

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
HAZEL WILLIAM JEFFRIES,
Debtor.

Case No. 97-28010-L
Chapter 13

MEMORANDUM

Before the Court is a motion filed by the Debtor on June 4, 1998 styled "Motion to Add and Provide for Payment of Prepetition Debt and for the Court Determine [sic] Pursuant to 11 U.S.C. § 366 the Adequate Assurance of Future Payment Necessary for Time Warner Communications ("Time Warner") to be Required to Provide Future Cable Service to Debtor." Time Warner has objected to the motion on the basis that cable television service is not a utility for purposes of Section 366. For the reasons set forth below, the Court concludes that the Debtor's motion should be granted in part and denied in part. The following constitutes the Court's findings of fact and conclusions of law pursuant the FED. R. BANKR. P. 7052. This is a core proceeding. *See* 28 U.S.C. § 157(b)(2)(B) and (O).

I. BACKGROUND FACTS

The essential background facts are not in dispute. The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on June 4, 1997. Sometime thereafter, she attempted to have cable television service provided to her home, whereupon she learned of an outstanding bill to Time Warner in the amount of \$166.79. Time Warner refuses to provide service to the Debtor until this debt is paid in full. The Debtor seeks to pay the debt through her plan. She claims to need cable

television service for her six children , ages 17,15, 13, 11, 8 and 3. As stated, the Debtor's motion was filed June 4, 1998, one year after the filing of her petition and the entry of the order for relief.

The Court is immediately struck by the fact that the Debtor has not enjoyed cable television service for the past five years. The Debtor informed the Court that she was unaware of the outstanding debt to Time Warner until she attempted to obtain service after the filing of her case.

II. ANALYSIS

Bankruptcy Code Section 366 provides:

(a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date for the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

11 U.S.C. § 366.

Time Warner correctly points out that the Debtor's motion was filed well beyond twenty days after the date of the order for relief. Thus, the Debtor's request is untimely and may be denied on that basis alone.

Further the Court is not persuaded that cable television service is a utility within the contemplation of Section 366. As pointed out in the brief filed by Time Warner, cable television service was not among the utilities listed in the House Judiciary Report concerning Section 366. The examples given are those of “an electric company, gas supplier, or telephone company that is a monopoly in the area so the debtor cannot easily obtain comparable service from another utility.” H. Rept. No. 95-595, 95th Cong. 2d Sess. 350 (1977). The Court takes notice that there are at least five broadcast television stations in the Memphis area, each of which provides a wide variety of programming, both entertaining and educational. It therefore does not appear that Time Warner holds a monopoly as contemplated in Section 366. Further, the Court agrees with the analysis of Bankruptcy Judge Catharine R. Carruthers who, when faced with the identical issue, concluded that “[e]ven if there were no alternative service available to the Debtor, cable television does not rise to the level of importance of other utilities listed under the legislative history.” *In re Moorefiled*, 218 B.R. 795, 797 (Bankr. M.D.N.C. 1997).

The Debtor in this case has managed to raise her children without cable television service for the prior five years. The Court does not believe that Congress intended that the filing of a bankruptcy petition place bankruptcy debtors in a better position than other consumers of cable television service, only that bankruptcy debtors not be discriminated against in the provision of necessary utility services.

Accordingly, the Court will enter a separate order granting in part and denying in part the Debtor’s motion. Time Warner may be added to the Debtor’s plan as a prepetition unsecured

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creditor, but Time Warner will not be compelled to provide cable television service to the Debtor until the outstanding debt to it is fully paid.

BY THE COURT

JENNIE D. LATTA
United States Bankruptcy Judge

Date: August 26, 1998

cc: Debtor
Debtor's Attorney
Creditor's (Time Warner) Attorney
United States Trustee
Chapter 13 Trustee
All Creditors