

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

In the Matter of)	
)	
Time Warner Entertainment-Advance/Newhouse Partnership)	File No.: EB-11-KC-0058
)	NAL/Acct. No.: 201232560002
)	FRN: 0003476298
Kansas City, MO)	Physical ID No.: 004677
)	

FORFEITURE ORDER

Adopted: November 19, 2013

Released: November 19, 2013

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty five thousand dollars (\$25,000) to Time Warner Entertainment – Advance/Newhouse Partnership (Time Warner), owner of a cable system in Kansas City, Missouri, for willfully violating Sections 76.1703 and 76.1704(a) of the Commission’s rules (Rules).¹ The noted violations involved Time Warner’s failure to make available required records and data.

II. BACKGROUND

2. Section 76.1703 of the Rules states: “Cable operators airing children’s programming must maintain records sufficient to verify compliance with § 76.225 and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).”² With respect to this rule, the Commission has clarified, since 1991, that such records must be placed in the cable system’s public file no later than the tenth day of the quarter following the quarter in which the covered programming aired and must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. § 503(b)(6)(B) (one year).³ Section 76.1704(a) of the Rules states: “The proof of performance tests required by § 76.601 shall be maintained on file at the operator’s local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request.”⁴

3. On July 17, 2012, the Enforcement Bureau issued a Notice of Apparent Liability for Forfeiture and Order (NAL)⁵ to Time Warner for failure to maintain and make available required proof of performance test data and children’s programming records. In response to the NAL, Time Warner did not

¹ 47 C.F.R. §§ 76.1703, 76.1704(a).

² 47 C.F.R. § 76.1703.

³ See *Policies and Rules Concerning Children’s Television Programming*, Memorandum Opinion and Order, 6 FCC Rcd 5093, 5097, para. 23 (1991).

⁴ 47 C.F.R. § 76.1704(a).

⁵ *Time Warner Entertainment – Advance/Newhouse Partnership*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 8047 (Enf. Bur. 2012). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

deny that, on July 18, 2011, it failed to make available these required records to agents from the Enforcement Bureau's Kansas City Office (Kansas City Office), but nonetheless urged reduction of the proposed \$25,000 forfeiture based on the following arguments: (1) it was unable to provide all of the requested information on July 18, 2011, because the responsible employees were on scheduled leave the day of the inspection; (2) it located all of the missing information and consolidated it at a single location by July 21, 2011; and (3) it has undertaken "comprehensive voluntary efforts to create an internal web-based public file system" – which were initiated immediately after July 18, 2011.⁶ Time Warner further contended that merely because it "is able to pay a higher forfeiture than \$10,000 and has previously been subject to isolated enforcement action plainly should not carry more weight than the gravity of the violation at issue, which [Time Warner] respectfully submits was relatively minor and must be balanced against TWC's substantial, good faith compliance efforts."⁷

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁸ Section 1.80 of the Rules,⁹ and the *Forfeiture Policy Statement*.¹⁰ In examining Time Warner's response, the Commission is required by Section 503(b)(2)(E) of the Act to take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ As discussed below, we have considered Time Warner's response in light of these statutory factors, and find that no reduction of the forfeiture is warranted.

5. We affirm the *NAL*'s undisputed finding that on July 18, 2011, agents from the Kansas City Office sought to inspect documents required to be in the public file at Time Warner's office located at 6550 Winchester Avenue, Kansas City during regular business hours and observed that the last entry for commercial records for children's programming was dated March 27, 2008, and that proof of performance test data for years 2008 and 2009 were missing. Commission rules require that all of the missing documents must be made available to the public upon request. Accordingly, based on the record evidence, we find that Time Warner willfully violated Sections 76.1703 and 76.1704(a) of the Rules by failing to make available required children's programming records for the first quarter 2010 through first quarter 2011 and proof of performance tests for 2008 and 2009.¹²

6. Although it does not dispute that the base forfeiture amount for the violation is \$10,000,¹³ Time Warner nonetheless requests reduction of the \$25,000 forfeiture, because it argues that the Bureau's

⁶ Letter from Matthew A. Brill, Attorney for Time Warner Cable Inc., to P. Michele Ellison, Chief, Enforcement Bureau at 5-6 (Aug. 16, 2012) (on file in EB-11-KC-0058) (*NAL Response*).

⁷ *Id.* at 7.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² Time Warner states that the missing items were located and consolidated in a file at the Kansas City Office by July 21, 2011. *NAL Response* at Exhibit A. Accordingly, Time Warner disputes that the missing items were not maintained. Because we find that Time Warner failed to make available the missing documents, we need not address whether Time Warner also failed to maintain those items.

¹³ *NAL Response* at 6. See also *Allen's TV Cable Service, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 1438 (Enf. Bur. 2012) (proposing \$10,000 forfeiture for willful failure to make available public inspection file).

upward adjustments were unwarranted. Pursuant to Section 503(b)(2)(E) of the Act,¹⁴ the Bureau upwardly adjusted the proposed forfeiture because of Time Warner's ability to pay¹⁵ and its prior violations of the rules at issue.¹⁶ Time Warner does not deny that it is able to pay the forfeiture and that it previously violated the rules at issue, but argues that these factors must be weighed against the gravity of the violation at issue, the fact that it located the missing items within a few days, and its good faith efforts to comply with the Rules.

7. We disagree that the Bureau's upward adjustments were inappropriate and impose a \$25,000 forfeiture. Time Warner twice has violated the rules at issue in the *NAL*. On this third occasion, the Bureau sought to ensure that the forfeiture amount served as an effective deterrent and not simply a cost of doing business. For these reasons, the upward adjustment was appropriate. Moreover, even though Time Warner states that it quickly corrected the violation by consolidating the missing materials after the inspection, such corrective actions are expected and do not warrant mitigation of the forfeiture.¹⁷ Similarly, Time Warner's efforts to create a "web-based public file system" are laudable but were also taken after the inspection and do not warrant mitigation of the forfeiture. Accordingly, we find no reason to reduce the proposed forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Time Warner Entertainment – Advance/Newhouse Partnership **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty five thousand dollars (\$25,000) for violations of Sections 76.1703 and 76.1704(a) of the Rules.¹⁸

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁹ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁰ Time Warner Entertainment – Advance/Newhouse Partnership shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ Time Warner noted that the *NAL* incorrectly referenced the revenues of Time Warner, Inc. Currently, Time Warner is ranked 105, not 103, on the Fortune 500 ranking of American corporations, with reported revenues of more than \$28.7 billion. See <http://money.cnn.com/magazines/fortune/fortune500/2013/snapshots/10472.html> (last visited November 18, 2013). We conclude, however, that this error does not impact the Bureau's findings. Moreover, Time Warner does not dispute that its revenues are more than sufficient to afford the \$25,000 forfeiture.

¹⁶ See *Time Warner Entertainment – Advance/Newhouse Subsidiary, LLC d/b/a Time Warner Cable*, Forfeiture Order, 19 FCC Rcd 10412 (Enf. Bur. 2004) (missing required commercial records on children's programming, proof of performance test data, and signal leakage log and repair records) (forfeiture paid); *Time Warner Cable*, Notice of Violation, EB-09-LA-0088 (Enf. Bur. Jan. 4, 2010).

¹⁷ See *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010) (reiterating the Commission's longstanding policy that "corrective action taken to come into compliance with the Rules is expected and does not nullify or mitigate any prior forfeitures or violations" and explaining that the forfeiture provisions are intended to encourage appropriate action to prevent violations rather than remedial action); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 76.1703, 76.1704(a).

¹⁹ 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 504(a).

submitted.²¹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²² If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Time Warner Entertainment – Advance/Newhouse Partnership at 13820 Sunrise Valley Drive, Herndon, VA 20171-3000 and to its attorney, Matthew A. Brill, Latham & Watkins, LLP, 555 Eleventh Street NW, Suite 1000, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²² See 47 C.F.R. § 1.1914.