

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

In the Matter of)	
)	
Media General Communications Holdings, LLC)	
)	
Request for Waiver of Sections 76.1601 and)	CSR-8198-M
76.1603 of the Commission’s Rules)	CSR-8202-M
)	CSR-8201-M
Request for Withdrawal of Emergency)	
Enforcement Complaints)	

MEMORANDUM OPINION AND ORDER

Adopted: September 17, 2009

Released: September 18, 2009

By the Chief, Media Bureau:

I. INTRODUCTION

1. On September 11, 2009, Time Warner Cable Inc. (“Time Warner”) filed with the Chief of the Media Bureau the above-captioned waiver request¹ seeking an expedited waiver of the cable system channel change and repositioning notification procedures in Part 76 of the Commission’s rules. Time Warner seeks a waiver of the notification procedures so as to permit Time Warner to reinstate carriage of station WBTW(TV), Florence, South Carolina, on channel 13 on certain cable systems serving portions of the South Carolina counties of Georgetown and Williamsburg.² Time Warner states that Media General Communications Holdings, LLC (“Media General”), Licensee of WBTW, fully supports Time Warner’s request for waiver. For the reasons set forth below, we grant Time Warner’s request. We additionally grant the September 14, 2009 requests of Media General for the withdrawal with prejudice of its three Emergency Enforcement Complaints regarding Time Warner’s discontinuation of carriage of stations WBTW, Florence, South Carolina, WNCT-TV, Greenville, North Carolina, and WCBBD-TV, Charleston, South Carolina.

II. BACKGROUND

2. Section 76.1603(b) of the Commission’s rules imposes on cable operators an obligation to notify customers of “any changes in . . . programming services or channel positions as soon as possible in writing,”³ and further requires that such notice be given to subscribers “a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator.”⁴ Section 76.1603(c) of the Commission’s rules additionally requires cable systems to “give 30 days written notice to both

¹ Request by Time Warner Cable Inc. for Waiver of Part 76 Cable System Channel Change and Repositioning Notification Procedures, filed September 11, 2009 (“Waiver Request”).

² Waiver Request at 1.

³ 47 C.F.R. § 76.1603(b).

⁴ *Id.*

subscribers and local franchising authorities before implementing any rate or service change.”⁵ Furthermore, Section 76.1601 of the Commission’s rules requires cable operators to “provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station,” and the written notice must be provided to cable system subscribers as well.⁶ The Commission adopted Section 76.1603(b) and other rules to implement Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 (“1992 Cable Act”), which gives the Commission authority to establish and implement customer service standards for cable operators nationwide.⁷ In so doing, the Commission was guided by Section 8’s underlying objective to “ensure that cable operators nationwide provide satisfactory service to their customers.”⁸

3. Time Warner, the operator of cable television facilities in the South Carolina counties of Georgetown and Williamsburg, ceased carrying WBTW in Georgetown County on August 11, 2009.⁹ On August 14, 19, and 21, 2009, Media General filed three Emergency Enforcement Complaints against Time Warner alleging violations of Section 76.1601 and 76.1603 of the Commission’s rules related to Time Warner’s discontinuation of the carriage of WBTW, WNCT-TV, and WCBD-TV, respectively. On September 14, 2009, Media General filed a request for the withdrawal of its three related Emergency Enforcement Complaints, pertaining to stations WBTW, WNCT-TV, and WCBD-TV. Time Warner states that it has reached a settlement with Media General, pursuant which Media General will withdraw its complaint and Time Warner will reinstate carriage of WBTW on channel 13, the channel it occupied prior to discontinuation.¹⁰ The Home Shopping Network, which currently occupies channel 13, will be repositioned to its former channel and tier.¹¹

4. Time Warner maintains that reinstating carriage of WBTW on channel 13, and returning the Home Shopping Network to its former channel location and tier, on less than 30 days’ notice will permit Time Warner to restore its carriage of WBTW in the affected communities “as quickly as possible.”¹² Time Warner states, “In light of the settlement between [Time Warner] and Media General, pursuant to which carriage of WBTW will be restored on certain systems where it was recently discontinued, the public interest would not be served if reinstatement of this in-state broadcast station on any portion of [Time Warner]’s systems in Georgetown and Williamsburg Counties were delayed by strict compliance with the notice provisions in Part 76.”¹³ In furtherance of its Waiver Request, Time Warner states that it will engage in efforts to notify subscribers of the channel changes.¹⁴

⁵ 47 C.F.R. § 76.1603(c).

⁶ 47 C.F.R. § 76.1601.

⁷ *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection and Customer Service*, MM Docket No. 92-263, Report and Order, 8 FCC Rcd 2892 (1993) (“*Cable Consumer Protection Order*”); see 47 U.S.C. § 552(b).

⁸ *Cable Consumer Protection Order*, 8 FCC Rcd at 2893, ¶ 4, citing Senate Comm. on Commerce, Science and Transportation, S. Rep. No. 102-92, 102d Cong., 2d Sess. at 20 (1992); House Comm. on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 34-35, 105 (1992).

⁹ Waiver Request at 1.

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ Time Warner Letter Regarding Waiver Request, filed September 16, 2009 (“Time Warner Letter”).

III. DISCUSSION

5. We grant Time Warner's waiver request. We find that grant of the request would serve the public interest by allowing subscribers in the South Carolina counties of Georgetown and Williamsburg to receive WBTW programming, which they received prior to August 11, 2009. In our view, the public interest in reinstating carriage of WBTW outweighs any harm resulting from Time Warner's failure to provide the full 30 day notice of the changes in programming and channel position required by Sections 76.1601 and 76.1603(b) and (c) of our rules. This is particularly true where, as here, the relocated programming service will continue to be carried by the cable system on its former tier and channel.¹⁵

6. Moreover, in light of its desire to reinstate carriage of WBTW promptly, we find that Time Warner plans to act diligently by taking steps to mitigate the impact of its failure to comply fully with the applicable notification procedures of the Commission's rules. Time Warner states that, if the Waiver Request is granted, Time Warner will provide notification of the programming changes through: (1) the legal notice section of local newspapers on September 21, 2009; (2) a video crawl on The Weather Channel; and (3) Time Warner's website targeted to the affected communities.¹⁶ Additionally, Time Warner states that Time Warner and Media General "plan to run advertising spots locally on cable channels and on WBTW announcing the return of WBTW to the channel lineup."¹⁷ Time Warner "believe[s] these steps will provide subscribers immediate notice of the channel changes,"¹⁸ which, in our view, should be adequate to fulfill the underlying purpose of the applicable rules -- to alert subscribers, local franchising authorities, and broadcast television stations that will be deleted or repositioned to changes in programming services prior to implementation of such changes.

7. On the basis of these findings, we conclude that good cause exists to grant Time Warner's request for waiver of Sections 76.1601, 76.1603(b) and 76.1603(c) of the Commission's rules.¹⁹ It is well-established that the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁰ Absent a waiver in this case, a longer time period would be required before the affected cable communities would again receive WBTW, in order for Time Warner to comply fully with the notification procedures of Part 76. We, therefore, conclude that the public interest would be served by granting Time Warner's request.

8. Additionally, Time Warner and Media General have reached an agreement settling Media General's three Emergency Enforcement Complaints regarding the discontinuance of carriage of WBTW, WNCT-TV, and WCBD-TV. Accordingly, we grant Media General's requests to withdraw the complaints, and dismiss the subject complaints with prejudice.

¹⁵ Waiver Request at 2.

¹⁶ Time Warner Letter at 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The Commission has discretion, pursuant to Section 1.3 of its rules, to waive its rules in whole or in part at any time "for good cause shown." *See* 47 C.F.R. § 1.3; *see also* 47 C.F.R. § 76.7 (allowing the Commission to waive any provision of part 76 of its rules upon petition by a cable operator).

²⁰ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 1.3 and 76.7 of the Commission's rules, 47 C.F.R. §§ 1.3, 76.7, the request for waiver filed by Time Warner Cable Inc. of Sections 76.1601, 76.1603(b) and 76.1603(c) of the Commission's rules, 47 C.F.R. §§ 76.1601, 76.1603(b), and 76.1603(c), **IS GRANTED** as discussed herein.

10. **IT IS FURTHER ORDERED** that the Emergency Enforcement Complaints of Media General Communications Holdings, LLC, regarding stations WBTW(TV), WNCT-TV, and WCBD-TV, **ARE DISMISSED WITH PREJUDICE**.

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau