

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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In the Matter of )  
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Time Warner Cable LLC )  
 )  
Emergency Enforcement Complaint )  
Concerning WBTW(TV), Florence, )  
South Carolina )

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To: The Secretary's Office  
Attn: The Media Bureau

**EMERGENCY ENFORCEMENT COMPLAINT**

Media General Communications Holdings, LLC (“Media General”), the licensee of full power television station WBTW(TV), Florence, South Carolina, by its attorneys and pursuant to Section 1.41 of the Commission’s rules,<sup>1</sup> hereby files this Emergency Enforcement Complaint against Time Warner Cable, LLC (“Time Warner”). Time Warner has knowingly and willfully violated Sections 76.1601 and 76.1603 of the Commission’s rules.<sup>2</sup> On August 11, 2009, it dropped WBTW(TV) from its channel lineup on its cable systems serving Georgetown County, South Carolina, without providing reasonable notice to its own subscribers or Media General. Moreover, **on Thursday, August 20, 2009**, Time Warner plans to repeat its violation by dropping WBTW(TV) on several other cable systems – again without providing the required notice to its subscribers or to Media General. Consequently, Media General is forced to file this Emergency Enforcement Complaint and request that the Media Bureau immediately take such actions as it deems necessary to protect innocent consumers and to deter Time Warner from again engaging in these unlawful actions going forward.

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<sup>1</sup> 47 C.F.R. § 1.41.

<sup>2</sup> 47 C.F.R. §§ 76.1601, 76.1603.

## **BACKGROUND**

On August 11, 2009, Time Warner dropped WBTW(TV)'s signal from its cable systems in Georgetown County, South Carolina without providing reasonable notice to its subscribers and without providing any notice to Media General. Time Warner's only hint of its decision to drop the second most popular channel in Georgetown County was its publication of a notice in the rarely read legal notices of two newspapers to which more than 75 percent of the households in Georgetown County do not subscribe and in a postcard received by subscribers no more than twenty-four hours before – and in many cases after – Time Warner dropped WBTW(TV). Moreover, Time Warner did not provide Media General with any prior notice of this change. To the contrary, Media General first learned that Time Warner had dropped WBTW(TV) when the television station's disenfranchised viewers flooded WBTW(TV) with telephone calls and email messages on August 11, 2009. Time Warner's decision to drop WBTW(TV) without providing sufficient notice to its subscribers or Media General clearly violates its obligations under the Commission's rules. As a result, Time Warner's subscribers – the exact people whom the law was designed to protect – have been deprived of their right to express to their cable company how they would value a decision to replace the area's leading news station with a MyNetwork affiliate and a home shopping channel.

On Thursday, August 20, 2009, Time Warner is planning another round of channel lineup changes – again, without complying with the Commission's notification requirements. Media General has learned from Time Warner subscribers and local press reports that Time Warner intends to drop WBTW(TV) on certain cable systems serving Richmond County, North Carolina; Brunswick County, North Carolina; Chesterfield County, South Carolina; and in the towns of Johnsonville and Effingham, South Carolina.<sup>3</sup> Subscribers to these cable systems report that they first learned of Time

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<sup>3</sup> Some subscribers to these systems report that Time Warner already dropped WBTW(TV) on August 11, 2009.

Warner's plans on or after August 10, 2009, when they received postcard notifications of the upcoming lineup change. Time Warner still has not provided any written notice of the proposed channel lineup changes to Media General.

Making matters worse, Time Warner is compounding its errors by spreading misinformation and outright falsehoods about its unilateral decisions. Time Warner's customer service representatives have told callers the following:

- (1) WBTW(TV) is no longer broadcasting;
- (2) WBTW(TV) has gone out of business;
- (3) the FCC forced Time Warner to drop WBTW(TV) and subscribers should complain to the FCC; and
- (4) the customer service representative does not know why Time Warner dropped WBTW(TV), and no one at Time Warner is available who can answer questions about WBTW(TV).

By blaming anyone but itself for its own decision, and by claiming that WBTW(TV) has gone out of business, Time Warner's responses to the deluge of local complaints has only exacerbated the predicament now facing thousands of innocent, and now disenfranchised, consumers who have long depended on WBTW(TV) for local news, weather, and information. Time Warner's innocent subscribers have an urgent need for the FCC's Media Bureau to intervene in this situation without delay.

**I. Time Warner Violated the Commission's Rules by Failing to Provide Any Advance Notice to Media General.**

Time Warner knowingly and willfully violated the Commission's rules when it deleted the signal of WBTW(TV) from the Georgetown County systems without providing any notice to Media General. Section 76.1601 of the Commission's rules states that "a cable operator shall provide written notice to *any* broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station."<sup>4</sup> Time Warner undoubtedly is a "cable operator," and

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<sup>4</sup> 47 C.F.R. § 76.1601. *See also* 47 U.S.C. § 534(b)(9).

WBTW(TV) is a “broadcast television station.” Therefore, Time Warner was required to provide written notice to Media General at least thirty days before it deleted the signal for WBTW(TV). The Commission has proposed forfeitures of up to \$20,000 for failing to provide the required notice to a broadcaster before repositioning its station.<sup>5</sup>

Time Warner did not provide *any* advance notice, written or otherwise, to Media General before it dropped WBTW(TV) from the Georgetown County systems. On August 10, 2009, one day before Time Warner dropped WBTW(TV), Time Warner’s Regional Vice President of Programming and Product Development left a voicemail for WBTW(TV)’s Vice President and General Manager, Michael Caplan. He asked Mr. Caplan to call him to discuss some unspecified out-of-market carriage “issues.” The voicemail did not offer any hint that Time Warner would drop WBTW(TV) within a few hours. The next morning, by the time Mr. Caplan arrived at work, WBTW(TV) already had received dozens of complaints from residents in Georgetown County claiming that Time Warner had dropped the station overnight. Most of the complaints expressed confusion and anger over Time Warner’s action, which the station soon learned was being blamed on the station itself. By failing to provide Media General with any notice, let alone thirty days’ prior written notice, of its intent to delete WBTW(TV) from its channel lineup in Georgetown County, South Carolina, Time Warner knowingly and willfully violated Section 76.1601 of the Commission’s rules.

Furthermore, without immediate Commission action, Time Warner appears to be planning to violate Section 76.1601 again on Thursday, August 20, 2009. Time Warner still have not provided written notice to Media General of its intent to drop WBTW(TV) from certain systems in Richmond County, North Carolina; Brunswick County, North Carolina; Chesterfield County, South Carolina;

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<sup>5</sup> Northland Cable Television, Inc., *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, 23 FCC Rcd 7872, 7877 at para 13 (2008).

and in the towns of Johnsonville and Effingham, South Carolina. Instead, Media General has learned of Time Warner's plans from complaining subscribers and local press reports.<sup>6</sup>

## **II. Time Warner Violated the FCC's Requirement to Provide Reasonable Notice to Its Subscribers of Any Channel Lineup Change.**

Section 76.1603(b) of the Commission's rules requires cable operators to notify their customers of "any changes in . . . programming services or channel positions *as soon as possible* in writing."<sup>7</sup> When the change "is within the control of the cable operator," such notice must be provided "a minimum of thirty (30) days in advance of such changes."<sup>8</sup> Section 76.1603(c) of the Commission's rules further provides that

In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. . . . When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. . . .<sup>9</sup>

The Commission has explained that "the 30-day notice requirement of section 76.1603 ensures that consumers actually receive the programming they were promised" by their cable operators when they paid their bills in advance for services they had not yet received.<sup>10</sup>

Time Warner knowingly and willfully violated the Commission's rules when it deleted the signal of WBTW(TV) without providing reasonable notice of the change to its subscribers. Time Warner's decision to drop WBTW(TV) was entirely within its control. Time Warner has

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<sup>6</sup> Cable Customers to See Changes, *Sun News* (Aug. 11, 2009) available at <http://www.thesunnews.com/business/story/1018604.html> (last visited Aug. 14, 2009) ("On Aug. 20, those living in Brunswick County, N.C., will no longer receive WBTW.")

<sup>7</sup> 47 C.F.R. § 76.1603(b) (emphasis added). *See also* 47 C.F.R. § 76.1601 (requiring cable operators to provide subscribers of the deletion or repositioning of any broadcast station). Section 76.1601(c) requires Time Warner to provide thirty day's notice to the local cable franchising authority. Media General has no knowledge of whether Time Warner complied with this provision.

<sup>8</sup> *Id.*

<sup>9</sup> 47 C.F.R. § 76.1603(c).

<sup>10</sup> Time Warner Cable, *Order on Reconsideration*, 21 FCC Rcd 9016, 9025 at para. 26 (MB 2006) ("*Time Warner/NFL Network Decision*"), *consent decree adopted*, Order, 21 FCC Rcd 11229 (MB 2006).

retransmitted WBTW(TV) for many years and the parties have entered into a retransmission consent agreement providing Time Warner with the requisite consent to retransmit the station's signal going forward. Thus, Time Warner was required to provide its subscribers with reasonable notice at least thirty days before removing WBTW(TV) from its lineup.

Although a "cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion,"<sup>11</sup> an operator's discretion regarding the form of written notice it provides is not limitless. When the Commission implemented its consumer protection requirements in Sections 76.1601 through 76.1603, the Commission agreed with a commenter that notice of changes in a newspaper was not "reasonable" *per se* because "the reasonableness of a notice . . . appearing in a newspaper depends upon several variables such as its location in the newspaper, the size of the notice, and the font of the print used in the notice."<sup>12</sup> When determining whether notice was reasonable, the Commission considers the matter from a typical subscriber's perspective.<sup>13</sup> In other words, if a typical subscriber was unlikely to receive the notice, it was not a reasonable means to provide notice.

Time Warner did not provide reasonable notice to its Georgetown County subscribers. According to an email provided by its Regional Vice President, Time Warner notified these subscribers by (1) securing publication in the legal notices section of the *Myrtle Beach Sun News* on July 8, 2009, and the *Charleston Post & Courier* on July 7, 2009, and (2) by mailing a postcard to its subscribers on August 6, 2009. Neither action provided adequate notice to its subscribers.

The newspaper publication was not a reasonable means to reach Time Warner's Georgetown County subscribers. Neither newspaper is published in Georgetown County, and the vast majority of

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<sup>11</sup> 47 U.S.C. § 552(c).

<sup>12</sup> Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, *Report and Order*, 14 FCC Rcd 5296, 5365 at para. 163 (1999).

<sup>13</sup> *Time Warner/NFL Network Decision*, at para. 15.

residents in Georgetown County do not subscribe to either newspaper. In fact, 97.4 percent of households do not subscribe to the *Post & Courier* and 79.7 percent of households do not subscribe to the *Sun News*.<sup>14</sup> Thus, at best, less than a quarter of the households in Georgetown County would have received the notice. Moreover, it is unlikely that any more than a slim percentage of these household would have read Time Warner's notice because Time Warner buried it in the legal notices section of each newspaper. The typical newspaper reader rarely reads the legal notices, and when the Commission determines whether notice was reasonable, it is the viewer's perspective – not the cable operator – that controls.<sup>15</sup> These facts confirm the wisdom of the Commission's decision sixteen years ago declining to find that "reasonable notice" can be provided through a publication in the legal notices section of a newspaper.<sup>16</sup>

The postcard, which Time Warner did not mail until less than a week before it planned to drop WBTW(TV) in Georgetown County, obviously could not have provided the necessary thirty days' notice. Indeed, most of the viewers that complained to WBTW(TV) reported that they receiving the postcard on or after August 10, 2009. Time Warner easily could have complied with the thirty day notice requirement by mailing its postcard prior to July 7, 2009, when it secured publication of the legal notice in the *Post & Courier*. For whatever reason, it deliberately chose not to do so.

Without immediate Commission action, Time Warner appears to be planning to violate notification rules again on August 20, 2009. According to complaints that Media General has received from Time Warner subscribers, Time Warner sent a postcard notifying its subscribers of its intent to drop WBTW(TV) from certain systems in Richmond County, North Carolina; Brunswick

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<sup>14</sup> See Audit Bureau of Circulations, SRDS CIRCULATION, at 779-80 (2009).

<sup>15</sup> *Time Warner/NFL Network Decision*, at para. 15.

<sup>16</sup> *Implementation of Cable Act*, 14 FCC Rcd at 5365 at para. 163.

County, North Carolina; Chesterfield County, South Carolina; and in the towns of Johnsonville and Effingham, South Carolina. The affected subscribers first began receiving the postcards on August 10, 2009 – only ten days before the scheduled lineup change. Media General is unaware of any other prior attempt by Time Warner to provide written notice of the impending channel lineup change. Thus, it appears that Time Warner again plans to violate the consumer notification requirements unless the Commission immediately orders Time Warner to comply with the FCC’s rules.

**III. The Commission Should Sanction Time Warner for Its Knowing And Willful Violation of the FCC’s Rules.**

The Commission should impose severe sanctions against Time Warner for its knowing and willful violation of the FCC’s rules. Time Warner is the second largest cable operator in the country. It is well aware of the Commission’s channel lineup notification requirements. Indeed, over the last few years, the Commission has issued several decisions involving Time Warner and apparent violations of Sections 76.1603.<sup>17</sup> Nevertheless, Time Warner continues to drop channels without providing appropriate notification. Given this past behavior, it is appropriate for the Commission to impose even stronger sanctions to deter Time Warner from future violations.

The requirement to provide subscribers, the broadcast station, and the local franchising authority with thirty days’ notice of any plans to delete a channel is an important provision to protect consumers. It provides affected subscribers with an opportunity to bring any concerns about the announced intention to the attention of the cable operator before any loss of service occurs. If need be, affected viewers may use the thirty day period to secure alternative arrangements to view the station before losing service. The broadcast station also may use the thirty day period to alert its viewers, which is particularly important when the cable operator seems unwilling to provide any

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<sup>17</sup> See, e.g., *Time Warner Cable, Inc.*, 24 FCC Rcd 1064 (EB 2009) (\$7,500 fine for failing to notify customers of change in programming service); *Oceanic Time Warner Cable, a subsidiary of Time Warner Cable, Inc.*, 23 FCC Rcd 12804 (EB 2008), *app. for rev. granted in part, denied in part*, FCC 09-52 (rel. (continued . . .))

reasonable notice. If the circumstances warrant, the broadcast station also may petition the Commission for special relief to expand its must-carry market to include the affected area, thereby preventing the cable operator from precipitously dropping the station.

This case validates the wisdom of the Commission's decisions to require thirty days' notice before deleting a channel and to enforce its requirement aggressively for the protection of innocent consumers. Had Time Warner complied with the Commission's rules, its customers in Georgetown County would not have woken up on August 11, 2009, to discover that Time Warner had taken away their historic ability to receive the second highest rated television station in the county (and likely the second highest channel among the hundreds of broadcast and cable channels on the affected systems).

### CONCLUSION

The Commission designed its subscriber notification requirements to protect subscribers. Therefore, the Commission views any notification complaint from the subscriber's perspective.<sup>18</sup> Here, subscribers in Georgetown County were utterly unprepared to lose the second most popular channel in the county. For the more than seventy-five percent of households that do not subscribe to the *Post & Courier* or the *Sun News*,<sup>19</sup> their first notice was a postcard received at most a few hours before Time Warner dropped WBTW(TV). Understandably, these viewers were confused and upset. When they called Time Warner for an explanation many received misinformation, blatant lies, or no help at all. Time Warner's customer service representatives told some subscribers that the FCC forced it to drop WBTW(TV). They told others that Media General went out of business or that

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(. . . *continued*)

Jun. 26, 2009) (upholding \$7,500 fine for failing to notify Franchising Authority of service change); *Time Warner/NFL Network Decision*.

<sup>18</sup> *Time Warner/NFL Network Decision*, at para. 15.

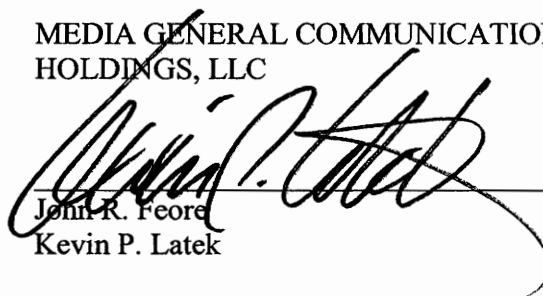
<sup>19</sup> *See* Audit Bureau of Circulations, SRDS CIRCULATION, at 779-80 (2009).

WBTW(TV) is no longer on the air. Given Time Warner's egregious violations of the notification rules in Georgetown County, its apparent intent to violate the rules again on August 20, 2009, and its past inability or unwillingness to comply with these simple requirements, this matter deserves immediate attention. The Bureau should impose such sanctions on Time Warner as necessary.

Time Warner willfully and knowingly violated the Commission's consumer protection rules requiring any cable operator to provide thirty days notice of any deletion of carriage of a broadcast station. Time Warner did not provide this notice to its Georgetown County customers or to Media General. Moreover, Time Warner appears to be preparing to violate the Commission's rules again on Thursday August 20, 2009, unless the Bureau intervenes first. Accordingly, Media General requests that the Bureau promptly issue an order imposing sanctions on Time Warner and taking all other actions that the Bureau deems appropriate.

Respectfully submitted,

MEDIA GENERAL COMMUNICATIONS  
HOLDINGS, LLC



John R. Feore  
Kevin P. Latek

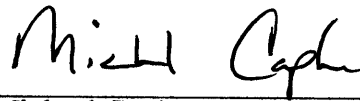
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Its Attorneys

August 14, 2009



8. I have learned from Time Warner subscribers and local press reports that on Thursday, August 20, 2009, Time Warner plans to drop WBTW(TV) on certain cable systems serving Richmond County, North Carolina; Brunswick County, North Carolina; Chesterfield County, South Carolina; and in the towns of Johnsonville and Effingham, South Carolina. Some of the subscribers to these cable systems report that Time Warner has already dropped WBTW(TV). Many subscribers to these cable systems reported that they first learned of Time Warner's plans on or after August 10, 2009, when they received postcard notifications of the upcoming lineup change. Time Warner still has not provided any written notice of the proposed channel lineup changes to Media General.
9. I declare under penalty of perjury that the facts contained herein and within the foregoing Enforcement Complaint are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Enforcement Complaint is well grounded in fact, that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.



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Michael Caplan  
Vice President and General Manager  
101 McDonald Court  
Myrtle Beach, South Carolina 29588  
843-294-8302

Dated: August 14, 2009

## CERTIFICATE OF SERVICE

I certify that on this 14th day of August, 2009, I caused the foregoing Emergency Enforcement Complaint to be served by first-class mail, except where hand delivery is indicated, on the following:

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\* via hand delivery



Laurel Starkey