

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page No. 1 of 3

| | | | |
|---|--------------------------------|---|------------------------|
| (1) LOCK BOX # 979089 | | SPECIAL USE ONLY | |
| | | FCC USE ONLY | |
| SECTION A - PAYER INFORMATION | | | |
| (2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Time Warner Cable Inc. | | (3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$13,550.00 | |
| (4) STREET ADDRESS LINE NO. 1 60 Columbus Circle | | | |
| (5) STREET ADDRESS LINE NO. 2 | | | |
| (6) CITY New York | | (7) STATE NY | (8) ZIP CODE 10023 |
| (9) DAYTIME TELEPHONE NUMBER (include area code) 212-3648482 | | (10) COUNTRY CODE (if not in U.S.A.) US | |
| FCC REGISTRATION NUMBER (FRN) REQUIRED | | | |
| (11) PAYER (FRN) 0007556251 | | (12) FCC USE ONLY | |
| IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET | | | |
| (13) APPLICANT NAME Time Warner Cable Inc. | | | |
| (14) STREET ADDRESS LINE NO. 1 60 Columbus Circle | | | |
| (15) STREET ADDRESS LINE NO. 2 | | | |
| (16) CITY New York | | (17) STATE NY | (18) ZIP CODE 10023 |
| (19) DAYTIME TELEPHONE NUMBER (include area code) 212-3648482 | | (20) COUNTRY CODE (if not in U.S.A.) US | |
| FCC REGISTRATION NUMBER (FRN) REQUIRED | | | |
| (21) APPLICANT (FRN) 0007556251 | | (22) FCC USE ONLY | |
| COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET | | | |
| (23A) CALL SIGN/OTHER ID WI1212 | (24A) PAYMENT TYPE CODE TQC | (25A) QUANTITY 1 | |
| (26A) FEE DUB FOR (PTC) \$1,355.00 | (27A) TOTAL FEE \$1,355.00 | FCC USE ONLY | |
| (28A) FCC CODE 1 ChaseWI | (29A) FCC CODE 2 x | | |
| (23B) CALL SIGN/OTHER ID IN0056 | (24B) PAYMENT TYPE CODE TQC | (25B) QUANTITY 1 | |
| (26B) FEE DUB FOR (PTC) \$1,355.00 | (27B) TOTAL FEE \$1,355.00 | FCC USE ONLY | |
| (28B) FCC CODE 1 Salem, IN | (29B) FCC CODE 2 x | | |
| SECTION D - CERTIFICATION | | | |
| CERTIFICATION STATEMENT I, _____, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE _____ DATE _____ | | | |
| SECTION E - CREDIT CARD PAYMENT INFORMATION | | | |
| MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____ ACCOUNT NUMBER _____ EXPIRATION DATE _____ I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described. SIGNATURE _____ DATE _____ | | | |

| FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE (CONTINUATION SHEET) Page No <u>2</u> of <u>3</u> | | SPECIAL USE |
|--|---|-------------------------------|
| | | FCC USE ONLY |
| USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT SECTION BB - ADDITIONAL APPLICANT INFORMATION | | |
| (13) APPLICANT NAME Time Warner Cable Inc. | | |
| (14) STREET ADDRESS LINE NO. 1 60 Columbus Circle | | |
| (15) STREET ADDRESS LINE NO. 2 | | |
| (16) CITY New York | (17) STATE NY | (18) ZIP CODE 10023 |
| (19) DAYTIME TELEPHONE NUMBER (include area code) 212-3648482 | (20) COUNTRY CODE (if not in U.S.A.) US | |
| FCC REGISTRATION NUMBER (FRN) REQUIRED | | |
| (21) APPLICANT (FRN) 0007556251 | (22) FCC USE ONLY | |
| COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET | | |
| (23A) CALL SIGN/OTHER ID KY0539 | (24A) PAYMENT TYPE CODE TQC | (25A) QUANTITY 1 |
| (26A) FEE DUE FOR (PTC) \$1,355.00 | (27A) TOTAL FEE \$1,355.00 | FCC USE ONLY |
| (28A) FCC CODE 1 Warsaw, KY | (29A) FCC CODE 2 x | |
| (23B) CALL SIGN/OTHER ID WI1318 | (24B) PAYMENT TYPE CODE TQC | (25B) QUANTITY 1 |
| (26B) FEE DUE FOR (PTC) \$1,355.00 | (27B) TOTAL FEE \$1,355.00 | FCC USE ONLY |
| (28B) FCC CODE 1 Lyndon, WI | (29B) FCC CODE 2 x | |
| (23C) CALL SIGN/OTHER ID WI0763 | (24C) PAYMENT TYPE CODE TQC | (25C) QUANTITY 1 |
| (26C) FEE DUE FOR (PTC) \$1,355.00 | (27C) TOTAL FEE \$1,355.00 | FCC USE ONLY |
| (28C) FCC CODE 1 Bristol, WI | (29C) FCC CODE 2 x | |
| (23D) CALL SIGN/OTHER ID KY0663 | (24D) PAYMENT TYPE CODE TQC | (25D) QUANTITY 1 |
| (26D) FEE DUE FOR (PTC) \$1,355.00 | (27D) TOTAL FEE \$1,355.00 | FCC USE ONLY |
| (28D) FCC CODE 1 Bellevue, KY | (29D) FCC CODE 2 x | |
| (23E) CALL SIGN/OTHER ID KY0086 | (24E) PAYMENT TYPE CODE TQC | (25E) QUANTITY 1 |
| (26E) FEE DUE FOR (PTC) \$1,355.00 | (27E) TOTAL FEE \$1,355.00 | FCC USE ONLY |
| (28E) FCC CODE 1 Providence KY | (29E) FCC CODE 2 x | |
| (23F) CALL SIGN/OTHER ID IN0083 | (24F) PAYMENT TYPE CODE TQC | (25F) QUANTITY 1 |
| (26F) FEE DUE FOR (PTC) \$1,355.00 | (27F) TOTAL FEE \$1,355.00 | FCC USE ONLY |
| (28F) FCC CODE 1 Charleston, IN | (29F) FCC CODE 2 x | |

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|--|---|-------------------------------|
| FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE (CONTINUATION SHEET) Page No <u>3</u> of <u>3</u> | | SPECIAL USE FCC USE ONLY |
| USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT SECTION BB - ADDITIONAL APPLICANT INFORMATION | | |
| (13) APPLICANT NAME Time Warner Cable Inc. | | |
| (14) STREET ADDRESS LINE NO. 1 60 Columbus Circle | | |
| (15) STREET ADDRESS LINE NO. 2 | | |
| (16) CITY New York | (17) STATE NY | (18) ZIP CODE 10023 |
| (19) DAYTIME TELEPHONE NUMBER (include area code) 212-3648482 | (20) COUNTRY CODE (if not in U.S.A.) US | |
| FCC REGISTRATION NUMBER (FRN) REQUIRED | | |
| (21) APPLICANT (FRN) 0007556251 | (22) FCC USE ONLY | |
| COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET | | |
| (23A) CALL SIGN/OTHER ID KY0139 | (24A) PAYMENT TYPE CODE TQC | (25A) QUANTITY 1 |
| (26A) FEE DUE FOR (PTC) \$1,355.00 | (27A) TOTAL FEE \$1,355.00 | FCC USE ONLY |
| (28A) FCC CODE 1 Carrollton, KY | (29A) FCC CODE 2 x | |
| (23B) CALL SIGN/OTHER ID KY0499 | (24B) PAYMENT TYPE CODE TQC | (25B) QUANTITY 1 |
| (26B) FEE DUE FOR (PTC) \$1,355.00 | (27B) TOTAL FEE \$1,355.00 | FCC USE ONLY |
| (28B) FCC CODE 1 ForestHillsKY | (29B) FCC CODE 2 x | |
| (23C) CALL SIGN/OTHER ID | (24C) PAYMENT TYPE CODE | (25C) QUANTITY |
| (26C) FEE DUE FOR (PTC) | (27C) TOTAL FEE | FCC USE ONLY |
| (28C) FCC CODE 1 | (29C) FCC CODE 2 | |
| (23D) CALL SIGN/OTHER ID | (24D) PAYMENT TYPE CODE | (25D) QUANTITY |
| (26D) FEE DUE FOR (PTC) | (27D) TOTAL FEE | FCC USE ONLY |
| (28D) FCC CODE 1 | (29D) FCC CODE 2 | |
| (23E) CALL SIGN/OTHER ID | (24E) PAYMENT TYPE CODE | (25E) QUANTITY |
| (26E) FEE DUE FOR (PTC) | (27E) TOTAL FEE | FCC USE ONLY |
| (28E) FCC CODE 1 | (29E) FCC CODE 2 | |
| (23F) CALL SIGN/OTHER ID | (24F) PAYMENT TYPE CODE | (25F) QUANTITY |
| (26F) FEE DUE FOR (PTC) | (27F) TOTAL FEE | FCC USE ONLY |
| (28F) FCC CODE 1 | (29F) FCC CODE 2 | |



Electronic Form 159

Payment Confirmation

Your transaction has been approved. For your records, please note the following:

| | |
|-------------------------------|--------------------|
| AGENCY TRACKING ID: | PGC2132509 |
| AUTHORIZATION NUMBER : | 01192G |
| AMOUNT PAID : | \$13,550.00 |

[PRINT FORM 159](#)

[CLOSE](#)

Customer Service

[FCC Fees](#)

[Web Policies / Privacy Policy](#)

[FCC Home Page](#)

If you have any questions or concerns please contact your licensing system help desk.

Before the
Federal Communications Commission
Washington, D.C. 20554

| | | | |
|-------------------------------|---|------------------------|--------|
| In re Petition of |) | CSR-____-E | |
| |) | | |
| |) | PSID No. 004604 | |
| Time Warner Cable Inc. |) | | |
| For Determination of |) | Charlestown, City of | IN0083 |
| Effective Competition |) | Sellersburg, City of | IN0084 |
| |) | Clarksville, Town of | IN0085 |
| |) | Corydon, Town of | IN0101 |
| |) | New Albany, City of | IN0194 |
| |) | Georgetown, Town of | IN0255 |
| |) | Greenville, Town of | IN0256 |
| |) | Borden, Town of | IN0636 |
| |) | Utica, Town of | IN0652 |
| |) | Palmyra, Town of | IN0791 |
| |) | Lanesville, Town of | IN0792 |
| |) | Monroe Township | IN1073 |
| |) | Hardin County (Uninc.) | KY0330 |
| |) | Radcliff, City of | KY0396 |
| |) | West Point, City of | KY0657 |

To: Chief, Media Bureau

PETITION FOR SPECIAL RELIEF

Time Warner Cable Inc. ("Time Warner Cable"), by its attorneys, and pursuant to Sections 76.7, 76.905(b) and 76.907 of the Commission's rules,¹ hereby petitions the Commission for a finding that Time Warner Cable's cable television system serving the above-captioned communities (unless otherwise noted, individually "Franchise Area" and collectively "Franchise Areas") is subject to effective competition² and therefore exempt from any rate regulation imposed pursuant to Section 623 of the Communications Act of 1934 (the "Act").³

¹ 47 C.F.R. §§ 76.7, 76.905(b), 76.907.

² Pursuant to Section 76.910 of the Commission's rules, rate regulatory authority may be exercised only by a local franchising authority ("LFA") that has been properly certified. 47 C.F.R. § 76.910. To the extent that any political subdivision covered by this petition is an LFA and has been certified to regulate rates in accordance with the Commission's rules, Time Warner Cable respectfully requests that the Commission revoke such certification.

I. TIME WARNER CABLE SATISFIES THE “50/15” OR “COMPETING PROVIDER TEST” IN FOURTEEN OF THE FRANCHISE AREAS.

Pursuant to Section 623(a)(2) of the Act,

[i]f the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section.⁴

The Act further provides that a cable system will be considered subject to effective competition (and therefore exempt from rate regulation) under the “50/15” test if, *inter alia*, the franchise area is:

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.⁵

As demonstrated below, effective competition exists in fourteen of the Franchise Areas (Charlestown, Sellersburg, Clarksville, Corydon, New Albany, Georgetown, Greenville, Borden, Utica, Palmyra, Lanesville, Monroe Township, Radcliff and West Point) because competing multichannel video programming distributors (“MVPDs”), including direct-to-home (“DTH”)

pursuant to Section 76.914(c). 47 C.F.R. § 76.914(c). To the extent that franchising responsibilities of any political subdivision covered by this petition have been reassigned to another governmental body, *e.g.*, pursuant to legislation providing for state-issued franchises, then that political subdivision is no longer an LFA and obviously would no longer have rate regulatory authority. In such event, Time Warner Cable is nevertheless seeking an effective competition determination to achieve the full competitive flexibility associated therewith.

³ 47 U.S.C. § 543. Time Warner Cable requests that, consistent with Commission precedent, any FCC grant of effective competition in the Franchise Areas be effective as of the date of filing of this petition. *See, e.g., Altrio Communications, Inc. v. Adelpia Communications Corporation*, 17 FCC Rcd 22955, ¶ 5 (Med. Bur. 2002) (Commission order released September 26, 2002 found that Adelpia was subject to effective competition in the Arcadia, California franchise area as of October 1, 2001).

⁴ 47 U.S.C. § 543(a)(2).

⁵ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

satellite providers such as DirecTV⁶ and DISH Network⁷ (collectively the “DBS Providers”), are available to more than 50 percent, and are subscribed to by more than 15 percent, of the households in such areas.

A. Competing MVPD Services Are “Offered” in the Franchise Areas.

According to the Commission’s rules, an MVPD’s service is deemed to be “offered” for purposes of effective competition:

(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and (2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.⁸

As demonstrated below, the DBS providers “offer” service in the Franchise Areas under this definition.

1. The DBS Providers are “Physically Able” to Offer Service to Subscribers in the Franchise Areas.

The Commission has repeatedly determined that DBS service is technically available throughout the continental United States due to its nationwide satellite footprint.⁹ Therefore, the DBS Providers are “physically able” to offer service to subscribers in the Franchise Areas.

2. No Regulatory, Technical or Other Impediments to Households Taking the DBS Providers’ Services Exist.

The DBS providers’ services are deemed to be technically available in a franchise area if the footprints of their satellites cover the franchise area and there are no local regulations

⁶ DirecTV is a registered trademark of DirecTV, Inc.

⁷ DISH Network is a registered trademark of EchoStar Communications Corporation.

⁸ 47 C.F.R. § 76.905(e).

⁹ See, e.g., *Bright House Networks, LLC, Petition for Determination of Effective Competition*, Memorandum Opinion and Order, 22 FCC Rcd 4390, ¶ 6 (Med. Bur. 2007) (“*Bright House Networks*”).

prohibiting reception by home satellite dishes.¹⁰ As noted above, DBS services have been determined by the Commission to be available throughout the United States. Time Warner Cable is aware of no zoning restrictions in the Franchise Areas that would prevent potential subscribers from placing a small dish on their houses or on their properties in order to receive DBS service. Indeed, it would appear that any such restriction would violate Section 207 of the Telecommunications Act of 1996 and Section 25.104 of the FCC's rules promulgated thereunder.¹¹ Further, the DBS providers do not need franchises to offer service to residents in the Franchise Areas. As such, there are no regulatory, technical or other impediments to households taking the DBS providers' service.

3. Potential Subscribers in the Franchise Areas are "Reasonably Aware" That They May Purchase the DBS Providers' Services.

In light of the Commission's prior findings regarding the ubiquitous availability of DBS service, and in recognition of the DBS Providers' extensive national, regional and local advertising and marketing efforts through television and radio, Internet, print media and direct marketing, potential subscribers throughout the Franchise Areas are undoubtedly "reasonably aware" of the availability of the DBS Providers' services.¹² In addition, the Commission has held that the DBS Providers' extensive nationwide subscribership and growth in recent years, combined with a local DTH penetration of more than 15 percent in any given franchise area, is

¹⁰*Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, ¶ 32 (1993) ("Rate Order").

¹¹Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); see 47 C.F.R. § 25.104.

¹² The DBS Providers maintain comprehensive websites, www.dishnetwork.com and www.directv.com, where consumers can learn more about local retail outlets and how to buy the necessary equipment online or through a toll-free number. See *Rate Order* at n. 104 ("[W]e believe that regional or local marketing, such as by a national or regional 800 telephone number, would suffice."). See also *id.* at ¶ 29; *Adelphia Cable Communications*, 20 FCC Rcd 20487, ¶ 6 (Med. Bur. 2005) ("*Adelphia Effective Competition Order*") (There is "no reason to require needlessly fractionalized marketing in order to ensure that a national or regional programming service is available in a particular community... [P]otential subscribers may be made reasonably aware of the availability of a competing service... through advertising in regional or local media, direct mail, or *any other* marketing outlet" (citing *Rate Order* at ¶ 29) (emphasis in original)).

an accurate sign that potential subscribers within that franchise area are “reasonably aware” of the availability of the DBS Providers’ services.¹³

Here, the presence of numerous subscribers of the DBS Providers’ services in the Franchise Areas, as shown below, demonstrates that such individuals are all obviously aware of their ability to obtain service from a DBS Provider. Moreover, it is reasonable to assume the awareness of the availability of the DBS Providers’ services only continues to increase as additional DBS dishes are prominently installed throughout the Franchise Areas.

Because the three factors described above have been satisfied, the DBS Providers “offer” competing MVPD services in the Franchise Areas.

B. The DBS Providers Offer “Comparable Multichannel Video Programming.”

Effective competition exists where programming offered by an MVPD competitor is deemed “comparable” to the programming offered by the unaffiliated cable operator.¹⁴ The programming offered by a competing MVPD is deemed “comparable” if it includes “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.”¹⁵ The Commission’s decisions have repeatedly concluded that the DBS Providers satisfy § 76.905(g)’s comparable programming criterion.¹⁶

¹³ Indeed, the Commission has “found households in a franchise area to be reasonably aware that they may purchase DBS service solely based on evidence of DBS’s nationwide growth and local subscriptions, without reference to advertising or other promotion.” *Bright House Networks* at ¶ 6 (referencing *Adelphia Communications, et al., Nineteen Unopposed Petitions for Determination of Effective Competition in Forty-Seven Local Franchise Areas*, Memorandum Opinion and Order, 20 FCC Rcd 7503, ¶ 3 (Med. Bur. 2005)).

¹⁴ 47 U.S.C. § 543(l)(1)(B)(i).

¹⁵ 47 C.F.R. § 76.905(g).

¹⁶ See *ACC Cable Communications, FLA-VA, LLC*, 18 FCC Rcd 7110, ¶ 6 (Med. Bur. 2003) (Town of Lake Waccamaw and Town of Tabor City, North Carolina) (“...the Commission has repeatedly concluded that the programming of DBS providers, such as DIRECTV and Dish, satisfy the Commission’s [comparable] programming criterion”); *Adelphia Effective Competition Order* at ¶ 7 (“Because different sets of rules govern which stations cable operators and DBS service providers can or must carry, we have never insisted on absolute parity in station offerings. Instead, an MVPD offers ‘comparable programming’ if it offers ‘at least 12 channels of video programming, including at least one channel of nonbroadcast service programming’”); *Time Warner Entertainment-Advance/Newhouse Partnership*, 20 FCC Rcd 15709, n. 15 (Med. Bur. 2005) (Nineteen California Franchise Areas) (“the DBS providers offer well over 100 channels, most of which are non-broadcast channels,” which satisfies the

The programming offered by DirecTV and Dish Network, listings of which are available at www.directv.com and www.dishnetwork.com,¹⁷ includes many of the same popular nonbroadcast and broadcast programming services available on Time Warner Cable's system serving the Franchise Areas. The DBS Providers' programming lineups amply demonstrate that at least twelve channels of video programming are offered, including at least one channel of nonbroadcast programming service.¹⁸ Thus, the DBS Providers offer "comparable" multichannel video programming, as defined by the Commission, to actual and potential subscribers in the Franchise Areas.

C. The DBS Providers Offer Comparable Multichannel Video Programming to More Than 50 Percent of the Households in the Franchise Areas.

As noted above, at least one MVPD unaffiliated with the incumbent cable operator must offer comparable video programming to at least 50 percent of the households in a franchise area for the first prong of the 50/15 effective competition test to be met.¹⁹ In numerous effective competition decisions, the Commission has concluded that the DBS Providers are deemed to satisfy this 50 percent threshold due to their nationwide satellite footprints.²⁰ Accordingly, since the DBS Providers offer comparable programming to greater than 50 percent of the households in the Franchise Areas, the first prong of the 50/15 effective competition test is satisfied.

comparable programming criterion).

¹⁷ See *The Helicon Group, L.P.*, 17 FCC Rcd 16636, n. 8 (Med. Bur. 2002) (Barnet, Vermont) ("While Charter did not provide in its Petition a copy of EchoStar's nationwide channel lineup, which is otherwise available at www.dishnetwork.com, we have consistently found that the programming of both DBS providers satisfies the programming compatibility component of the competing provider effective competition test.").

¹⁸ The DBS Providers satisfy the program comparability standard regardless of whether they provide local-into-local service to the Franchise Area. See *Falcon Telecable*, 17 FCC Rcd 22842, ¶ 4 (Med. Bur. 2002) (Four Texas Communities) ("[T]he Commission's effective competition program comparability standard does not include a local television programming component.").

¹⁹ See 47 C.F.R. § 76.905(b)(2)(i).

²⁰ See note 9.

D. The Number of Households Subscribing to the Programming Services of Competing MVPDs Exceeds 15 Percent of the Households in the Fourteen Franchise Areas.

The subscriber base of any MVPD or MVPDs,²¹ other than the largest MVPD, must exceed 15 percent of the households in a franchise area to meet the second prong of the 50/15 test. As demonstrated below, Time Warner Cable's cable system meets this threshold with respect to fourteen of the Franchise Areas.²² Time Warner Cable is the largest MVPD in each of these Franchise Areas because it has the most video subscribers in each community.

Time Warner Cable has used the ZIP+4 methodology previously approved by the Commission in numerous decisions to calculate the DBS Providers' subscribership in the Franchise Areas.²³ Attached as Exhibit A is a report from Media Business Corp. ("MBC") which has identified all of the ZIP+4 zip codes that are encompassed, in whole or in part, by each of these fourteen Franchise Areas by using mapping software based on data derived from the U.S. Census Bureau and the U.S. Postal Service. Attached as Exhibit B are the Census 2010 occupied household figures for each of these Franchise Areas. Attached as Exhibit C are reports from the Satellite Broadcasting Communications Association ("SBCA"), which has been charged with the task of providing the required DBS Provider combined subscriber data for effective competition purposes, providing DBS Provider subscriber counts for each Franchise Area and each of the identified ZIP+4 zip codes. Based on this data and summarized in the following table, the DBS

²¹ See *Time Warner Entertainment Co., L.P., et al. v. FCC*, 56 F.3d 151 (D.C. Cir. 1995) (holding that the subscribership of all MVPDs, other than the largest MVPD, may be aggregated to satisfy the 15 percent threshold). See also 47 C.F.R. § 76.905(f).

²² See attached Declaration of Ed Kozelek, Vice President of Governmental Relations – Midwest for Time Warner Cable.

²³ See, e.g., *Marcus Cable Associates, LLC d/b/a Charter Communications, Inc.*, DA 02-2174, 17 FCC Rcd 16652 (Media Bureau 2002) (Denton, Texas), *aff'd* 18 FCC Rcd 9762 (Media Bureau 2003); see also *Vicksburg Video, Inc. d/b/a Wehco Video, Inc.*, DA 02-2176, 17 FCC Rcd 16659 (Media Bureau 2002) (Vicksburg, Mississippi); *Kilgore Video, Inc. d/b/a Wehco Video, Inc.*, DA 02-2177, 17 FCC Rcd 16662 (Media Bureau 2002) (Kilgore, Texas); *Twelve Oregon Cities Order*.

providers' subscriber penetration levels clearly exceed 15% in each of the fourteen Franchise Areas.

| Community | DBS Provider Subscribership | 2010 Census Occupied Households | DBS Provider Penetration |
|------------------|--|--|-------------------------------------|
| Charlestown | 585 | 2,884 | 20.28% |
| Sellersburg | 646 | 2,443 | 26.44% |
| Clarksville | 1,454 | 9,175 | 15.85% |
| Corydon | 287 | 1,341 | 21.40% |
| New Albany | 2,428 | 15,575 | 15.59% |
| Georgetown | 228 | 1,088 | 20.96% |
| Greenville | 71 | 219 | 32.42% |
| Borden | 94 | 321 | 29.28% |
| Utica | 56 | 328 | 17.07% |
| Palmyra | 77 | 388 | 19.85% |
| Lanesville | 80 | 241 | 33.20% |
| Monroe Township | 919 | 1,975 | 46.53% |
| Radcliff | 1,346 | 8,660 | 15.54% |
| West Point | 58 | 338 | 17.16% |

Consequently, Time Warner Cable has demonstrated that the second prong of the 50/15 effective competition test has been met for each of these fourteen Franchise Areas.

II. TIME WARNER CABLE ALSO SATISFIES THE “LOW PENETRATION” EFFECTIVE COMPETITION TEST IN HARDIN COUNTY UNINCORPORATED.

In the unincorporated Hardin County, Time Warner Cable requests that the Commission additionally deem Time Warner Cable subject to effective competition under the separate “low penetration” effective competition test. Pursuant to Section 623(l)(1)(A) of the Act, effective competition exists under the low penetration test where “fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system.”²⁴ Time Warner Cable currently serves only 358 of the 16,517 occupied households in unincorporated Hardin County, which is fewer than 30 percent of the total number of households there. Thus, Time Warner

²⁴ 47 U.S.C. § 543(l)(1)(A); *see also* 47 C.F.R. § 76.905(b)(1).

Cable has demonstrated that it is subject to effective competition there under the low penetration test for effective competition.

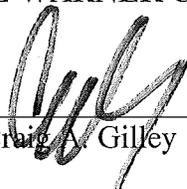
CONCLUSION

Because Time Warner Cable has demonstrated that it is subject to effective competition pursuant to Section 623(l)(1) of the Act and Section 76.905(b) of the Commission's rules for the above captioned Franchise Areas, Time Warner Cable respectfully requests that the Commission expeditiously find that Time Warner Cable's cable system serving the Franchise Areas is not subject to rate regulation as to basic cable service or other forms of rate regulation specified in 47 U.S.C. § 543 and revoke the LFAs' certification to regulate basic rates as appropriate.

Undersigned counsel has read the foregoing Petition, and to the best of such counsel's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and is not interposed for any improper purpose.

Respectfully submitted,

TIME WARNER CABLE INC.

By: 

Craig A. Gilley

EDWARDS WILDMAN PALMER LLP
1255 23rd Street, N.W.
Eighth Floor
Washington, D.C. 20037
(202) 478-7370

Its Attorneys

Dated: May 18, 2012

DECLARATION

I, Edward Kozelek, hereby declare under penalty of perjury that:

1. I am the Vice President of Government Relations – Midwest for Time Warner Cable, the operator of the cable system that serves the specific Franchise Areas involved in the foregoing Petition for Special Relief (“Petition”).
2. I have read the foregoing Petition and am familiar with the contents thereof and the matters referred to therein.
3. I have reviewed Time Warner Cable’s respective cable subscriber numbers for each of the communities involved in the Petition, as well as the DBS subscriber numbers provided by SBCA and allocated to each as described in the Petition. Time Warner Cable is the largest multichannel video program provider serving each of the Franchise Areas.
4. The facts contained within the Petition are true and correct to the best of my knowledge, information and belief.

Ed Kozelek
Edward Kozelek

Date: 5/15/18