

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

In the Matter of: )
TIME WARNER CABLE ) CSR 5543-C
Emergency Petition of ABC, Inc. ) NAL/Acct. No. 200112000002
For Declaratory Ruling )
And Enforcement Order For Violation of )
Section 76.58 of the Commission's Rules, )
Or in the Alternative For Immediate )
Injunctive Relief )

ORDER

Adopted: March 8, 2001

Released: March 9, 2001

By the Chief, Cable Services Bureau:

1. In this Order, we adopt a Consent Decree terminating further consideration of enforcement action by the Commission against Time Warner Cable ("Time Warner") for failure to carry eight commercial television stations (the "ABC Stations") on certain of its cable systems during the May 2000 local station audience rating period ("sweeps period").

2. By Order<sup>1</sup> dated May 3, 2000, the Cable Services Bureau (the "Bureau") determined that Time Warner's termination of carriage of the ABC Stations during an ongoing sweeps period violated Section 614(b)(9) of the Communications Act of 1934, as amended ("Communications Act") and Section 76.58 of the Commission's rules.<sup>2</sup> In its decision, the Bureau stated that "[w]e will consider separately what enforcement action is warranted as a consequence of Time Warner's conduct."<sup>3</sup> Time Warner did not seek review or reconsideration of the Bureau's decision.

3. The Bureau and Time Warner have negotiated the terms of a Consent Decree that would resolve pending enforcement action. A copy of the Consent Decree is attached and is incorporated by reference. As detailed in the Consent Decree, Time Warner has agreed, among other things, to make a voluntary contribution to the U.S. Treasury, and to comply with Section 614(b)(9) of the Communications Act and Section 76.58 of the

<sup>1</sup> Time Warner Cable, 15 FCC Rcd 7882, 7884-85 (CSB 2000).

<sup>2</sup> 47 U.S.C. § 534(b)(9); 47 C.F.R. § 76.58.

<sup>3</sup> Time Warner Cable, 15 FCC Rcd at 7886.

Commission's rules during all future sweeps periods. In light of the mitigating circumstances and factors, our review of the Consent Decree and Time Warner's commitment to be bound thereby, we believe that the public interest would not be served by imposing a forfeiture, but rather by approving the Consent Decree and terminating further consideration of enforcement action.<sup>4</sup>

4. In determining the amount of potential forfeitures, we are guided by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,<sup>5</sup> which takes into consideration standards set forth in Section 503(b)(2) of the Communications Act.<sup>6</sup> Under these standards, \$7,500 is the base forfeiture for a willful and repeated violation of the cable broadcast signal carriage rules, although the Commission and the Bureau retain the discretion not to issue any forfeiture, or to issue a higher or lower forfeiture, subject to the prescribed ceiling of \$27,500 for a single violation or single day of a continuing violation and \$300,000 for continuing violations involving a single act or failure to act.<sup>7</sup> In a prior decision, the Commission determined the forfeiture applicable for a willful and repeated violation of the cable broadcast signal carriage rules on per system basis (*i.e.* each cable system involved in a violation was assessed the base forfeiture amount).<sup>8</sup> Assuming similar treatment, the Commission could fine Time Warner by assessing a \$7,500.00 forfeiture against each system that ceased carriage of the ABC stations during the sweeps period.

5. As detailed in the attached Consent Decree, certain mitigating factors coupled with Time Warner's willingness to accept a Consent Decree indicate that further enforcement action by the Commission is not necessary and that it would not serve the public interest to impose a forfeiture against Time Warner under the circumstances. Time Warner has agreed, among other things, to make a voluntary contribution to the U.S. Treasury in the amount of \$72,000 (96 cable systems x \$750.00). We have reviewed the terms of the Consent Decree and evaluated the facts before us. In light of Time Warner's commitment to be bound by the various principles set forth in the Consent Decree, we believe that the public interest would be served by approving the Consent Decree and terminating further consideration of enforcement action.

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<sup>4</sup> Time Warner will not be obligated to report this matter on future applications or forms filed with the Commission. For example, the matters addressed herein shall not be deemed to be an adverse finding or adverse final action with respect to any matters set forth in FCC Form 394, Part II, Question 5 (Sept. 1996).

<sup>5</sup> 12 FCC Rcd 17087 (1997).

<sup>6</sup> 47 U.S.C. § 503(b)(2).

<sup>7</sup> 47 C.F.R. § 1.80(b)(4).

<sup>8</sup> See *Cablevision Systems Corporation*, 15 FCC Rcd 3269 (2000).

6. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), and the authority delegated in Sections 0.101 and 0.321 of the Commission's rules, 47 C.F.R. §§ 0.101, 0.321, that the attached Consent Decree **IS ADOPTED**.

FEDERAL COMMUNICATIONS COMMISSION

Deborah A. Lathen  
Chief, Cable Services Bureau

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

In the Matter of: )  
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TIME WARNER CABLE ) CSR 5543-C  
 ) NAL/Acct. No. 200112000002  
 )

CONSENT DECREE

1. The Cable Services Bureau of the Federal Communications Commission (the "Bureau") and Time Warner Cable ("Time Warner"), by their attorneys and authorized representatives, hereby enter into a voluntary Consent Decree regarding violations of the Communications Act of 1934, as amended ("Communications Act") and the Commission's rules.

2. By Order dated May 3, 2000, the Bureau determined that Time Warner violated the Communications Act and the Commission's rules by terminating carriage of eight commercial television stations (the "ABC Stations") on certain of its cable systems during the May 2000 local station audience rating period ("sweeps period").<sup>9</sup> In its decision, the Bureau stated that "[w]e will consider separately what enforcement action is warranted as a consequence of Time Warner's conduct."<sup>10</sup> Time Warner did not seek review or reconsideration of the Bureau's decision.

3. On June 7<sup>th</sup> and July 5<sup>th</sup>, 2000, Time Warner initiated meetings with the Bureau for the purpose of outlining certain mitigating circumstances and actions taken by Time Warner both before and subsequent to the release of the Bureau's May 3, 2000 Order. These mitigating circumstances and actions are relevant to the Bureau's consideration of further enforcement action.

4. For example, Time Warner acted promptly to end the dispute by offering a medium-term retransmission consent extension to ABC. Upon reaching an extension agreement with ABC, Time Warner immediately restored carriage of the ABC Stations even before the Bureau issued its finding of violation. Time Warner also worked diligently with ABC to achieve a long-term retransmission consent agreement that extends through May 2006. Other mitigating circumstances and actions include Time Warner's prompt action to compensate affected subscribers by crediting two full days of basic cable service even though only one channel of basic service, the local ABC affiliate, was affected.<sup>11</sup> In addition, certain Time Warner cable systems also

<sup>9</sup> *Time Warner Cable*, DA-00-987 at ¶ 7 (CSB rel. May 3, 2000). Carriage of the ABC stations was terminated on May 1, 2000 and restored less than 48 hours later, on May 2, 2000. *See id.* at ¶ 4, note 8.

<sup>10</sup> *Id.* at ¶ 10.

<sup>11</sup> Time Warner indicates that the total value of these subscriber credits amounts to over \$2,750,000.

offered affected subscribers the option to receive a free premium cable service for one month.<sup>12</sup> Finally, Time Warner also has pointed out its long history of overall compliance with the Commission's rules and that the decision to cease carriage of the ABC Stations was based upon a good faith interpretation of the Communications Act and the Commission's rules. Time Warner expressly reaffirms its commitment to comply with the rules and regulations of the Commission and the provisions of the Communications Act in the future.

5. In consideration for the termination by the Bureau of further enforcement action, and in accordance with the terms of this Consent Decree, Time Warner agrees to the following terms and conditions.

6. For the purposes of this Consent Decree the following definitions shall apply:

- a. "Commission" or "FCC" means the Federal Communications Commission;
- b. "Bureau" means the Cable Services Bureau of the Federal Communications Commission;
- c. "Time Warner" means Time Warner Cable, its successors and assigns;
- d. "Parties" means the Bureau and Time Warner; and
- e. "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree.
- f. "Relevant System" means a cable television system owned or operated by Time Warner Cable that terminated carriage of an ABC Station during the May 2000 sweeps period.

7. The Parties agree that the provisions of this voluntary Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order of the Bureau.

8. The Parties agree that this Consent Decree shall become effective on the date upon which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission Order entitling the Commission to exercise any and all remedies authorized by law for the enforcement of a Commission Order.

9. Time Warner admits the jurisdiction of the Commission for purposes of this Consent Decree and the Adopting Order.

10. Time Warner waives any rights that it may have to further procedural steps and any rights it may have to seek judicial review or otherwise challenge or contest the validity of the Adopting Order or this Consent Decree, provided the Adopting Order adopts the Consent Decree without modification.

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<sup>12</sup> Assuming an average premium service retail value of \$6.95, the potential value of this offer exceeds \$15 million.

11. Time Warner waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504.

12. The Parties agree that this Consent Decree shall constitute a final settlement of all issues related to Time Warner's terminating carriage of the ABC Stations during the May 2000 sweeps period as detailed in the Bureau's May 3, 2000 Order. Except as provided in paragraph 14 of this Consent Decree, the Bureau will not initiate on its own motion any other enforcement action against Time Warner, or seek on its own motion any administrative or other penalties from Time Warner, based on the findings in said Order, or otherwise use such findings in any other current or future proceedings before the Commission.

13. The Parties agree that this Consent Decree does not constitute an adjudication of the merits, or any finding on the facts or law regarding the enforcement of the Bureau's May 3, 2000 Order.

14. In the event that Time Warner is found by the Commission or its delegated authority to have engaged in conduct the same or similar to that described in paragraph 2 of this Consent Decree, Time Warner and the Bureau agree that the conduct described in paragraph 2 may be used by the Bureau only to fashion an appropriate sanction.

15. Time Warner shall make a voluntary contribution to the United States Treasury in the amount of seven hundred fifty dollars (\$750) per Relevant System. Time Warner shall make such contribution within 30 days of the effective date of this Consent Decree. Such contribution shall be made, without further protest or recourse, by certified check, cashier's check, or money order drawn to the order of the Federal Communications Commission and shall be mailed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482, reflecting NAL account number 200112000002.

16. Time Warner affirms that it is in compliance and will remain in compliance with Section 614(b)(9) of the Communications Act and Section 76.58 of the Commission's rules during all future sweeps periods.

17. The Parties agree that any provision of the Consent Decree which conflicts with any subsequent rule or order adopted by the Commission will be superseded by such Commission rule or order.

18. If this Consent Decree is not signed by both Parties, is not adopted by the Bureau, or is otherwise rendered invalid by any court of competent jurisdiction, it shall become null and void and shall not become part of the record in this enforcement proceeding nor may it be used in any fashion by any party in a legal proceeding. The Parties agree, however, that except for Time Warner's financial obligations herein, or except as otherwise ordered by any court of competent jurisdiction, the Parties will comply with this Consent Decree during the pendency of any proceeding initiated by a third party seeking to nullify, void or otherwise modify the Consent Decree or Adopting Order.

19. The Parties further agree that this Consent Decree shall become effective on the date of the release of the Adopting Order.

20. This Consent Decree may be signed in counterparts.

FOR THE FEDERAL COMMUNICATIONS  
COMMISSION

FOR TIME WARNER CABLE

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Deborah A. Lathen  
Chief, Cable Services Bureau

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Arthur H. Harding  
Counsel for Time Warner Cable