

Agency Tracking ID:PGC2164872 Authorization Number:01672G

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READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING (1) LOCKBOX #979089	FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE FORM 159 PAGE NO 1 OF 1	APPROVED BY OMB 3060-059 SPECIAL USE FCC USE ONLY
SECTION A - Payer Information		
(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) Time Warner Cable Inc.		(3) TOTAL AMOUNT PAID (dollars and cents) \$1355.00
(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 (INCLUDING AREA CODE) 212-3648482	(10) COUNTRY CODE (IF NOT IN U.S.A.) US	
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(11) PAYER (FRN) 0007556251	(12) FCC USE ONLY	
IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)		
(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 (INCLUDING AREA CODE) 212-3648482	(20) COUNTRY CODE (IF NOT IN U.S.A.) US	
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(21) APPLICANT (FRN) 0007556251	(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) FCC Call Sign/Other ID 008594	(24A) Payment Type Code(PTC) TQC	(25A) Quantity 1
(26A) Fee Due for (PTC) \$1,355.00	(27A) Total Fee \$1355.00	FCC Use Only
(28A) FCC CODE 1 Bayside	(29A) FCC CODE 2 x	
(23B) FCC Call Sign/Other ID	(24B) Payment Type Code(PTC)	(25B) Quantity
(26B) Fee Due for (PTC)	(27B) Total Fee	FCC Use Only
(28B) FCC CODE 1	(29B) FCC CODE 2	



Electronic Form 159

Payment Confirmation

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

AGENCY TRACKING ID:	PGC2164872
AUTHORIZATION NUMBER :	01672G
AMOUNT PAID :	\$1,355.00

[PRINT FORM 159](#)

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

In re Petition of)	CSR-	
	)	PSID #008594	
TIME WARNER CABLE INC.)		
	)	Bayside, Village of	WI0334; WI0335
	)	Brown Deer, Village of	WI0331
For Determination of	)	Cudahy, City of	WI0319
Effective Competition	)	Fox Point, Village of	WI0333
	)	Franklin, City of	WI0321
	)	Glendale, City of	WI0337
	)	Greendale, Village of	WI0322
	)	Greenfield, City of	WI0323
	)	Hales Corners, Village of	WI0420
	)	Oak Creek, City of	WI0401
	)	River Hills, Village of	WI0336
	)	Shorewood, Village of	WI0332
	)	South Milwaukee, City of	WI0320
	)	St. Francis, City of	WI0105
	)	Wauwatosa, City of	WI0131
	)	West Allis, City of	WI0265
	)	West Milwaukee, Village of	WI0357
	)	Whitefish Bay, Village of	WI0330

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 America 17024308.1

I. TIME WARNER CABLE IS SUBJECT TO LEC EFFECTIVE COMPETITION IN THE FRANCHISE AREAS

Pursuant to Section 623(1)(1)(D) of the Act (the “LEC Test”), a cable system is considered to be subject to effective competition (and therefore exempt from rate regulation) where

a local exchange carrier [“LEC”] or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁴

This Commission has incorporated this test in Section 76.905(b)(4) of its rules.⁵ As shall be shown below, the LEC Test is met in the Franchise Areas due to the presence of AT&T Wisconsin (“AT&T”), the incumbent local exchange carrier in each of the Franchise Areas, which also provides its multichannel video service U-verse to households located therein.

A. AT&T Is A Local Exchange Carrier

The first prong of the LEC Test requires a showing that AT&T is a local exchange carrier or is affiliated with one.⁶ The Commission has long treated AT&T as a “local exchange carrier”

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 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(1)(1)(D).

⁵ 47 C.F.R. § 76.905(b)(4).

⁶ 47 U.S.C. § 543(1)(1)(D).

in the effective competition context.⁷ Furthermore, AT&T's own marketing and promotional materials acknowledge that AT&T provides local and long distance telephone service to residents in all the Communities,⁸ AT&T is registered with the Wisconsin Public Service Commission as an local exchange carrier in each of the Franchise Areas,⁹ and AT&T affirmatively attests that is indeed "a local exchange carrier in portions of the State of Wisconsin."¹⁰ Accordingly, there can be no doubt that AT&T is a local exchange carrier.

B. AT&T's Multichannel Video Service is Offered In All The Communities

Service of a multichannel video programming distributor ("MVPD") is deemed to be offered for purposes of effective competition

(1) [w]hen 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) [w]hen 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.¹¹

This prong of the LEC Test includes MVPDs that are local exchange carriers.¹² As demonstrated below, this prong is met in all the Franchise Areas.

⁷ See *Charter Communications Entertainment II, L.P.*, 12 FCC Rcd 23207, 23212, at para. 10 (Cab. Serv. Bur. 1997).

⁸ Exhibit A, AT&T Marketing Materials distributed in the Franchise Areas. See also AT&T's website at <<http://uversel.att.com/un/launchAMSS.do>>, which provides customers with service offerings, pricing and other information to sign up for U-Verse services.

⁹ Exhibit B, Wisconsin Public Service Commission listing of local exchange carriers by community, available at <<http://psc.wi.gov/apps40/teleprovider/default.aspx>>.

¹⁰ Exhibit C, Declaration of Dan Alto, Director-Product Marketing Management of AT&T Services, Inc., an affiliate of AT&T Wisconsin, at ¶ 1.

¹¹ 47 C.F.R. § 76.905(e).

¹² *Implementation of Cable Act Provisions of the Telecommunications Act of 1996*, Report and Order, 14 FCC Rcd 5296, ¶¶ 9-15 (1999) ("Cable Reform Order").

1. AT&T Is Physically Able To Offer Multichannel Video Service To All The Households In Each Of The Franchise Areas.

AT&T is physically able to provide multichannel video programming services to subscribers in all the Franchise Areas. As mentioned above, AT&T's multichannel video/cable service, marketed as U-Verse, is currently offered to customers in each of the Franchise Areas.

In response to a request under Commission rule Section 76.907(c) pertaining to the scope of its U-Verse service in the Franchise Areas,¹³ AT&T confirms that it "is technically and actually able to provide service that substantially overlaps" Time Warner Cable's service footprints in each of the Franchise Areas,¹⁴ and that actually serve residents in each:

With AT&T U-Verse TV service, AT&T offers video programming services directly to subscribers in the following communities: Village of Bayside; Village of Brown Deer; City of Cudahy; Village of Fox Point; City of Franklin; City of Glendale; Village of Greendale; City of Greenfield; Village of Hales Corners. . . City of Oak Creek; Village of River Hills; Village of Shorewood; City of South Milwaukee; City of St. Francis; City of Wauwatosa; City of West Allis; and Village of Whitefish Bay.¹⁵

Time Warner Cable construction personnel interact daily and regularly with AT&T construction crews in the field, observing and coordinating the buildout of AT&T system in the Franchise Areas. Given this interaction and their technical expertise, Time Warner Cable's personnel are professionally and personally qualified to confirm to AT&T's levels of buildout of its cable system in each Franchise Area. As attested to in the attached declaration of Ralph Newcomb, Time Warner Cable's Vice President of Technical Operations, the Time Warner Cable employee who oversees a staff that operates daily in each of the communities and has a familiarity with AT&T's extensive video facilities in each, AT&T's cable system is now able to

¹³ 47 C.F.R. § 76.907(c).

¹⁴ Exhibit C, Declaration of Dan Alto, Director-Product Marketing Management of AT&T Services, Inc., an affiliate of AT&T Wisconsin, at ¶ 3.b.

¹⁵ *Id.* at ¶ 3.a.

serve virtually all of the occupied households in each of the Franchise Areas.¹⁶ This assessment is entirely consistent with AT&T's acknowledgement that AT&T confirms that it is "actually able to provide service that substantially overlaps" each of the Franchise Areas. This comprehensive buildout also well exceeds the levels deemed sufficient in other instances where the Commission has found a franchise area subject to effective competition under the LEC Test.¹⁷

Given the sensitive nature of the extent of AT&T's current operations, current customer figures and the geographic scope of its service in the Franchise Areas, should the Bureau require additional details to confirm AT&T assertion that its operations "substantially overlap" Time Warner Cable's in each of the Franchise Areas, we hereby request, as provided in Section 76.907(c) of the Commission's rules, that the Bureau on its own motion request AT&T to produce additional detailed information regarding such matters into the record.¹⁸

As also confirmed by AT&T, AT&T has embarked on an aggressive marketing campaign to promote its U-Verse service in each of the Franchise Areas.¹⁹ Examples of AT&T marketing materials distributed in the Franchise Areas and available over the Internet are also attached in Exhibit A.

¹⁶ See Exhibit D, Declaration of Ralph Newcomb, Vice President of Technical Operations for Time Warner Cable.

¹⁷ See, e.g., *Paragon Communications, Inc. d/b/a Time Warner Cable (San Antonio, TX)*, 22 FCC Rcd 4899, ¶ 6 (Med. Bur. 2007) (LEC test met where there is a demonstration of 30% LEC buildout); *Kansas City Cable Partners (Shawnee, KS)*, 18 FCC Rcd 14187, ¶ 7 (Med. Bur. 2003) (LEC test met where there is a demonstration of 15% LEC buildout); *Kansas City Cable Partners (Overland Park, KS)*, 18 FCC Rcd 1546, ¶ 6 (Med. Bur. 2003) (LEC test met where there is a demonstration of 15% LEC buildout); *Cablevision of Boston (Boston, MA)*, 17 FCC Rcd 4772, ¶¶ 7, 18 (2002), *affirming* 16 FCC Rcd 14056 (Cab. Ser. Bur. 2001) (LEC test met where there is a demonstration of 13% LEC buildout).

¹⁸ 47 C.F.R. § 76.907(c) ([W]ith respect to petitions filed seeking to demonstrate the presence of effective competition pursuant to § 76.905(b)(4), the Commission may issue an order directing one or more persons to produce information relevant to the petition's disposition.). In order to respect AT&T's desire to protect such information, Time Warner Cable would not object to such information being submitted under seal or subject to a protective order, and will agree to restrict access to any submitted information to only those persons directly participating in this proceeding.

¹⁹ Exhibit C, at 3.e.

In light of the extensive availability of AT&T's U-Verse service to households in each of the Franchise Areas, its ongoing service and marketing activities, and the fact that it is the incumbent local exchange carrier in all of the Franchise Areas and in surrounding areas, AT&T's service is indeed sufficient to meet the "physically able" requirement of the LEC Test.

2. No Regulatory, Technical Or Other Impediments Exist For Households To Receive AT&T's Service.

AT&T states that it "does not face regulatory, technical, or other impediments to households" in the Franchise Areas taking its U-verse service.²⁰ As also explained by AT&T, AT&T is authorized to provide service throughout the entire state of Wisconsin pursuant to a state issued video service authorization.²¹ In addition, as AT&T's marketing materials attached as Exhibit A demonstrate that residents of all the Franchise Areas need only contact AT&T to activate service.²² These facts, coupled with AT&T's actual franchised service to residents in the communities, prove that there are no regulatory, technical or other impediments to the receipt of AT&T's service by residents of all the Franchise Areas.

3. Potential Subscribers In The Franchise Areas Are Reasonably Aware That They May Purchase AT&T's Service

Under this element of the test, cable operators may rely on "advertising in regional or local media, direct mail, or any other marketing outlet" to demonstrate that potential subscribers in the franchise area are reasonably aware of the competitor's service.²³ Exhibit A includes AT&T advertising and marketing materials targeted to residents of the Franchise Areas. These materials, which include door hangers, brochures and direct mailings, have been distributed to households and residents in each of the Franchise Areas. These materials, combined with

²⁰ Exhibit C, at 3.d. Copy of AT&T's Wisconsin Statewide Video Franchise also attached as Exhibit E.

²¹ Exhibit C, at 3.d.

²² See also AT&T's website at <<http://uversel.att.com>>, which provides customers with service offerings, pricing and other information to sign up for U-verse services.

²³ *Cable Reform Order* at ¶ 11.

various promotional events in the Franchise Areas, have served to inform residents of the existence of AT&T and its service offerings. Furthermore, as residents of the Franchise Areas sign up for AT&T's service, it is fair to assume that other residents throughout have become reasonably aware of AT&T's service offering.²⁴ Given these marketing efforts, as well as AT&T's actual service to homes in the Franchise Areas, residents are certainly "reasonably aware" that they may purchase AT&T's service, and AT&T meets the offer requirement of the LEC Test.

C. AT&T OFFERS COMPARABLE MULTICHANNEL VIDEO PROGRAMMING IN ALL THE COMMUNITIES

Effective competition exists where the programming offered by the MVPD competitor is "comparable" to the programming offered by the unaffiliated cable operator. Pursuant to Section 76.905(g), comparable programming exists when a competing multichannel video programming distributor offers at least twelve channels of video programming, including at least one channel of nonbroadcast service programming.²⁵ As demonstrated by AT&T's channel lineup, included with the marketing materials provide as Exhibit A, AT&T offers over 300 channels of programming, including numerous nonbroadcast programming services such as ESPN, Home Box Office ("HBO") and CNN, as well as numerous local television broadcast stations such as WTMJ(NBC), WISN(ABC), WITI(Fox) and WDJT(CBS). This compares closely with the programming available on Time Warner Cable's cable system.²⁶ Thus, as defined by the

²⁴ See *Time Warner Cable, Petition for Determination of Effective Competition*, Memorandum Opinion and Order (Orlando, FL et al.), DA 99-1651, ¶ 16 (Cable Serv. Bur., rel. Aug. 19, 1999) ("We find that potential subscribers in Orange County are reasonably aware that they may receive competing video service because of BellSouth's advertising and marketing campaign. The fact that BellSouth has a substantial number of subscribers in the franchise areas supports this finding.").

²⁵ 47 C.F.R. § 76.905(g).

²⁶ See Exhibit F, Time Warner Cable's local cable system channel directory.

Commission, AT&T offers comparable multichannel video programming to current and potential subscribers in all of the Franchise Areas.

Accordingly, Time Warner Cable has demonstrated that the LEC Test effective competition test has been met for the Franchise Areas.

CONCLUSION

Because Time Warner Cable has demonstrated that it is subject to effective competition pursuant to Section 623 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 those 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 have read the foregoing Petition, and to the best of such counsels' 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 NW – Suite 800
Washington, D.C. 20037
(202) 478-7370

Its Attorneys

Dated: July 19, 2012

DECLARATION

I, Celeste Flynn, hereby declare under penalty of perjury as follows:

1. I am Vice President Government Relations – Wisconsin for Time Warner Cable Inc. (“Time Warner Cable”), the owner and manager of the cable system involved in the foregoing Petition for Special Relief (“Petition”); and
2. I have read the foregoing Petition. With respect to statements made in this Petition, other than those of which official notice can be taken, the facts contained therein are true and correct to the best of my personal knowledge, information and belief.



Celeste Flynn

Dated: _____

7/9 / 12