



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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).

basis.⁴ Insight's indirect, wholly-owned subsidiary, Insight Midwest Holdings, LLC, holds international section 214 authority to provide global resale service. TWC, a publicly-traded Delaware corporation, is an MVPD that provides cable television, broadband Internet access service, competitive telecommunications, and VoIP services to residential and business customers in 28 states.⁵ TWC's subsidiary, TWC Communications, LLC, holds international section 214 authority to provide global facilities-based and global resale services.

Pursuant to the terms of the proposed transaction, TWC will acquire control of Insight through a merger of Insight and Derby Merger Sub Inc., a wholly-owned subsidiary of TWC, with Insight as the surviving entity. As a result of the merger, Insight will be a wholly-owned, direct subsidiary of TWC. Applicants state that all of Insight's existing subsidiaries that hold Commission licenses or authorizations will remain intact, will continue to hold their operating assets, and will become indirect, wholly-owned subsidiaries of TWC.

Applicants submit that the proposed transaction is in the public interest because it will strengthen the combined company's ability to compete with dominant incumbent LECs, facilitate Insight's transition to an all-IP network, and expand telecommunications service offerings to business and wholesale customers, including wireless carriers, in Insight's service territory. Applicants further assert that the proposed transaction will not diminish competition because TWC and Insight, both non-dominant telecommunications providers, generally do not compete in the provision of voice and data services, and their networks overlap only to a small degree, and only in an area where the incumbent LEC is the major competitor. Overall, they maintain that the *de minimis* network overlaps will not have an adverse effect on competition in the telecommunications or video programming businesses.⁶ For cable system customers, Applicants state that TWC's broader footprint will benefit Insight's customers by eliminating redundant facilities and upgrading regional network equipment, allow a quicker rollout of innovative service offerings, including broadband offerings, and promote more robust competition with direct broadcast satellite providers and incumbent LECs that provide video and Internet access services.⁷ Applicants affirm that TWC will continue Insight's local community programming and community involvement and that the proposed transaction will not reduce competition in the sale of video programming or the ability of unaffiliated MVPDs to access program services.⁸ They state that TWC's acquisition of Insight's cable systems will not result in the acquisition by TWC of any national video

⁴ Applicants state that CVMO Acquisition, LLC and The Carlyle Group each own 43 percent of Insight. The 10 percent or greater owners of CVMO Acquisition, LLC are Crestview Partners II, L.P. (47.96 percent) and MidOcean Partners III, L.P. (12.65 percent). Applicants further state that Crestview Partners II, L.P. is controlled by Crestview Partners, and MidOcean Partners III, L.P. is controlled by MidOcean Partners. All entities are U.S. based.

⁵ TWC is authorized as a competitive telecommunications carrier in Alabama, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, and Wisconsin.

⁶ Public Interest Statement at 18-19.

⁷ *Id.* at 10-18.

⁸ *Id.* at 18-20.

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).

Columbus, Ohio. They state that Insight provides competitive telephone exchange service to 27 residential customers whose homes are passed by TWC's facilities. Overall, they state that the area in which the companies' networks overlap consists of approximately 2,600 households, or less than 0.2 percent of Insight's 1.34 million homes passed and approximately 90 plant miles out of about 16,500 total plant miles in Insight's network.¹⁷

We seek comment from the public on whether the proposed transaction satisfies the waiver criteria set forth in section 652(d)(6)(A)(iii). Additionally, the Commission may waive the restrictions of subsection 652(b) only if it finds that the relevant LFAs approve of such waiver.¹⁸ In the *Comcast/CIMCO* proceeding, the Commission established a process for an LFA to express its approval or disapproval of the Commission's possible waiver of the restrictions of section 652(b).¹⁹ In the public notice, the Commission required the Applicants to: (1) serve, within 10 days of the release of the public notice, a copy of the public notice on any LFA in the cable/telco overlap areas that had authority over the cable operator; (2) file with the Commission a certificate of service attesting that the public notice was timely served; and (3) informally advise the relevant LFAs of the public notice and procedures established for notifying the Commission of their approval or disapproval.²⁰ The Commission found that these procedures balanced the interests of the applicants, interested parties, and the public-at-large by providing a reasonable period for LFAs to approve or disapprove the requested waiver while at the same time preventing indefinite delay of the Commission's transaction review and waiver process, and possible derailment of a transaction that could otherwise be found to be in the public interest.²¹ The Applicants in the current proceeding raise similar concerns about delay, and assert that there are very few telephone exchange customers in most of the areas in question and no competitive overlap in most areas. They

¹⁷ Application at 16-17.

¹⁸ 47 U.S.C. § 572(d)(6)(B).

¹⁹ See *Applications Filed for the Acquisition of Certain Assets of CIMCO Communications, Inc. by Comcast Phone LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC*, WC Docket No. 09-183, Public Notice, 24 FCC Rcd 14815 (2010) (*Comcast/CIMCO Notice*); *Applications Filed for the Acquisition of Certain Assets of CIMCO Communications, Inc. by Comcast Phone LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC*, WC Docket No. 09-183, Memorandum Opinion and Order and Order on Reconsideration, 25 FCC Rcd 3401, 3404, para. 15 (2010) (*Comcast/CIMCO Order*).

²⁰ See *Comcast/CIMCO Notice*, 24 FCC Rcd at 14818-19.

²¹ *Comcast/CIMCO Order*, 25 FCC Rcd at 3412, para. 27. In particular, the Commission found that these procedures responded to the Applicants' concerns that some LFAs might not file any response regarding the requested waiver because the transaction might involve very few customers in any individual LFA, or because Applicants might not use rights of way or be subject to regulation in a specific area. *Comcast/CIMCO Notice*, 24 FCC Rcd at 14817-18; *Comcast/CIMCO Order*, 25 FCC Rcd at 3407, 3412, paras. 15, 27. In the *NTELOS/FiberNet* proceeding, the Commission adopted a slightly different process to reflect the fact that it would be more difficult in that instance for the Applicants to identify all relevant franchise areas and LFAs. *Applications Filed for the Transfer of Control of FiberNet from One Communications Corp. to NTELOS Inc.*, WC Docket No. 10-158, Public Notice, 25 FCC Rcd 13179, 13185 (WCB 2010) (*NTELOS/FiberNet Notice*); *Applications Filed for the Transfer of Control of FiberNet from One Communications Corp. to NTELOS Inc.*, WC Docket No. 10-158, Public Notice, 25 FCC Rcd 16304 (WCB 2010). There is no such issue in this proceeding. Applicants state that there are 26 local franchise areas in Ohio and three in Kentucky in which both Insight and TWC hold a cable television franchise, and that Insight serves less than 4,000 telephone exchange customers in nine of those overlapping franchise areas. For these areas, Applicants have identified two LFAs that must approve a section 652(b) waiver. Application at 16, 19-20.

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).

respond to the waiver request. In light of the multiple applications and waiver request pending before the Commission with respect to this transaction and the public interest review associated with them, the domestic section 214 transfer of control application is not subject to streamlined treatment.²⁵

SATELLITE EARTH STATION APPLICATIONS

Insight Kentucky Partners II, L.P. and Insight Communications Midwest, LLC, subsidiaries of Insight, seek to transfer control to TWC of non-common-carrier receive only earth station registrations. These applications have been assigned File Nos. SES-T/C-20110906-01029 (Lead Call Sign: E2091) and SES-T/C-20110906-01030 (Lead Call Sign: E5828).

SECTION 310(d) APPLICATION

The application for consent to the assignment of licenses under section 310(d) has been assigned the file numbers listed below.

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0004843213 ²⁶	Insight Kentucky Partners II, LP	KNCN356
0004843245	Insight Communications Midwest, LLC	KWG830

EX PARTE STATUS OF THIS PROCEEDING

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

²⁵ 47 C.F.R. § 63.03(c)(1).

²⁶ This has been designated by Applicants as the lead Wireless Telecommunications Bureau application.

²⁷ 47 C.F.R. §§ 1.1200 *et seq.*

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).

- Electronic Filers: Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) at <http://fjallfoss.fcc.gov/ecfs2/>. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Additionally, filers must deliver courtesy copies by email or facsimile to the following Commission staff:

- Jim Bird, Office of General Counsel, at Jim.Bird@fcc.gov or 202 / 418-2822 (facsimile);
- Joel Rabinovitz, Office of General Counsel, at Joel.Rabinovitz@fcc.gov or 202 / 418-2822 (facsimile);
- Lisa Gelb, Wireline Competition Bureau, at Lisa.Gelb@fcc.gov or 202 / 418-2825 (facsimile);
- Tim Stelzig, Wireline Competition Bureau, at Tim.Stelzig@fcc.gov or 202 / 418-1413 (facsimile);
- Jodie May, Competition Policy Division, Wireline Competition Bureau, at Jodie.May@fcc.gov or 202 / 418-1413 (facsimile);
- David Krech, Policy Division, International Bureau, at David.Krech@fcc.gov or 202 / 418-2824 (facsimile);

- 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.

-FCC-