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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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Federal Communications Commission  
Office of the Secretary

**In the Matter of** )  
 )  
Applications for Consent to the Transfer of Control )  
of Licenses of )  
 )  
Insight Communications Company, Inc., )  
Transferor, )  
 )  
to )  
 )  
Time Warner Cable Inc., )  
Transferee )

Docket No. \_\_\_\_\_

**APPLICATIONS AND PUBLIC INTEREST STATEMENT**

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## SUMMARY

By this filing, Time Warner Cable Inc. (“TWC”) and Insight Communications Company, Inc. (“Insight”) (collectively, the “Parties”) seek the Commission’s approval for the transfer of control of various licenses and authorizations, and, to the extent necessary, for a waiver pursuant to Section 652 (collectively, the “Applications”), in connection with an Agreement and Plan of Merger dated as of August 15, 2011 (the “Transaction”). The Transaction, upon grant of the Applications, will fully comply with the Communications Act and the Commission’s rules and will generate important public interest benefits, without producing any countervailing public harm.

- **The Transaction Will Accelerate Deployment of Advanced Services.**

TWC is widely regarded as one of the cable industry’s leaders in innovation. TWC is proud to offer customers a plethora of advanced services and has historically been at the forefront of development and deployment of new industry offerings. Insight’s systems, which have been almost universally upgraded to 750 MHz capacity, are ideal platforms for the deployment of new products. With these systems under TWC’s direct control, consumers will be able to benefit from a quicker rollout of innovative service offerings due to the Transaction.

- **The Transaction Will Promote Beneficial Efficiencies and Economies of Scale.**

TWC’s broader footprint will directly benefit Insight’s customers in its three state service area by eliminating redundant facilities and upgrading regional network equipment. The combined company will promote more robust competition vis-à-vis the DBS providers and the dominant incumbent telephone companies in Insight’s area, most notably AT&T. Moreover, Insight’s enterprise customers will greatly benefit from TWC’s extensive experience serving business customers of all sizes. The Transaction will facilitate access to a wider range of highly

reliable, scalable, and customizable service enhancements for business customers including Managed Cloud Services, Managed Application Services, Managed Messaging Services and Enterprise Hosting.

- **The Transaction Is Fully Consistent With Law and Will Have No Anticompetitive Effects.**

The Transaction will be fully consistent with the media concentration provisions of the Communications Act and the Commission's rules. Significantly, while there currently is no enforceable horizontal ownership limitation on cable, the moderate increase in TWC's subscribership that would result from the Transaction will leave TWC well below the limits that the Commission has considered. Moreover, the Transaction will not result in the acquisition by TWC of any national video programming service, and thus will fully comply with the Commission's various programming rules, including the remanded channel occupancy rule or any more generalized concerns relating to vertical integration. Likewise, the Transaction will not harm competition for telecommunications services. To the extent the Commission finds the cable-local exchange carrier buyout prohibition of Section 652(b) of the Act applies to this Transaction, the Parties seek a waiver. Such waiver is warranted in this instance because the Transaction will enhance competition, particularly with the dominant ILECs in Insight's service areas.

In sum, the Transaction will generate real and substantial benefits for consumers that are not achievable through other means and will do so in a manner fully consistent with the Communications Act and the Commission's rules, without creating any countervailing anti-competitive effects or diversity concerns. Accordingly, the Parties respectfully request that the Commission grant the Applications promptly and unconditionally.



Agreement and Plan of Merger dated as of August 15, 2011 (the “Agreement”) whereby a wholly-owned special-purpose subsidiary of TWC will merge with Insight and Insight will continue as the surviving corporation of the merger and become a wholly-owned subsidiary of TWC (the “Transaction”).<sup>2</sup> For the reasons stated below, the Transaction will further the public interest and, therefore, the Applications should be unconditionally granted.<sup>3</sup>

## I. INTRODUCTION

The Transaction by which TWC will acquire control of Insight and its cable systems will advance the public interest by providing the communities served by Insight with the benefit of TWC’s expertise and investment in new technology platforms and services and its forward-thinking approaches to packaging and marketing, while maintaining a strong local management presence. In many respects, the TWC-Insight combination is similar to the combination of Cablevision Systems Corporation and Bresnan Communications, LLC that the Commission approved just last year.<sup>4</sup> Like Bresnan, Insight is known for its well-run cable systems and for its knowledge of the needs and interests of the local communities in which it operates. And like Cablevision, TWC is known for its industry-leading technological advances, its forward-looking marketing and packaging strategies, and its commitment to community involvement. The Commission, acting through the Media, Wireline Competition, and Wireless Telecommunications

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*Transferor, to AT&T Corp., Transferee*, Memorandum Opinion and Order, 15 FCC Rcd 9816, ¶ 185 (2000) (“*AT&T–MediaOne Order*”).

<sup>2</sup> A copy of the Agreement is attached as Exhibit B.

<sup>3</sup> Various applications associated with the Transaction are being filed concurrently herewith and copies are attached for convenience: Exhibit C (Section 214 and Section 652 Waiver), Exhibit D (business radio licenses), Exhibit E (TVRO registrations). No CARS licenses are involved in the Transaction.

<sup>4</sup> Public Notice, *Applications Granted for the Transfer of Control of Bresnan Communications, LLC to Cablevision Systems Corporation*, MB Docket No. 10-154, DA 10-1782 (Sept. 21, 2010).

Bureaus, summarily found that the Cablevision-Bresnan combination served the public interest and approved it without conditions.<sup>5</sup> The same result is appropriate here.

## II. THE PARTIES AND THE TRANSACTION

A. **TWC.** TWC is the nation's fourth largest multichannel video programming distributor ("MVPD"), serving approximately 14.5 million customers (12.1 million basic video customers) in 28 states over its technologically advanced broadband networks passing nearly 27 million homes.<sup>6</sup> In addition to offering basic and digital cable services, TWC has long been an innovator in the broadband arena, establishing a remarkably successful track record in the provision of broadband-based services, including Internet access and facilities-based VoIP services, to residential and enterprise customers.

TWC also has been a leader in the creation of locally-oriented programming channels in the areas where it operates. TWC currently operates 24-hour local news channels in the Carolinas (News 14 Carolinas); New York, NY and surrounding areas (NY1 News, NY1 Noticias, YNN Hudson Valley); Buffalo, NY (YNN Buffalo); Albany, NY (YNN Capital Region); Rochester, NY (YNN Rochester); Central New York (YNN Central NY); and Austin, TX (YNN Austin). In addition, TWC offers local channels featuring college and high school sports in Albany, Central New York, Buffalo, Rochester, Kansas City, Nebraska, Mid-Ohio,

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<sup>5</sup> *Id.*

<sup>6</sup> TWC holds a 66.66% ownership interest in Time Warner Entertainment-Advance/Newhouse

Southwest Ohio, Wisconsin and Hawaii.<sup>7</sup> TWC holds minority, non-controlling interests in certain nationally-distributed programming networks (Exercise TV, LLC; iN Demand L.L.C.; and The MLB Network, LLC) as well as in one regional sports network (SportsNet New York). A complete list of TWC's programming interests is set forth on Exhibit F.

Throughout its history, TWC has played a leading role both in the construction of advanced broadband networks and in the development and launch of a host of new products and services over those advanced networks. Indeed, more than three decades ago, Warner Cable made history by launching "QUBE" -- a breakthrough interactive platform that represented the first effort to give consumers access to some of the advanced two-way services that are a routine part of the media landscape today.

The spirit of experimentation and innovation represented by QUBE has remained a hallmark of TWC over the years. In 1995, TWC entered into a groundbreaking "Social Contract" with the Commission under which TWC committed, *inter alia*, to invest billions of dollars to upgrade its systems.<sup>8</sup> As a result of its investment of more than \$5 billion on plant-related rebuilds, TWC has been able offer its subscribers a full suite of new services, years ahead of many other cable MSOs.<sup>9</sup> Over ninety-nine percent of TWC subscribers are currently served by cable systems with at least 750 MHz capacity, all capable of carrying two-way broadband communications. Indeed, TWC is generally recognized as the leading provider not only of video

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<sup>7</sup> On February 14, 2011, TWC announced that two new HD RSNs will be launched to serve Southern California, Nevada and Hawaii, one of which will be the nation's first Spanish-language RSN. These RSNs will feature, beginning with the 2012-2013 season, all locally available pre-season, regular season and post-season Los Angeles Lakers games.

<sup>8</sup> See *Social Contract for Time Warner*, Memorandum Opinion and Order, 11 FCC Rcd 2788 (1995).

<sup>9</sup> See <http://www.timewarnercable.com/maine/aboutus/dedicatedtoinnovation.html> ("In 2001, we completed a \$5 billion, nationwide system upgrade to create a hybrid fiber coaxial cable network.").

programming, but also of broadband Internet access and facilities-based VoIP services across its footprint.<sup>10</sup>

What distinguishes TWC from other companies that have upgraded their systems is that TWC does not merely offer advanced services, it takes the lead in creating and deploying them. Innovation is not merely what TWC does; it is part of the company's DNA. TWC has been in the forefront of the development and introduction of video-on-demand services that currently give subscribers instant access to thousands of hit movies and programs; of wideband Internet with speeds up to 50 Mbps downstream and 5 Mbps upstream; and of digital home phone services that include advanced features such as on-screen caller ID. Even more recently, TWC has unveiled and begun the deployment of several new services and products that give consumers additional tools that will allow them to watch what they want, when they want. These new services include:

- **Look Back®** – a service that gives customers the ability to retrieve shows that they missed with the click of a remote.
- **Start Over®** – a service that allows subscribers to restart live shows from the beginning, without having to set a DVR.
- A remote DVR manager that provides subscribers with the option of going online or using a smartphone to program their DVR.
- Whole house DVR service that lets subscribers record a show in one room and watch it another.

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<sup>10</sup> See, e.g., Mike Farrell, *The Industry Standard*, Multichannel News, Sept. 27, 2004, at 3A (“Time Warner has always been the technology leader in the cable industry”); Jesse Drucker and Peter Grant, *Cable Giant is Close to Scoring a Quadruple Play*, Wall St. J., Dec. 29, 2004, at B-1 (“Time Warner Cable . . . has a reputation for being a technology leader in cable.”); K.C. Neel, *The Regional ‘Guinea Pigs’*, Multichannel News, Sept. 27, 2004, at 18A (“Time Warner Cable has always been on the cutting edge of testing and launching new products, and in recent years, the company has picked up the pace. In any given year, Time Warner launches at least two new products.”); S. Hofmeister, *Sale of Adelphia May Benefit Southland Cable-TV Watchers*, L.A. Times, Apr. 9, 2005, at C1 (“Time Warner has been at the forefront in converting its cable systems to offer customers digital cable, high-speed Internet access, video-on-demand, personal video recorders and telephone service via cable.”).

- TWCable TV™ 2.0 for the Apple iPad, an application offered for free to video customers with broadband service, which includes over 100 live channels, an interactive program guide, remote DVR manager and the ability to change channels on a set top box from an iPad.

In addition to these new products and services, TWC, which helped lead the industry into the era of high definition television, is now looking to take the next step forward by adding 3D TV content to its line-up of diverse programming choices. TWC has also committed itself to developing services for the enterprise market – providing business customers with the benefits of expanded competition.

Given its history of technological innovation, it is not surprising that TWC has been recognized with multiple awards. In 1994, TWC became the first cable operator to receive an Emmy® award from the Academy of Television Arts and Sciences, which cited TWC for its Outstanding Achievement in Technological Development in connection with its deployment of hybrid fiber-coax plant – an innovation that paved the way for the broadband revolution.<sup>11</sup> More recently, CableFAX the Magazine found TWC “led the pack,” honoring it as MSO of the Year for 2011, lauding TWC’s technological advances and the “new offerings that TWC keeps rolling out.”<sup>12</sup> The same publication also bestowed the 2011 Leadership Award on TWC’s

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<sup>11</sup> See <http://www.timewarnercable.com/maine/aboutus/dedicatedtoinnovation.html> (“In 1994, Time Warner Cable became the first cable company to be honored with an Emmy Award by winning the Engineering Award for Outstanding Achievement in Technological Development.”). In 1996, TWC won an Engineering Emmy for its pioneering HFC design for cable television systems, which is now considered the industry standard as a robust and flexible broadband platform. See, e.g., Mike Farrell, *The Industry Standard*, Multichannel News, Sept. 27, 2004, at 3A (“Time Warner . . . developed the hybrid fiber-coax technology that all cable operators use today.”); Matt Stump, *Technology’s Creative Master*, Multichannel News, Sept. 27, 2004, at 12A (“Orlando was the first place that we ever did hybrid fiber-coax, which became the underpinning for the entire cable industry.”).

<sup>12</sup> Amy Maclean, *2011 Top OPS Awards, MSO of the Year, Time Warner Cable*, CableFAX the Magazine, July 2011, at 6.

chairman/CEO Glenn Britt due to the success of his vision to make TWC a company focused on innovation, community service and diversity.<sup>13</sup>

**B. Insight.** Co-founded in 1985 by current Chairman Sidney Knafel and Vice Chairman and CEO Michael Willner, Insight is the thirteenth largest MVPD in the United States with approximately 643,191 basic video customers in the three contiguous states of Kentucky, Indiana and Ohio. Insight offers bundled, state-of-the-art video, high-speed Internet and voice telephony services to residential and business customers and delivers cn|2, a new kind of local information network, to all of its Kentucky and Indiana customers.<sup>14</sup>

Insight's reputation for high quality service is reflected by the host of honors that the company has received in recent years, including a leading industry publication's recognition of Michael Willner as cable executive of the year in 2008 and the identification of the company as the nation's top MSO and as one of the top four Internet providers that same year.<sup>15</sup> Insight also deservedly has a reputation for a deep level of commitment to the communities that it serves.

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<sup>13</sup> Amy Maclean, *2011 Top OPS Awards, Leadership Award, Glenn Britt, Time Warner Cable, CableFAX the Magazine*, July 2011, at 16.

<sup>14</sup> cn|2 is Insight's local weather and community information channel. cn|2 provides frequent (every 10 minutes) 24-hour, up-to-the-minute weather coverage, as well as frequently updated local forecasts. cn|2 is fast becoming Kentucky's source for the best political news and analysis. Pure Politics with Ryan Alessi airs Monday through Friday at 7:00 p.m. EST and again at 11:30 p.m. EST in all of Insight's Kentucky markets, and also in Frankfort on the Frankfort Plant Board's channel 77. The program features political analysis and news, as well as interviews with officials, candidates, policy makers and political observers. cn|2 has also become the home for Kentucky's best sports commentary. Kentucky Sports Radio.com founder and editor Matt Jones hosts KST-Kentucky Sports Television – at 7:30 p.m. EST and again at 11:00 p.m. EST. KSTV features in-depth news and discussion about the latest in University of Kentucky Wildcats' athletics.

<sup>15</sup> *Executive of the Year: Insight CEO Michael Willner*, Multichannel News, Dec. 21, 2008, available at [http://www.multichannel.com/article/161191-Executive\\_of\\_The\\_Year\\_Insight\\_CEO\\_Michael\\_Willner.php](http://www.multichannel.com/article/161191-Executive_of_The_Year_Insight_CEO_Michael_Willner.php); *2008 Top OPS Awards, MSO of the Year: Insight Communications*, CableFAX the Magazine, July 24, 2008, available at <http://www.cable360.net/business/operatorsmsos/30800.html>.

This commitment manifests itself in a variety of ways, including support for local organizations through sponsored events, scholarship programs, and charitable donations. Insight is a committed partner in Cable in the Classroom and in the Cable Puts You in Control initiative (providing families with tools to block unwanted content). Insight takes particular pride in its stellar reputation for customer service.

**C. The Transaction.**

Under the Agreement entered into by the Parties, TWC will acquire control of Insight and Insight's existing subsidiaries will continue to hold their current cable systems, franchises, licenses and other assets. Specifically, pursuant to the Agreement, Derby Merger Sub Inc., a direct, wholly-owned special-purpose subsidiary of TWC, will merge with and into Insight, and Insight will continue as the surviving corporation of the merger. All of Insight's existing subsidiaries that hold FCC licenses or authorizations, state certificates, or cable franchises 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. It is expected that the closing of the Transaction will take place upon the satisfaction of customary closing conditions, including the approval by the Commission of the transfer of control of certain FCC licenses and authorizations as identified on Exhibit A.

**III. THE COMMISSION'S PUBLIC INTEREST STANDARD**

Pursuant to Section 310(d) of the Act, the Commission must approve transfers of licenses and authorizations upon a finding that the "public interest" would be served thereby.<sup>16</sup> In certain situations, the Commission has applied a standard first articulated in the *Bell Atlantic/NYNEX*

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<sup>16</sup> 47 U.S.C. § 310(d).

Order.<sup>17</sup> Under that standard, the Commission “weigh[s] any potential competitive harms and benefits to determine whether the proposed transaction would promote the public interest.”<sup>18</sup> In assessing the potential public interest benefits of a proposed transaction, the Commission “focuses on demonstrable and verifiable public interest benefits that could not be achieved if there were no merger.”<sup>19</sup> The Commission’s analysis of potential harms encompasses both an assessment of any anticompetitive effects and an inquiry into whether the transaction would violate the Act or the Commission’s implementation or enforcement of the Act.<sup>20</sup> The Commission has elaborated that its examination of potential harms and benefits is merger-specific, and is not an open forum for airing preexisting or industry-wide disputes:

It is important to emphasize that the Commission’s review focuses on the potential for harms and benefits to the policies of the Communications Act that flow from the proposed transaction – *i.e.*, harms and benefits that are ‘merger specific.’ The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one or other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.<sup>21</sup>

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<sup>17</sup> *Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶¶ 2-3 (1997) (“*Bell Atlantic/NYNEX Order*”). It has long been recognized that the Commission’s authority to consider competitive issues is entirely discretionary. Thus, in practice, the Commission has applied its *Bell Atlantic/NYNEX* analytical framework selectively. See, e.g., *Gencom Inc. v. FCC*, 832 F. 2d 171 (D.C. Cir. 1987); *Astroline Communications Co. v. FCC*, 857 F. 2d 1556, 1561 (D.C. Cir. 1988); *Taft Broadcasting Co.*, 38 FCC 2d 189 (1972); *Turner Broadcasting System, Inc., Transferor, and Time Warner Inc., Transferee*, 11 FCC Rcd 19595 (1996); *Shareholders of Hispanic Broadcasting Corp., Transferor, and Univision Communications, Inc., Transferee*, 18 FCC Rcd 188343 (2003).

<sup>18</sup> *Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee*, Memorandum Opinion and Order, 14 FCC Rcd 3160, ¶ 15 (1999) (“*AT&T – TCI Order*”).

<sup>19</sup> *AT&T–MediaOne Order* at ¶ 154.

<sup>20</sup> *AT&T – TCI Order* at ¶ 14.

<sup>21</sup> See, e.g., *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations of Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner*

As set forth in Section IV below, the proposed Transaction will generate important public interest benefits and no public interest harms. Moreover, as set forth in Section V, upon grant of the Applications, the proposed Transaction will comply fully with the Act and the Commission's rules. Thus, the Applications should be promptly and unconditionally granted.

**IV. THE TRANSACTION WILL GENERATE SUBSTANTIAL PUBLIC INTEREST BENEFITS AND CREATE NO PUBLIC INTEREST HARMS.**

Commission approval of the Transaction will serve the public interest, convenience and necessity. In particular, the combination of Insight and TWC will provide unique benefits to Insight's subscribers and to the communities where they live without posing any threat to competition or creating any other public interest harm.

**A. The Transaction Will Accelerate the Deployment Of Innovative Services on the Insight Systems and Will Create Efficiencies That Will Enhance Competition in the Residential and Enterprise Markets.**

As detailed above, TWC is known not just for offering advanced services, but for creating them and taking the lead in deploying them. Insight's systems have almost universally been upgraded to 750 MHz capacity, which makes them particularly well-suited platforms for the deployment of the new products, such as Start Over®, Look Back®, and TWCable TV™ 2.0 for the Apple iPad, that TWC has created and will continue to create in the future. With these systems placed under TWC's direct control, the period from innovation to deployment to the consumer will be shorter than would otherwise be the case.

The synergies and efficiencies inherent in the Transaction also will provide recognized benefits to consumers of broadband services.<sup>22</sup> TWC and Insight currently compete principally

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*Inc., Transferee*, Memorandum Opinion and Order, 16 FCC Rcd 6547, ¶ 6 (2000) (“*AOL–Time Warner Order*”).

<sup>22</sup> See, e.g., *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, 17 FCC

against companies with national or broad regional footprints. For example, DBS operators DirecTV and EchoStar have been able to take advantage of their ability to mount cost-effective nationwide advertising campaigns, often with tie-ins to national retail chains, to aggressively market their services and promotions.<sup>23</sup> As a result, DirecTV and EchoStar attracted over 23 million subscribers in little more than a decade;<sup>24</sup> by comparison, it took the entire cable industry over thirty years to reach the 23 million subscriber threshold.<sup>25</sup> The combination of TWC and Insight will facilitate a more robust competitive give-and-take with the DBS industry's national marketing campaigns.<sup>26</sup>

Similarly, the combination of TWC and Insight will benefit the public by maximizing the competition with the major ILECs, who not only provide telephone and business services throughout expansive, multi-state geographic areas, but also have rapidly become formidable

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Rcd 23246, ¶¶ 182, 184 (2002) (“Comcast-AT&T Order”) (acknowledging that the “synergies and efficiencies” from a merger can result in “significant cost savings and that the “greater scale and scope” produced by a merger can “foster incentives for investment” by giving the merged “a greater ability to spread ...fixed costs across a larger customer base”).

<sup>23</sup> See e.g., Press Release, *DIRECTV Launches New Brand and Advertising Campaign* (Feb. 7, 2005), available at [http://www.directv.com/DTVAPP/aboutus/headline.dsp?id=01\\_07\\_2005A](http://www.directv.com/DTVAPP/aboutus/headline.dsp?id=01_07_2005A); Press Release, *DIRECTV Launches National High-Definition Television Bundled Equipment Offer at Circuit City* (Nov. 19, 2003), available at [http://www.directv.com/DTVAPP/aboutus/mediacenter/NewsDetails.dsp?id=11\\_19\\_2003A](http://www.directv.com/DTVAPP/aboutus/mediacenter/NewsDetails.dsp?id=11_19_2003A); Jeff Baumgartner, *RadioShack goes satellite exclusive with EchoStar and Sirius* (Feb. 12, 2004), CED Broadband Direct, available at <http://www.cedmagazine.com/cedailydirect/2004/0204/cedaily040212.htm#6>.

<sup>24</sup> *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd 2755, ¶ 54 (2005).

<sup>25</sup> See National Cable & Telecommunications Association, *Cable Television Developments 2004*, available at <http://www.ncta.com/Docs/PageContent.cfm?pageID=304>.

<sup>26</sup> See Geraldine Fabrikant, *Time Warner and Comcast Seal Adelphia Purchase*, New York Times, April 22, 2005 (quoting American Technology Research analyst Rob Sanderson as saying that where a cable operator has “broader market” the operator “can...advertise cable to a denser audience and do more effective promotions with stores like Best Buy”); Pamela McClintock, *Adelphia Buy Gives TW a Leg Up in L.A.*, Daily Variety, April 11, 2005, at 5 (according to Sanford C. Bernstein analyst Craig Moffett, “[h]istorically it’s been very difficult for a cable operator to market to its customers in L.A. because no one operator has sufficient scale to make marketing efficient.”).

competitors for the delivery of video and Internet access services. 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).<sup>27</sup> The communities served by Insight, which operates only within three states, will benefit from TWC’s far broader footprint, which 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.<sup>28</sup> 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 incumbent LEC in Insight’s service area, particularly AT&T. In addition, the Transaction will maximize the ability to harness the efficiencies of IP technologies and expand IP-based services on Insight’s facilities.<sup>29</sup> The Commission has acknowledged the multifaceted

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<sup>27</sup> 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”). See also *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighth Annual Report, 17 FCC Rcd 1244, ¶ 14 (2002) (“By clustering their systems, cable operators may be able to achieve efficiencies that facilitate the provision of cable and other services, such as telephony.”); *Implementation of Sections 11(c) of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits*, Third Report and Order, 14 FCC Rcd 19908, ¶ 63 (1999) (“1999 Horizontal Ownership Order”) (noting “the benefits of clustering - including market efficiencies and the deployment of telephony and Internet access services”).

<sup>28</sup> As discussed in the Parties’ joint Section 214 Application filed concurrently herewith, the integration of Insight’s voice and data networks with TWC’s adjacent facilities 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.

<sup>29</sup> 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). Insight has implemented a “cap and grow” strategy under which it has ceased

benefits of IP networks—including lower operating costs and innovative features—and thus has affirmatively encouraged carriers to rapidly deploy IP networks and services.<sup>30</sup>

Along with enhancing competition, the Transaction will enable the combined company to provide more efficient service to its customers. The Insight systems in particular will benefit from overhead efficiencies, such as the more cost effective deployment of management and other employees over a larger, more contiguous service area, as well as important cost-reducing infrastructure efficiencies such as the consolidation of head-end facilities and greater ability to negotiate volume discounts for programming and hardware.<sup>31</sup> TWC estimates that such cost savings will be in the range of \$100 million, savings that will benefit subscribers by reducing the upward pressure on rates driven by spiraling expenses, such as those fueled by broadcasters' exponential demands for retransmission consent payments.<sup>32</sup>

The benefits described above will accrue not only to residential customers, but also to the enterprise market in the communities served by Insight. TWC has extensive experience

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offering circuit-switched service to new customers and is relying on attrition to reduce its base of circuit-switched customers over time.

<sup>30</sup> 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).

<sup>31</sup> As noted above, the Commission previously has acknowledged that cable system combinations produce cost-saving efficiencies that benefit the public. See *Comcast-AT&T Order* at ¶¶ 182-185.

<sup>32</sup> Press Release, *Time Warner Cable to Acquire Insight Communications*, Aug. 15, 2011 (available at <http://www.timewarnercable.com/nynj/about/inthenewsdetails.ashx?PRID=3285&MarketID=50>).

providing service to governments and schools (both primary and secondary) and all business industries, including hospitality, financial, health, retail and manufacturing. Indeed, TWC's provision of broadband-based services to businesses is a core aspect of its corporate strategy. TWC's experience and robust business service options will enable it to enhance the competitiveness of enterprise and wholesale services available in Insight's service territory.<sup>33</sup> For example, Time Warner Cable Business Class service offers the option of secure and reliable phone service, fast and dependable broadband Internet, dedicated local private Ethernet, customizable cable television, mobile broadband, and the ability to bundle services with flexible packaging options.<sup>34</sup> 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. On the whole, 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.

Finally, the Transaction will allow TWC to become a more effective competitor in providing local and regional advertising opportunities, giving area advertisers a simple and effective way to reach their target audiences that: (1) better correlates to the full DMA reach of local television broadcasters; (2) maximizes the effectiveness of their marketing efforts through

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<sup>33</sup> The Commission recently recognized the benefits of a cable operator "increas[ing] the level of competition in the medium-sized and enterprise business marketplace" in its approval of Comcast's acquisition of CIMCO Communications, Inc., where the FCC lauded the transaction for its ability to "advance facilities-based competition, which is likely to result in consumer benefits." *Applications Filed for the Acquisition of Certain Assets of CIMCO Communications, Inc. by Comcast Phone LLC*, 25 FCC Rcd 3401, ¶¶ 38, 40 (2010)

<sup>34</sup> Business Class is thus specifically tailored to each customer allowing TWC to provide optimum service to businesses of all sizes and types, whether local or national. TWC supports its business customers throughout all stages of business development from the day the doors first open and all the way through the business' evolution and maturation.

more precise audience targeting (*e.g.*, by minimizing the extent to which their advertising purchases reach viewers outside of the relevant geographic area); and (3) eliminates the significant transaction costs incurred by having to negotiate with numerous cable system operators. The competitive benefits to consumers and advertisers described above will be particularly pronounced through the footprint rationalization achieved in the Cincinnati and Columbus DMAs pursuant to the Transaction.

**B. The Transaction Will Enable the Parties To Expand Upon Their Already Stellar Records of Community Involvement and Public Service.**

Another public interest benefit of the Transaction is that it will allow TWC to build upon Insight's solid reputation for public service and community involvement. For example, TWC has an established track record of providing educational support to communities and their institutions. In 2009, TWC launched a five year, \$100 million cash and in-kind philanthropic initiative called Connect a Million Minds (CAMM) aimed at addressing the declining proficiency of America's children in science, technology, engineering and math (STEM). TWC has partnered with CSAS (Coalition for Science After School), FIRST (For Inspiration and Recognition of Science and Technology) and a national advisory board of entrepreneurs and STEM experts to guide the overall direction of the program. With an emphasis on after-school opportunities, CAMM promotes programs in local communities across the country, strategically focuses employee giving and voluntarism, provides funding, and leverages the "Connectory," a unique online platform that brings together and empowers and motivates students, parents, and STEM learning providers. Through CAMM, thousands of students have visited TWC facilities across the country to learn about how STEM skills translate into real jobs. More information about CAMM can be found at [www.connectamillionminds.com](http://www.connectamillionminds.com). TWC's efforts have received

attention from the White House, Congress, and numerous state and local governments, educational leaders, and communities partners.<sup>35</sup>

TWC also seeks to support and enhance the effectiveness of existing service organizations, extending the benefits of its technology to a broader, more inclusive audience. Adopt-A-School initiatives, support for local symphonies, art and dance organizations, youth after school and mentoring activities, environmental concerns and economic development are just some of the areas that are covered by this emphasis on local community involvement.

Extending the impact of TWC's commitment to its communities is the energetic and enthusiastic contribution of its employees. Across the country, TWC employees are active volunteers in a wide variety of programs, devoting countless hours of personal time for community service projects.<sup>36</sup> TWC's community activism embraces corporate philanthropy as well. Each year, TWC donates several million dollars directly to non-profit organizations. Greater still are the tens of millions of dollars more of in-kind contributions provided through activities such as the production and distribution of public service announcements. These donations support both local initiatives and national non-profit organizations.

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<sup>35</sup> See, e.g., Kenneth Chang, *White House Pushes Science and Math Education*, NY Times, Nov. 22, 2009 (available at <http://www.nytimes.com/2009/11/23/science/23educ.html?pagewanted=all>); Press Release, *Time Warner Cable Partners with CHCI to Promote STEM Careers for Latino Youth* (available at <http://www.timewarnercable.com/Corporate/about/inthenewsdetails.ashx?PRID=2772&MarketID=0>).

<sup>36</sup> TWC also supports individual, non company-related projects that benefit local communities through its employees' personal involvement. Four times each year, TWC's EVG (Employee Volunteer Grant) program awards grants ranging from \$500 to \$3,000 to fund such varied non-profit local initiatives as refurbishment of youth sports facilities, community environmental projects and equipment for day care centers, to name just a few.

C. **TWC is Uniquely Positioned to Generate the Above-Described Public Interest Benefits.**

The above description of TWC's technological expertise and leadership and its strong record of community involvement should not be taken in any way as suggesting that Insight has not also been committed to providing its customers with high quality, innovative service options and to taking a leadership role in its Kentucky, Indiana and Ohio service areas – an enviable track record described in detail above. But while the combination of two top tier companies (albeit ones that are dramatically different in size) inevitably raises the question of what benefits accrue to the public when a very well run company combines with another very well run company, the answer is that the whole truly can be, and in this instance will be, greater than the sum of its parts.

TWC and Insight each bring to the table a deep commitment to be on the cutting edge in terms of technology and service and to be exemplary corporate citizens in the communities they serve. Each also brings its own set of ideas, tools, and visions for how best to fulfill these commitments. TWC has its reputation for innovative new services, such as Start Over®, Look Back®, and its iPad Apps, as well as its experience in successfully expanding competition for business-related services. Insight has an established source of local content in cn|2 and a firm commitment to excellence in local customer service. The combination of these companies will give Insight's customers (and TWC's customers as well) a chance to be part of the "best of the best."

In short, the combination of Insight and TWC presents a unique opportunity to achieve efficiencies and enhance the roll-out of new advanced services to consumers. In particular, the Transaction will:

- Provide a platform for current Insight customers to realize the benefits of TWC's history of developing and deploying innovative services;
- Promote enhanced competition with DBS and ILECs;
- Make a robust offering of services available to business and enterprise customers;
- Provide advertisers with more effective and efficient ways to reach local and regional audiences; and
- Build upon the Parties' solid reputation for public service and community involvement.

Thus, the Transaction presents the public with substantial benefits that no company other than TWC is in a position to provide. Both new and existing customers served by Insight will receive additional service choices in the future more effectively and efficiently.

**D. The Transaction Will Produce Only Pro-Competitive Effects.**

The Transaction will not create any anticompetitive effects or other public harms. While Insight and TWC have a handful of franchises for the same communities, their networks largely serve distinct portions of those communities and the Parties do not generally compete directly in the provision of any service. Reflecting the proximity of TWC and Insight service areas in and around Columbus, OH, there are approximately 12 communities in which TWC and Insight plant overlaps at the margins. The parties have determined that approximately 2,600 homes passed fall within this overlap area. These homes represent a mere 0.2 percent of Insight's overall homes passed (over 1,337,000). Moreover, in these areas where Insight and TWC facilities overlap, Insight serves only 670 cable customers (a miniscule 0.1 percent of Insight's 643,191 customers) and only 27 TDM telephone customers (0.0043 percent) fall within TWC service areas. The Insight and TWC networks overlap by only approximately 90 plant miles, which represents less than 0.55 percent of Insight's roughly 16,500 total plant miles. To the extent the Transaction will result in a reduction of competition in this overlap area, it will be *de minimis* and thus will not have any adverse effect on competition in the telecommunications or video

programming businesses, either with respect to MVPD distribution or in upstream activities involving production, packaging, and sale of video programming.<sup>37</sup> Indeed, this *de minimis* overlap is far less than that previously found to create no material risk of public interest harm.<sup>38</sup>

With respect to harms to the production, packaging, and sale of video programming, Congress specifically directed the Commission to ensure that cable operators do not have the ability to “unreasonably restrict the flow of video programming to consumers” or to “hinder the development of new programming from diverse voices.”<sup>39</sup> As the Commission found when initially setting the now vacated horizontal cap, a cable operator with an attributable interest in less than 30 percent of MVPD subscribers poses no risk of these harms, because an operator of such size will have neither excessive leverage in the purchase of video programming nor the ability to foreclose entry by new programmers.<sup>40</sup>

Indeed, in approving the acquisition of the AT&T cable systems by Comcast in 2002, the Commission specifically concluded that Comcast’s post-transaction subscriber reach, which amounted to approximately 28.9 percent of all MVPD subscribers, was “unlikely to . . . impair the quality or quantity of programming available to consumers” or “enable [the company] to

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<sup>37</sup> Notably, the Ohio Bell Telephone Company d/b/a AT&T Ohio and/or WideOpenWest Ohio, LLC hold authorizations from the Ohio Department of Commerce to provide competitive video service in each of the affected communities.

<sup>38</sup> *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corp., Assignors, to Time Warner Inc., Assignees; Adelphia Communications Corp., Assignors and Transferors, to Comcast Corporation, Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee*, Memorandum Opinion and Order, 21 FCC Rcd 8203, ¶ 91 (2006) (transaction resulting in elimination of overbuild affecting up to 8,000 passings found “not sufficient to create a material risk of public harm.”).

<sup>39</sup> *1999 Horizontal Ownership Order* at ¶ 38; 47 U.S.C. § 533(f)(2).

<sup>40</sup> *See 1999 Horizontal Ownership Order* at ¶¶ 50-55.

foreclose unaffiliated programmers.”<sup>41</sup> Given that TWC will remain far below the now-overturned 30 percent cap, there is no reasonable basis for concern that the Transaction could lead to the types of harms that caused Congress to direct the Commission to adopt a horizontal limit in the first place.<sup>42</sup>

Finally, the Transaction will not reduce competition in the sale of video programming. As noted above, TWC will acquire control of cn|2, Insight’s locally-originated weather, public affairs and “sports talk” channel. In light of the vibrant competitive environment for video programming that exists today and the fact that cn|2 offers the kind of programming that the Commission has found to be “replicable” by other distributors, there is absolutely no basis for concern that the proposed Transaction will somehow reduce competition in the sale of video programming or the ability of unaffiliated MVPDs to access program services.<sup>43</sup>

**V. THE TRANSACTION IS FULLY CONSISTENT WITH THE COMMUNICATIONS ACT AND THE COMMISSION’S RULES.**

The proposed Transaction is fully consistent with the Communications Act and the Commission’s rules and with the traditional competition and diversity concerns that underlie

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<sup>41</sup> *Comcast-AT&T Order* at ¶ 30.

<sup>42</sup> Furthermore, in light of the faults enumerated by the D.C. Circuit with respect to the agency’s initial reasoning in setting the horizontal cap at 30 percent, any horizontal limit that ultimately may be adopted by the Commission could not be lower than the former 30 percent rule. In fact, the Court found that, even if one assumed that the Commission’s analytical framework were valid, the Commission should have adopted a limit twice as high as the one it chose. *Time Warner Entertainment Co., L.P. v. FCC*, 240 F.3d 1126, 1132 (D.C. Cir. 2001) (“*Time Warner II*”) (“Assuming the validity of the premises supporting the FCC’s conclusion that a 40 percent ‘open field’ is necessary . . . , the statute’s express concern for the act of ‘any individual operator’ would justify a horizontal limit of 60 percent.”). The D.C. Circuit’s second rejection of the ownership cap recognized the “overwhelming evidence” of the dramatic competitive changes that have occurred in the MVPD marketplace, changes that make it even more unlikely that the Commission would be able to justify a lower ownership cap or that the merged entities would be able to engage in the types of anticompetitive behavior that any such cap is intended to curtail. *Comcast Corp. v. FCC*, 579 F. 3d 1, 8 (D.C. Cir. 2009).

<sup>43</sup> *Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, 25 FCC Rcd 746, ¶¶ 8, 51 n.200 (2010).

various provisions of the Act and rules. In particular, TWC's acquisition of control over the Insight systems will not implicate the Commission's overturned cable horizontal or channel occupancy ownership limits, or the existing multiple or cross-ownership rules. As far as the "buy out" restriction in Section 652 of the Act is concerned, the Transaction meets the standard for a waiver of that restriction (assuming it is applicable).

**A. Cable Horizontal Ownership.**

At the present time, the Commission does not have in effect an enforceable cable horizontal limit, its two previous attempts to establish such a limit having been struck down by the courts.<sup>44</sup> In any event, the Transaction will not cause TWC to have a national subscriber total in excess of even the old 30 percent limit, so no rule violation would occur even assuming the 30 percent limit were still in effect. Rather, the Transaction will result in TWC's gaining approximately 693,000 video subscribers, bringing its total video subscribers to approximately 13 million.<sup>45</sup> Accounting for the 2,171,000 TWE-A/N video subscribers managed by Bright House Networks LLC and using the 59.6 million total MVPD subscriber figure cited by SNL Kagan, TWC's share for horizontal ownership cap purposes would be under 26 percent (*i.e.*,  $(12.375M + 2.171M) + 693,000/59.6M = 25.6\%$ ), far below the former cap of 30 percent.

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<sup>44</sup> In 2001, the D.C. Circuit remanded to the FCC its 1999 decision adopting a 30 percent horizontal ownership cap. See *Time Warner II* (remanding *1999 Horizontal Ownership Order*). In 2008, the Commission issued a new order again adopting a 30 percent horizontal ownership cap. *Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992; Horizontal Ownership Limits*, Fourth Report and Order, 23 FCC Rcd 2134 (2008). The D.C. Circuit struck down this new effort the following year, finding that "the record is replete with evidence of ever increasing competition among video providers" and noted the "dramatic increase both in the number of cable networks and in the programming available to subscribers" since the adoption of the 1992 Cable Act. *Comcast Corp. v. FCC*, 379 F. 3d at 8.

<sup>45</sup> To help ensure an "apples-to-apples" comparison, figures used in this analysis are based on March, 2011 SNL Kagan estimates available at <http://www.ncta.com/Stats/TopMSOs.aspx>. Current subscriber totals are likely slightly lower across the board.