

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

In the Matter of	)	
	)	
Time Warner Entertainment-Advance/Newhouse	)	File No.: EB-11-KC-0058
Partnership	)	NAL/Acct. No.: 201232560002
	)	FRN: 0003476298
Kansas City, MO	)	Physical ID No.: 004677
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted:** July 17, 2012

**Released:** July 17, 2012

By the District Director, Kansas City Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Time Warner Entertainment – Advance/Newhouse Partnership (Time Warner), owner of a cable system in Kansas City, Missouri, apparently willfully and repeatedly violated Sections 76.1703 and 76.1704(a) of the Commission’s rules (Rules),<sup>1</sup> by failing to maintain and make available required records and data. We conclude that Time Warner is apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000). In addition, we direct Time Warner to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury that it is maintaining the required children’s programming records and proof of performance test data.

**II. BACKGROUND**

2. On July 18, 2011, agents from the Enforcement Bureau’s Kansas City Office (Kansas City Office) requested to inspect documents required to be in the public file at Time Warner’s office located at 6550 Winchester Avenue, Kansas City during regular business hours.<sup>2</sup> After an hour of waiting and discussions with eight Time Warner employees, the agents were provided the requested records. The agents observed that the last entry for commercial records for children’s programming was dated March 27, 2008, and that proof of performance test data for years 2008 and 2009 were missing.

**III. DISCUSSION**

3. Section 503(b) of the Communications Act of 1934, as amended (Act), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>3</sup> Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of

<sup>1</sup> 47 C.F.R. §§ 76.1703, 76.1704(a).

<sup>2</sup> *Id.*

<sup>3</sup> 47 U.S.C. § 503(b).

any intent to violate” the law.<sup>4</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>5</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>6</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>7</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

**A. Failure to Comply with Children’s Programming and Test Data Recordkeeping Requirements**

4. Section 76.1703 of the Rules states: “Cable operators airing children’s programming must maintain records sufficient to verify compliance with § 76.225 and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. 503(b)(6)(B).”<sup>9</sup> With respect to this rule, the Commission has clarified, since 1991, that such records must be placed in the cable system’s public file no later than the tenth day of the quarter following the quarter in which the covered programming aired and must be maintained for a period sufficient to cover the limitations period specified in 47 U.S.C. § 503(b)(6)(B) (one year).<sup>10</sup> Section 76.1704(a) of the Rules states: “The proof of performance tests required by § 76.601 shall be maintained on file at the operator’s local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request.”<sup>11</sup>

5. On July 18, 2011, agents from the Kansas City Office requested to inspect Time Warner’s required files at one of its offices in Kansas City during regular business hours. The agents observed that Time Warner’s files were missing the required children’s programming records for five quarters and also the proof of performance tests for 2008 and 2009. There was no evidence that the missing records were ever compiled. Based on the record evidence, we find that Time Warner apparently willfully and repeatedly violated Section 76.1703 of the Rules by failing to maintain required children’s programming records for the first quarter 2010 through first quarter 2011. We further find that Time Warner apparently willfully and repeatedly violated Section 76.1704(a) of the Rules by failing to maintain proof of performance tests for

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<sup>4</sup> 47 U.S.C. § 312(f)(1).

<sup>5</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

<sup>6</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>7</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>8</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

<sup>9</sup> 47 C.F.R. § 76.1703.

<sup>10</sup> See *Policies and Rules Concerning Children’s Television Programming*, Memorandum Opinion and Order, 6 FCC Rcd 5093, 5097, para. 23 (1991).

<sup>11</sup> 47 C.F.R. § 76.1704(a).

2008 and 2009. Finally, we find that Time Warner apparently willfully violated Sections 76.1703 and 76.1704(a) of the Rules by failing to make those required records available to FCC agents at the time of the inspection.

#### B. Proposed Forfeiture Amount and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for violating public file rules is \$10,000.<sup>12</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>13</sup> In similar cases, the Commission recently has imposed the base forfeiture.<sup>14</sup> Because of Time Warner's ability to pay<sup>15</sup> and its prior violations of the rules at issue today,<sup>16</sup> however, we find the appropriate forfeiture amount to be \$25,000. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Time Warner is apparently liable for a total forfeiture in the amount of \$25,000.

7. We further order Time Warner to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>17</sup> signed under penalty of perjury by an officer or director of Time Warner, stating that it is maintaining the required children's programming material and proof of performance tests. This statement must be provided to the Kansas City Office at the address listed in paragraph 10, below, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Time Warner Entertainment – Advance/Newhouse Partnership is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty five thousand dollars (\$25,000) for violations of Sections 76.1703 and 76.1704(a) of the Rules.<sup>18</sup>

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<sup>12</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> See, e.g., *Southern Media Associates, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 3215 (MB 2012), *Indiana Wesleyan University*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2993 (MB 2012); *Belo TV, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2311 (MB 2012); *Joseph V. Earley*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2166 (MB 2012).

<sup>15</sup> Currently, Time Warner is ranked 103 on the Fortune 500 ranking of American corporations, with reported revenues of more than \$28.9 billion. See <http://money.cnn.com/magazines/fortune/fortune500/2012/snapshots/10472.html> (last visited May 31, 2012).

<sup>16</sup> See *Time Warner Entertainment – Advance/Newhouse Subsidiary, LLC d/b/a Time Warner Cable*, Forfeiture Order, 19 FCC Rcd 10412 (Enf. Bur. 2004) (missing required commercial records on children's programming, proof of performance test data, and signal leakage log and repair records) (forfeiture paid); *Time Warner Cable*, Notice of Violation, EB-09-LA-0088 (Enf. Bur. Jan. 4, 2010).

<sup>17</sup> 47 C.F.R. § 1.16.

<sup>18</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 76.1703, 76.1704(a).

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,<sup>19</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Time Warner Entertainment – Advance/Newhouse Partnership **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Time Warner Entertainment – Advance/Newhouse Partnership **SHALL SUBMIT** a written statement, as described in paragraph 7, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 NE Colbern Road, 2<sup>nd</sup> Floor, Lee's Summit, MO, 64086. Time Warner shall also e-mail the written statement to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Time Warner Entertainment – Advance/Newhouse Partnership shall send electronic notification of payment to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov) on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>20</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>21</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

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<sup>19</sup> 47 C.F.R. § 1.80.

<sup>20</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>21</sup> See 47 C.F.R. § 1.1914.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.<sup>22</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 NE Colbern Road, 2<sup>nd</sup> Floor, Lee's Summit, MO, 64081, and include the NAL/Acct. No. referenced in the caption. Time Warner also shall e-mail the written response to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Time Warner Entertainment – Advance/Newhouse Partnership at 13820 Sunrise Valley Drive, Herndon, VA 20171-3000.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage  
Director  
Kansas City Office  
South Central Region  
Enforcement Bureau

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<sup>22</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).