

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

In the Matter of)	
)	
Time Warner Cable)	File No. EB-06-IH-2402
Los Angeles, California)	FRN: 0007556251

MEMORANDUM OPINION AND ORDER

Adopted: March 7, 2007

Released: March 7, 2007

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*MO&O*”), we admonish Time Warner Cable (“Time Warner” or the “Company”)¹ for failure to provide prompt access to its public inspection files on September 13 and 16, 2005, in violation of Section 76.1700 of the Commission’s rules.² We have reviewed the record thoroughly, including Time Warner’s responses, and conclude that Time Warner willfully violated Section 76.1700 on September 13, 2005, by requiring a member of the public to schedule an appointment to view the Company’s public file during regular business hours. Time Warner again violated the cable public file rule on September 16, 2005, by not promptly making its public file available for inspection. For the reasons stated below, we conclude that Time Warner should be admonished for its repeated violations of Section 76.1700.

II. BACKGROUND

2. In a letter to the Commission dated October 4, 2005, James Shelton alleges that Time Warner denied him prompt access to the Company’s public inspection file, including its Equal Employment Opportunity (“EEO”) file, in violation of Section 76.1700.³ According to Mr. Shelton, he and an associate,

¹ Time Warner, owner of a cable television system serving the Los Angeles, California, area, also owns cable units in Orange County, California, where some of the offices mentioned in the Complaint are located.

² See 47 C.F.R. § 76.1700 (the “cable public file rule” or “Section 76.1700”). See also *Reminder of Cable Television System Public Inspection File Obligations*, Public Notice, 19 FCC Rcd 23632 (Media Bur. 2004) (“2004 Public Notice”).

³ See Complaint of James Shelton to EEO Staff, Policy Division, Media Bureau, FCC, dated October 4, 2005 (“Complaint”). In his Complaint, Mr. Shelton also contends that Time Warner violated Section 76.1702 of the Commission’s Rules, 47 C.F.R. § 76.1702, which requires cable operators to maintain an EEO file and describes the information that should be included in the file. In this *MO&O*, we do not address the question of whether Time Warner violated Section 76.1702. The EEO staff of the Media Bureau’s Policy Division will address that issue in a separate proceeding.

Donald Todd, arrived at Time Warner's Gardena, California, office on September 13, 2005, to view the Company's EEO public file.⁴ Gregory S. Drake, in-house counsel for Time Warner, gave the Company's EEO files to Messrs. Shelton and Todd for review.⁵ After viewing the EEO files, Mr. Shelton and Mr. Todd then asked to see the remainder of the file.⁶ Mr. Drake, however, did not provide the other sections of the public file and instead told them to contact him to schedule an appointment to see the rest of the file.⁷

3. On September 16, 2005, Mr. Shelton and another associate, Paul Beckett, visited Time Warner's Torrance, California, office and asked the receptionist to see the Company's public EEO files.⁸ According to Mr. Shelton, the receptionist was unfamiliar with the EEO files and did not know where they were located, but did provide him with the phone number of an individual at the Company's main office in Garden Grove, California.⁹ Messrs. Shelton and Beckett then traveled to the Garden Grove office and asked to see the Company's EEO files.¹⁰ The employee at the Garden Grove office informed them that the public EEO files were not in that office and that she would have to contact the human resources manager to find out which office had them.¹¹ Mr. Shelton decided to leave rather than wait to hear from the manager about the location of the EEO files.¹²

4. Based on the allegations contained in the Complaint, the Media Bureau sent a letter of inquiry to Time Warner on April 18, 2006.¹³ Time Warner responded by letter dated May 16, 2006

⁴ See Complaint at 1; see also Letter from Donald C. Todd to Estella Salvatierra, Esq., Policy Division, Media Bureau, FCC, dated July 25, 2006 ("Todd Letter"); Letter from Gregory S. Drake, Senior Counsel, Time Warner Cable, to James Shelton, dated September 1, 2005 (a copy of which is attached at Exhibit 2 to Time Warner's response to a letter of inquiry) (advising Mr. Shelton that he could view the applicable files at the Company's Gardena office on September 13, 2005, at 11:00 a.m.) ("Drake Letter"). We note that the business hours for Time Warner's Gardena office are Monday through Friday, 9 a.m. to 6 p.m. See Time Warner Cable Customer Service Payment Centers, at www.timewarnercable.com/CustomerService/PaymentCenter/TWCPaymentCenters.accountservices/complaints.a.shx (last visited 7/26/06).

⁵ See Complaint at 1. See also Drake Letter.

⁶ See Complaint at 1. See also Todd Letter at 2.

⁷ See Complaint at 1; Todd Letter at 2 ("When it was requested that we be allowed to review the rest of the public files, Mr. Drake denied the request and said that another appointment would need to be made with him in order to view the other public files we requested. Mr. Drake did not mention at any time where these files were located.").

⁸ See *id.* at 2. See also Letter from Paul Beckett to Estella Salvatierra, dated July 20, 2006 (on September 16, 2005, "[we] were told at both the Torrance and Garden Grove locations that these [EEO] files were not available").

⁹ See Complaint at 2.

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

¹³ See Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, Federal Communications Commission, to Juan Munoz, Vice President, Employee Relations, Time Warner Cable, dated April 18, 2006 ("LOI"). The LOI included a copy of Mr. Shelton's September 20, 2005 e-mail query to Commission staff.

(hereinafter “LOI Response”).¹⁴ The Company states generally that it did not engage in any misconduct and denies specifically that it withheld access to any of its public inspection files at any of its offices.¹⁵

III. DISCUSSION

5. The public inspection file is a source of information to subscribers and other interested members of the public about their local cable system and its compliance with Commission rules. Cable operators must ensure that the public file contains all required records, such as the company’s relevant EEO records and sponsorship identification.¹⁶ Cable operators also must provide the file upon request.¹⁷ Specifically, Section 76.1700 states:

The public inspection file shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) The public inspection file shall be available for public inspection *at any time during regular business hours*.¹⁸

6. We find that Time Warner violated Section 76.1700 by not making its public file – whether only the EEO file or the entirety of its public inspection file – readily available. The Commission has interpreted the Rule’s phrase “at any time during regular business hours” to mean that the file shall be made available for inspection upon request.¹⁹ In December 2004, the Commission reminded cable operators of their obligation that “[e]ach system’s public inspection file must be made available *promptly* upon request.”²⁰ Thus, a cable operator may not require a member of the public to make an appointment to

¹⁴ See Letter from Roger Keating, President, Los Angeles Division, Time Warner Cable, to Estella Salvatierra, EEO Staff – Policy Division, Media Bureau, FCC, dated May 16, 2006 (“LOI Response”). Attached to the LOI Response is a “Declaration of Gregory S. Drake” (hereinafter “Drake Declaration”). Time Warner supplemented its LOI Response on various dates in May and July, 2006. See Letters from Gregory S. Drake, Senior Counsel, Legal Department, Time Warner Cable, to Estella Salvatierra, EEO Staff – Policy Division, Media Bureau, dated May 31, 2006 (correcting a statement made at paragraph 10 of the Declaration), July 6, 2006 (replying to statements contained in Mr. Shelton’s June 12, 2006, correspondence to the Commission), July 19, 2006 (explaining that the public files for the Torrance office are located at Time Warner’s Gardena facility), and July 20, 2006 (reiterating the location of the Torrance public files and explaining that the Garden Grove public files are located at Time Warner’s Orange office).

¹⁵ See LOI Response at 1-2.

¹⁶ See 47 C.F.R. § 76.1700(a) (requiring cable television operators having 5000 or more subscribers to maintain for public inspection a file containing a copy of all specified records, such as the political file; sponsorship identification; EEO records available for public inspection; commercial records for children’s programming; proof-of-performance test data; and signal leakage logs and repair records).

¹⁷ See 47 C.F.R. § 76.1700(b).

¹⁸ 47 C.F.R. § 76.1700(b) (emphasis added).

¹⁹ See *Thomas P. Brunnock*, 50 RR 2d 1313 (Broadcast Bur. 1982) (noting that a station’s two-hour delay in locating its public inspection file would violate the Commission’s public inspection file rules), *review denied sub. nom. Complaint of Continuing Committee for Mayor Bergin against Station WATR-TV Waterbury, Connecticut*, 90 FCC 2d 813 (1982).

²⁰ See *2004 Public Notice*, *supra* note 2 (emphasis added).

inspect its public file.²¹ On September 13, 2005, however, personnel at Time Warner's Gardena office did not make the entire file available when requested during regular business hours, and instead instructed the complainant and his associate to make an appointment to view the entire public file.²²

7. Time Warner disputes that it denied access to the Company's entire public file on September 13.²³ The record, however, does not support Time Warner's position. Indeed, Mr. Drake admits that he did not provide the entire public file upon request. According to Mr. Drake: "At the end of the meeting in Gardena, Mr. Todd asked what he should do if he wanted to review other documents. I suggested that he either call me or write me a letter. We had this conversation in front of Mr. Shelton."²⁴ Additionally, although Mr. Drake initially states that Mr. Shelton did not request access to the entire public file, his declaration later undermines that contention, albeit indirectly, by noting that at the meeting: "[Mr. Shelton] did not specify a date for viewing the [other files]."²⁵ Time Warner's actions in this regard are inconsistent with the cable public file rule.

8. Time Warner again violated Section 76.1700 by denying access to its public files on September 16, 2005, because its employees were unable to direct members of the public to the Time Warner offices at which the files were located. As explained in the aforementioned *2004 Public Notice*, if a member of the public asks to see a cable operator's file during regular business hours, the operator should produce the file or, if the file is not located at the office at which the request is made, should timely provide the location of the office where the relevant file may be viewed.²⁶ Here, various Time Warner employees at both the Torrance and Garden Grove locations did not know where the Company's public files were maintained.²⁷ Employees at the Torrance office did not know the location of the file and misdirected Mr. Shelton to the Garden Grove office, which also did not maintain the EEO file.²⁸ The Commission has reminded cable operators that its personnel, especially those who deal directly with the public, "should be able to timely inform any party as to the location of the office where the relevant file

²¹ See *Availability of Locally Maintained Records for Inspection by Members of the Public*, Public Notice, 28 FCC 2d 71 (1971) (reminding licensees, permittees, and applicants that public inspection files must be made available during regular business hours and that any requirement that a member of the public make an appointment in advance, or return at another time, to view a station's public inspection file is a violation of the Commission's public inspection file rules). See also *Riverside Broadcasting, Inc.*, Notice of Apparent Liability, 15 FCC Rcd 18322 (EB IHD 2000) (finding a violation of public inspection rules where, *inter alia*, station employees erroneously believed that a member of the public had to make an appointment in order to view files) (forfeiture paid).

²² See Complaint at 1. See also Todd Letter at 2.

²³ See LOI Response, Drake Declaration, ¶ 3.

²⁴ *Id.* at ¶ 8.

²⁵ *Id.*

²⁶ See *2004 Public Notice*, *supra* note 2.

²⁷ See Complaint at 2.

²⁸ According to Mr. Drake, the EEO file for the Garden Grove office is actually located in the Company's Orange, California facility. See LOI Response, Drake Declaration, ¶ 9.

may be inspected.”²⁹ The record shows in this case, however, that Time Warner did not properly train its employees to respond to public file requests.

9. Under Section 503(b)(1) of the Communications Act of 1934, as amended (the “Act”), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.³⁰ Section 503(b)(6)(B) of the Act, however, limits the time period in which the Commission can initiate a forfeiture proceeding against non-broadcast entities to only those violations that occur within one year of the issuance date of a notice of apparent liability for forfeiture.³¹ The violations here occurred more than 12 months ago; thus, the statute of limitations prohibits us from initiating a forfeiture proceeding against Time Warner. But for the running of the statute of limitations, however, we would have initiated a forfeiture proceeding in this case.³²

10. Section 503 does not, however, prohibit us from assessing whether Time Warner’s conduct prior to the expiration of the one-year statute of limitations violated the Act or the rules. Based on the evidence before us, we find that Time Warner violated Section 76.1700 of the Commission’s rules on September 13 and 16, 2005, and we admonish the Company for its failure to timely make available its public inspection files. Moreover, in light of Time Warner’s previous violation,³³ we remind the Company that we expect it to take the steps necessary to ensure that its personnel understand and comply with the requirements of Section 76.1700, and we caution Time Warner that we will not hesitate to subject it to sanctions commensurate with further violations of the cable public file rule.

²⁹ 2004 Public Notice, *supra* note 2. See also 47 C.F.R. § 76.1700(b); *T.V. Transmission, Inc., d/b/a Cablevision Lincoln, Nebraska, Petition for Order to Show Cause*, Memorandum Opinion and Order, 69 FCC 2d 1624, ¶ 13 (1978) (reminding cable operator that its “public inspection file is to be available at either the system’s office or another accessible place in the community at any time during regular business hours”).

³⁰ See 47 U.S.C. § 312(f)(1). Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history accompanying Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, and the Commission has so interpreted the term in the Section 503(b) context. See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982). See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”). “Repeated” merely means that the act was committed or omitted more than once, or lasts more than one day. See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; see also *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

³¹ See 47 U.S.C. § 503(b)(6)(B); see also *Globcom, Inc., d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903, ¶ 23 (2003) (citations omitted) (subsequent history omitted).

³² Time Warner’s conduct is particularly egregious because it is not the first time the company has violated the cable public file rule. See *Time Warner Entertainment – Advance/Newhouse Subsidiary, LLC, d/b/a Time Warner Cable*, Forfeiture Order, 19 FCC Rcd 10412 (EB 2004) (imposing \$6,600 forfeiture for operator’s failure to maintain all required material in its public inspection file pursuant to Section 76.1700(a) of the Commission’s rules) (forfeiture paid).

³³ See *id.*

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,³⁴ and Sections 0.111 and 0.311 of the Commission's rules,³⁵ that Time Warner Cable is hereby **ADMONISHED** for its failures to timely make available for inspection its public inspection files on September 13 and 16, 2005, in violation of Section 76.1700 of the Commission's rules.³⁶

11. **IT IS FURTHER ORDERED** that the complaint filed by James Shelton **IS GRANTED** to the extent indicated herein and the complaint proceeding **IS HEREBY TERMINATED**.

12. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order* shall be sent, by Certified Mail/Return Receipt Requested, to the following: James Shelton, at his home address; Roger Keating, President, Los Angeles Division, Time Warner Cable, 959 South Coast Drive, Suite 300, Costa Mesa, California 92626; and to Juan Munoz, Vice President, Employee Relations, Time Warner Cable, Corporate Human Resources, 7910 Crescent Executive Drive, Charlotte, North Carolina 28217.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division
Enforcement Bureau

³⁴ See 47 U.S.C. § 154(i).

³⁵ See 47 C.F.R. §§ 0.111, 0.311.

³⁶ See 47 C.F.R. § 76.1700.