

ATTACHMENT 1

Time Warner Cable Inc., a Delaware corporation (“TWC”) (“Transferee”) and Insight Communications Company, Inc., a Delaware corporation, and its subsidiaries (“Insight” or “the Company,” together with TWC, the “Applicants”) submit this attachment to their Application to transfer control of Insight Midwest Holdings, LLC (“Insight Midwest”), which holds international Section 214 authority under FCC File Nos. ITC-214-19970801-00449; ITC-T/C-20040723-00403, to TWC, in the Federal Communications Commission’s (“FCC’s” or “Commission’s”) International Bureau Filing System (“IBFS”).

Answer to Question 10. The information required by 47 C.F.R. § 63.18(c) and (d) is contained in the attached Joint Application¹ at pages 4 through 6. Insight Midwest currently holds international Section 214 authority to provide global resale service under FCC File Nos. ITC-214-19970801-00449; ITC-T/C-20040723-00403. Comcast Phone, LLC is reflected as the holder of ITC-214-19970801-00449 but partially assigned this authorization to Insight Midwest, Insight’s indirect, wholly owned subsidiary. A more detailed history of the authorization held by Insight Midwest is included in the Joint Application at Section III.A.(d) on pages 5 through 6.

Answer to Question 11. Additional information regarding the ownership of the Applicants is contained in the Joint Application at pages 6 through 7.

Answer to Question 13. The Joint Application contains a description of the transfer of control transaction at page 3. The Joint Application also provides support for the Commission’s conclusion that the public interest, convenience and necessity would be furthered by a grant of

¹ *Insight Communications Company, Inc., Transferor, and Time Warner Cable Inc., Transferee*, Joint Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Domestic and International Section 214 Authorizations, and Waiver Pursuant to Section 652(d) (Sept. 6, 2011) (“Joint Application”).

this application for transfer of control of Insight’s international Section 214 authorization requested herein.

Answer to Question 16. This question is not applicable to TWC. As indicated in response to Questions 14 and 15, TWC is not a foreign carrier in any country, nor is it affiliated with any foreign carrier. Therefore, TWC should continue to be classified as a non-dominant carrier pursuant to 47 C.F.R. § 63.10(a)(1).

Answer to Question 20. This application satisfies the criteria for streamlined processing pursuant to section 63.12(a) of the Commission’s rules,² because none of the provisions of Section 63.12(c) of the Commission’s rules, which would prevent streamlined treatment, apply to the proposed Transaction. Specifically, TWC is not affiliated with a foreign carrier in a destination market, nor does it have an affiliation with a dominant U.S. carrier whose international switched or private line services it seeks authority to resell.³ Therefore, pursuant to Section 63.12(a) of the Commission’s rules, the Commission should grant this application fourteen days after the date of public notice listing this application as accepted for filing.

² 47 C.F.R. § 63.12(a).

³ *Id.* § 63.12(c)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Insight Communications Company, Inc.,)
Transferor)
)
and)
)
Time Warner Cable Inc., Transferee)
)
Application for Authority Pursuant to)
Section 214 of the Communications Act)
of 1934, as Amended, to Transfer Control)
of Domestic and International Section 214)
Authorizations, and Waiver Pursuant to)
Section 652(d))

JOINT APPLICATION

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Dated: September 6, 2011

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Section 214 of the Communications Act)
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Authorizations, and Waiver Pursuant to)
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)

JOINT APPLICATION

Time Warner Cable Inc., a Delaware corporation (“TWC”), and Insight Communications Company, Inc., a Delaware corporation, and its subsidiaries (“Insight” or “the Company,” together with TWC, the “Applicants”) hereby request authority pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”), and Sections 63.04 and 63.24(e) of the Commission’s rules, to transfer control of Insight (the “Transaction”) from its current shareholders to TWC.¹ Insight, through its subsidiaries, holds domestic and international Section 214 authority to provide telecommunications services. As described herein and in the parties’ separate applications relating to Insight’s other FCC licenses and authorizations, the Transaction will promote the public interest by joining two non-dominant providers of voice and data

¹ 47 U.S.C. § 214; 47 C.F.R. §§ 63.04, 63.24(e).

telecommunications offerings, which will enable the combined company to compete more effectively against incumbent local exchange carriers (“ILECs”), with respect to both residential and business class services. To the extent that Section 652(b) of the Act applies to the Transaction, the parties seek a waiver of that buyout restriction pursuant to Section 652(d).² Because Insight’s and TWC’s respective networks generally do not overlap and Insight’s provision of telephone exchange service within TWC’s franchise areas is *de minimis*, the Applicants submit that the waiver criteria set forth in Section 652(d) are easily satisfied.

I. DESCRIPTION OF THE APPLICANTS

A. Time Warner Cable Inc.

TWC is a publicly traded corporation organized under the laws of the state of Delaware and, through its operating subsidiaries, is the fourth largest multichannel video programming distributor (“MVPD”) in the United States. TWC provides video, broadband Internet access, telecommunications, and Voice over Internet Protocol (“VoIP”) services to residential and business customers in 28 states across the nation. TWC is authorized to operate as a telecommunications carrier in Alabama, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, and Wisconsin. TWC also provides various retail and wholesale telecommunications to business customers in these states. TWC’s financial, technical, and legal qualifications to acquire Insight are matters of public record.

² 47 U.S.C. § 572(b); 47 C.F.R. § 76.505(b).

B. Insight Communications Company, Inc.

Insight is a technologically advanced cable operator that operates in Indiana, Kentucky, and Ohio. Insight provides cable television, broadband Internet access, voice telephony, and data telecommunications services to residential and business customers. Insight offers voice services to customers in all of its markets, primarily as a provider of VoIP, but also as a provider of circuit-switched telephone exchange service to a small number of legacy customers in certain areas.³ The Company also offers IP-based telecommunications on a wholesale and retail basis to business customers.

II. DESCRIPTION OF THE TRANSACTION

On August 15, 2011, Insight, TWC, and Derby Merger Sub Inc. (“Derby”), a wholly owned subsidiary of TWC, entered into an agreement pursuant to which TWC will acquire control of Insight. The acquisition will occur through a merger of Insight and Derby, which is a special-purpose subsidiary of TWC, with Insight as the surviving entity. As a result of the merger, Insight will be a wholly owned, direct subsidiary of TWC. All of Insight’s existing subsidiaries that hold FCC licenses or authorizations will remain intact and will continue to hold their operating tangible and intangible assets, and will become indirect, wholly owned subsidiaries of TWC, and thus subject to the ultimate control of TWC.

The Transaction will not cause any interruption in service to customers. No existing service will be discontinued, reduced, or impaired in conjunction with the Transaction, nor will the Transaction cause any immediate change to any customer’s service provider.⁴ To the

³ As noted below, Insight was not providing telephone exchange service as of January 1, 1993 and thus has no “telephone service area” within the meaning of 47 U.S.C. § 572(e).

⁴ If and when TWC or the Company seeks to discontinue any telecommunications service and/or migrate customers to a new provider at some point following the Transaction, it

contrary, as described below, the Transaction will enhance the Company's ability to deliver high-quality telecommunications services.

III. INFORMATION REQUIRED BY SECTIONS 63.04 AND 63.24 OF THE COMMISSION'S RULES

In accordance with Sections 63.04 and 63.24(e)(2) of the Commission's rules, the Applicants submit the following information in support of this Application.

A. Information Required by 47 C.F.R. § 63.24

In accordance with 47 C.F.R. § 63.24(e)(2), the Applicants submit the following information requested in 47 C.F.R. § 63.18(a) through (d) for TWC and Insight, and information requested in 47 C.F.R. § 63.18(h) through (p) for TWC:

- (a) Insight has a principal business address of 810 7th Avenue, 41st Floor, New York, New York, 10019 and a telephone number of (917) 286-2300.

TWC has a principal business address of 60 Columbus Circle, New York, New York, 10023 and a telephone number of (212) 364-8200.

- (b) Both Insight and TWC are corporations organized under the laws of the State of Delaware.
- (c) Correspondence concerning this Application should be addressed to:

For Insight:

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will do so in compliance with the procedures set forth in Sections 63.71 and 64.1120(e) of the Commission's rules. 47 C.F.R. §§ 63.71, 64.1120(e).

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- (d) Insight is authorized to provide domestic interstate common carrier services pursuant to 47 C.F.R. § 63.01. Insight's indirect, wholly owned subsidiary, Insight Midwest Holdings, LLC, holds international Section 214 authority to provide global resale service (FCC File Nos. ITC-214-19970801-00449; ITC-T/C-20040723-00403).⁵ Insight obtained this authorization in 2004 as part of

⁵ The global resale authorization was originally granted to TCI Telephony Services of Connecticut, and through a series of transactions and name changes, was held by Comcast Phone, LLC ("Comcast Phone"). *See* Transfer of Control of Telecommunications, Inc. to AT&T Corp., File No. ITC-T/C-19980914-00635 (granted Feb. 18, 1999) (TCI Telephony Services of Connecticut, Inc. changed its name to AT&T Broadband Phone of Connecticut, Inc. in March 2001); Transfer of Control of AT&T Corp. to AT&T Comcast Corp., File No. ITC-T/C-20020228-00138, (granted November 13, 2002) (AT&T Broadband Phone of Connecticut changed its name to Comcast Phone

a transaction through which it acquired certain subsidiaries of Comcast Phone.⁶ Insight also assigned certain assets that included telephone operations to Comcast in 2007.⁷

TWC is authorized to provide domestic interstate common carrier services pursuant to 47 C.F.R. § 63.01. TWC subsidiary, TWC Communications LLC, holds international Section 214 authority for global facilities-based and global resale services (FCC File No. ITC-214-20030117-00043). This authorization was originally granted to Time Warner Cable Information Services (Maine), LLC, and was assigned to TWC Communications, LLC in a *pro forma* transaction.⁸

(h) TWC

No person owns a 10 percent or greater direct or indirect interest in TWC. TWC is a publicly traded United States corporation organized under the laws of the State of Delaware with a principal place of business at 60 Columbus Circle, New York, New York, 10023. TWC's principal business is providing video, broadband Internet access, telecommunications, and VoIP services to residential and business customers. Upon the consummation of the Transaction, TWC will directly own and control all of the voting and equity stock of Insight. TWC does not have any interlocking directorates with a foreign carrier.

of Connecticut, Inc. by letter dated March 18, 2003 (Pub. Notice DA 03-942, rel. Mar. 27, 2003)); Assignment from Comcast Phone of Connecticut to Comcast Phone, LLC, File No. ITC-ASG-20021122-00615, (granted Aug. 13, 2003); Transfer from Comcast Phone, LLC to Insight Midwest Holdings, LLC, File No. ITC-T/C-20040723-00403 (granted Oct. 29, 2004).

⁶ FCC Wireline Competition Bureau, *Notice of Streamlined Domestic 214 Application Granted*, WC Docket No. 04-292, DA 04-3587 (Nov. 15, 2004); Transfer from Comcast Phone, LLC to Insight Midwest Holdings, LLC, File No. ITC-T/C-20040723-00403 (granted Oct. 29, 2004). Pursuant to the International Bureau's applicable practices at the time of this transaction, carriers obtaining a partial assignment or transfer of an International Section 214 authorization were not issued a new "214" file number. Therefore, Comcast Phone retains authority to provide service under the same International Section 214 authorization and is still reflected as the holder of authorization File No. ITC-214-19970801-00449 in the International Bureau's database. Insight's authority to provide international common carrier services is pursuant to File No. ITC-T/C-20040723-00403.

⁷ The Commission approved the assignment under WC Docket No. 07-263, effective Dec. 22, 2007. *See* Notice of Domestic Section 214 Authorizations Granted, Public Notice, DA 07-5097 (rel. Dec. 26, 2007).

⁸ *See* FCC File No. ITC-ASG-20080520-00229.

Insight

The 10 percent or greater owners of Insight Communications Company, Inc. are CVMO Acquisition, LLC, which holds 43 percent of the equity, and The Carlyle Group, which holds 43 percent of the equity through four entities under its control. The 10 percent or greater owners of CVMO Acquisition, LLC are Crestview Partners II, L.P., which holds 47.96 percent of the equity and MidOcean Partners III, L.P., which holds 12.65 percent of the equity. Crestview Partners II is controlled by Crestview Partners, and MidOcean Partners III is controlled by MidOcean Partners. The principal business of each of the listed direct and indirect owners of Insight Communications Company is investments, and each is organized in the United States. The address for CVMO Acquisition, Crestview Partners II and CrestView Partners is 667 Madison Avenue, 10th Floor, New York, New York 10065. The address for MidOcean Partners III and MidOcean Partners is 320 Park Avenue, Suite 1700, New York, New York 10022. The address for The Carlyle Group and the other Carlyle entities is 520 Madison Avenue, 42nd Floor, New York, New York 10022.

- (i) TWC certifies that it is not a foreign carrier in any country, nor is it affiliated with any foreign carrier.
- (j) TWC certifies that it does not seek to provide international telecommunications services to any destination country to which 47 C.F.R. § 63.18(j)(1) through (j)(4) applies.
- (k)-(m) Sections (k) through (m) of 47 C.F.R. § 63.18 are not applicable to TWC because it is not affiliated with any foreign carrier.
- (n) TWC certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- (o) TWC and Insight certify, pursuant to 47 C.F.R. §§ 1.2001 through 1.2003, that no party to this Application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) The Applicants request streamlined processing of this Application to transfer control of Insight's international Section 214 authorization pursuant to 47 C.F.R. § 63.12. TWC is not affiliated with a foreign carrier in a destination market, nor does it have an affiliation with a dominant U.S. carrier whose international switched or private line services it seeks authority to resell.⁹ Therefore, pursuant to section 63.12(a) of the Commission's rules, the

⁹ 47 C.F.R. § 63.12(c).

Commission should grant this Application fourteen days after the date of public notice listing this Application as accepted for filing.

B. Information Required by 47 C.F.R. § 63.04

In accordance with section 63.04(b) of the Commission's rules,¹⁰ which specifies the contents required of joint international and domestic Section 214 transfer of control applications, in addition to the information required in international Section 214 authorizations by 47 C.F.R. § 63.18, the Applicants submit the following information, as described in 47 C.F.R. § 63.04(a)(6) through (a)(12):

(6) Description of the transaction.

The transaction is described at Section I of this Application.

(7) Description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area.

The respective services and operating areas of TWC and Insight are as described in Section I above.

(8) Statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment.

This Application satisfies the criteria set forth in Section 63.03(b)(2) for presumptive streamlined processing because: (i) the Applicants have a market share in the interstate interexchange market of less than 10 percent, (ii) the Applicants provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the Transaction, and (iii) the

¹⁰ *Id.* § 63.04(b).

Applicants are not dominant with respect to any telecommunications service.¹¹ As the Commission has explained, “[w]here facilities-based carriers proposing to combine are not dominant with respect to any service . . . , it is extremely unlikely that the proposed combination could result in a public interest harm, particularly where their combined market shares are relatively low.”¹² Although the approval of the overall Transaction will be subject to the grant of the Section 652 waiver request, consent to the transfer of control relating to the domestic Section 214 authorization should be processed on a streamlined basis.

(9) Identification of all other Commission applications related to the same transaction.

The Applicants have filed simultaneous applications with the Commission’s Wireless Telecommunications Bureau and International Bureau seeking authority to transfer to TWC control of Insight’s subsidiaries that hold FCC licenses relating to Insight’s cable systems.

(10) Statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure.

The Applicants are not requesting such special consideration of this Application.

(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction.

The Applicants request a waiver of Section 652(b) of the Act in Section V below. There are no other separately filed waiver requests being sought in connection with the Transaction.

¹¹ *Id.* § 63.03(b)(2); *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, 17 FCC Rcd 5517 ¶ 28 (2002) (“*Streamlining Order*”) (Streamlined treatment is “presumed to apply” when “neither of the applicants is dominant with respect to any service . . . [and] where a transaction would result in a transferee having a market share in the interstate, interexchange market of less than 10 percent, and the transferee would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction.”).

¹² *Streamlining Order* ¶ 30.

(12) Statement showing how grant of the application will serve the public interest, convenience and necessity.

This Application serves the public interest, convenience and necessity, as discussed in Section IV below.

IV. THE TRANSACTION WILL PROMOTE THE PUBLIC INTEREST

As described more fully in the public interest statement accompanying the Applicants' related license transfer applications, the Commission's approval of this Application will serve the public interest, convenience, and necessity. In addition to the general merger synergies and the benefits relating to cable television and broadband Internet access services, the Transaction will strengthen the combined company's ability to compete with dominant incumbent LECs (including, in particular, AT&T) in the provision of voice and data telecommunications services and otherwise will benefit Insight's customers in several different respects.

First, the integration of Insight's voice and data networks with TWC's adjacent facilities will maximize the combined company's ability to compete with the dominant ILEC, AT&T. The combination of these networks will create operating efficiencies as well as scale and scope advantages in procuring key inputs, such as long-distance service, 911 connectivity, and directory assistance and other database services. Whereas Insight operates only within three states, TWC's far broader footprint will create various advantages for the combined company, such as the ability to eliminate redundant facilities and to rely on regional soft switches, gateways, and other network equipment. By lowering the combined company's cost structure and facilitating the delivery of high-quality, innovative services, these network-integration and procurement efficiencies will bolster the company's ability to deliver benefits to its customers and to compete with the dominant ILEC in each service area. Given the massive scale and nationwide reach of AT&T, a leading competitor to Insight, the combination with TWC will be

vital to Insight’s ability to compete in market segments for which a broader footprint are advantageous, if not essential, such as enterprise services for companies with operations that extend beyond Insight’s current service area. Indeed, the Commission has recognized that increased “clustering” of cable systems translates into competitive benefits for purchasers of voice and data services (in addition to video services).¹³

Second, the Transaction will maximize Insight’s ability to harness the efficiencies enabled by Internet Protocol (“IP”) technologies and avoid the costs associated with operating different types of networks. The Commission has acknowledged the multifaceted benefits of IP networks—including lower operating costs and innovative features—and thus has affirmatively encouraged carriers to replace traditional circuit-switched networks with IP networks.¹⁴ Insight relies primarily on IP technology in providing voice services to its customers today, but continues to serve more than 73,000 customers using legacy circuit-switched technology.¹⁵

¹³ See, e.g., *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifth Annual Report, 13 FCC Rcd 24284 ¶ 144 (1998) (noting that “clustering makes cable providers a more effective competitor to LECs whose service areas are usually larger than a single cable franchise area”).

¹⁴ See, e.g., *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 ¶¶ 505-06 (2011) (seeking to “encourage carriers to more rapidly deploy broadband facilities and IP based services” through intercarrier compensation and universal service reforms) (internal citations and quotation marks omitted); Omnibus Broadband Initiative, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, at 49, 59 (2010) (making recommendations to encourage carriers to transition to IP-based networks).

¹⁵ Insight does not offer circuit-switched service to any new customers and is relying on attrition to reduce its base of circuit-switched customers over time.

TWC's voice services, by contrast, consist solely of VoIP, enabling it to operate more efficiently. Therefore, TWC is ideally positioned to assist Insight in expanding its IP-based services.¹⁶

Third, the Transaction will entail particular benefits for medium-sized business and large enterprise customers, as well as wholesale customers including wireless carriers, as a result of TWC's extensive experience with such services and its broad array of service offerings. TWC has robust service options that will enable it to enhance the competitiveness of enterprise and wholesale services available in Insight's service territory. TWC has described its innovative enterprise offerings in prior submissions to the Commission, as well as its backhaul services for wireless providers, both of which offer critical alternatives to incumbent LECs' special access and other services.¹⁷ Moreover, TWC's recent acquisition of NaviSite, a leader in cloud computing services, will create further opportunities for enterprise customers to benefit from an integrated suite of managed services. Just as the integration of NaviSite's cloud-based services with TWC's IP-enabled networks will produce benefits for TWC customers, the Transaction will facilitate the ability of Insight's customers to obtain a wider range of highly reliable, scalable, and customizable service enhancements including Managed Cloud Services, Managed Application Services, Managed Messaging Services, and Enterprise Hosting.¹⁸

¹⁶ TWC has experience in implementing IP-based platforms. *See, e.g.*, Public Notice, *Comments Invited on Application of Time Warner Cable Information Services (Texas), L.P. d/b/a Time Warner Cable to Discontinue Domestic Telecommunications Services*, DA 07-4724, WC Docket No. 07-266 (rel. Nov. 27, 2007) (seeking comment on TWC discontinuance of circuit-switched services previously provided by Adelphia, as part of TWC's transition of affected customers to its VoIP services).

¹⁷ *See, e.g.*, Comments of Time Warner Cable, *Business Broadband Marketplace*, WC Docket No. 10-188 (filed Oct. 15, 2008) (describing High Speed Internet Access, Dedicated Internet Access, Metro Ethernet, and Cell Backhaul, among other services).

¹⁸ *See* NAVISITE, <http://www.navisite.com> (last visited Sept. 1, 2011).

Finally, the Transaction will not diminish competition in any relevant market or otherwise harm the public interest. For purposes of the Commission's analysis under Section 214, the Transaction poses no threat to competition because TWC and Insight generally do not compete in the provision of voice or data services. As discussed further below, the companies' networks overlap to a *de minimis* degree in and around Columbus, Ohio. That overlap consists of approximately 2,600 households, which represent less than 0.2 percent of the more than 1.34 million homes passed by Insight's facilities overall. Insight and TWC's respective networks overlap by only approximately 90 plant miles, which represent approximately 0.55 percent of Insight's roughly 16,500 total plant miles. The fact that the companies overwhelmingly serve separate geographic areas demonstrates that the Transaction will not result in harm to competition or related public interest concerns.¹⁹

V. THE COMMISSION SHOULD GRANT A WAIVER OF THE CABLE-LEC BUYOUT RESTRICTION PURSUANT TO SECTION 652 OF THE ACT

Section 652(b) of the Act generally prohibits a cable operator from acquiring a LEC that provides telephone exchange service within the cable operator's franchise area.²⁰ As explained

¹⁹ See, e.g., *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Docket 09-95, Memorandum Opinion and Order, FCC 10-87 ¶¶ 15-16 (rel. May 21, 2010) ("Because [the parties] do not currently compete against each other in the transaction market area, the transaction does not appear likely to have adverse effects on existing competition."); see also *Streamlining Order* ¶ 30 (providing for streamlined approval of transactions between non-dominant providers of telecommunications services, even where they do compete, based on the very low likelihood of competitive harm from such transactions).

²⁰ Section 652(b) of the Act states:

No cable operator or affiliate of a cable operator that is owned by, operated by, controlled by, or under common ownership with such cable operator may purchase or otherwise acquire, directly or indirectly, more than a 10 percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area.

47 U.S.C. § 572(b). See also 47 C.F.R. § 76.505(b).

in detail in a pending petition for declaratory ruling filed by the National Cable and Telecommunications Association, the Commission could reasonably interpret Section 652(b) as applying only to covered transactions involving a cable operator and *incumbent* LEC (as opposed to a competitive LEC (“CLEC”), such as the Insight subsidiaries at issue here, that did not provide telephone exchange service as of January 1, 1993).²¹ Although the Applicants believe that such an interpretation would best effectuate Congress’s intent, this Application seeks a waiver under Section 652(d) in the interest of obtaining approval for the proposed Transaction as expeditiously as possible. As set forth below, to the extent that Section 652(b) applies, a waiver is plainly appropriate because the Transaction presents almost no competitive overlap, is strongly pro-competitive, and does not remotely involve the types of concerns that Section 652(b) was enacted to address. The Applicants therefore request that the Commission process this Application on the basis of their waiver request, and accordingly assume that Section 652(b) applies to this Transaction without deciding more generally whether Section 652(b) applies to a cable operator’s acquisition of a CLEC.²²

Under Section 652(d)(6) of the Act, the Commission may waive the buyout restriction in Section 652(b) where “the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served” and the local franchising authorities

²¹ See generally *Petition for Declaratory Ruling To Clarify 47 U.S.C. § 572 in the Context of Transactions between Competitive Local Exchange Carriers and Cable Operators*, WC Docket No. 11-118 (filed June 21, 2011).

²² In the event the Commission nevertheless chooses to address the broader question of the scope of Section 652(b) in this proceeding—*i.e.*, rather than in the pending declaratory ruling proceeding (WC Docket No. 11-118)—the Applicants request an opportunity to brief the pertinent legal issues in an appropriate filing.

(“LFAs”) in question approve of the waiver.²³ That standard is easily satisfied here. Although Insight provides telephone exchange service in a limited number of areas in which TWC holds a franchise, the Transaction will have no anticompetitive effects, because the two companies generally serve distinct geographic areas and therefore do not compete with one another. Moreover, the Transaction will strongly promote the public interest by enhancing the combined company’s ability to compete with dominant ILECs such as AT&T and delivering additional benefits to consumers.²⁴ Consistent with the Commission’s handling of Comcast’s recent acquisition of CIMCO, a Chicago-based CLEC, the Applicants request that the Commission adopt procedures that (1) enable the relevant LFAs to file comments expressing their approval or disapproval of the Applicants’ waiver request, and (2) deem an LFA to have approved the waiver request if it does not file comments within 60 days of being served with a copy of the Public Notice describing the approval procedure.²⁵

A. The Transaction Will Cause No Anticompetitive Effects

Even assuming Section 652(b) applies to cable-CLEC transactions, the instant Transaction for the most part would trigger that provision only in the highly technical sense that

²³ 47 U.S.C. § 572(d)(6)(A)(iii).

²⁴ *See supra* Section IV (explaining public interest benefits of the Transaction).

²⁵ *See* Public Notice, *CIMCO Communications, Inc. and Comcast Phone, LLC, Comcast Phone of Michigan, LLC, and Comcast Business Communications, LLC, for the Acquisition of Certain Customers and Assets of an Authorized Domestic and International Carrier*, WC Docket No. 09-183, FCC 09-104 (rel. Dec. 1, 2009) (adopting LFA approval procedures); Public Notice, *Application Filed for the Acquisition of Certain Assets and Authorizations of CIMCO Communications, Inc. by Comcast Phone LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC*, WC Docket No. 09-183 (rel. Jan. 29, 2010) (clarifying LFA approval procedures); *Applications Filed for the Acquisition of Certain Assets of CIMCO Communications, Inc. by Comcast Phone LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC*, Memorandum Opinion and Order and Order on Reconsideration, 25 FCC Rcd 3401 ¶¶ 25-31 (2010) (“*Comcast-CIMCO Order*”) (denying reconsideration and reaffirming validity of “deemed approved” procedure).

Insight provides telephone exchange service in certain areas that TWC is *authorized* to serve, but does not actually serve. TWC and Insight generally do not have overlapping networks or compete with one another despite holding overlapping franchises in certain communities. Thus, while Section 652(b) was intended to prevent the incumbent LEC from acquiring the incumbent cable operator or vice versa in any given area, and thereby gain control of the only two wires into the home, this Transaction does not remotely implicate such concerns about the loss of a major competitor.

The specific facts pertaining to Insight's provision of telephone exchange service in TWC's franchise areas underscore the absence of competitive harm flowing from the Transaction. Of the more than 200 Insight-authorized service areas, there are 26 local franchise areas in Ohio and three in Kentucky in which both TWC and Insight both hold a cable television franchise. Insight serves fewer than 4,000 telephone exchange customers in nine of those overlapping franchise areas. However, the vast majority of those customers reside in areas in which there is no actual overlap between the two companies' *networks*. Rather, subject to the *de minimis* exceptions described below, Insight provides its facilities-based telephone exchange service only within portions of TWC's franchise areas that TWC itself does *not* serve.

As a result, to the extent that Section 652(b) applies at all, it applies despite the absence of overlapping facilities or service offerings. In any event, because TWC and Insight generally do not compete with one another, the Transaction is incapable of diminishing competition. For the same reason, the Transaction plainly does not implicate the concerns that animated the enactment of Section 652. As the Commission has recognized, "Congress' main concern in enacting section 652, as indicated by the legislative history, was to avoid having a LEC purchase

a local cable operator and thus control both wires to consumers.”²⁶ Notwithstanding the fact that the Transaction will not combine a cable operator and an *incumbent* LEC (which means at least two wires invariably will reach every customer), no loss of competition between TWC and Insight as *CLECs* is possible because their facilities generally do not overlap and they therefore did not compete in the first place.

As noted above, TWC’s network does overlap with Insight’s to a very limited degree in and around Columbus, Ohio. Specifically, Insight provides telephone exchange service to 27 residential customers whose homes are passed by TWC’s facilities. Overall, the area in which the companies’ networks overlap consists of approximately 2,600 households, or less than 0.2 percent of Insight’s 1.34 million homes passed, and approximately 90 plant miles (approximately 0.55 percent) out of a total of roughly 16,500 total plant miles in Insight’s network. Such a *de minimis* network overlap has no practical competitive significance when TWC and Insight serve hundreds of thousands of customers over tens of thousands of plant miles in Ohio. Both TWC and Insight are focused on competing against the dominant incumbent LEC and over-the-top VoIP providers in the voice services marketplace; the incumbent LEC likewise represents the dominant player and the competitive focal point with respect to data telecommunications.²⁷

²⁶ *Applications of Ameritech, Corp. & SBC Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 14712 ¶ 564 n.1081 (1999). *See also US West, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 4402 ¶ 4 (CSB 1998) (stating that “the premise of Section 652 is that if the LEC and the cable operator within its local markets are not owned by one entity ... there is a greater likelihood of competition as envisioned by the 1996 Act”); Edward J. Markey, *Cable Television Regulation: Promoting Competition in a Rapidly Changing World*, 46 FED. COMM. L.J. 1, 6 (1993) (“One company should not control both the phone and the cable wire running down the street. The goal of congressional action should be to preserve a two-wire, competitive world.”).

²⁷ TWC and Insight similarly compete against incumbent LECs (among other providers, including cable operators and wireless carriers) in the provision of video services and broadband Internet access.

Because the Applicants' networks overlap to such a limited degree, nor is there any meaningful potential for future competition between them.

In short, although the waiver standard set forth in Section 652(d)(6)(A)(iii) presupposes that a covered transaction will harm competition and focuses on whether there are countervailing public interest benefits, the instant Transaction poses no threat to competition in the first place.

B. The Transaction Will Strongly Promote the Public Interest

As set forth in Section IV, *supra*, and in the Public Interest Statement accompanying the Applicants' other license-transfer applications, TWC's acquisition of Insight will be strongly pro-competitive and beneficial for consumers. More relevant here, the Transaction will: facilitate Insight's transition to an all-IP voice network, in furtherance of paramount Commission objectives; enable network integration that results in cost savings and potential service enhancements; and expand the breadth and depth of enterprise and wholesale service offerings available to Insight's customers. Collectively, these synergies will bolster the combined company's ability to compete with dominant ILECs in the provision of voice and data telecommunications and increase consumer welfare.

The Commission recognized that a similar combination of CLEC operations in the Comcast-CIMCO transaction warranted a waiver, because it "promot[ed] facilities-based competition in the medium-sized and enterprise business marketplace."²⁸ There, as here, the combination of competitive telecommunications providers promised to create a more effective competitor to AT&T.²⁹ In fact, the instant Transaction presents a considerably stronger case for granting the requested waiver of Section 652(b), because even though Comcast and CIMCO

²⁸ *Comcast-CIMCO Order* ¶ 22.

²⁹ *Id.* ¶ 38.

focused on different market segments, they did have overlapping business service offerings,³⁰ whereas TWC and Insight effectively do not compete at all. In these circumstances, the public interest benefits associated with the Transaction necessarily outweigh the *de minimis* competitive overlap. Accordingly, the Commission should grant the requested waiver.

C. The Commission Should Adopt the Streamlined LFA Approval Procedures That It Established in the Comcast-CIMCO Transaction

Finally, the Applicants request that the Commission adhere to the procedural rules it adopted in the Comcast-CIMCO proceeding for LFA approvals of the requested waiver. In that proceeding, the Commission held that the term “approval” as used in Section 652(d) is ambiguous, giving the Commission broad discretion to adopt an opt-out approval mechanism.³¹ That mechanism affords LFAs a reasonable opportunity to consider a proposed transaction, while at the same time assuring that “the waiver process established by Congress in section 652(d)(6) [is] not effectively nullified by potential undue delay and uncertainty associated with an open-ended process.”³² The Commission found reasonable the concern that some LFAs “might take no steps to express their view regarding the waiver request, even though they have no objection to the request,” for example because the transaction might “involve[] very few customers in any individual [LFA].”³³

Those considerations apply with equal force here. Although the Transaction, to the extent it implicates Section 652 at all, will require approval of only two LFAs—Henderson County, Kentucky and the Ohio Department of Commerce—there is the same prospect that an LFA might delay its consideration of the Transaction indefinitely and thereby thwart its

³⁰ *Id.* ¶ 33.

³¹ *Id.* ¶ 26.

³² *Id.* ¶ 29.

³³ *Id.*

consummation, even if there is no substantive basis to object. Just as in the Comcast-CIMCO proceeding, there are very few telephone exchange customers in most of the areas in question—and no competitive overlap in most instances—which might prompt an LFA to express no views on the Transaction. Accordingly, requiring affirmative, opt-in approval by each LFA would threaten to nullify the waiver process established by Congress.

Consistent with the Comcast-CIMCO procedures, the Applicants request that the Commission issue a Public Notice providing that the Applicants shall serve a copy thereof on each affected LFA within 10 days of its release. If an LFA fails to inform the Commission of its decision within 60 days of receiving the Public Notice, the Commission should deem that authority to have approved of the proposed waiver of the restrictions in Section 652(b). Moreover, any LFA objecting to the grant of the waiver should be required to explain the reasons for its disapproval.

VI. CONCLUSION

For the foregoing reasons, the Applicants respectfully submit that the public interest, convenience, and necessity will be served by a grant of this Section 214 Application. The Commission should grant a waiver of the buyout restriction in Section 652(b) to the extent it applies, and it should adopt streamlined procedures for LFA approvals of the waiver.

Respectfully submitted,

/s/

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