

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

In the Matter of:)
)
Time Warner Cable,)
A Division of Time Warner Entertainment) MB Docket No. 06-151
Company, L.P.)
)
)

ORDER

Adopted: October 5, 2006

Released: October 6, 2006

By the Chief, Media Bureau:

1. In this Order, we adopt a Consent Decree that terminates the captioned proceeding before the Media Bureau (the "Bureau") looking into the possible violation by Time Warner Cable Inc. ("TWC") of Section 76.1603 of the Commission's Rules.¹

2. The Bureau and TWC have negotiated the terms of the Consent Decree, a copy of which is attached hereto and incorporated by reference herein. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating the captioned proceeding. In the absence of material new evidence relating to this matter, we conclude, based on the record before us, in particular TWC's acknowledgement that its discontinuation of its carriage of the NFL Network without notification to its subscribers violated Section 76.1603, that there are no substantial or material questions of fact as to whether TWC possesses the basic qualifications to be or remain a Commission licensee.

3. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,² and the authority delegated by Sections 0.61 and 0.283 of the Commission's Rules,³ the attached Consent Decree IS ADOPTED.

4. IT IS FURTHER ORDERED that the "Emergency Petition for Declaratory Ruling and Enforcement Order, or, in the Alternative, for Immediate Injunctive Relief" filed on August 1, 2006, by NFL Enterprises LLC IS DISMISSED, as moot, and the captioned proceeding IS TERMINATED.

5. IT IS FURTHER ORDERED that copies of this Order shall be sent by regular first class mail and certified mail - return receipt requested, to Time Warner Cable Inc., 290 Harbor Drive,

¹ 47 C.F.R. § 76.1603.
² 47 U.S.C. § 154(i).
³ 47 C.F.R. §§ 0.61, 0.283

Stamford, Connecticut 06902, and to its counsel, Richard E. Wiley, Esq. and Robert L. Pettit, Esq., Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Time Warner Cable Inc., by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of resolving and terminating MB Docket No. 06-151, a proceeding before the Media Bureau looking into possible violations by TWC of Section 76.1603 of the rules of the Federal Communications Commission.

2. For the purposes of this Consent Decree, the following definitions apply:

- a) The “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*;
- b) “Adopting Order” or “Order” means an order of the Media Bureau adopting this Consent Decree;
- c) The “Bureau” means the Media Bureau of the Federal Communications Commission;
- d) The “Commission” or “FCC” means the Federal Communications Commission;
- e) “Effective Date” means the date on which the Bureau releases the Adopting Order;
- f) “TWC” means Time Warner Cable Inc. and its subsidiaries, divisions and controlled affiliates, and each of their respective officers, directors, employees, agents, representatives, or any other person acting or purporting to act on behalf of TWC or their successors or assigns;
- g) “TW” means Time Warner Inc. and its subsidiaries, divisions and affiliates, and each of their respective officers, directors, employees, agents, representatives, or any other person acting or purporting to act on behalf of TW or their successors or assigns;
- h) “Parties” means TWC and the Bureau;
- i) “NFL” means NFL Enterprises LLC; and
- j) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations.

I. Background

3. On August 1, 2006, the NFL, operator of the NFL Network (“NFLN”), filed with the FCC an “Emergency Petition for Declaratory Ruling and Enforcement Order, or, in the Alternative, for Immediate Injunctive Relief” (the “NFL Petition”), alleging that TWC violated Section 76.1603 of the Rules by dropping NFLN from certain cable systems that TWC recently acquired from affiliates of Adelphia Communications Corporation (“Adelphia”) and Comcast

Corporation (“Comcast”) without providing subscribers 30-days’ notice. By Order released August 3, 2006, the Bureau instructed TWC, “on a temporary basis, to reinstate carriage of the NFL Network on all of its newly acquired systems on previously applicable terms until we are able to resolve the NFL’s Petition on the merits.”⁴ TWC reinstated carriage of NFLN in accordance with the *Interim Relief Order* on or about midnight on August 3, 2006.

4. TWC filed a Petition for Reconsideration and Application for Stay of the *Interim Relief Order* on August 3, 2006. The NFL filed an Opposition to TWC’s Application for Stay on August 4, 2006. By Order released August 7, 2006, the Bureau denied TWC’s Petition for Reconsideration and Application for Stay.⁵ In so doing, the Bureau concluded that the NFL had established a substantial likelihood of success on the merits based on the undisputed facts that TWC: (1) failed to provide to its subscribers 30-days’ notice before dropping NFLN; and (2) refused the NFL’s offer to allow TWC to carry NFLN on the pre-existing terms and conditions contained in the Adelphia and Comcast agreements with the NFL for those 30 days.

5. TWC acknowledges that the NFL had authorized TWC to carry the NFLN pursuant to the preexisting terms of the Adelphia and Comcast agreements with the NFL in order that adequate notice could be provided, and that the NFL indicates that, had TWC asked, it would have provided sufficient information to TWC to enable TWC to operate under those agreements.

6. Pursuant to the *Interim Relief Order*, TWC reinstated NFLN on the cable systems on which the network had previously been carried, resulting in a two-day period during which NFLN was not being carried. TWC has remained in compliance with the *Interim Relief Order* and the Rules since that time. The Parties recognize that TWC did provide some advance notice to affected Adelphia and Comcast subscribers prior to consummation of the transactions through advertisements published in newspapers of general circulation in the affected communities. Additionally, subsequent to the *Interim Relief Order*, TWC began providing notice so that, prior to any discontinuation of carriage of NFLN, subscribers will have had a period in excess of thirty days to voice their concerns to TWC or to discontinue service, and hence were afforded the full protection intended by Section 76.1603 of the Rules. Moreover, TWC gave any and all subscribers who had paid for an entire month’s service in advance a credit for the remainder of the month upon their election to discontinue service mid-month, after receipt of notice of the upcoming deletion of NFLN. These mitigating circumstances and actions are relevant to the Bureau’s consideration of further enforcement action against TWC.

II. Terms of Settlement

⁴ *Time Warner Cable*, Order, DA 06-1587, __ FCC Rcd __, ¶ 5 (Media Bur. rel. August 3, 2006) (“*Interim Relief Order*”). By letter of August 18, 2006, counsel for TWC also informed the Media Bureau of other drops of programming by TWC from some of the recently acquired systems. *Letter of Donald B. Verrilli, Jr., to Donna C. Gregg*, Chief, Media Bureau, Federal Communications Commission (August 18, 2006). The Commission has received no programmer complaints regarding any programming changes by TWC other than those relating to NFLN.

⁵ *Time Warner Cable*, Order on Reconsideration, DA 06-1594, __ FCC Rcd __ (Media Bur. released August 7, 2006) (“*Reconsideration Order*”).

7. In accordance with the terms of this Consent Decree, the Parties agree to the following terms, conditions, and procedures.

8. 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 an Adopting Order.

9. 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 and any violation of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

10. TWC agrees that the Bureau has jurisdiction over the matters that are the subject of this Consent Decree and the authority to enter into and adopt this Consent Decree.

11. In express reliance upon the covenants and representations in this Consent Decree, including, in particular, TWC's representations contained in Paragraphs 3 and 6 above of its actions taken after the release of the *Interim Relief Order*, the Bureau agrees to terminate its investigation of TWC relating to the matters discussed above, without any finding of liability on the part of TWC.

12. In the Adopting Order, the Bureau will dismiss, as moot, the NFL Petition. In consideration of the Bureau's dismissal of the NFL Petition, TWC agrees to the terms set forth herein.

13. 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 compliance or noncompliance with the requirements of the Act or the Rules and the Commission's orders.⁶ The Parties agree that this Consent Decree is for settlement purposes only.

14. Nonetheless, TWC acknowledges that its discontinuation of NFLN on August 1, 2006, with less than 30 days' notice to subscribers violated Section 76.1603 of the Rules.⁷

15. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them concerning any and all violations of Section 76.1603 resulting from programming changes discussed herein instituted by TWC prior to the Effective Date on cable systems that TWC acquired from Adelphia or Comcast.

16. The Bureau agrees that, in the absence of material new evidence, it will not initiate on its own motion, or recommend to the Commission, any new proceeding, formal or

⁶ Likewise, neither the *Interim Relief Order* nor the *Reconsideration Order* purported to make any such final determination. *E.g.*, *Interim Relief Order* at ¶ 10 (“[W]e make no final decision on the merits of the NFL’s petition. . .”).

⁷ 47 C.F.R. § 76.1603

informal, regarding the matters discussed above. The Bureau further agrees that, in the absence of material new evidence, it will not use the facts developed in the MB Docket No. 06-151 proceeding through the Effective Date to initiate on its own motion, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion against TWC with respect to its basic qualifications to hold any Commission license or authorization.⁸ Nothing in this Consent Decree shall prevent the Bureau from instituting, or recommending to the Commission, new investigations or enforcement proceedings against TWC, in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the Act or the Commission's Rules for any non-settled claims, consistent with the provisions of this Consent Decree.

17. TWC 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 the *Interim Relief Order*, the *Reconsideration Order*, this Consent Decree and the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification.

18. TWC 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 discussed in this Consent Decree.

19. If any Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Adopting Order, the Parties shall not contest the continuing validity of the Consent Decree or Adopting Order.

20. In the event that this Consent Decree is not signed by both Parties, is not adopted by the Bureau, or is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void, shall not become part of the record of this proceeding, and may not be used in any manner in any legal proceeding.

21. This Consent Decree may be signed in counterparts.

⁸ In this regard, TWC and TW will not be obligated to report this matter, including as an adverse finding or adverse final action, on any Commission application or form.

For the Media Bureau

Donna C. Gregg
Chief, Media Bureau

Date

For Time Warner Cable Inc.

Jeffrey M. Zimmerman
Senior Vice President and Deputy General Counsel
Time Warner Cable Inc.

Date