



NEWS

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FOR IMMEDIATE RELEASE
December 6, 2001

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FCC SAYS TIME WARNER IS NOT REQUIRED TO CARRY GEMSTAR'S VBI MATERIAL

Decision Applies Only to Narrow Context

Washington, DC – The Federal Communications Commission (FCC) today ruled that Time Warner Cable's analog must carry obligations do not require the company to carry material inserted in the vertical blanking interval ("VBI") of over-the-air broadcast stations at the behest of Gemstar International ("Gemstar"). The FCC said that today's decision is narrowly focused on the specifics of this case. This decision does not preclude the companies from entering into commercial agreements whereby Time Warner would carry the Gemstar information.

Gemstar is the developer of *Guide Plus+*, a proprietary electronic program guide ("EPG") that is built into TVs and VCRs manufactured by companies that have a licensing agreement with Gemstar. The data for updating the program listings is sent through the VBI of the signal of analog over-the-air broadcast stations. Gemstar enters into data carriage agreements with local broadcasters. Without the programming updates, *Guide Plus+* EPG will not function. Time Warner Cable filed a petition with the FCC seeking a determination whether or not the *Guide Plus+* material is entitled to mandatory carriage under FCC rules.

As part of their must carry obligation, cable operators are required to retransmit program-related material carried in the VBI. The FCC has determined that factors enumerated by the U.S. Court of Appeals for the Seventh Circuit in *WGN Continental Broadcasting Co. v. United Video Inc.* ("WGN") provided guidance useful for deciding whether material in the VBI is program-related. The factors are:

- 1) The VBI information is intended to be seen by the same viewers who are watching the main program.
- 2) The VBI information must be available during the same interval of time as main program.
- 3) The VBI information is an integral part of the main program.

In today's *Memorandum Opinion and Order*, the FCC said that none of the WGN factors favor a determination that Gemstar's VBI material is program-related. The *Order* finds that very little of Gemstar's VBI material is uniquely related to the main program of the broadcast station carrying it, but instead consists of information regarding programming on other channels as well as advertisements and other promotions that do not relate to any program. The *Order* notes that the decision is limited to the distinct question presented regarding the particular technology and video channels used for delivery of Gemstar's EPG data.

Action by the Commission, December 4, 2001, by *Memorandum Opinion and Order* (FCC 01-354). Chairman Powell, Commissioners Abernathy, Copps, Martin.

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