Wi-Fi on their assigned frequencies by establishing remote transceivers within their coverage areas to interface with remote wireless devices seeking "broadband".

4. The older analog technology of radios will remain unobstructed while creating a massive new economic stimulus and inciting massive advances in the human intellect..

5. The shortest amount of time that can be detected by humans by direct observation is slightly longer than the 1/72 second refresh rate once quoted for television and computer screens. More of a gap in time than .0138 seconds causes the movement of objects to appear halting or the television or computer screens to appea5r to "flicker".

6. Less than .0138 seconds of darkness between flashes of light will cause the normal human mind to recognize only the continually lit state. The ability of the human to indirectly detect time might seem odd to most but can quickly be made "clear as a drum". Low frequencies are observed indirectly as sound. "*Bass*" sounds are lower frequencies or larger small segments of time. "Treble" sounds are higher frequencies or smaller segments of time. The highest frequency observable by very good human ears is around 1/20,000 second. Less time than .00005 seconds is too short to be detected by human senses at all. It is the "sound of silence".

7. Taking one .0005 second silent slice out of an audio recording and using this time section for 3GHz of Wi-Fi will allow 150 MHz of broadband to be encoded in just one silent slice. The Plaintiff is not sure how many slices will pass undetected per second but is sure several could and allow simultaneous use of FM commercial analog radios after the digital time slots are cleared of all audio data. The same type order to switch to digital broadcast would require an authority for rule-making and this agency already exists.

8. Plaintiff will try to help by using distances to make comparing these tiny time segments easier to consider for the public reader, .00005 seconds is roughly enough time for a light ray to travel around 589,248 inches or roughly 9.3 miles in 1/20,000 second.

9. One tiny 3GHz segment of time will allow light to travel only 3.92832 INCHES. Comparing slightly less than four inches to 9.3 miles or 589,248 inches gives a better perspective on the quickness of computers compared to human minds. Computers are infinitely faster (150,000 X) but computers lack the abilities of the human mind to justify not regulating wire communications despite the clear laws requiring this be done passed in 1934.

CONCLUSION

1. The FCC should allow commercial radio station operators to become geographically distributed providers of Wi-Fi with a simple rule change. This development will first require 47 USC §151 to be followed instead of seeking some secondary rational for jurisdiction like was attempted in *Comcast Corp. v. FCC*, 600 F.3d 642.

2. Simultaneous wire and radio communications called [sic] "Internet" for disguise in the United States and most of Europe remain human communications and remain subject to the rules of written law and ALL natural laws. The United States' law will eventually adapt just like the United States' laws adapted when prohibiting slavery and allowing women to vote.

3. The Plaintiff pleads this matter be allowed to continue to trial against each party including the FCC such that the FCC must explain failing to regulate interstate and world-wide communications by wire and be admonished for this malfeasance or be ordered to cease NATURAL law violations. The Plaintiff could revise [sic] "*Neeley III*" to seek only a public admonishment or the court can read the prayer for "injunction" as prayer for "admonishment" wherein the District Court should admonish the FCC for malfeasance that lead to widespread criminal use of [sic] "internet" wire communications. The FCC almost encourages Google Inc and Microsoft Corporation to use unconstitutional 17 US §107 *fair-use* copy[rite] exception to trespass on private computers and encourage anonymous retransmission of indecency and thereby creating the anonymous venue for Plaintiff's prior indecent image display and the perpetual anonymous venue for child pornography violating the NATURAL right to control creations and the NATURAL right to repent as has a history in law older than the United States.

4. Public admonishment does not require payment or compel an action but should motivate an eventual correction. The Plaintiff is sick of this litigation and except for the improper associations left remaining NOW by each Corporate Defendant and permitted due to FCC malfeasance, the Plaintiff has cleared Earth's indexed computer presentations connected to common carrier wires of twenty-one years of naked art. See exhibit "Repent" for lists of remaining inappropriate associations and for presentations now removed. The Plaintiff once produced naked images but has repented for creating these and wishes to enforce the NATURAL right to avoid damages to reputation. NATURAL law is more solidly anchored than even the Constitution.

5. The [sic] "internet" exists only as an ***imaginary construct or label*** for Google Inc, Microsoft Corporation, and other private databases representing individual presentations on private and public computers world-wide attached to wires using the same communications protocol. The slang constructs of [sic] "internet" and [sic] "copy*right*" both cause United States law to violate NATURAL human rights to freedom protected in most other nations as will not continue for another generation as can be seen by the recent Google Inc failure to export US' fair-use.

6. Regardless of the decisions of this court now; the Plaintiff will not again pursue ANYONE legally except the owners of <aventar.eu> for republishing one prior Portuguese BLOG publication that was withdrawn at the request of the Plaintiff but recently reappeared.

7. The right thing may not be done by the FCC now or even within this generation. There certainly will be action by the United States government within the next generation to stop the anonymous presentation of indecent art and the wholly anonymous consumption of indecent art and the recognition of authors' rights to control art for a time as was authorized but never protected.

8. The common law rights and natural law rights of this Plaintiff are **far beyond any** sovereign immunity or subject matter jurisdiction concern plead now by the FCC. The FCC is wrong in not regulating the [sic] "Internet" and this harms everyone on Earth including this Plaintiff.

7. The Plaintiff begs the Western District or Arkansas Court to permit the provisional Second Amended Compliant though perhaps directing the prayer be changed to an admonition instead of an injunction and seeking damages from each corporate defendants. In the alternative, the Plaintiff asks that [sic]"*Neeley III*" be subject to prejudicial dismissal and an order be given that the Plaintiff not pursue any dismissed Defendant further except after seeking permission from the District Court.

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Respectfully Submitted,

Curtis J Neeley Jr. MFA

CERTIFICATE OF SERVICE

I, Curtis J. Neeley Jr., MFA, do hereby certify that on February 07, 2013, I filed the forgoing personally. The District Clerk will scan this and make it accessible via CM/ECF. Furthermore; every docket entry of Neeley Jr v FCC et al, (5:12-cv-5208) will be accessible by wire communications perpetually including a free mirror of the District Court Docket with freely provided electronic copies of every filing. The docket will be updated within 24-hours after any paper is filed by Neeley and can be accessed from the following UnRegulated Locations. (URLs)

1. CurtisNeeley.com/FCC/Neeley-Jr_v_FCC-et-al.htm
2. CurtisNeeley.com/FCC/New_GOOG_exhibits
3. CurtisNeeley.com/FCC/New_MSFT_exhibits

URL #1 is the mirror of the Docket. URL #2 is the password protected directory with access to all exhibit files prepared that are not accessible at URL #3. The username for logging in is "adult" and the password is "YeS" and proper case is required. These PDFs are often indecent or obscene and all access is logged.

Curtis J Neeley Jr MFA