

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

In the Matter of:)	
)	
WFXV-TV, Inc.)	
v.)	CSR-4949-M
United Cablevision of Southern Illinois, Inc. d/b/a TCI of Illinois)	
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: October 21, 2003

Released: October 29, 2003

By the Commission:

1. Before the Commission is a petition, filed by WFXV-TV, Inc., licensee of low power television station WSPY-LP, Plano, Illinois (“WSPY-LP”), seeking reconsideration of the Commission’s decision denying its application for review of the former Cable Services Bureau’s (the “Bureau”) denial of WSPY-LP’s must carry complaint against United Cablevision of Southern Illinois, Inc. d/b/a TCI of Illinois (“TCI-I”).¹

2. WSPY-LP argues that the Commission should reverse its decision because it erred in holding that WSPY-LP does not meet the requirements of Section 76.55(d)(5) of the rules in that it did not fully consider the plain meaning of the statute pursuant to which the rule was promulgated.² WSPY-LP also maintains that the Commission erred in holding that TCI-I did not violate the Commission’s notification requirements prior to WSPY-LP being dropped by TCI-I.³ WSPY-LP asserts that the Commission’s holding in this regard is inconsistent with the decision in *Kralowec Family Children’s*

¹ *WFXV-TV, Inc. v. United Cablevision of Southern Illinois, Inc. d/b/a TCI of Illinois*, 16 FCC Rcd 433 (2000) (“*Commission Order*”); see also *WFXV-TV, Inc. v. Cablevision of Southern Illinois, Inc. d/b/a TCI of Illinois*, 13 FCC Rcd 1870 (1997) (“*Bureau Order*”).

² Petition at 2, citing 47 C.F.R. § 76.55(d)(5); see also 47 U.S.C. § 534(h)(2)(E). Section 76.55(d)(5) of the Commission’s rules states that one of the requirements that LPTV stations must meet in order to satisfy the qualifications for must carry status is that the community of license of the station and the franchise area of the cable operator must both be located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by OMB on June 30, 1990.

³ Petition at 2. WSPY-LP provided statements from cable subscribers that they received no advance notice regarding WSPY-LP’s deletion and argued that a single publication in a single newspaper does not constitute reasonable notification.

Trust v. Falcon Cable Systems as well as the Commission's holding when it adopted its Order in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*.⁴

3. We affirm the Order adopted by the Commission in the above-captioned matter and deny the petition for reconsideration. WSPY-LP has raised no new arguments or facts regarding our analysis of OMB's classification of WSPY-LP's MSA assignment. Despite WSPY-LP's allegations, the Order took into account OMB's classifications of MSAs and PMSAs and their relation to the statute, and fully analyzed the information provided by WSPY-LP.⁵

4. With regard to its argument that it was entitled to 30 days notice prior to being dropped by TCI-I, WSPY-LP points to former Section 76.58(a) of our rules as interpreted by the Commission's decision in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*.⁶ WSPY-LP submits that this rulemaking held that for notice purposes a low power station was to be treated as if it were a full power station which entitled it to 30 days notice from TCI-I prior to it being dropped. Upon review, we believe that TCI-I should have provided written notice to WSPY-LP pursuant to former Section 76.58(a) prior to the station being dropped. Nevertheless, based on the entirety of the record and some ambiguity in the rule itself, as reflected in our prior rulings, we believe that TCI-I's action in this regard does not warrant the issuance of a forfeiture or any other remedial action. With regard to the alleged notice requirement required under former section 76.964(a), WSPY-LP's reliance on the *Kralowec Family Children's Trust* case is misplaced. Under the statutory revisions to the Communications Act made in 1996, TCI-I was permitted to give notice by any reasonable means, and no longer needed to give written notice to each of its subscribers directly as alleged by WSPY-LP.⁷ TCI-I's notice of its intent to drop WSPY-LP was given to subscribers by publication in a local newspaper. Moreover, even if we were to find that the cable operator did not provide proper notice in the context of the complaint, and that *Kralowec Family Children's Trust* did apply, a carriage remedy would be inappropriate in this instance, given that the underlying orders found that the station was not otherwise entitled to mandatory carriage. Finally, in view of the above, WSPY-LP's request for forfeiture was appropriately denied.⁸

5. Accordingly, **IT IS ORDERED**, that the captioned petition for reconsideration **IS DENIED**.

⁴ *Id.* at 7, citing *Kralowec Family Children's Trust v. Falcon Cable Systems*, 9 FCC Rcd 7908 (CSB 1994) ("We conclude that, in this instance, a paid advertisement in a local newspaper is not sufficient written notice, particularly when that advertisement ran for only one day."), and *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd. 2965 (1993)

⁵ 55 Fed. Reg. 12154, 12156 (1990). (OMB's list of MSAs)

⁶ 8 FCC Rcd 2965 (1993), Section 76.58(a) was renumbered as 47 CFR 76.1601.

⁷ Telecommunications Act of 1996, Pub. L. No. 104-104 §§ 301, 302, 110 Stat. 56, 114-124 approved Feb. 8, 1996. Section 76.964 (a) was renumbered as 47 CFR § 76.1603(b) of the Commission's rules. *See also Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd. 5296, 5363 (1999).

⁸ Even if we had concluded that a violation had occurred, whether to issue an NAL is within the Commission's discretion. *See* 47 U.S.C. § 503(b)(3)(A) (at the discretion of the Commission a forfeiture penalty may be determined against a person after notice and an opportunity for a hearing before the Commission); *In the Matter of Webnet Comm., Inc.*, 18 FCC Rcd 6870, 6877 n.61 (Section 503(b) of the Act does not require the issuance of a forfeiture for every violation we receive).

6. This action is taken pursuant to statutory authority found in Sections 1, 4(i), 5(c), 405, and 614(h)(1)(C) of the Communications Act of 1934, as amended, 47 U.S.C. §§151, 154(i), 155(c), 405, and 534(h)(1)(C).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary