



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

CABLE TELEVISION

IN THE MATTER OF TIME WARNER CABLE COMPANY)
REQUEST FOR WAIVER, AS WITHIN TIME, OF THE)
NOTICE REQUIREMENT FOR FILING OF AN)
ALTERATION IN CHANNEL ALLOCATION PURSUANT)
TO N.J.A.C. 14:18-3.17(A) AND (B))

ORDER
DOCKET NO. CO10120971

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated October 21, 2010, Time Warner Cable Co. (TWC or Petitioner) sought a Board waiver, as within time, of the appropriate notice required for the filing of a notice of an alteration in channel allocation pursuant to N.J.A.C. 14:18-3.17., with respect to changes to ESPN Classic and ESPN Goal Line programming.

On September 17, 2010, TWC filed a notice of an alteration in channel allocation with the OCTV for the addition of ESPN Goal Line programming effective on September 4, 2010. Subscribers were notified on the same day via newspaper publication in the Bergen Record. Municipal notification was accomplished through notices faxed and mailed first class on September 17, 2010.

Additionally, on October 1, 2010, TWC filed a notice of an alteration of channel allocation with the OCTV for the purpose of changing ESPN Classic from a separate Digital Tier channel to become a part of its Sports Pass programming, effective on September 22, 2010. Municipal officials were notified via fax and first class letters on October 1, 2010. Subscribers were also notified on October 1, 2010 through on-screen crawl notifications and via newspaper publication in the Bergen Record.

TWC maintains that the OCTV had been advised in the summer of 2010 that it was having difficult negotiations with Disney, which owns the ESPN programming channels, and that it might be required to discontinue carriage of the Disney-owned channels without having the ability to provide advanced notice of same. However, it added that TWC and Disney achieved an agreement permitting TWC to continue carriage of the Disney-owned channels without interruption. TWC asserts that the agreement required it to add ESPN Goal Line to its channel

lineup and quickly move ESPN Classic from the Digital tier to its Sports Pass package. TWC contends that in the haste of taking care of the foregoing, it inadvertently failed to fully comply with the notice requirements of N.J.A.C. 14:18-3.17.

N.J.A.C. 14:18-3.17(a) provides that cable television companies file written notice of an alteration in channel allocation on a form prescribed by the director with the OCTV in advance prior to the effective date for channel additions and at least 30 days prior to the effective date with respect to channel deletions.

N.J.A.C. 14:18-3.17(b) provides that each cable television company notify its customers and affected municipalities in advance prior to the effective date of a channel addition and at least 30 days prior to the effective date of a channel deletion in a manner reasonably calculated to provide such information.

N.J.A.C. 14:18-3.17 (c) (3) provides for the relaxation of the time for providing notification upon a showing by the cable television operator that the cable television operator has acted to provide the required notice at the earliest possible date and the programming service has been discontinued or withdrawn by the provider in such a manner as to leave the cable television operator without sufficient time to comply.

Upon review, it appears that TWC failed to provide the required notice at the "earliest possible date," pursuant to N.J.A.C. 14:18-3.17(c) (3), as the notice with respect to moving the ESPN Classic from a Digital tier to become a part of TWC's Sports Pass package was late by approximately six weeks since the company could have made a timely notice on August 21, 2010.

Further it took almost two weeks after the effective date of the addition of ESPN Goal line for TWC to provide notice.

In addition, as noted above, N.J.A.C. 14:18-3.17(c) (3) provides that relaxation of the notification requirements may be granted in instances where "[t]he programming service has been discontinued or withdrawn by the provider in such a manner as to leave the cable television operator without sufficient time to comply." However, that does not appear to be the case in both instances. ESPN Goal Line involves an addition of a channel, and therefore the programming service has not been discontinued or withdrawn. Neither does it apply to the deletion of the ESPN Classic from the digital tier. ESPN Classic was removed from the digital tier and moved to the Sports Pass package. It was not withdrawn or discontinued.

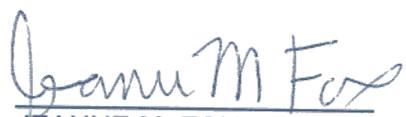
Having reviewed this matter, the Board HEREBY FINDS that the waiver is unwarranted under the present circumstances. The Board FURTHER FINDS that TWC did not make a sufficient good faith effort to provide the OCTV, its subscribers, affected municipalities with any advance notice prior to altering its programming as required by regulation. Furthermore, TWC failed to justify its late notices. Thus, the Board concludes that TWC failed to act at the "earliest possible date" in accordance with N.J.A.C. 14:18-3.17(c)(3). Further, the provisions for relaxing the notification requirements were not applicable to either instance. Therefore, the Board HEREBY

DENIES, as within time, Petitioner's request for a waiver of the alteration in channel allocation filing requirements as permitted under N.J.A.C. 14:18-3.17.

DATED: 4/27/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT

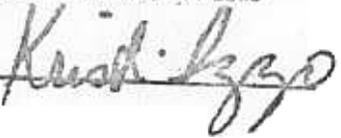

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ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities


SERVICE LIST

**IN THE MATTER OF TIME WARNER CABLE REQUEST FOR WAIVER, AS WITHIN TIME,
OF THE 30-DAY NOTICE PERIOD FOR FILING OF AN ALTERATION IN CHANNEL
ALLOCATION PURSUANT TO N.J.A.C. 14:18-3.17(A) AND (B)**

DOCKET NO. CO10120971

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