[US] The Fox News Channel and Time Warner Cable go to Court over cable carriage

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The reach of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") has again been tested by an incident involving large broadcast and cable concerns. The latest confrontation occurred when Time Warner, the nation's second largest cable company, denied access to its cable system (in Europe referred to as `cable networks') in New York City to the Fox News Channel. Fox asserted that Time Warner denied access to Fox due to Time Warner's interests in CNN, another around-the-clock news service already carried by the Time Warner cable system. Fox turned to New York City and the Mayor's office for help, claiming that Time Warner was using its vertically integrated media holdings to keep Fox from reaching New York City viewers in competition with CNN.

Sympathetic to the claims by Fox, the City decided to place the Fox News Channel on one of the City's five "public access" channels. Under Section 5 of the 1992 Cable Act, cable operators are required to provide space on its cable systems for "public, educational, or governmental" purposes. The City claims that additional news outlets enhance the diversity of viewpoints on television, so carriage of the Fox News Channel consists of a "public" or "governmental" purpose. In addition, the City relies on a franchise agreement which allows the City to use five channels for any "lawful, governmental purpose." Time Warner, however, won a preliminary injunction from the US District Court in late November 1995 and has sought a restraining order against the City from placing the Fox News Channel on any of the City-controlled channels. Time Warner asserts that neither the 1992 Cable Act nor the municipal franchise agreement allows the City to place commercial programming on any of the City-controlled channels. Commercial channels are covered by a separate provision of the 1992 Cable Act, referred to as the "leased access" provisions. Section 5 specifically refers to non-commercial programming.

Further, Time Warner contends that the City's actions are a violation of Time Warner's First Amendment rights of free speech because it forces Time Warner to air specific commercial programming on its cable systems. Rather than protecting speech, Time Warner claims, the City's actions advance the interests of a particular speaker. Under established US case law, regulation of speech may not advance the views of any particular speaker, or class of speakers. The Court accepted this reasoning on 6 November 1996.

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Time Warner Cable of New York City v. City of New York, F. Supp., 96 CIV. 7736 (S.D.N.Y. November 6, 1996).

http://www.cmcnyls.edu/public/USCases/TimeWNYC.HTM

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