

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

In the Matter of)
)
Time Warner Cable)
)
Request for Waiver of Section 76.1603(b) of the)
Commission’s Rules)

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 2008

Released: January 31, 2008

By the Chief, Media Bureau:

I. INTRODUCTION

1. On January 24, 2008, Time Warner Cable (“Time Warner”) filed with the Chief of the Media Bureau the above-captioned waiver request¹ seeking an expedited waiver of Section 76.1603(b) of the Commission’s rules, which requires cable operators, among other things, to provide subscribers with written notification of any changes in programming services or channel positions at least thirty days prior to implementing such changes.² In particular, Time Warner seeks a waiver to abbreviate the notice period so as to permit customers in several Texas communities uninterrupted access to the Fox Television Network (“Fox”) beginning on February 4, 2008, when Minority Media TV-38, the proposed licensee of KUQI(TV), will become the sole affiliated station of the Fox network in the Corpus Christi, Texas Designated Market Area (“DMA”).³ No oppositions to Time Warner’s Waiver Request have been filed. For the reasons set forth below, we grant Time Warner’s request.

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,”⁴ 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.”⁵ 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

¹ Request by Time Warner Cable for Waiver of Section 76.1603(b) of the Commission’s Rules, filed January 24, 2008 (“Waiver Request”).

² 47 C.F.R. § 76.1603(b).

³ Waiver Request at 1.

⁴ 47 C.F.R. § 76.1603(b).

⁵ *Id.*

establish and implement customer service standards for cable operators nationwide.⁶ 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."⁷

3. Time Warner, the operator of cable television facilities in Corpus Christi, Texas and surrounding communities, currently carries Class A low power television station K47DF, the local Fox network affiliate, in the communities it serves.⁸ Time Warner asserts that, on January 15, 2008, Minority Media TV-38, the proposed licensee of KUQI(TV), officially informed the company that KUQI had commenced regular, full-power broadcast transmissions as of that date, and had elected to commence retransmission consent negotiations with Time Warner.⁹ KUQI also informed Time Warner that, as of February 4, 2008, KUQI was slated to become the sole provider of Fox network programming in the Corpus Christi DMA, effectively replacing K47DF, which thereafter would cease to be affiliated with a national broadcast network.¹⁰ Pending the adoption of a final retransmission consent agreement, Time Warner and KUQI have agreed to execute an Interim Retransmission Consent Agreement that provides for Time Warner's carriage of KUQI for a ninety-day period so as not to deprive Time Warner customers of popular Fox network programming after February 4, 2008.¹¹

4. Despite the parties' intention to establish an interim arrangement providing for short-term carriage of KUQI,¹² Time Warner states that, in most of the relevant Communities, there currently are "no empty slots on the [s]ystem's Basic Service Tier ("BST") where KUQI may be positioned," as required by Section 76.901(a) of the Commission's rules.¹³ Consequently, Time Warner asserts, it will be forced to relocate a non-broadcast programming service, Weather Radar, to a different channel in order to accommodate KUQI on the BST in almost all of the relevant communities.¹⁴ Although Time Warner acknowledges that it is required by Section 76.1603(b) of the rules to alert customers at least thirty days prior to any change in programming services or channel position, Time Warner asserts that KUQI's notice of intent to elect carriage under Section 76.64(f)(4) of the rules, although compliant with Section

⁶ *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).

⁷ *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).

⁸ Waiver Request at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² As of January 24, 2008, the date of its Waiver Request, Time Warner and KUQI had not yet executed an Interim Retransmission Consent Agreement. *Id.* at 2, n.3. Time Warner stated, however, that it would not commence carriage of KUQI until such an agreement had been adopted, and that this was expected to occur "imminently." *Id.*

¹³ *Id.* at 2. Section 76.901(a) provides, in pertinent part, that

[t]he basic service tier shall, at a minimum, include *all signals of domestic television broadcast stations* provided to any subscriber[.]. . . any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals a service added to the basic tier by the cable operator.

47 C.F.R. § 76.901(a) (emphasis added).

¹⁴ Waiver Request at 2.

76.64(f)(4),¹⁵ was not sufficient notice to allow Time Warner to provide the requisite thirty-day notice to its customers and continue to provide uninterrupted availability to Fox programming for its customers.¹⁶

5. Time Warner maintains that relocating Weather Radar to a different channel on less than thirty-days' notice is the least disruptive means of ensuring the uninterrupted availability of Fox programming to subscribers in the affected communities. In this regard, Time Warner points out that customers seeking current weather information have access to multiple full-power commercial broadcast stations on its BST that provide breaking weather alerts and regular weather reports.¹⁷ In furtherance of its Waiver Request, and in an effort to alert subscribers to the impending programming service and channel position change, Time Warner commits to undertake an "aggressive marketing campaign" utilizing various media.¹⁸

III. DISCUSSION

6. We grant Time Warner's waiver request. We find that grant of the request would serve the public interest by allowing subscribers in several Texas communities to continue to receive Fox network programming after February 4, 2008, when KUQI becomes the sole affiliate of the Fox network in the Corpus Christi DMA. In our view, the need to ensure uninterrupted access to network programming popular among viewers in the affected communities outweighs any harm resulting from Time Warner's inability to provide the full thirty-day notice of the changes in programming and channel position required by Section 76.1603(b) of our rules.¹⁹ This is particularly true where, as here, the relocated programming service will continue to be carried by the cable system,²⁰ and customers seeking up-to-date weather news can access multiple alternative broadcast stations that complement the service provided by Weather Radar.²¹ We also find it significant that Weather Central, who operates the programming service subject to relocation, has filed a letter with the Bureau expressing that it "has no objection to the channel positioning changes proposed by Time Warner Cable on less than 30 days notice

¹⁵ *Id.*

¹⁶ *Id.* at 3. According to Time Warner, KUQI notified Time Warner on January 15, 2008, of its intention to commence broadcasting of Fox network programming on February 4, 2008, thereby giving Time Warner only twenty days' advance notice. *Id.* at 2.

¹⁷ *Id.* at 3, n.8.

¹⁸ *Id.* at 3.

¹⁹ Several federal, state and local officials representing the affected communities have filed letters with the Bureau expressing support for the Waiver Request. *See* Letter from Congressman Solomon P. Ortiz, U.S. House of Representatives (27th District, Texas) to Monica Desai, Chief, Media Bureau, Federal Communications Commission, dated January 28, 2008; Letter from Representative Solomon P. Ortiz, Jr., Texas House of Representatives, District 33, to Monica Desai, Chief, Media Bureau, Federal Communications Commission, dated January 25, 2008; Letter from Representative Juan M. Garcia III, Texas House of Representatives, District 32, to Monica Desai, Chief, Media Bureau, Federal Communications Commission, dated January 29, 2008; Letter from Henry Garrett, Mayor, City of Corpus Christi, Texas, to Monica Desai, Chief, Media Bureau, Federal Communications Commission, dated January 28, 2008; and Letter from George K. Noe, City Manager, City of Corpus Christi, Texas, to Monica Desai, Chief, Media Bureau, Federal Communications Commission, dated January 28, 2008.

²⁰ Time Warner states that it will reposition Weather Radar to Channel 366, also on the BST, in all but three of the affected communities. In those three communities – Freer, George West and Hebronville – Weather Radar will remain on the current channel. Waiver Request at 2, n.6.

²¹ Waiver Request at 3, n.8.

to subscribers.²²

7. Moreover, in light of the short time period that Time Warner arguably was given to notify customers of the imminent channel position change, we find that Time Warner acted diligently by taking steps to mitigate the impact of its failure to comply fully with Section 76.1603(b). Beginning on January 26, 2008, Time Warner undertook measures to notify affected customers through a variety of means, including half-page and quarter-page daily newspaper advertisements, billing statement inserts, cablecasting a minimum of 500 ad spots alerting subscribers to the changes, promoting the changes on Time Warner's Corpus Christi website, email notices, and customer service representative training on the changes.²³ In our view, these immediate and wide-ranging efforts, which exceed the requirements of Section 76.1603(b), should be adequate to fulfill the underlying purpose of the rule -- to alert subscribers to changes in their programming services prior to implementation of such changes.

8. On the basis of these findings, we conclude that good cause exists to grant Time Warner's request for waiver of Section 76.1603(b) of the Commission's rules.²⁴ 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.²⁵ Absent a waiver in this case, the affected communities would experience an interruption of popular network programming as the result of Time Warner's inability to comply fully with Section 76.1603(b). We, therefore, conclude that the public interest would be served by granting Time Warner's request.

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 of Section 76.1603(b) of the Commission's rules, 47 C.F.R. § 76.1603(b), **IS GRANTED** as discussed herein.

10. 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

Monica Shah Desai
Chief, Media Bureau

²² Letter from William R. Baker, President, Weather Central, Inc. to Monica Desai, Chief, Media Bureau, Federal Communications Commission, dated January 25, 2008.

²³ *Id.* at 3.

²⁴ 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).

²⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("Northeast Cellular").