

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

In the Matter of:	)	
	)	
Telefutura Los Angeles LLC	)	
	)	CSR-6240-M
v.	)	
	)	
Time Warner Inc.	)	
	)	
Channel Positioning Complaint	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 2, 2004**

**Released: February 5, 2004**

By the Deputy Chief, Media Bureau, Policy Division:

**I. INTRODUCTION**

1. Telefutura Los Angeles LLC. (“Telefutura”), licensee of commercial television station KFTR(TV) (Channel 46), Ontario, California (“KFTR” or the “Station”) filed a must carry complaint with the Commission, pursuant to Section 534(a) of the Communications Act of 1934, asking that the Commission require Time Warner Inc. (“TWI”) to carry KFTR on its over-the-air channel position on TWI’s South Pasadena and Gardena, California cable systems (the “systems”).<sup>1</sup> No opposition to the complaint was received.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* (“*Must Carry Order*”), commercial television broadcast stations are entitled to assert mandatory carriage rights, including certain mandatory channel position rights, on cable systems located within the station’s market.<sup>2</sup>

3. Section 614(b)(6) of the Act and Section 76.57 of the Commission’s rules provide commercial television stations with three channel positioning options.<sup>3</sup> The station may elect to be carried on: (1) the channel number on which the station is broadcast over-the-air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was

<sup>1</sup> 47 U.S.C. § 534(a); *see* 47 C.F.R. §§ 76.7 and 76.61.

<sup>2</sup> 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>3</sup> 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57.

carried on January 1, 1992.<sup>4</sup> The Act and the rules also provide that a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.<sup>5</sup>

### III. DISCUSSION

4. In support of its complaint, Telefutera indicates that TWI is carrying KFTR on channel 24 on the South Pasadena system and channel 29 on the Gardena system, which is not in compliance with KFTR's earlier channel positioning request.<sup>6</sup> Telefutera states that on September 16, 2002, it informed TWI that it had elected must carry status on the two cable systems at issue.<sup>7</sup> Telefutera asserts that it informed TWI of KFTR's desire to be carried anywhere between channels 2 and 14, or on channel 16, and that KFTR was also willing to negotiate carriage on a mutually acceptable channel.<sup>8</sup> According to Telefutera, it also informed TWI that if the parties failed to reach an agreement, KFTR would affirmatively elect carriage on channel 46, its over-the-air channel.<sup>9</sup> Telefutera asserts further that TWI commenced carriage of the Station, unilaterally assigning KFTR to channel 24 on the South Pasadena system and channel 29 on the Gardena system.<sup>10</sup> Telefutera maintains that on June 9, 2003, it informed TWI that carriage of KFTR on the two systems at issue did not conform to the Commission's must carry requirements, and requested TWI to relocate the Station to channel 46, or to another channel agreeable to both parties.<sup>11</sup> Telefutera notes that on June 9 it also informed TWI that pursuant to Commission's rules, TWI had 30 days to comply with the Station's relocation request, or respond in writing stating its reasons for not complying with KFTR's relocation request<sup>12</sup>. Telefutera maintains that TWI failed to relocate the Station as requested and respond to the June 9, 2003 request.<sup>13</sup> Finally, Telefutera asks that TWI be ordered to commence carriage of KFTR on its over-the-air channel (channel 46).<sup>14</sup>

5. We grant Telefutera's channel positioning complaint. As noted above, Telefutera, pursuant to Section 76.61(a) of the Commission's rules, informed TWI that it was not meeting its channel positioning obligations, and requested that TWI come into compliance with the statutory channel positioning requirements. TWI, however, has failed to honor its obligation to either negotiate the positioning of KFTR on the South Pasadena and Gardena systems, or to begin carriage on the Station's over-the-air channel. In that regard, the Commission has stated that cable operators must comply with channel positioning requirements absent compelling technical reasons.<sup>15</sup> The Commission specifically held that the need to employ additional traps, reconfigure the basic tier, or make technical changes are

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<sup>4</sup> 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57(a).

<sup>5</sup> 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57(c).

<sup>6</sup> Complaint at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* and Exhibit 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Must Carry Order*, 8 FCC Rcd at 2988.

generally not sufficient grounds for denying the channel positioning request of a must carry station.<sup>16</sup> The Commission has also noted that “[a] cable system claiming that it cannot meet a channel positioning request for technical reasons will have to provide evidence that clearly demonstrates that the operator cannot meet this requirement.”<sup>17</sup> In the instant case, TWI has not provided such evidence. In fact, it did not file a response to the instant complaint explaining why it failed to comply with Telefutera’s channel relocation request. We therefore conclude that TWI is required to carry KFTR on channel 46, the Station’s over-the-air position.

#### IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534(d)(3), that the complaint (CSR-6240-M) filed by Telefutera Los Angeles LLC against Time Warner, Inc., seeking carriage of KFTR on its over-the-air channel **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that Time Warner, Inc. **SHALL COMMENCE THE CARRIAGE** of KFTR(TV) on Channel 46 throughout its South Pasadena and Gardena, California systems within sixty (60) days of the release of this *Memorandum Opinion and Order*.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 47 C.F.R. § 0.283.