



PUBLIC NOTICE

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DA 11-1606
Released: September 27, 2011

**APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF
INSIGHT COMMUNICATIONS COMPANY, INC.
TO TIME WARNER CABLE INC.**

**PLEADING CYCLE AND
LOCAL FRANCHISE AUTHORITY FILING PROCEDURES ESTABLISHED**

WC Docket No. 11-148

Comment Date: October 27, 2011

Reply Comment Date: November 14, 2011

On September 7, 2011, Time Warner Cable Inc. (TWC) and Insight Communications Company, Inc. (Insight) (collectively, the Applicants) filed a series of applications¹ pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended, (Act) to transfer control of Insight from its current shareholders to TWC.² Applicants also seek a waiver of section 652(b) of the Act, which prohibits a cable operator or its affiliate from obtaining certain interests in a local exchange carrier that provides service in the cable operator's local franchise area.³

Insight, a Delaware corporation, is a multichannel video programming distributor (MVPD) that provides cable television, competitive local exchange carrier (LEC), and data telecommunications services to residential and business customers in Indiana, Kentucky, and Ohio. It also offers high-speed Internet access, Voice over Internet Protocol (VoIP), and other IP-based services on a wholesale and retail

¹ Insight Communications Company, Inc. and Time Warner Cable Inc. Application for Authority to Transfer Control of Domestic and International Section 214 Authorizations and Waiver Pursuant to Section 652(d), WC Docket No. 11-148 (filed Sept. 7, 2011) (Application); ITC-T/C-20110907-00288; SES-T/C-20110906-01029, SES-T/C-20110906-01030; WTB File Nos. 0004843213, 0004843245 (filed Sept. 6, 2011).

² 47 U.S.C. §§ 214, 310(d).

³ 47 U.S.C. § 572(b). Applicants also submitted an Agreement and Plan of Merger dated as of August 15, 2011. Applications for Insight Communications Company, Inc. and Time Warner Cable Inc. for Authority to Transfer Control, WC Docket No. 11-148, Public Interest Statement, Exhibit B (filed Sept. 6, 2011) (Public Interest Statement).

programming service and will not implicate any cable horizontal limit, the channel occupancy limits, or the existing multiple or cross ownership rules.⁹

LOCAL FRANCHISING AUTHORITY APPROVAL

Applicants request a waiver of the restrictions of section 652(b) of the Act.¹⁰ Section 652(b) prohibits cable operators and their affiliates from acquiring “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.”¹¹ Section 652(d)(6) authorizes the Commission to waive section 652(b) if, in relevant part: (1) “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 (2) the relevant local franchising authorities (LFAs) approve of such waiver.¹²

Applicants claim the proposed transaction satisfies the public interest prong of section 652(d)(6).¹³ In particular, they argue that the proposed transaction has “no anticompetitive effects” and does not present the potential public interest harm that section 652(d) is intended to address.¹⁴ They also assert that the proposed transaction will promote the public interest by enhancing the combined companies’ ability to compete with incumbent LECs, by facilitating Insight’s transition to an all-IP network, and by expanding service offerings for business and wholesale customers.¹⁵ Applicants maintain that, unlike a situation in which the incumbent cable operator is acquiring the incumbent LEC in a given area, thereby allowing the cable company to gain control of the only two wires into consumers’ homes, Insight and TWC generally serve distinct geographic areas and do not compete with one another.¹⁶ Applicants identify only one location in which both Insight’s and TWC’s networks overlap, in and around

⁹ *Id.* at 21-23 (citing *Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009) (overturning the Commission’s 30 percent cable horizontal ownership limit); 47 C.F.R. § 76.504 (channel occupancy rule); 47 C.F.R. § 73.3555 (broadcast ownership limits); 47 C.F.R. § 21.912(a) (cable/multichannel multipoint distribution service limit); 47 C.F.R. § 76.501(d)-(e) (cable/SMATV cross ownership limit)).

¹⁰ Application at 13-20.

¹¹ 47 U.S.C. § 572(b). Section 652(a) places a converse prohibition on local exchange carriers and their affiliates. 47 U.S.C. § 572(a). In addition, section 652 prohibits cable operators and LECs from entering “into any joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services” in the overlap area of the providers’ cable franchise area and telephone service area, respectively. 47 U.S.C. § 572(c). Section 652 is implemented in the Commission’s rules at 47 C.F.R. § 76.505.

¹² 47 U.S.C. § 572(d)(6)(A)(iii) & (B).

¹³ 47 U.S.C. § 572(d)(6)(A)(iii).

¹⁴ Application at 13-15.

¹⁵ *Id.* at 10-13; 18-20.

¹⁶ *Id.* at 15-17. On June 21, 2011, the National Cable and Telecommunications Association filed a petition for declaratory ruling and a conditional petition for forbearance to limit or prevent the application of section 652 to mergers and acquisitions between cable operators and competitive LECs. Those petitions are pending. *Comment Sought on NCTA Petitions Regarding Section 652 of the Communications Act*, WC Docket No. 11-118, Public Notice, DA 11-1177 (July 8, 2011).

maintain that an LFA might not respond to the proposed waiver even if it does not object.²² We find the LFA approval process adopted in Comcast/CIMCO responsive to these concerns and adopt that process in this proceeding.

Local Franchising Authority Approval or Disapproval of the Requested Waiver of the Restrictions of section 652(b). We direct the Applicants to serve, within 10 days of the release of this Public Notice, a copy of this Public Notice on any LFA in the overlap areas. Service shall be made by a method recognized under the civil rules of the state courts of the appropriate jurisdiction. Within five (5) days after all relevant franchising authorities have been served, the Applicants shall file with the Commission a certificate (or certificates) of service attesting that the Public Notice was timely served on each relevant LFA by an appropriate method, and that shows on which dates each LFA was served. In addition, because we anticipate that Applicants will have ongoing communications with the LFAs in the relevant areas, we expect the Applicants to inform the relevant LFAs informally of this Public Notice and of the procedures to notify the Commission of their approval or disapproval.²³

An LFA may express approval or disapproval of the proposed waiver by following the filing instructions set forth below. If an LFA fails to inform the Commission of its decision within 60 days after proper service by the Applicants, the Commission will deem the LFA to have approved of the proposed waiver of the restrictions of section 652(b). Before responding, LFAs will have an opportunity to view petitions to deny, comments, and replies filed in this proceeding. These materials will be available online through the Commission's Electronic Comment Filing System (ECFS), as described below. We find that providing LFAs 60 days to file their approval or disapproval—including a minimum of two weeks following the close of the public comment period—provides them adequate time to consider the merits of the proposed waiver.

SECTION 214 AUTHORIZATIONS

The following applications for consent to the transfer of control of section 214 authorizations to TWC have been assigned the file numbers listed below.

A. International

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20110907-00288	Insight Midwest Holdings, LLC	ITC-214-20040723-00514

B. Domestic

Applicants filed an application for consent to transfer control of Insight from its current shareholders to TWC. Applicants request streamlined treatment under section 63.03(b) of the Commission's rules for this transaction.²⁴ Further, the Applicants seek a waiver of the restrictions of 652(b) of the Communications Act, which involves a notification and response period for LFAs to

²² Application at 19-20.

²³ See *Comcast/CIMCO Notice*, 24 FCC Rcd at 14818-19.

²⁴ 47 C.F.R. § 63.03(b).

GENERAL INFORMATION

The applications referenced herein have been found, upon initial review, to be acceptable for filing. Although Applicants request streamlined treatment for their applications under various sections of the Commission's rules, in light of the multiple applications pending before the Commission with respect to this transaction and the public interest review associated with them, Applicants' request is denied and, therefore, the applications are not subject to streamlined treatment. The Commission reserves the right to return any application, or subpart thereof, if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. The Commission will not take final action on this application before 60 days have elapsed following Applicants' filing of a certificate of service attesting that all the relevant LFAs have been served with a copy of this Public Notice.²⁸

Interested parties must file comments or petitions to deny no later than **October 27, 2011**. Persons and entities that timely file comments or petitions to deny may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order (subject to the restrictions contained in the protective order) and seeking reconsideration of decisions. Replies or oppositions to comments and petitions must be filed no later than **November 14, 2011**.

LFAs should follow the same directions as other filers when submitting materials to this docket. Expressions of approval or disapproval of the proposed waiver of the restrictions of section 652(b) should be filed no later than 60 days after the Applicants serve the LFA with a copy of this Public Notice.²⁹ Such expressions of approval or disapproval of the proposed waiver may be in the form of a letter from the LFA to Marlene H. Dortch, Secretary, FCC, or other appropriate format, and filed in this docket according to the instructions below.

All filings concerning matters referenced in this Public Notice should refer to **DA 11-1606** and **WC Docket No. 11-148**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

To allow the Commission to consider fully all substantive issues regarding the Applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.³⁰ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

Under the Commission's procedures for the submission of filings and other documents, submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery.

²⁸ See 47 U.S.C. § 309(b).

²⁹ See *supra* at 5.

³⁰ See 47 C.F.R. §1.45(c).

- Karl Kensinger, Satellite Division, International Bureau, at Karl.Kensinger@fcc.gov or 202 / 418-0748 (facsimile);
- Jeffrey Tobias, Mobility Division, Wireless Telecommunications Bureau, at Jeff.Tobias@fcc.gov or 202 / 418-2643 (facsimile).

For further information, contact Jodie May, Competition Policy Division, Wireline Competition Bureau, at 202 / 418-0913; David Krech, Policy Division, International Bureau, at 202 / 418-7443, Karl Kensinger, Satellite Division, International Bureau, at 202 / 418-0773; Jeff Tobias, Mobility Division, Wireless Telecommunications Bureau, at 202 / 418-1617.

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