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

In the Matter of:	)	
	)	
Time Warner Cable,	)	
A Division of Time Warner Entertainment	)	MB Docket No. 06-151
Company, L.P.	)	
	)	
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	)	

ORDER ON RECONSIDERATION

Adopted: August 7, 2006 **Released: August 7, 2006**

By the Chief, Media Bureau:

I. INTRODUCTION

1. Time Warner Cable ("Time Warner") seeks a stay and reconsideration of the Media Bureau's August 3 Order in the above-captioned proceeding, which required Time Warner temporarily to reinstate carriage of the NFL Network on systems that it recently acquired from Adelphia Communications and Comcast Corporation until the Commission is able to resolve on the merits the Emergency Petition for Declaratory Ruling ("Petition") filed by NFL Enterprises LLC ("NFL"). The NFL's Petition alleges that Time Warner discontinued carriage of the NFL Network without providing customers with the 30-days notice mandated by section 76.1603 of the Commission's rules. For the reasons set forth herein, we deny Time Warner's Application for Stay and Petition for Reconsideration and Request for Referral to the Full Commission ("Petition for Reconsideration").

II. BACKGROUND

2. This controversy stems from Time Warner's action on August 1, 2006, to discontinue carriage of the NFL Network[1] on cable systems that Time Warner had just acquired from Adelphia and Comcast ("newly acquired systems") in transactions approved by the Commission on July 13, 2006.[2] The transactions involved a series of agreements between and among Time Warner, Comcast, and Adelphia, through which, among other things, Time Warner acquired control of cable systems from Adelphia and also gained control of cable systems from Comcast as a result of system swaps between the two companies.[3] Pursuant to these transactions, Time Warner gained approximately 3.5 million subscribers.[4]

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[1] The NFL Network is a programming service carried by cable operators and satellite providers that has in-depth coverage of the NFL, including pre-season and regular season games.

[2] *See Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., Assignees, et al*. ("*Adelphia Order*"), Memorandum Opinion and Order, MB Docket No. 05-192, FCC 06-105 (rel. July 21, 2006).

[3] *See* Petition for Reconsideration at 6-7.

3. Before they were acquired by Time Warner, many of the systems transferred from Adelphia and Comcast carried the NFL Network. Time Warner, however, did not carry the NFL Network on any of its systems in the United States. As a result, prior to the closing of the Adelphia transactions, the NFL and Time Warner attempted to negotiate a carriage agreement that would have allowed the NFL Network to remain on Time Warner's newly acquired systems. With negotiations deadlocked and the projected closing date of the Adelphia transactions one week away,[5] the NFL, on July 24, 2006, offered Time Warner authorization to carry the NFL Network on the systems it was about to acquire for a 30-day period on the same terms under which the network had previously been carried on those systems. This offer would have allowed Time Warner to provide subscribers with the 30-days notice of its decision to drop the NFL Network required by section 76.1603 of the Commission's rules, since Time Warner had yet to provide subscribers with any notice.[6] On July 27, 2006, however, Time Warner rejected the NFL's offer,[7] and on August 1, 2006, Time Warner discontinued carriage of NFL Network programming on its newly acquired systems.[8] By its own acknowledgement, within two days of having dropped the NFL Network, Time Warner received at least 7,843 complaints and 88 requests for service disconnection as a result of dropping the network.[9] In addition, the NFL has registered over 22,000 complaints from Designated Market Areas served by Time Warner.[10]

4. On August 1, 2006, the NFL filed with the Commission an Emergency Petition for Declaratory Ruling and Enforcement Order, or in the Alternative, for Immediate Injunctive Relief ("Petition"). In the Petition, the NFL alleged that Time Warner had violated section 76.1603 of the Commission's rules when it dropped the NFL Network without providing subscribers the requisite notice 30 days in advance of its action.[11] That section states, in pertinent part:

> (b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must 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. . . .
>
> (c) 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. . . .[12]

5. On August 3, 2006, the Media Bureau released an order ("August 3 Order") concluding that the NFL had met its burden for injunctive relief and granting temporary injunctive relief in furtherance of the public interest, pending the outcome of our review on the merits.[13] Because of the

[4] *See Adelphia Order*, ___ FCC Rcd at ___, ¶ 9.

[5] *See* Petition at 6; Petition for Reconsideration at 7.

[6] 47 C.F.R. § 76.1603(b)-(c); *see* Petition at 2, 6. While it is undisputed that Time Warner failed to provide notice to subscribers before July 27, 2006, or four days before the company dropped the NFL Network, it is not clear from the record whether an unspecified number of newspaper advertisements run by Time Warner on July 27, 2006, triggered the 30-day notice period. Time Warner provides no evidence as to how many newspapers these advertisements appeared in and does not assert that such advertisements were placed in each affected community across the country. *See* Petition for Reconsideration at 8.

[7] *See* Petition at 2.

[8] *See* Petition at 3.

[9] *See* Petition for Reconsideration, Exhibit 1 at 7.

[10] *See* Opposition at 6.

[11] *See* Petition at 3.

[12] 47 C.F.R. § 76.1603(b)-(c).

[13] *See Time Warner Cable*, DA 06-1587 (MB, rel. Aug. 3, 2006).

time-sensitive nature of the Petition, which sought immediate relief to restore the status quo pending review, the Media Bureau acted on the Petition two days after it was filed. At that time, notwithstanding the NFL's request for immediate relief, Time Warner had not yet filed a response to the NFL's Petition.

6. The Media Bureau analyzed four factors before reaching its conclusion: (1) the likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief were granted; and (4) whether the preliminary relief would further the public interest.[14] The August 3 Order concluded that the public interest factor, in particular, weighed heavily in favor of granting the temporary relief.[15] The August 3 Order required Time Warner to immediately reinstate carriage of the NFL Network on all of its newly acquired systems on the previously applicable rates, terms, and conditions. The August 3 Order also established an expedited pleading cycle to afford the Commission the ability to promptly resolve the NFL's Petition on the merits.

7. Later on August 3, 2006, Time Warner filed the instant Application for Stay of the Bureau Order and Petition for Reconsideration and Request for Referral to the Full Commission.[16] At midnight that night, according to a press statement issued by the company, Time Warner complied with the August 3 Order by reinstating the NFL Network on the newly acquired systems.[17] On August 4, 2006, the NFL filed an Opposition to Time Warner's Application for Stay.

III. DISCUSSION

8. In this Order, we respond to Time Warner's Petition for Reconsideration and examine whether the relief granted in our August 3, 2006 Order was lawful and appropriate. Recognizing that Time Warner had not responded before we issued the August 3 Order, we reexamine *de novo* the issues addressed in our earlier order, carefully considering Time Warner's submissions and all record materials. Based on this review, we believe that the relief granted in the August 3 Order was lawful and appropriate and therefore deny Time Warner's Petition for Reconsideration. Accordingly, Time Warner must carry the NFL Network on all of its newly acquired systems on the same terms under which it was carried prior to August 1, 2006. Time Warner must maintain carriage either until we resolve the NFL's Petition on the merits, or until 30 days after Time Warner has provided affected customers with adequate notice of its decision to drop the NFL Network, whichever comes first.

9. In evaluating anew the interim relief granted in the August 3 Order, we once again consider the four criteria identified in that Order and used by federal courts to evaluate a request for a preliminary injunction: (1) the likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) whether the preliminary relief will further the public interest.[18] We again recognize that in a situation such as this, involving "administration of regulatory statutes designed to promote the public interest," the public interest factor "necessarily becomes crucial."[19] Additionally, the degree of harm that a petitioner

[14] *See id.* (citing *In re AT&T Corp., et al.*, 13 FCC Rcd 14508, 14515-16 (1998)).

[15] *See id.* (citing *In re AT&T Corp., et al.*, 13 FCC Rcd at 14516).

[16] While Time Warner requests that we refer its Petition for Reconsideration directly to the Commission, it chose not to file an Application for Review with the Commission. *See* 47 C.F.R. § 1.115. Therefore, we have the discretion to either to rule on the Petition for Reconsideration ourselves or to refer it to the Commission. *See* 47 C.F.R. §§ 1.104(b), 1.106(a)(1). In light of the time-sensitive nature of this dispute and Time Warner's request that the Bureau or the Commission act on its request by 10:00 AM on August 7, 2006, *see* Petition for Reconsideration at 2-3, we choose to dispose of the Petition for Reconsideration ourselves.

[17] *See Time Warner Reinstates NFL Net* BROADCASTING & CABLE (Aug. 4, 2006) (found at http://www.broadcastingcable.com/article/CA6359461.html?display=Breaking+News) (visited Aug. 5, 2006).

[18] *See In re AT&T Corp., et al.*, 13 FCC Rcd at 14515-16.

[19] *Id.* at 14516.

must demonstrate varies with its chances for success on the merits. As the United States Court of Appeals for the Seventh Circuit has explained, "[t]he more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor."[20]

A. Likelihood of Success on the Merits

10. In light of the undisputed facts of the case, we conclude that the NFL has established a substantial likelihood of success on the merits. In its Petition for Reconsideration, Time Warner concedes that it: (1) failed to provide customers with 30-days notice before dropping the NFL Network; and (2) refused the NFL's offer "to allow Time Warner to continue to carry the network on the pre-existing terms and conditions" for those 30 days.[21] Nevertheless, Time Warner argues that it did not violate section 76.1603 for two reasons, neither of which we find persuasive.

11. First, Time Warner claims that section 76.1603(b) is inapplicable on its face because Time Warner did not change "the service it offers to any of its subscribers."[22] In other words, Time Warner argues that section 76.1603(b) does not require notification to customers for channel lineup changes that occur upon the sale of a cable operator's assets like those at issue here. As explained below, we reject Time Warner's interpretation of the rule as lacking any basis in the text or purpose of the provision. But as a preliminary matter, we find that Time Warner is precluded from advancing this interpretation here. This is because Time Warner's argument flatly contradicts the position taken by the company less than two weeks ago in the very proceeding approving Time Warner's acquisition of Adelphia and Comcast's assets ("the Adelphia transactions").

12. Specifically, on July 24, 2006, representatives of Time Warner, along with representatives of Comcast, had a phone conversation with Media Bureau personnel to discuss the Commission's Memorandum Opinion and Order approving the Adelphia transactions with conditions. During the phone call, Time Warner and Comcast requested alteration of the certification requirement described in paragraph 54 of the Order, which originally required both companies to certify prior to closing that their systems would be in compliance with Commission's cap on the percentage of affiliated networks that may be carried by any cable operator. The two companies asked the Commission to postpone the certification requirement and allow the companies to make the certification 90 days after closing. Among other reasons, they argued that the postponement was necessary to give them "adequate time, pursuant to 47 C.F.R. § 76.1603(b)," to provide customers on newly acquired systems notice of any channel lineup changes required to bring the companies into compliance with the Commission's channel occupancy rules.[23] Time Warner and Comcast asserted that the Commission's rules might require them to drop some affiliated networks from their newly acquired systems, and that they therefore needed time to make that determination and provide customers the 30-days notice required by section 76.1603(b) before the networks were dropped. The Media Bureau, acting under delegated authority, relied on these representations and granted Time Warner and Comcast the relief they sought.[24]

13. Time Warner thus obtained regulatory relief from the Commission less than two weeks

[20] *Roland Machinery Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 387-88 (7th Cir. 1984).

[21] *See* Petition for Reconsideration at 19.

[22] Petition for Reconsideration at 18.

[23] Letter from Michael H. Hammer, Willkie Farr & Gallagher, LLP, to Marlene H. Dortch, Secretary, FCC (July 25, 2006) (filed in MB Docket No. 05-192).

[24] *See Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., et al.*, Erratum, MB Docket No. 05-192, ¶ 10 (rel. July 27, 2006).

ago based upon an interpretation of section 76.1603(b) – that it does apply to channel changes made to newly acquired systems – that is flatly inconsistent with the interpretation Time Warner offers now. We will not countenance such behavior by parties seeking relief from the Commission. After arguing successfully that section 76.1603(b) temporarily shields it from bringing newly acquired cable systems into compliance with the certification requirement, Time Warner cannot be heard to argue that those same cable systems are beyond the reach of section 76.1603(b). Accordingly, we find that Time Warner is estopped from arguing here that section 76.1603(b) does not apply to newly acquired systems.[25]

14. Indeed, Time Warner has long been aware that section 76.1603 applies to newly acquired systems. In 1995, the company sought a waiver of section 76.964 (section 76.1603(c)'s predecessor) in advance of its acquisition of cable systems from Cablevision Industries Corporation.[26] In that case, Time Warner argued, before the closing of the transaction, that the 30-days notice requirement should be waived so that Time Warner could expeditiously implement the initial rate restructuring and service changes required under the Social Contract that had been agreed to the year before by the company and the Commission. The Social Contract was designed to resolve all "tier rate cases" involving Time Warner then pending at the Commission. In light of the pro-consumer terms of the Social Contract, the Commission found that such a waiver would be in the public interest.[27] Here, notably, Time Warner failed to seek any waiver of section 76.1603.

15. In any case, leaving aside Time Warner's past behavior, we also reject the company's interpretation of section 76.1603(b) on the merits. Because section 76.1603(b) is aimed at protecting subscribers, it is the subscribers' perspective – not that of the cable operator – that is relevant to determining whether a change in programming services has occurred. Here, it is undisputed that the programming provided to approximately 1.16 million households changed overnight,[28] despite the lack of any action on the part of those consumers. Time Warner offers no basis in the text of the rule or elsewhere to support the conclusion that a change in programming services did not occur.

16. Second, Time Warner argues that even if section 76.1603(b) is generally applicable to newly acquired systems, it did not run afoul of the rule because the change in programming services at issue here – the removal of the NFL Network – was not within its control. Time Warner contends that this is because "[t]he plain and undisputed fact is that Time Warner had no right to carry [the NFL Network] on the former Adelphia and Comcast systems . . . after July 31, 2006." Moreover, it maintains that "[h]ad Time Warner continued carriage of [the NFL Network], it would have violated the copyright laws and been subject to the charge that it was unlawfully expropriating [the NFL Network's property]."[29]

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[25] *See Review Of The Section 251 Unbundling Obligations Of Incumbent Local Exchange Carriers*, Second Report and Order, 19 FCC Rcd 13494 ¶ 8 n.34 ("Judicial estoppel applies where a party assumes a successful position in a legal proceeding, and then assumes a contrary position simply because interests have changed . . . ."); *cf. New Hampshire v. Maine*, 532 U.S. 742, 749 (2001); *Busse Broadcasting Corp. v. FCC*, 87 F.3d 1456, 1461 (D.C. Cir. 1996).

[26] *See In the Matter of Social Contract for Time Warner Cable*, 11 FCC Rcd 3099, 3101 (Cable Services Bureau 1995).

[27] *See id*. There is no indication that implementation of the Social Contract would have caused Time Warner to terminate carriage of any programming services. Rather, it appears as though the waiver granted by the Commission had the principal effect of expediting the restructuring of rates and the creation of a low-cost, lifeline basic tier of service on Time Warner's newly acquired systems. *See id*. at 3099-3101.

[28] *See* Supplement to NFL Enterprises LLC's Opposition to Time Warner Cable's Application for Stay, Supplemental Declaration of David Proper at ¶ 1. The NFL Network was dropped from approximately 785,000 households that were previously served by Adelphia, and from approximately 375,000 households formerly served by Comcast. *See id*. at ¶ 2.

[29] Petition for Reconsideration at 18.

17. We disagree. The undisputed facts in this case demonstrate that the change in programming services was "within the control" of Time Warner. Had the NFL been unwilling to provide Time Warner with the legal right to continue to carry its programming, this might well be a different case. Here, however, it is undisputed that the NFL Network "offered to allow Time Warner to continue to carry the network on pre-existing terms and conditions" for 30 days and that Time Warner refused this offer.[30] Time Warner's decision to reject this offer and drop the NFL Network appears to have been sufficiently within its control to fall within the rule. From all indications, it was a voluntary choice made by Time Warner, and the company does not argue to the contrary.[31] A conclusion that this change was not in Time Warner's control is contrary to common sense and to the ordinary meaning of the word "control."[32] Moreover, Time Warner's understanding of control is untenable, as it would mean that any time a programming contract expired, the cable operator could drop the programming at issue without any notice to subscribers. That result would substantially undermine the Commission's intent in adopting section 76.1603.

18. Perhaps recognizing the difficulties associated with its assertion that it lacked control over its decision to drop the NFL Network, Time Warner next argues that it could not have notified customers 30 days before it dropped the NFL Network because it was uncertain when the Adelphia transactions would close. As an initial matter, Time Warner's argument is based on a misreading of section 76.1603(b). Under that provision, the relevant question is whether the change in programming services, *i.e.*, the decision to drop the NFL Network, was within the control of Time Warner, and we concluded above that this was the case. So long as Time Warner's decision to drop the NFL Network on August 1 from the cable systems in question was within its control, it is irrelevant for purposes of the rule that it may have lacked the ability to provide notice 30 days prior to that date.

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[30] Petition for Reconsideration at 19. While it is undisputed that the NFL offered to allow Time Warner to carry the NFL Network on pre-existing terms and conditions, Time Warner complains in its Petition for Reconsideration that it does not know the terms of Comcast's deal with the NFL Network (it concedes that it knows the terms of Adelphia's deal with NFL Network). Notably, Time Warner nowhere contends that it made any effort to discover the terms of those agreements before rejecting the NFL's offer. In response, the NFL contends that its carriage agreement with Comcast is subject to confidentiality provisions and suggests that a Time Warner executive gave it mixed messages as to whether the NFL should nevertheless disclose the substantive terms of the contracts to Time Warner. In any event, the NFL indicates that it has now provided Time Warner with the substance of the terms of its carriage agreement with Comcast, thus enabling it to comply with the August 3 Order. *See* Opposition, Exhibit A, ¶¶ 12-14 (Affidavit of David Proper).

[31] Time Warner argues that our reading of section 76.1603(b) has given the NFL Network "the unilateral right to dictate carriage terms" (for 30 days) because "the NFL Network could as readily have offered carriage at twice or three times current rates." Our interpretation of the rule does no such thing. In this case, it is clear that the NFL Network offered to continue service for 30 days under preexisting terms and conditions. We need not decide here whether an offer to allow continued carriage at "patently unreasonable" rates for 30 days unlawfully deprives a cable operator, as a practical matter, of control over the decision to drop a programming service for purposes of the rule. Here, Time Warner makes no effort to demonstrate that the terms under which the NFL Network offered to allow temporary carriage were unreasonable. Moreover, given that Time Warner knew that it did not have a carriage deal with the NFL and that it would eventually be assuming control over new systems carrying that network, the company could have easily taken away from the NFL any "unilateral right to dictate carriage terms" simply by providing customers with 30-days notice that the NFL Network might be dropped.

[32] To illustrate Time Warner's control over the change in programming services here, imagine that Company X promises to deliver a package at a certain time "unless prevented by circumstances not within its control." Suppose further that Company X lacks a long-term contract with the supplier of fuel for its delivery vehicles, but that the supplier in question offers to continue selling it fuel on the same terms that it has sold fuel in the past. If Company X were to refuse the offer and decline to purchase fuel, no reasonable person would say that Company X's resulting inability to deliver the package was beyond its control. On Time Warner's theory, however, Company X could be relieved of its promise, because it has no legal ability to compel the supplier to sell fuel to it, even though fuel was offered to it on preexisting terms and conditions.

19. In any event, Time Warner's argument that it "could not have possibly given effective notice" 30 days prior to its decision to drop the NFL Network is disingenuous. At the end of June, Time Warner was well aware that: (1) it had yet to secure an agreement to carry the NFL Network on its soon-to-be acquired systems; and (2) it was likely that the Adelphia transactions would close by the end of July. Notwithstanding Time Warner's claim that it could not predict the likely timeframe for the closing of the Adelphia transactions,[33] multiple documents show that Time Warner was consistently planning over the course of a year for an orderly closing of the transaction by July 31, 2006, and that by late June, it was clear to the company that the closing would likely occur on or around that date. Among other things, the asset purchase agreements for the Adelphia transaction contained provisions allowing Time Warner and Comcast to terminate the transactions if they were not consummated by July 31, 2006.[34] At the end of June, the bankruptcy court granted its approval for consummation of the transaction, thereby removing a large obstacle to the closing.[35] Ex parte notices filed by Adelphia's counsel on July 5 and July 6, 2006, made clear that the parties contemplated consummation of the transaction before the end of that month. According to those filings, counsel "stressed that the Commission should act expeditiously to approve the transactions so that the parties may close by the July 31, 2006 deadline established in the deal documents."[36] Consequently, Time Warner easily could have provided customers with notice in late June or early July that, absent a change in circumstances, the NFL Network would be dropped from their systems.

20. Time Warner complains that, as of the beginning of July, it had failed to complete carriage agreements with numerous cable networks and broadcast stations. Thus, it contends that any notice that Time Warner gave under these circumstances "would have been of no value to consumers" and "would have created alarm and confusion among our subscribers," since it would have referenced many channels. This argument, however, has nothing to do with whether Time Warner complied with section 76.1603(b). Rather, it is an argument as to why Time Warner thinks that the rule, as applied in certain situations, may not be good policy. However, if Time Warner believed that complying with section 76.1603(b) in the context of the Adelphia transactions was not in the public interest, it was free to ask the Commission for a waiver of the rule in the Adelphia proceeding, as it did when acquiring cable

[33] *See* Time Warner's Petition for Reconsideration at 19-21.

[34] *See In re Applications for Consent to the Assignment and/or Transfer of Control of License of Adelphia Communications Corporation to Time Warner Inc. and of Adelphia Communications Corporation to Comcast Corporation and of Comcast Corporation to Time Warner Inc*., Public Interest Statement, Exhibit A (Asset Purchase Agreement between Adelphia Communications Corporation and Time Warner NY Cable LLC) (Apr. 20, 2005) at Section 8.2 (Adelphia-TWNY Asset Purchase Agreement"); *Id.*, Letter from Angie Kronenberg, Willkie, Farr & Gallagher LLP, Counsel for Adelphia Communications Corp., to Marlene H. Dortch, Secretary, FCC (June 8, 2006) (filed in MB Docket No. 05-192), Amendment No. 2 to Asset Purchase Agreement Between Adelphia Communications Corporation and Time Warner NY Cable LLC at Section 8.6 ("Amendment No. 2 to Adelphia-TWNY Asset Purchase Agreement"). The asset purchase agreements initially filed with the Commission also contained large break-up fees (to be paid by Adelphia to Time Warner and Comcast) if the transactions were not consummated by July 31, 2006. Adelphia-TWNY Asset Purchase Agreement at Section 8.6. Although the outside date for payment of the break-up fees was extended from July 31 to August 31, Amendment No. 2 to Adelphia-TWNY Asset Purchase Agreement at Section 8.6, the *Adelphia* Applicants made it clear in their dealings with the Commission, as noted below, that they were preparing for a July 31 closing.

[35] On June 28, 2006, the bankruptcy court stated that the debtor parties were authorized to execute the purchase agreements or other related documents and to take any other actions necessary or appropriate to effectuate the purchase agreement. *Adelphia Order* , ___ FCC Rcd ____ at ¶ 31 n.119 (2006). The bankruptcy court approved the sale of Adelphia's interests in two joint ventures to Comcast on June 29, 2006. *Id.; see also* Letter from Michael H. Hammer, Willkie Farr & Gallagher, LLP, to Marlene H. Dortch, Secretary, FCC (June 29, 2006) (filed in MB Docket No. 05-192).

[36] Letter from Michael H. Hammer, Willkie Farr & Gallagher, LLP, to Marlene H. Dortch, Secretary, FCC (July 5, 2006) (filed in MB Docket No. 05-192); Letter from Michael H. Hammer, Willkie Farr & Gallagher, LLP to Marlene H. Dortch, Secretary, FCC (July 6, 2006) (filed in MB Docket No. 05-192).

systems from Cablevision Industries Corporation.[37] Notably, it did not do so. Additionally, while Time Warner may explain why providing notice to customers in early July would not have been in Time Warner's private interest, it fails to advance a strong case that such notice would not have been in the interest of consumers. Time Warner adopts the paternalistic attitude that its soon-to-be customers were better off not knowing that Time Warner had yet to reach carriage agreements with certain networks and broadcast stations 30 days before the company was likely to assume control over those customers' cable systems and thus such networks and stations might soon be dropped. We do not agree. Had the customers in question been provided with this notice, they would have been able to make their voices heard, and Time Warner might have received additional valuable input from its soon-to-be customers with respect to the importance of the programming in dispute. Moreover, if a customer wanted to ensure that he or she would be able to view the threatened programming without interruption, he or she would have had time to research options offered by other multichannel video programming distributors and make alternative arrangements to switch. At the end of the day, Time Warner is really arguing that customers were better off being left in the dark because it was likely that carriage agreements would be reached with most of the networks and stations at issue. However, Time Warner provides no reason as to why it could not have explained this to consumers at the time, and we doubt that viewers of the NFL Network who awoke on August 1 to find that the network had been removed from their cable systems share Time Warner's view that the company was acting in the best interest of its subscribers.

21. Additionally, we note that, while Time Warner disputes our finding that the company apparently violated section 76.1603(b), nowhere does it contest our conclusion that it also apparently violated section 76.1603(c). That provision explicitly requires that cable operators provide subscribers and local franchising authorities with 30 days written notice before implementing any change in programming services, and requires that each channel added or deleted must be separately added or identified in this notice. Significantly, section 76.1603(c)'s applicability is not limited to circumstances where the change in programming services is within the control of the cable operator. Leaving aside Time Warner's apparent violation of section 76.1603(b), the company's apparent violation of section 76.1603(c) alone provides an independent ground to establish that the NFL has a substantial likelihood of prevailing on the merits and fully supports the interim relief ordered.

B. Balance of Equities

22. We also conclude that the equitable factors support a grant of preliminary relief. We have carefully considered Time Warner's arguments with respect to these factors, and we find them unpersuasive.

23. To begin with, the August 3 Order is necessary to prevent irreparable harm to the NFL. As we observed in the August 3 Order, the NFL will be irreparably harmed by Time Warner's violation of the 30-day notice rule, since the period just before the beginning of the football season is an important time for establishing viewing patterns.[38] Time Warner argues that the NFL Network will not be harmed because, once the 30-day period is up, the NFL Network will no longer be available over Time Warner cable systems. For this reason, it concludes, "there are no viewership patterns to 'establish.'"[39] This overlooks one of the principal purposes of section 76.1603, which is to allow consumers to make alternative arrangements to view programming that is dropped by a cable provider. If Time Warner's

[37] *See supra* ¶ 14.

[38] *See Time Warner Cable* at ¶ 8; *see also* Declaration of David Proper (Opposition, Exhibit A), at ¶ 3 (explaining that the pre-season period is "of particular importance with respect to acquisition of viewers and establishment of viewing patterns"); *id.* ¶ 5 ("[The NFL Network] builds on this high level of viewership [in August] to establish a relationship with its fans."); *id*. ¶ 6 ("During this period, [NFL Network] viewership has traditionally been at its highest.").

[39] Petition for Reconsideration at 16.

subscribers were able to watch August pre-season activity on the NFL Network during the 30-day notice period, they might decide to switch from Time Warner to another provider so that they could continue to watch the NFL Network once the 30-day period was over.[40]

24. Conversely, we conclude that the grant of preliminary relief will not cause significant injury to Time Warner. Time Warner argues that it will be unable to recover the fees it must pay the NFL to carry the NFL Network during the 30-day notice period. Whatever force this objection might otherwise have, in this case it is undermined by the NFL's offer to deposit the fees in an escrow account, and its commitment to repay the money should the Commission or a court determine that Time Warner did not violate section 76.1603.[41] This promise ensures that Time Warner will not be irreparably harmed by having to pay for carriage of the NFL Network during the next 30 days.

25. Time Warner also asserts that the August 3 Order harms its First Amendment interests by compelling it to carry a programming service that it wishes to discontinue.[42] This is a criticism not of the August 3 Order, but of section 76.1603 itself, which states that cable operators must provide 30-days notice before they discontinue a programming service. Significantly, Time Warner makes no effort to argue that section 76.1603, which provides important consumer protections, is unconstitutional, either on its face or as applied to Time Warner's discontinuation of the NFL Network. Moreover, Time Warner, when it voluntarily acquired new systems from Adelphia and Comcast with Commission approval, was well aware that it would be expected to comply with the Commission's rules. If Time Warner believed that carrying the NFL Network or any other programming service for 30 days placed too onerous a burden on its First Amendment rights, then it should have sought a waiver of the Commission's rules or provided subscribers with 30-days notice so that it might drop the NFL Network as soon as it acquired the new systems. We also note that Time Warner has no objection in principle to carrying the NFL Network's programming.[43] For all of these reasons, Time Warner's putative First Amendment interests

[40] We note that both of the nationwide DBS providers, DirecTV and Dish Network, offer the NFL Network. DirecTV carries the NFL Network in its Total Choice Plus package for $49.99 a month. *See* http:www.directv.com/DTVAPP/packProg/channelChart1.jsp?assetId=90040 (visited Aug. 6, 2006). Dish Network carries the NFL Network, on its America's Top 180 package for $49.99 a month. *See* http://www.dishnetwork.com/content/programming/packages/at_150/index.asp?viewby=1&packid=10045&sortby=1 (visited Aug. 6, 2006).

[41] *See* Opposition at 7-8.

[42] While Time Warner also suggests in one sentence of its Petition for Reconsideration that the interim relief in this case raises "[t]akings concerns," Petition for Reconsideration at 12, it provides no argumentation to support this assertion so we do not address it here.

[43] According to Time Warner, a principal dispute between the company and the NFL in the carriage negotiations involved the issue of tier placement. The NFL wanted the NFL Network placed in the more widely distributed expanded basic tier while Time Warner wanted to place it on a sports tier. Time Warner argued that placing the NFL Network on the expanded basic tier "would force virtually all of its customers to pay for programming in which a great many of them have little or no interest." Petition for Reconsideration at 8. While we express no view on this dispute, we note that in the past, Time Warner has strenuously opposed allowing consumers to pay only for the channels that they want in an a la carte system, maintaining that such a system would lead to higher prices for consumers, fewer programming choices, and difficulties for niche networks or new programming services. Comments of Time Warner Cable Inc., *In the Matter of A La Carte and Themed Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, at 9-10 (July 15, 2004). Moreover, Time Warner Cable itself has acknowledged that it plans to use any money it saves on programming "to upgrade networks and introduce new products," rather than to lower customers' cable bills. Ken Belson**, "**Adelphia Deal May Cut Time Warner's Programming Costs, but Not Customers' Bills," New York Times, July 31, 2006, at C6.

provide no basis for relieving it of the plain requirements of the regulation.[44]

26. Finally, and most importantly, the August 3 Order furthers the public interest. By enforcing the notice requirement of section 76.1603, the grant of preliminary relief protects important interests of consumers. Cable subscribers typically pay for service one month in advance. For example, Time Warner's residential subscriber agreement provides: "I will be billed monthly in advance for recurring monthly charges."[45] In other words, when subscribers pay their bills, they are paying for cable services that they have not yet received. The 30-day notice requirement of section 76.1603 ensures that consumers actually receive the programming they were promised. Here, Time Warner's subscribers have paid their bills for August with the expectation that they will be able to view the NFL Network. Absent the August 3 Order, those expectations would be thwarted.

27. Moreover, the evidence in this case shows that this consumer interest is not merely theoretical. By Time Warner's own account, nearly 8,000 subscribers complained in just the first two days after the NFL Network was dropped.[46] And the NFL points out that it received over 22,000 complaints from areas served by Time Warner.[47] In addition, given that ownership of the systems in question recently shifted from Adelphia or Comcast to Time Warner, it is certainly possible that customer complaints were mistakenly directed to those companies as well. Time Warner argues that, because it gave notice in at least some communities on July 27 that it would drop the NFL Network on August 1, these consumers had sufficient time to change providers. This is simply an argument that the 30-day notice requirement is excessive and that some lesser period of notice would suffice. As we have observed, if Time Warner believed that the 30-day notice rule was inappropriate, it was free to ask for a waiver. Having failed to do so, it should not be permitted simply to disregard the rule, which reflects the Commission's considered judgment as to how much time customers should receive to arrange for alternative service.

28. Time Warner also argues that the August 3 Order will cause consumer confusion by requiring the removal or repositioning of the programming that Time Warner added in the NFL Network's place. This is a problem entirely of Time Warner's own creation, and it could have been avoided had Time Warner simply complied with section 76.1603 in the first place. More importantly, the costs of any confusion associated with the August 3 Order have already been incurred, because Time Warner has complied with the Order and reinstated the NFL Network. If we were to grant the Petition for Reconsideration, we would be allowing Time Warner to switch its programming lineup for the third time in a week, and there would be a serious risk of additional consumer confusion. In addition, while Time

[44] Time Warner's further assertion that the August 3 Order is suspect under the First Amendment because it appears to be content-based, "showing a preference for [football] programming over other programming," likewise misses the mark. Petition for Reconsideration at 12, n.4. The Bureau's action is not based on any judgment that the NFL Network's programming is superior to the programming offered by any network that Time Warner may choose to carry in the NFL Network's place. Rather, it is based on our content-neutral assessment that Time Warner apparently did not provide subscribers with 30-days notice before dropping the NFL Network. If Time Warner has dropped other networks without providing requisite notice, we will move swiftly to provide an appropriate remedy in such cases as well if they are brought to the Commission. In that vein, we note that Time Warner appears to acknowledge dropping another network from its newly acquired systems without providing 30-days notice, and we are currently investigating the facts of that situation. *See* Petition for Reconsideration at 7.

[45] Time Warner Cable Residential Services Subscriber Agreement, available at http://help.twcable.com/html/twc_sub_agreement2.html (visited Aug. 4, 2006).

[46] *See* Declaration of Michelle Kim, ¶ 18 (Petition for Reconsideration, Exhibit 1). In fact, the NFL argues that this number may significantly understate the number of customers who have attempted to complain to Time Warner because anecdotal evidence suggests that customers attempting to complain have faced long hold times and disconnected calls. Opposition at 6.

[47] *See* Proper Decl., ¶ 10-11.

Warner hypothesizes that placing the NFL Network on the newly acquired systems "may well result in the bumping of other cable programmers," thus abridging the First Amendment rights of those programmers and resulting in significant economic loss, Time Warner nowhere asserts that this, in fact, did happen between August 1 and August 3 and provides no information whatsoever about the identities of these other programmers. In any event, this too would be entirely a problem of Time Warner's own creation because it could have been avoided had Time Warner complied with section 76.1603.

C. Authority to Provide Interim Relief

29. In light of the NFL's strong showing that it has a substantial likelihood of success on the merits, that the irreparable harm to the NFL from the foregoing interim relief outweighs any harm to Time Warner from granting interim relief, and that interim relief would further the public interest, we believe that our decision to provide the NFL with interim relief was entirely appropriate. Nevertheless, Time Warner contests our authority to issue interim relief in this case. Time Warner first argues that the Commission lacks authority to impose *any* remedy in this case because the company's violation of section 76.1603(b) does not constitute a systemic abuse that undermines the statutory objectives of the Cable Act of 1992, and that the Commission has limited its enforcement role to such cases.[48]

30. As an initial matter, the Commission has never limited its enforcement role with respect to section 76.1603(c) to systemic abuses. Section 76.1603(b) originated as part of the Commission's customer service standards,[49] and as explained below, the Commission has indicated that the primary responsibility for the enforcement of such standards rests with local franchising authorities. But section 76.1603(c), by contrast, was promulgated as part of the Commission's scheme of rate regulation,[50] and the Commission has never limited its enforcement role in rate regulation matters to systemic abuses.[51] Indeed, in adopting what is now section 76.1603(c) back in 1994, the Commission compared this new notice provision to the provision that is now section 76.1603(b). The Commission pointed out that the latter was primarily enforced by local franchising authorities but notably made no such statement about the new provision.[52] And since 1994, the Commission has adjudicated cases involving the provision that

[48] *See* Petition for Reconsideration at 9-10.

[49] What is now section 76.1603(b) originated as section 76.309(c)(3)(i)(B) in 1993. *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*). In 1999, it was moved to section 76.1603(b) as part of housekeeping efforts to place similar notice requirements in one place, *see 1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, CS Docket No. 98-132, Report and Order, 14 FCC Rcd 4653 (1999) ("Cable Streamlining Order").

[50] What is now section 76.1603(c) was originally promulgated as section 76.964(b) in 1994. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119 (1994). Then, after being folded into section 76.964(a) in 1996, *see Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, CS Docket No. 96-85, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 5937, the provision was moved to section 76.1603(c) in 1999 as part of the housekeeping effort identified in note 49 above. *See* Cable Streamlining Order, 14 FCC Rcd 4653.

[51] While Time Warner implies that the notice requirement here concerns "regulation of programming" not "regulation of rates," Petition for Reconsideration at 11, the company ignores the fact that the reasonableness of a rate depends not only on the amount charged by the cable operator but also on the package of programming services that is purchased by the amount charged. Accordingly, the record is clear that the Commission has long viewed a notice requirement not only as part of its customer service standards but also as part of its scheme of rate regulation. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, 9 FCC Rcd 4119 (1994).

[52] *See id.* at 4185 ¶ 139.

is now section 76.1603(c) involving only one cable system and one channel.[53] Moreover, to the extent, as discussed below, that the Commission leaves to local franchising authorities the primary responsibility to enforce section 76.1603(b) where an abuse is not systemic, it is crucial that local franchising authorities receive timely notice of a cable operator's change in programming services. Section 76.1603(c) is therefore also important to ensure that local franchising authorities can fulfill their responsibilities under section 76.1603(b).

31. In addition to determining that we have the authority to enforce section 76.1603(c), we conclude that Time Warner's challenged action also satisfies the threshold standard for Commission enforcement of section 76.1603(b) because it constitutes a systemic abuse that undermines statutory objectives. Although Time Warner characterizes this dispute as "an isolated instance of a single termination of a single channel,"[54] the company dropped the NFL Network from multiple cable systems spanning numerous franchise areas, affecting approximately 1.16 million households from southern California to Maine.[55] For that reason alone, Time Warner's actions appear to be systemic. Moreover, Time Warner's actions arise out of the transaction the Commission just approved in the Adelphia Order. As noted above, Time Warner indicated in that proceeding that section 76.1603(b) would apply to channel lineup changes made in newly acquired systems and obtained regulatory relief on that basis. The Commission has an obvious interest both in ensuring that the implementation of transactions that it approves pursuant to 47 U.S.C. § 310(d) serves the public interest,[56] and in being able to rely on statements made by applicants in its proceedings. Indeed, it is disappointing that just days after the conclusion of a proceeding in which commenters as well as Commissioners had expressed serious concern about the impact that the Adelphia transactions would have on unaffiliated programmers,[57] Time Warner chose to remove an unaffiliated network from former Adelphia and Comcast systems in a manner that apparently violated the Commission's rules. Time Warner's actions here thus implicate multiple interests of the Commission, making the Bureau's action particularly appropriate.

32. In short, this is not an isolated incident to be addressed by a single franchising authority; rather, it is a systemic abuse. As a practical matter, it does not make sense to require individual local franchising authorities to address a problem of nationwide scope. Agency action is therefore necessary and appropriate here to vindicate federal interests. To the extent that Time Warner implies that a systemic abuse must be repeated before the Commission may take action, we find that Time Warner's action here was repeated in that it spanned multiple local franchising authorities, from New York to Ohio to California. Moreover, an alleged violation need not be recurring in time to meet the threshold standard for Commission or Bureau action, and Time Warner does not cite to any Commission precedent, or statutory or regulatory text to the contrary.

33. Time Warner's decision to drop the NFL Network without providing its customers with

[53] *See, e.g.*, *Complaint of WFXV-TV Against United Cablevision of Southern Illinois, Inc.*, 16 FCC Rcd 433 (2000), *recon. denied*, 18 FCC Rcd 22782 (2003).

[54] Petition for Reconsideration at 10.

[55] *See* Supplement to NFL Enterprises LLC's Opposition to Time Warner Cable's Application for Stay, Supplemental Declaration of David Proper at ¶ 1-2. Specifically, the NFL Network was dropped from cable systems in at least the following Designated Market Areas: Albany-Schenectady-Troy, New York; Bangor, Maine; Binghamton, New York; Buffalo, New York; Burlington-Plattsburgh, New York; Cleveland-Akron, Ohio; Dallas-Fort Worth, Texas; Erie, Pennsylvania; Green Bay-Appleton, Wisconsin; Los Angeles, California; Portland-Auburn, Maine; Syracuse, New York; Toledo, Ohio; Utica, New York; and Youngstown, Ohio. *Id.* at ¶ 2.

[56] *See Adelphia Order* at ¶ 4 ("To obtain Commission approval, the Applicants must demonstrate that the proposed transactions will serve the public interest, convenience, and necessity pursuant to sections 214 and 310(d) of the Communications Act.").

[57] *See Adelphia Order* at ¶ 182-183; Dissenting Statement of Commissioner Copps at 2-3; Statement of Commissioner Adelstein Approving in Part and Dissenting in Part at 2; Statement of Commissioner Tate at 1.

the requisite 30-days notice also undermines one of the key objectives of the 1992 Cable Act. The key statutory objective is "to ensure that cable operators nationwide provide satisfactory service to their customers."[58] Similarly, the legislative history of the Telecommunications Act of 1996 explains that Congress wanted "to ensure that consumers have sufficient warning about rate and service changes so they can choose to disconnect their service prior to the implementation of the change."[59] Moreover, in that legislative history, Congress explicitly signaled its approval of the Commission's pre-existing 30-day notice requirement, stating that "[t]he requirement that subscriber notice occur 30 days before the change is implemented achieves this purpose."[60] Time Warner's apparent widespread violation of the Commission's 30-day notice requirement thus plainly undermines this important statutory objective.[61]

34. Time Warner also argues that, even if Commission action were appropriate here, the interim relief granted in the August 3 Order exceeds our statutory authority. We reject this argument as well. The August 3 Order directed Time Warner to reinstate carriage of the NFL Network on all of its newly acquired systems "on the same terms under which it was carried prior to August 1, 2006, until we are able to resolve the NFL's Petition on the merits."[62] Thus, in light of the showing made by the NFL, we merely returned the parties to the status quo ante to allow time for full consideration of the matter. Under section 4(i) of the Communications Act, "the Commission has been explicitly authorized to issue 'such orders, not inconsistent with this (Act), as may be necessary in the execution of its functions.'"[63] Indeed, the Supreme Court affirmed the Commission's authority to impose such interim injunctive relief, in the form of a stand-still order, pursuant to section 4(i) in the *Southwestern Cable* decision.[64]

35. Contrary to Time Warner's argument, the August 3 Order did not rely on section 4(i) for "independent substantive authority."[65] Rather, the interim relief we ordered here represents the agency's enforcement of 47 U.S.C. §§ 543 and 552. In enforcing those statutes, section 4(i) merely authorizes us to tailor a remedy to "best meet the particular factual situation before [us]."[66]

36. Time Warner does not dispute that the Commission has statutory authority under 47 U.S.C. §§ 543 and 552 to promulgate a 30-day notice rule, and any such argument would run contrary to both the statutory text as well as the explicit endorsement of the 30-day notice rule contained in the 1996 Telecommunications Act's legislative history.[67] Thus, to the extent that the interim relief imposes a burden on Time Warner by forcing it to continue carrying the NFL Network on its newly acquired cable systems, the burden stems from customer service protections authorized by the Act. And because section 76.1603 is designed to protect subscribers from having programming services deleted without 30-days notice, directing that carriage be maintained until the network is removed pursuant to the requisite 30-

[58] *Cable Consumer Protection Order*, 8 FCC Rcd at 2893 ¶ 4.

[59] H.R. Rep. 104-204(I), 104th Cong., 1st Sess. at 112 (1995), reprinted in 1996 U.S.C.C.A.N. 10.

[60] *Id.*

[61] *See id.*

[62] August 3 Order, at ¶ 10.

[63] *United States v. Southwestern Cable Co*., 392 U.S. 157, 181 (1968), (quoting 47 U.S.C. § 154(i)).

[64] *Id. See AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd 14508 (1998) (stand-still order issued pursuant to 47 U.S.C. § 154(i) temporarily preventing Ameritech from enrolling additional customers in, and marketing and promoting, a "teaming" arrangement with Qwest Corporation pending a decision concerning the lawfulness of the program); *Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, 12 FCC Rcd 22497, 22566 ¶ 159 and n. 464 (1997) (stating that the Commission has authority under section 4(i) of the Act to award injunctive relief).

[65] Petition for Reconsideration at 11.

[66] *Ashtabula Cable TV, Inc. v. Ashtabula Tel. Co.*, 17 FCC 2d 113, 119 ¶ 116, *recon. denied*, 18 FCC 2d 193 (1969).

[67] *See supra* ¶ 33.

days notice, or sooner if we are able to resolve the merits of a complaint – in a case where there is a substantial likelihood that section 76.1603 has been violated – is well within our authority under the Act.

37. Finally, Time Warner's reliance on *Complaint of WFXV-TV Against United Cablevision of Southern Illinois, Inc.,* for the proposition that the August 3 Order imposed a drastic sanction is inapposite.[68] That case involved a situation where a cable operator was found to have terminated carriage of a low-power television station without providing the station itself with 30-days notice in violation of the Commission's rules.[69] However, unlike the 30-days notice rule involving subscribers, the rule that a broadcast station is entitled to 30-days notice before carriage is discontinued is not a consumer protection regulation. Indeed, in *WFXV-TV*, the Commission explicitly found the cable operator *had complied* with the rule that subscribers receive 30-days notice before its carriage of the low-power station was discontinued. As a result, *WFXV-TV* lends no support to Time Warner's argument.[70]

IV. CONCLUSION

38. In the end, our role in this case is not to vindicate either the interests of the NFL or those of Time Warner. Rather, our lodestar is the interests of consumers. Here, the NFL has set forth a persuasive case that subscribers across the country were not provided with the requisite 30-days notice before Time Warner dropped the NFL Network from their cable systems. The interim relief we have granted provides a remedy for these subscribers until we are able to resolve the NFL's Petition.

V. ORDERING CLAUSES

39. Accordingly, **IT IS ORDERED**, that pursuant to sections 4(i), 623, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 543, and 552, and 47 C.F.R. §§ 0.283, 0.61, 76.7, and 76.1603, Time Warner Cable shall continue to carry the NFL Network on all systems newly acquired from Adelphia Communications and Comcast Corporation on the same terms under which the NFL Network was carried on those systems prior to August 1, 2006 until the NFL's Petition is resolved on the merits or until 30 days after Time Warner has provided affected customers with adequate notice of its decision to drop the NFL Network, whichever comes first.

[68] *See* Petition for Reconsideration at 13.

[69] *See Complaint of WFXV-TV Against United Cablevision of Southern Illinois, Inc.*, 16 FCC Rcd 433 (2000), *recon. denied*, 18 FCC Rcd 22782 (2003).

[70] In *WFXV-TV*, the Commission in dicta did note that even had it found that the form of notice provided to subscribers by the cable operator had been improper, it would not have imposed a carriage remedy there. Given that the Commission in that case was issuing its decision on reconsideration *almost six years* after the low-power station had been dropped by the cable operator, it should come as no surprise that the Commission would note that a finding of a violation of the 30-days notice requirement would not have justified a carriage remedy many years after the fact. That case makes clear the importance of swift Commission action to maintain the status quo. Here, by contrast, we are confronting a case where the NFL is seeking temporary carriage (as opposed to permanent carriage) and where such relief has been granted only days after the programming was dropped. Moreover, in *WFXV-TV*, it was undisputed that the cable operator did attempt to provide 30-days notice to subscribers and the only question in dispute was whether the particular form of notice utilized was proper. Here, by contrast, Time Warner makes no claim that it made any effort to provide subscribers with 30-days notice.

40. **IT IS FURTHER ORDERED**, that Time Warner's Application for Stay, Petition for Reconsideration, and Request for Referral to the Full Commission are DENIED.

41. Finally, **IT IS FURTHER ORDERED**, that the Media Bureau SHALL IMMEDIATELY NOTIFY the NFL and Time Warner Cable of this Order and SHALL SEND it to the NFL and Time Warner Cable, by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau