

92-237



Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

April 20, 2005

Mr. John Manning  
Director  
NANP Administration, NeuStar  
46000 Center Oak Plaza  
Sterling, VA 20166

Dear Mr. Manning:

This letter addresses a recent request from Time Warner Cable Information Services (New Hampshire), LLC (Time Warner Cable IS) to NeuStar, the North American Numbering Plan Administrator (NANPA). Time Warner Cable IS requested a Feature Group D (FGD) carrier identification code (CIC) assignment. On February 22, 2005, NeuStar denied Time Warner Cable IS' request. After detailed review of materials supplied by Time Warner Cable IS,<sup>1</sup> the Wireline Competition Bureau (Bureau) concludes that, under the definition of "entity" in Section 1.3 of the CIC Assignment Guidelines (INC 95-0127-006), Time Warner Cable IS is a separate "entity" from Time Warner Telecom, Inc. (Time Warner Telecom) and Comcast Corporation (Comcast), for purposes of obtaining a CIC assignment.<sup>2</sup> Thus, we direct NeuStar to reverse its decision based on the analysis provided below.

Section 1.3 of the CIC Assignment Guidelines provides that CICs may be assigned to entities that purchase Feature Group B (FGB) or FGD access, FGB translation access, or that are local exchange carriers. For purposes of these guidelines, an entity is defined as "a firm or group of firms under common ownership or control."

The guidelines further provide:

Franchise operators are those individuals, groups, or firms granted the right or license to market a company's goods or services in a particular area. As there is a commonality of economic interest in marketing conditions normally imposed on franchise operator by the franchiser, these industry guidelines treat the franchiser as the relevant entity and not each individual franchise operator. The franchiser is eligible for CICs assigned to an entity up to the maximum number as determined by these guidelines. The franchise

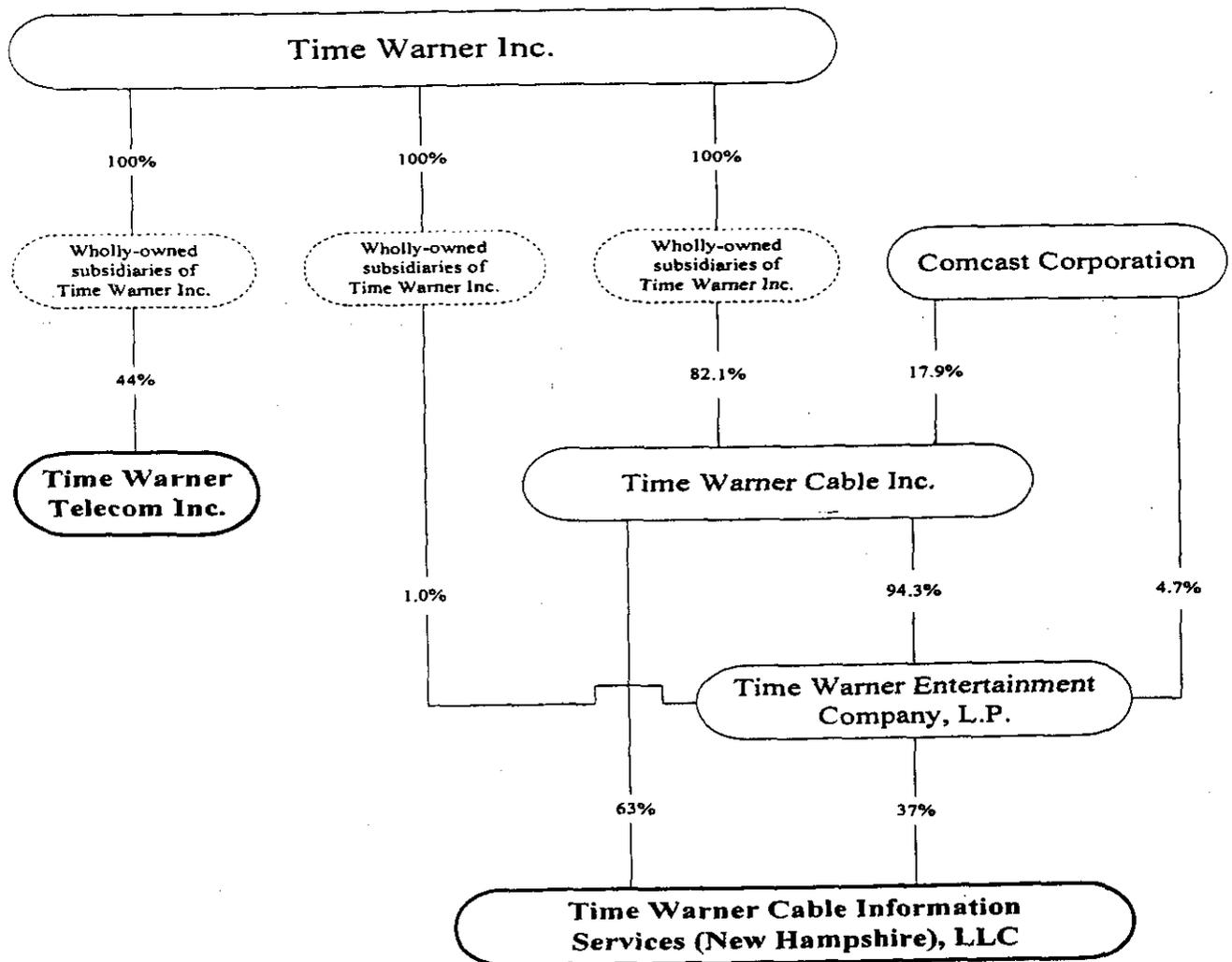
<sup>1</sup> See Letters from Vincent M. Paladini, Associate Counsel, Time Warner Cable to Narda Jones, Chief, Telecommunications Access Policy Division, Federal Communications Commission dated February 18, 2005 and from Nancy K. Fears, Manager - Numbering, NANPA to Mr. Vincent Paladini, Associate Counsel, Time Cable Information Services (NH) LLC dba Time Warner Cable.

<sup>2</sup> Pursuant to a Commission Order, entities are entitled to a limit of two CICs. See Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), *Second Report and Order*, CC Docket No. 92-237, 12 FCC Rcd 8024.

guidance of the franchiser. On the assumption that franchise operators are operating in different territories, as may be dictated by the franchiser, no technical limitation on access service exists due to this CIC limit.

The information provided by Time Warner Cable IS indicates the following ownership structure:

**Time Warner Telecom Inc. &  
Time Warner Cable Information Services (New Hampshire), LLC**



NeuStar denied Time Warner Cable IS' request for a FGD CIC assignment, finding that Time Warner Cable IS was under common ownership and/or control with Time Warner

Telecom, which currently is assigned seven FGD CICs.<sup>3</sup> NeuStar concluded that Time Warner Cable IS could not obtain a CIC, because Time Warner Telecom already had the maximum number of CICs available to a single entity. Subsequently, NeuStar advised the Bureau staff that because Comcast has an ownership interest in Time Warner Cable IS, and Comcast has two CICs, that relationship would constitute an independent basis to deny Time Warner Cable IS' request.

Based on the record, the Bureau concludes that the CIC applicant, Time Warner Cable IS, is not under common ownership or control of Time Warner Telecom for the purposes of a CIC assignment. The fact that Time Warner, Inc. (Time Warner) holds some ownership interests in both Time Warner Cable IS and Time Warner Telecom does not make Time Warner Cable IS and Time Warner Telecom a single entity for purposes of the CIC Assignment Guidelines. For similar reasons, we find that Time Warner Cable IS is not under common ownership or control of Comcast. The term "common ownership or control" should be interpreted to mean either *de jure* or *de facto* control of an entity.

An entity has *de jure* control if such entity possesses, directly or indirectly, an equity interest by stock, partnership (general or limited) interest, joint venture participation, or member interest in the other entity in excess of fifty percent of the total equity interests in the other entity.<sup>4</sup> In addition, *de jure* control can be established if an entity possesses the power to vote more than fifty percent of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other entity.<sup>5</sup>

An entity has *de facto* control if such entity possesses the power to direct or cause the direction of the management and policies of such other entity, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest of such other entity, by contract (including but not limited to stockholder agreement, partnership (general or limited) agreement, joint venture agreement, or operating agreement), or otherwise.<sup>6</sup>

Applying this standard for ownership and control, we conclude that neither Time Warner Telecom nor Comcast exercises common ownership or control over Time Warner Cable IS.

Although the ultimate holding company, Time Warner, has indirect ownership interests in each of Time Warner Telecom and Time Warner Cable IS, such ownership interests are insufficient, in the case of Time Warner Telecom, to give Time Warner *de jure* control of that company. Further, nothing in the record suggests that Time Warner has *de facto* control of Time

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<sup>3</sup> Transfer of CICs through mergers and acquisitions is a common means by which entities obtain additional CICs. Section 5.2 of the CIC Assignment Guidelines allows for such transfers as long as the CICs are in use, *i.e.*, Feature Group B or Feature Group D access is being reported or can be verified by an access provider.

<sup>4</sup> See, *e.g.*, 47 C.F.R. 52.12(a)(1)(i)(A).

<sup>5</sup> See, *e.g.*, 47 C.F.R. 52.12(a)(1)(i)(B).

<sup>6</sup> See, *e.g.*, 47 C.F.R. 52.12(a)(1)(i)(C).

Warner Telecom. Nor, as demonstrated by the chart above, does Time Warner Telecom have *de jure* or *de facto* control of either Time Warner or Time Warner Cable IS. Time Warner Telecom and Time Warner Cable IS therefore should not be considered under “common ownership and control.”

We also conclude that Time Warner Cable IS is not under common ownership or control of Comcast for the purposes of a CIC assignment. The record in this case demonstrates that Comcast Corporation does not possess enough ownership interest in Time Warner Cable, Inc. to give it *de jure* control over Time Warner Cable IS. Further, nothing in the record suggests that Comcast is exercising *de facto* control of Time Warner Cable IS.

Please let me know if the Bureau can be of further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa S. Gelb". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lisa S. Gelb  
Deputy Chief  
Wireline Competition Bureau