

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

In the Matter of)
)
AMC Networks Inc.,) MB Docket No. 20-254
Complainant,)
) CSR-8993
v.)
)
AT&T Inc.,)
Defendant.)

ORDER

Adopted: August 31, 2020

Released: August 31, 2020

By the Chief, Media Bureau:

I. INTRODUCTION

1. By this Order, we deny a Petition for Temporary Relief filed by AMC Networks Inc. (AMCN) seeking a standstill order to preserve AMCN’s current program carriage agreement with AT&T Inc. (AT&T) pending resolution of AMCN’s program carriage complaint.1 We find that AMCN has failed to satisfy its burden of demonstrating that interim relief is warranted and therefore deny the Petition.2

II. BACKGROUND

2. AMCN is a video programming vendor that owns and operates a suite of linear programming networks and subscription video on demand (SVOD) products, specifically: AMC, AMC+, BBC America, IFC, IFC Films, Sundance TV, WEtv, WEtv+, Acorn TV, Cocina On, Shudder, Sundance Now, UMC, and IFC Films Unlimited.3 AT&T is a “communications conglomerate and the second largest [multichannel video programming distributor (MVPD)] in the country.”4 AT&T distributes video

1 Petition of AMC Networks Inc. for Temporary Relief Pending Resolution of Program Carriage Complaint, MB Docket No. 20-254, File No. CSR 8993 (filed Aug. 5, 2020) (Petition).

2 We note that the U.S. Court of Appeals for the Second Circuit vacated rules adopted by the Commission in 2011 governing requests for a temporary standstill pending resolution of a program carriage complaint. Revision of the Commission’s Program Carriage Rules; Leased Commercial Access, MB Docket No. 11-131, Second Report and Order and Notice of Proposed Rulemaking, 26 FCC Rcd 11494, 11512-17, paras. 25-30 (2011) (2011 Program Carriage Order), vacated in part by Time Warner Cable Inc. v. FCC, 729 F.3d 137, 171 (2d Cir. 2013) (holding that the Commission failed to comply with notice-and-comment requirements of the Administrative Procedure Act). Because we deny AMCN’s standstill petition based on its failure to demonstrate that interim relief is warranted, we need not address AT&T’s arguments that the Commission should deny the petition on the bases that: (i) the agency lacks authority to issue a standstill order in the program carriage context under the Communications Act of 1934, as amended; and (ii) AMCN unjustifiably delayed filing its petition. See Opposition of AT&T Services, Inc., MB Docket No. 20-254, File No. CSR 8993, at 8-11 (filed Aug. 21, 2020) (Opposition). For the same reason, we need not address AT&T’s argument that AMCN’s decision to file its petition less than [REDACTED] undermines AMCN’s claim it would be irreparably harmed by a temporary lapse of that agreement. Opposition at 34.

3 Program Carriage Complaint of AMC Networks Inc., MB Docket No. 20-254, File No. CSR 8992-P, at 5-6 (filed Aug. 5, 2020) (Complaint).

4 Id. at 6.

programming through its satellite-based DIRECTV service and through its Internet Protocol TV service, U-verse TV, to approximately 20 million subscribers.⁵ Through its merger with Time Warner Inc. in 2018, AT&T acquired several linear programming networks and their content libraries, including HBO and TNT.⁶

3. On August 5, 2020, AMCN filed a program carriage complaint with the Commission alleging that AT&T discriminated against it on the basis of affiliation, with the effect of unreasonably restraining AMCN's ability to compete fairly, in violation of section 616 of the Communications Act of 1934, as amended (Act),⁷ and the Commission's program carriage rules.⁸ AMCN claims that AT&T is using its bargaining leverage as a vertically integrated MVPD to disadvantage AMCN's unaffiliated, independent programming networks by demanding anticompetitive program carriage terms.⁹ Specifically, AMCN asserts that AT&T is conditioning renewed carriage of AMC and AMC+ on: **[REDACTED]**

4. Along with its complaint, AMCN filed the Petition, requesting that the Commission order a temporary standstill of the current AT&T-AMCN program carriage agreement, which is set to expire **[REDACTED]**¹⁰ In the Petition, AMCN asserts that it qualifies for injunctive relief because it is likely to prevail on the merits of its complaint and the balance of equities strongly tips in its favor.¹¹ AMCN contends that temporary relief is necessary to prevent AMCN from being "forced into a Hobson's choice: either (i) pulling its networks off one of the biggest distributors in the country, causing an immediate loss of millions of subscribers and the attendant loss of license fees and advertising revenues, or (ii) agreeing to AT&T's discriminatory and drastic [program carriage terms.]"¹² AMCN asserts that: (i) it is likely to succeed on the merits of its program carriage complaint;¹³ (ii) AMC and AMC+ would suffer irreparable harm absent a grant of temporary relief;¹⁴ (iii) grant of its petition would not irreparably harm AT&T;¹⁵ and (iv) granting temporary relief would advance the public interest.¹⁶ AMCN argues, therefore, that it has met all four criteria for granting a request for interim relief.¹⁷

5. On August 21, 2020, AT&T filed an opposition to AMCN's petition. AT&T asserts that the Commission should deny AMCN's petition on the grounds that: (i) it is procedurally infirm because

⁵ *Id.*

⁶ *See id.* at 6-7.

⁷ 47 U.S.C. § 536(a)(3).

⁸ *See* Complaint; *see also* 47 CFR § 76.1301(c). **[REDACTED]** Complaint at 17. AT&T does not appear to dispute AMCN's characterization of the parties' carriage negotiations to date, although it denies that it engaged in unlawful discrimination.

⁹ Complaint at 2.

¹⁰ **[REDACTED]** It appears that the current agreement does not include AMCN's newest linear programming network, AMC+, which is "presently offered *a la carte*, along with complementary on demand content, to video and broadband subscribers of Comcast, DISH, and SlingTV." Complaint at 10; Petition at 11.

¹¹ *See* Petition at 2-4.

¹² *Id.* at 2.

¹³ *Id.* at 4-14.

¹⁴ *Id.* at 14-17.

¹⁵ *Id.* at 17-19.

¹⁶ *Id.* at 19-20.

¹⁷ *Id.* at 4, citing *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

the Commission lacks authority to order a standstill and AMCN unjustifiably delayed filing its petition;¹⁸ and (ii) it is substantively deficient because AMCN has failed to satisfy the four criteria for ordering a standstill.¹⁹ On August 24, 2020, AMCN filed a reply.²⁰

6. In evaluating a request for temporary injunctive relief, the Commission and the courts generally consider the following four factors: (i) whether the complainant is likely to prevail on the merits of its complaint; (ii) whether the complainant will suffer irreparable harm absent temporary injunctive relief; (iii) whether the grant of such relief would substantially harm other interested parties; and (iv) whether the public interest favors grant of such relief.²¹ The party seeking a temporary injunction bears the burden of proof.²²

III. DISCUSSION

7. We conclude that AMCN has failed to satisfy its burden of demonstrating that interim relief is warranted. Most critically, we find that AMCN has not shown that it will suffer irreparable harm absent the issuance of a standstill order, and primarily for that reason, the equities weigh against its request for injunctive relief. Accordingly, as explained below, we deny AMCN's request for standstill.

8. *Irreparable Harm Absent Standstill.* We find that AMCN has failed to show that it would suffer irreparable harm without a standstill order. AMCN claims that AMC and AMC+ would suffer irreparable harm if forced to agree to AT&T's carriage terms or forgo distribution on AT&T, home to "nearly a quarter of AMC's total subscribers."²³ First, AMCN asserts that AT&T's proposed license fee "could have immediate and severe repercussions on AMC's ability to compete in the television marketplace far into the future," particularly with regard to its ability to bid for new content.²⁴ AMCN asserts that, if it cannot bid on new content because it is not guaranteed the necessary income stream from license fees, "the repercussions of that lack of funding . . . cannot be remedied even if AMCN succeeds in winning its program carriage complaint and recovers the lost license fees [from AT&T]."²⁵ Second, AMCN contends that [REDACTED]²⁶ Third, AMCN argues that the [REDACTED] proposed by AT&T would "magnify the effects of [AT&T's proposed license fee], because AMC and AMC+ would

¹⁸ Opposition at 1-2, 8-11.

¹⁹ *Id.* at 3-8, 12-31 (arguing that AMCN has failed to show a likelihood of success on the merits of its complaint); 32-34 (contending that AMCN has failed to show that it would suffer irreparable harm absent a standstill order); 34-36 (arguing that AT&T would suffer substantial harm if a standstill order is issued); and 36-37 (asserting that the public interest favors denial of AMCN's petition).

²⁰ Reply of AMC Networks Inc. in Support of Petition for Temporary Relief Pending Resolution of Program Carriage Complaint, MB Docket No. 20-254, File No. CSR-8993 (filed Aug. 24, 2020) (Reply) (rebutting certain procedural and substantive arguments put forth in AT&T's opposition).

²¹ See *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Comm'n*, 559 F.2d at 843 (clarifying the standard set forth in *Virginia Petroleum Jobbers Ass'n v. FPC*); *Game Show Network, LLC v. Cablevision Systems Corp.*, Order, 26 FCC Rcd 16471, 16474 (2011); *Sky Angel U.S., LLC*, Order, 25 FCC Rcd 3879, 3881 (MB 2010); *Time Warner Cable*, Order on Reconsideration, 21 FCC Rcd 9016, 9018-19 (MB 2006); *AT&T Corp., et al. v. Ameritech Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 14508, 14516 (1996).

²² *Game Show Network, LLC*, 26 FCC Rcd at 16474, para. 10, n.31 (citing *Amendment of Part 22 of the Commission's Rules*, Order, 8 FCC Rcd 5087, 5087, para. 2 (1993)).

²³ Petition at 14.

²⁴ *Id.* at 14-15. AMCN asserts further that the revenue loss from AT&T's proposed fee would be even greater because AT&T insists on [REDACTED] *Id.* at 14, n.56; Complaint at 3.

²⁵ Petition at 15.

²⁶ *Id.* at 16.

be unable to [REDACTED]²⁷ Finally, AMCN maintains that if it is forced to [REDACTED] during the pendency of the complaint proceeding, which could be lengthy, [REDACTED]²⁸ AMCN contends that a network's [REDACTED], all of which constitute irreparable harms.²⁹

9. Unfortunately for AMCN, its irreparable harm argument was breaking bad at the outset because AMCN misconstrued the relevant inquiry. Should we deny AMCN's request for temporary injunctive relief, the alternative under the status quo would be a temporary service disruption pending resolution of AMCN's Complaint. To be sure, AMCN could decide instead to accept AT&T's latest carriage offer. But taking such a step would be AMCN's choice entirely, and we fail to see how AMCN can base its case for injunctive relief on harms that would flow solely from its own decision to accept AT&T's offer, harms that it can avoid by not agreeing to that offer. As a result, AMCN must demonstrate that it will suffer irreparable harm from experiencing a temporary service disruption while its Complaint is pending.

10. Once we cross that Rubicon, most of AMCN's irreparable harm case halts and catches fire. For example, we will not issue a standstill order to prevent harms that allegedly would result from AT&T's proposed [REDACTED] Simply put, AMCN does not need a standstill order to avoid those harms. Rather, it can decline AT&T's carriage offer and experience a temporary service disruption while its Complaint is being considered by the Commission.³⁰

11. That leaves the issue of license fees. We agree with AT&T that the relevant issue in front of us "is whether loss of AT&T's license fees *while the complaint is pending*" constitutes an irreparable harm to AMCN, and we further agree with AT&T that it does not.³¹ Most notably, AMCN contends that this loss of license fees would harm its ability to bid for new content. But AMCN further maintains that it cannot bid for new content if it is not guaranteed the necessary income stream from license fees. And as AT&T points out, this argument is self-defeating because a standstill order here would not guarantee AMCN long-term future income from AT&T in the form of license fees. Or, using AMCN's own framing, temporary injunctive relief will not "assure[] . . . the necessary income stream from license fees" that AMCN claims it needs.³² Rather, a standstill order would only preserve the status quo for a short period of time, leaving the medium-term and long-term outlook highly uncertain. In addition, AMCN's claim that [REDACTED] is entirely speculative.³³ AMCN does not marshal any evidence that a *temporary* carriage disruption would lead to these harms.³⁴

²⁷ *Id.*

²⁸ *Id.* at 17.

²⁹ *Id.*

³⁰ *Id.* In this regard, AT&T notes that if the Commission were to deny AMCN's petition, the parties' existing agreement would expire on [REDACTED], thereby "freeing AMCN from any and all AT&T restrictions." Opposition at 33. For this reason, we agree with AT&T that the cases referenced by AMCN concerning loss of access to markets are inapposite; denying the Petition would give AMCN greater latitude to explore other modes of distribution for its content. *Id.* at 34.

³¹ Opposition at 32-33.

³² Petition at 15.

³³ *Id.* at 16.

³⁴ Opposition at 33. Because AT&T subscribers wishing to view AMCN programming have other options for doing so, we find unconvincing [REDACTED] See *id.* at 5-6 (noting AMCN's claim that it is carried by all major MVPDs on their most widely distributed tier and suggesting that "if AT&T truly is the only MVPD [REDACTED] Indeed, as AT&T notes, AMCN's agreements with major MVPDs previously have lapsed, yet AMCN has put forth no evidence of harm resulting from such temporary disruptions. *Id.* at 33.

12. We find, moreover, that AMCN has failed to demonstrate the urgency of the relief sought or the immediacy of the alleged harms. A party seeking a temporary injunction must show that “[t]he injury complained of is of such imminence that there is a ‘clear and present’ need for equitable relief to prevent irreparable harm.”³⁵ AMCN’s assertions regarding the popularity of its programming and its broad carriage by MVPDs nationwide suggest that a temporary period of non-carriage on AT&T’s video systems during the pendency of this proceeding is unlikely to significantly and adversely affect its competitive position in the marketplace. In addition, section 616 of the Act directs the Commission to provide for “expedited” review of program carriage complaints,³⁶ and the Commission, in implementing that statutory provision, adopted rules establishing strict deadlines for issuance of a *prima facie* determination³⁷ and a decision on the merits of a complaint.³⁸ This expedited process for action on program carriage complaints further bolsters our conclusion that AMCN will not suffer irreparable harm before the Commission rules on its Complaint given the specific facts of this case. Indeed, we see no prospect that denying AMCN’s request for temporary injunctive relief will turn it into the walking dead of programmers.

13. *Harm to Interested Parties.* We conclude that AT&T would be harmed by grant of a standstill order, and thus we find that this factor weighs against a grant of interim relief. AMCN argues that grant of its Petition merely would preserve the *status quo* and would not otherwise harm AT&T.³⁹ In particular, AMCN maintains that, if the Commission were to grant its request for temporary relief, AT&T would continue to carry AMC “on nondiscriminatory rates, terms, and conditions for a slightly longer period of time. Having already operated on these terms for years, AT&T [would] not be harmed by paying license fees at the same rate for a few more months.”⁴⁰ Refuting AMCN’s assertions, AT&T counters that grant of AMCN’s petition would cause it substantial harm⁴¹ because its current carriage agreement with AMCN covers [REDACTED] AMCN networks, only one of which AMCN has attempted to show is similarly situated to an AT&T affiliated network.⁴² A standstill order, however, would require AT&T to carry all [REDACTED] networks at the current contract rates,⁴³ despite the fact that [REDACTED] of those networks [REDACTED] have no connection to the present complaint. AMCN’s Reply does not address this critical point, and we find that AT&T would be substantially harmed by an order requiring it to continue to pay AMCN for the carriage of networks that have nothing whatsoever to do with the merits of this proceeding.

14. *Public Interest.* We find that, based on the current record, the public interest does not tip decisively in favor of or against AMCN’s request for interim relief. AMCN contends that granting its standstill request would advance the public interest in maintaining the diversity and quality of video programming.⁴⁴ According to AMCN, “[f]ederal media policy has long recognized the importance of

³⁵ See, e.g., *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985); *Minnesota Vikings Football Stadium, LLC v. Wells Fargo Bank*, 157 F. Supp. 3d 834 (D. Minn. 2016).

³⁶ 47 U.S.C. § 536(a)(4).

³⁷ 47 CFR § 76.1302(g).

³⁸ *Id.* § 76.1302(i).

³⁹ Petition at 17.

⁴⁰ *Id.* at 17-18.

⁴¹ Although AMCN suggests that the third factor in assessing whether to grant a request for temporary injunctive relief is whether the claimed injury to other parties is “irreparabl[e],” see *id.* at 17, we agree with AT&T’s assertion that the proper inquiry is whether the harm to other parties is “substantial.” Opposition at 34, n.101.

⁴² Opposition at 36.

⁴³ *Id.*

⁴⁴ Petition at 19. AMCN notes that, “especially during these difficult times of COVID-19-mandated isolation, the public increasingly relies on AMCN’s excellent programming content for much needed entertainment.” *Id.* at 20.

promoting a diversity of viewpoints, even well before Congress identified the promotion of diversity of views and information as one of the main purposes of the 1992 Cable Act.”⁴⁵ AMCN maintains that “[a]s one of the few remaining independent programmers, AMC adds a unique and innovative voice . . . that should be protected.”⁴⁶ AT&T, on the other hand, contends that the public interest would be served by allowing it to negotiate new rates that reflect current economic realities.⁴⁷ AT&T asserts that the only economic analysis presented in this proceeding demonstrates that a standstill of the parties’ agreement would compel [REDACTED]⁴⁸ AT&T claims, moreover, that “Commission-imposed overpayments to AMC would result in a windfall – granting it a competitive advantage over other independent programmers and depriving more popular programmers of an opportunity to compete fairly,” and that such an unfair advantage, in turn, “would distort the programming market and deprive the public of the benefits of competition.”⁴⁹ On one hand, grant of the standstill would ensure that AT&T’s subscribers continue to receive AMCN’s networks on AT&T without the need to obtain AMCN’s programming through other avenues. On the other hand, acting prematurely before the record has fully developed could lead to a windfall for AMCN and prevent other programmers from competing for distribution on fair terms. Thus, based on the limited record before us at this early stage in the complaint proceeding, we find that the fourth factor neither favors nor disfavors granting the relief requested and AMCN has not met its burden of demonstrating that grant of the standstill is in the public interest.

15. *Likelihood of Prevailing on the Merits.* Because the equitable factors favor denial of interim relief, AMCN must satisfy a “heavy” burden under this first factor, that it is likely to prevail on the merits of its complaint, for grant of a standstill to be warranted. The record at this stage of the proceeding reflects numerous factual issues that must be resolved before AMCN would be entitled to relief, each of which the parties contest, including, but not limited to, whether there are legitimate and nondiscriminatory reasons for AT&T’s carriage proposals.⁵⁰ Thus, given the limited record before us at this early stage in the complaint proceeding, it is too soon to say whether AMCN is likely or unlikely to prevail on the merits, and this first factor of the injunctive harm test neither favors nor disfavors granting the relief requested.

16. *Conclusion.* On balance, we conclude that AMCN has failed to satisfy its burden of demonstrating that temporary injunctive relief is warranted. Most importantly, AMCN has failed to establish that a standstill order is necessary to prevent AMCN from suffering irreparable harm and thus the balance of harms does not weigh in AMCN’s favor. Under judicial and Commission precedent, therefore, AMCN has not justified grant of its petition.⁵¹

17. Our decision to deny AMCN’s petition should not be read to state or imply that the Commission, Bureau, or an administrative law judge acting on delegated authority, will ultimately

⁴⁵ *Id.* at 19.

⁴⁶ *Id.*

⁴⁷ Opposition at 36.

⁴⁸ *Id.* at 36.

⁴⁹ *Id.* at 37. AT&T asserts further that denying AMCN’s petition would not harm the public interest because any consumers interested in accessing AMCN programming either could switch to an MVPD that carries AMC programming or utilize one of the direct-to-consumer programming options made available by AMCN. *Id.*

⁵⁰ Compare Complaint at 38-46 with Opposition at 20-30.

⁵¹ See *Washington Metropolitan Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (clarifying the standard set forth in *Virginia Petroleum Jobbers Ass’n v. FPC*); *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Game Show Network, LLC v. Cablevision Systems Corp.*, Order, 26 FCC Rcd 16471, 16474 (2011); *Sky Angel U.S., LLC*, Order, 25 FCC Rcd 3879, 3881 (MB 2010); *Time Warner Cable*, Order on Reconsideration, 21 FCC Rcd 9016, 9018-19 (MB 2006); *AT&T Corp., et al. v. Ameritech Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 14508, 14516 (1996).

conclude, in resolving the underlying complaint, that a program carriage violation has not occurred. Rather, based on the limited record before us at this stage, we are unable to conclude that AMCN has met its burden of demonstrating that the extraordinary relief of a standstill order is warranted. At the same time, we recognize the potential impact of this dispute on some of AMCN's viewers and encourage the parties to work toward a mutually agreeable solution pending the outcome of the complaint proceeding.

IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j), and 616 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 536, and sections 76.1300-1302 of the Commission's rules, 47 CFR §§ 76.1300-1302, the Petition for Temporary Relief Pending Resolution of Program Carriage Complaint filed by AMC Networks Inc. **IS DENIED**.

19. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules, 47 CFR § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau