

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

In the Matter of )  
 )  
Applications Filed for the Transfer of Control of ) WC Docket No. 11-148  
Insight Communications Company, Inc. to )  
Time Warner Cable Inc. )  
 )

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 31, 2012**

**Released: January 31, 2012**

By the Chief, Wireline Competition Bureau; Chief, International Bureau; and Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. Time Warner Cable Inc. (TWC) and Insight Communications Company, Inc. (Insight) (collectively, Applicants) filed a series of applications<sup>1</sup> pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act), and the Commission's rules to transfer control of Insight from its current shareholders to TWC.<sup>2</sup> As part of their applications, 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.<sup>3</sup> Based upon the record before us, we grant Applicants' request for a waiver of section 652(b) of the Act. We find that any potential competitive harms of the transaction are limited because the Applicants primarily serve separate geographic areas, with very limited overlaps. We received no comments in opposition to the transaction, and we conclude that, overall, approval of the applications will serve the public interest, convenience, and necessity, and hereby grant the applications.

**II. BACKGROUND**

**A. Applications and Review Process**

2. On September 27, 2011, the Wireline Competition Bureau, International Bureau, and Wireless Telecommunications Bureau (collectively, Bureaus) released a consolidated public notice

<sup>1</sup> 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).

<sup>2</sup> 47 U.S.C. §§ 214, 310(d).

<sup>3</sup> 47 U.S.C. § 572(b). Applicants also submitted an Agreement and Plan of Merger dated 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).

accepting the applications for non-streamlined processing and announcing a pleading cycle.<sup>4</sup> The Bureaus also established a process for soliciting input from the relevant local franchising authorities (LFAs) and determining whether they disapprove of the requested waiver of section 652(b).<sup>5</sup> The *September Public Notice* established a 60-day period, after proper service by the Applicants, for LFAs to inform the Commission of their decision whether to approve or disapprove of the proposed waiver.<sup>6</sup> The Public Notice explained that, if an LFA fails to inform the Commission of its decision within 60 days after proper service by the Applicants, the Commission will deem that LFA to have approved of the proposed waiver of the restrictions of section 652(b).<sup>7</sup> The Bureaus received no comments in response to the *September Public Notice* and no disapprovals of the requested waiver from the LFAs.

### **1. Department of Justice Review**

3. The Antitrust Division of the U.S. Department of Justice (DOJ) reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition.<sup>8</sup> The Antitrust Division's review is limited solely to an examination of the potential competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between Insight and TWC and approved the transaction without conditions on September 16, 2011.<sup>9</sup>

### **B. The Applicants**

#### **1. The Transferor**

4. Insight, a Delaware corporation, is a multichannel video programming distributor (MVPD) that provides cable television, voice, 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 basis.<sup>10</sup> Insight's subsidiary, Insight Midwest Holdings, LLC, holds international section 214 authority to provide global resale service. Its other subsidiaries, Insight Kentucky Partners II, LP and Insight Communications

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<sup>4</sup> *Applications Filed for the Transfer of Control of Insight Communications Company, Inc. to Time Warner Cable Inc.*, WC Docket No. 11-148, 26 FCC Rcd 13372 (WCB 2011) (*September Public Notice*).

<sup>5</sup> These are the same LFA waiver approval procedures the Commission established in the Comcast/CIMCO proceeding. 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 (WCB 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*).

<sup>6</sup> *September Public Notice* at 5.

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. § 18.

<sup>9</sup> See DOJ, Transaction Granted: Early Termination (Sept. 16, 2011), available at <http://www.ftc.gov/bc/earlyterm/2011/09/et110916.pdf>.

<sup>10</sup> Applicants state that the 10 percent or greater owners of Insight are CVMO Acquisition, LLC, which holds 43 percent of the equity, and The Carlyle Group, which holds 43 percent of the equity through four entities under its control. The 10 percent or greater owners of CVMO Acquisition, LLC are Crestview Partners II, L.P. (47.96%) and MidOcean Partners III, L.P. (12.65%). 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.

Midwest, LLC, hold wireless licenses. Insight Kentucky Partners II, L.P. and Insight Communications Midwest, LLC also hold non-common-carrier receive only earth station registrations.

## 2. The Transferee

5. TWC, a publicly-traded Delaware corporation with no ten percent or greater interest holders, is an MVPD that provides cable television service,<sup>11</sup> broadband Internet access service, telecommunications, and VoIP services to residential and business customers in 28 states.<sup>12</sup> TWC's subsidiary, TWC Communications, LLC, holds international section 214 authority to provide global facilities-based and global resale services.

## C. The Transaction

6. 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.

## III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

7. Pursuant to sections 214(a) and 310(d) of the Act,<sup>13</sup> the Commission must determine whether the proposed transfer of assets, licenses, and authorizations held and controlled by Insight to TWC will serve the public interest, convenience, and necessity.<sup>14</sup> In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.<sup>15</sup> If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or

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<sup>11</sup> In addition to operating cable television systems, TWC has ownership interests in 24-hour local news channels (in the Carolinas, New York, NY, and surrounding areas, Buffalo, NY, Albany, NY, Rochester, NY, Central NY, and Austin, TX); local channels featuring college and high school sports (in Albany, Central New York, Buffalo, Rochester, Kansas City, Nebraska, Mid-Ohio, Southwest Ohio, Wisconsin, and Hawaii); national programming networks (Exercise TV, iN Demand, and The MLB Network); and one regional sports network, SportsNet New York. See Public Interest Statement at 3-4. See also Public Interest Statement at App. F.

<sup>12</sup> TWC is authorized as a 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.

<sup>13</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>14</sup> 47 U.S.C. § 310(d) requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17460-61, para. 26 (2008) (*Verizon/ALLTEL Order*); *Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc.*, WT Docket No. 06-96, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 13580, 13588, para. 13 (2006) (*DoCoMo/Guam Cellular Order*); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300 n.60 (2005) (*SBC/AT&T Order*).

<sup>15</sup> *Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, Memorandum Opinion and Order, 24 FCC Rcd 8741, 8745-46, para. 9 (2009) (*CenturyTel/Embarq Order*).

impairing the objectives or implementation of the Communications Act or related statutes.<sup>16</sup> The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the proposed public interest benefits.<sup>17</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>18</sup> If we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, we must designate the applications for hearing.<sup>19</sup>

8. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,”<sup>20</sup> which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing spectrum in the public interest.<sup>21</sup> Our public interest analysis may also entail assessing whether the transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.<sup>22</sup> In conducting this analysis, the Commission may consider technological and market changes, as well as trends within the communications industry, including the nature and rate of change.<sup>23</sup>

9. Our competitive effects analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.<sup>24</sup> DOJ reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.<sup>25</sup> Under the Commission’s review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing.<sup>26</sup> DOJ’s review is also limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations.<sup>27</sup> The Commission’s competitive effects analysis under the public interest standard is somewhat broader—for example, it considers whether a transaction will enhance, rather than merely

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<sup>16</sup> *Id.*

<sup>17</sup> See, e.g., *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T/BellSouth Order*).

<sup>18</sup> See, e.g., *id.*

<sup>19</sup> See, e.g., *Application of Echostar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and Echostar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, at para. 25 (2002) (*EchoStar/DirectTV Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, et al.*, WT Docket Nos. 04-70, 04-254, and 04-323, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21542-44, at para. 40 (2004) (*Cingular/AT&T Wireless Order*).

<sup>20</sup> *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

<sup>21</sup> See 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996 Act), Preamble; *SBC/AT&T Order*, 20 FCC Rcd at 18301, para. 17 (2005); see also *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom Inc.*, WC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-31, para. 9 (1998) (*WorldCom/MCI Order*); cf. 47 U.S.C. §§ 301, 303, 309(j), 310(d), 521(4), 532(a).

<sup>22</sup> See *AT&T/BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

<sup>23</sup> See *id.*

<sup>24</sup> See, e.g., *id.* at 5673, para. 21.

<sup>25</sup> 15 U.S.C. § 18.

<sup>26</sup> See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17462, para. 28.

<sup>27</sup> See *id.*

preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.<sup>28</sup>

10. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.<sup>29</sup> Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions to ensure that the public interest is served.<sup>30</sup> Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.<sup>31</sup> Similarly, section 214(c) of the Act authorizes the Commission to impose “such terms and conditions as in its judgment the public convenience and necessity may require.”<sup>32</sup> Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.<sup>33</sup> In using this broad authority, the Commission has generally imposed conditions to remedy specific harms or confirm specific benefits likely to arise from transactions and that are related to the Commission’s responsibilities under the Act and related statutes.<sup>34</sup>

#### IV. DISCUSSION

##### A. Applicants’ Qualifications to Hold Licenses

11. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold, assign, and transfer licenses under section 310(d) of the Act and the Commission’s rules. In general, when evaluating assignments under section 310(d), we do not re-evaluate the qualifications of the transferor.<sup>35</sup> The exception to this rule occurs where issues related to basic

<sup>28</sup> See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17462, para. 28; *Applications for Consent to Transfer Control of Licenses, XM Satellite Radio Holdings, Inc. to Sirius Satellite Radio Inc.*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12366, at para. 32 (2008) (*XM/Sirius Order*).

<sup>29</sup> See, e.g., *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 21.

<sup>30</sup> See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17462, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>31</sup> 47 U.S.C. § 303(r); see also *Verizon/ALLTEL Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>32</sup> 47 U.S.C. § 214(c); see also *Verizon/ALLTEL Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>33</sup> See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22; see also *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

<sup>34</sup> See, e.g., *Verizon/ALLTEL Order*, 23 FCC Rcd at 17463, para. 29; *XM/Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T/BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

<sup>35</sup> See *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *Applications of Midwest Wireless Holdings, L.L.C. and Alltel Communications, Inc.*, WT Docket No. 05-339, Memorandum Opinion and Order, 21 FCC Rcd 11526, 11536, para. 17 (2006) (*ALLTEL/Midwest Wireless Order*); *Applications of Nextel Partners, Inc., Transferor, and Nextel Wip Corp. and Sprint Nextel Corporation, Transferees*, Memorandum Opinion and Order, 21 FCC Rcd 7358, 7362, para. 10 (2006) (*Sprint Nextel/Nextel Partners Order*); *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18526, para. 183 (2005) (*Verizon/MCI Order*); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13979, para. 24 (2005) (*Sprint/Nextel Order*); *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum (continued....)

qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.<sup>36</sup> This is not the case here. Thus, we need not re-evaluate Insight's basic qualifications.

12. Section 310(d) also requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act.<sup>37</sup> Among the factors that the Commission considers in its public interest inquiry is whether the applicant for a license or license transfer has the requisite "citizenship, character, financial, technical, and other qualifications."<sup>38</sup> No challenges have been raised with respect to the basic qualifications of TWC, and the Commission has previously found TWC qualified to control entities holding Commission licenses and authorizations.

### B. Section 652 Waiver Request

13. The Applicants request a waiver of the restrictions of section 652(b) of the Act.<sup>39</sup> Section 652(b) prohibits cable operators and their affiliates from acquiring "directly or indirectly, more than a ten percent financial interest, or any management interest, in any local exchange carrier providing telephone exchange service within such cable operator's franchise area."<sup>40</sup> Section 652(b) is applicable to

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Opinion and Order, 20 FCC Rcd 13053, 13063–64, para. 18 (2005) (*ALLTEL/Western Wireless Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21546, para. 44 (2004) (*Cingular/AT&T Wireless Order*); *Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9790, para. 19 (2001) (*Deutsche Telekom/VoiceStream Order*); *Verizon/ALLTEL Order*, 23 FCC Rcd at 17464, para. 31; *Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17582, para. 23 (2008) (*Sprint Nextel/Clearwire Order*).

<sup>36</sup> See *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *ALLTEL/Midwest Wireless Order*, 21 FCC Rcd 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *Sprint/Nextel Order*, 20 FCC Rcd at 13979, para. 24; *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13063–64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, para. 19; *Verizon/ALLTEL Order*, 23 FCC Rcd at 17464, para. 31; *Sprint Nextel/Clearwire Order*, 23 FCC Rcd 17582–83, para. 23.

<sup>37</sup> Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. See 47 U.S.C. § 308. Our rules implementing the provisions of section 308 regarding an applicant's qualifications to hold the Commission licenses involved in this transfer are set forth in Parts 5, 25, and 63 of the Commission's rules. See 47 C.F.R. Parts 5, 25, 63; see also *DoCoMo/Guam Cellular Order*, 21 FCC Rcd at 13590, para. 14; *ALLTEL/Midwest Wireless Order*, 21 FCC Rcd at 11536, para. 17; *Sprint Nextel/Nextel Partners Order*, 21 FCC Rcd at 7362, para. 10; *SBC/AT&T Order*, 20 FCC Rcd at 18379, para. 171; *Verizon/MCI Order*, 20 FCC Rcd at 18526, para. 183; *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13063–64, para. 18; *Cingular/AT&T Wireless Order*, 19 FCC Rcd at 21546, para. 44.

<sup>38</sup> See *AT&T/BellSouth Order*, 22 FCC Rcd at 5756, para. 191; *Applications of SBC Communications Inc. and BellSouth Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations*, WT Docket No. 00-81, Memorandum Opinion and Order, 15 FCC Rcd 25459, 25465, para. 14 (2000) (*SBC/BellSouth Order*); see also 47 U.S.C. §§ 308, 310(d); 47 C.F.R. Parts 5, 25, 63.

<sup>39</sup> See Application at 12–18.

<sup>40</sup> 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.

this transaction because Insight provides local exchange services in TWC's cable franchise area.<sup>41</sup> 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 LFAs approve of such waiver.<sup>42</sup>

14. We grant the Applicants' request for waiver of the restrictions of section 652(b).<sup>43</sup> First, based on the record and as described below, we find that the potential anticompetitive effects of the proposed transaction are limited and are outweighed by the probable benefits, particularly the potential for greater telephony competition for residential and business customers through the combined companies' increased ability to compete with the incumbent local exchange carrier (LEC) for voice services.<sup>44</sup> We find that the proposed transaction is unlikely to result in anticompetitive effects because, among other reasons, Insight and TWC generally do not provide service in the same geographic areas, and other competitors will remain in markets where the companies currently have overlapping services.<sup>45</sup> We also find that grant of the Application will help meet the "convenience and needs of the community to be served" by promoting facilities-based competition for residential and enterprise customers, for the reasons discussed below.<sup>46</sup> We therefore find that the public interest requirement in section 652(d)(6)(A) is met.

15. Second, we find that the requirement in section 652(d)(6)(B) that "the local franchising authority approve of such waiver" has been met.<sup>47</sup> As discussed above, under the process established for this transaction, LFAs had 60 days after proper service to express approval or disapproval of the proposed waiver with the Commission.<sup>48</sup> The *September Public Notice* provided that if an LFA failed to inform the Commission of its decision within the specified period, that authority would be deemed to have approved of the proposed waiver of the restrictions of section 652(b).<sup>49</sup> Applicants verified that they provided

<sup>41</sup> Applicants contend that the Commission reasonably could interpret section 652(b) as not applying to the proposed transaction because Insight did not begin offering telephone exchange service until after January 1, 1993. Application at 13-14 (citing 47 U.S.C. § 572(e) (defining the term "telephone service area")). Nevertheless, they request "a waiver under section 652(d) in the interest of obtaining approval for the proposed transaction as expeditiously as possible." Application at 14. 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).

<sup>42</sup> 47 U.S.C. § 572(d)(6)(A)(iii) & (B).

<sup>43</sup> 47 U.S.C. § 572(b) (prohibiting cable operators from acquiring "any local exchange carrier providing telephone exchange service within such cable operator's franchise area").

<sup>44</sup> 47 U.S.C. § 572(d)(6)(A)(iii); *see also* 47 C.F.R. § 76.505(d)(6)(i)(C).

<sup>45</sup> Application at 10-15; Public Interest Statement at 10-15; Letter from Matthew A. Brill and Elizabeth R. Park, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-148, at Attach. (Telecommunications Competitors in Insight Markets) (filed Oct. 4, 2011) (Oct. 4 Supplement). *See Comcast/CIMCO Order*, 25 FCC Rcd at 3410, para. 22; *Applications Granted 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, 16306 (WCB 2010) (*NTELOS Notice*).

<sup>46</sup> *See supra* Part IV.D; *see also* Application at 10-15; Public Interest Statement at 10-15.

<sup>47</sup> 47 U.S.C. § 572(d)(6)(B); *see also* 47 C.F.R. § 76.505(d)(6)(ii).

<sup>48</sup> *September Public Notice* at 7.

<sup>49</sup> *Id.*

notice to the two relevant LFAs on October 4 and October 5, 2011.<sup>50</sup> The Commission received no disapprovals of the requested waiver from the LFAs in the overlap areas, or elsewhere. Thus, pursuant to the procedures announced in our *September Public Notice*, we find that the LFAs approve of the requested waiver. We therefore grant the Applicants' request for waiver of section 652(b) of the Act.

### C. Potential Public Interest Harms

16. In this section, we consider the potential harms to competition arising from the proposed transaction. Overall, we conclude that any potential competitive harms are limited because the Applicants primarily serve separate geographic areas. Applicants state that, while Insight and TWC both have authority to operate in several of the same franchise areas, the companies compete head-to-head for only approximately 2,600 homes in 10 communities in and around Columbus, Ohio, where both companies have built network facilities serving the same customers.<sup>51</sup> These 2,600 homes represent less than 0.2 percent of Insight's 1.34 million homes passed, and approximately 90 plant miles out of a total of about 16,500 total plant miles in Insight's network (approximately 0.55 percent).<sup>52</sup> Of the 2,600 homes that have access to service offerings from both Insight and TWC, Insight provides telephone service to only 27 circuit-switched customers and 271 interconnected VoIP customers, and cable television service to only 670 customers (0.1 percent of Insight's approximately 643,000 cable customers).<sup>53</sup>

17. *Residential Telephony.* Because the area in which Insight and TWC currently compete for residential telephone customers is extremely limited, we find that the proposed transaction does not present a significant reduction in competition relative to what exists today.<sup>54</sup> The merger will result in the loss of Insight as a facilities-based competitor in the area in Columbus containing the 2,600 households with access to both companies' networks. However, we do not expect that pricing for services to those 2,600 households will be different from that of surrounding areas after the merger because Applicants state that prices are set on a broader geographic basis.<sup>55</sup> We also recognize the risk of competitive harm is

<sup>50</sup> See Letter from Elizabeth R. Park, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, WC Docket No. 11-148 (filed Oct. 7, 2011) (attaching proof of delivery and affidavit of service).

<sup>51</sup> Application at 16; Public Interest Statement at 18-19; Oct. 4 Supplement at Attach. (TWC-Insight Ohio Franchised Service Areas Network Overlap); Letter from Matthew A. Brill and Elizabeth R. Park, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-148 (filed Nov. 29, 2011) (Nov. 29 Supplement). Applicants state that Insight is authorized to provide cable television service in 200 local franchise areas in its three-state region. In 29 of the 200 areas, both Insight and TWC are authorized to provide cable television service, but their networks mostly serve distinct portions of those areas, and they do not generally compete directly in the provision of any service. Application at 16-17; Public Interest Statement at 18; Nov. 29 Supplement at Att. 1.

<sup>52</sup> Application at 17; Public Interest Statement at 18. Plant miles generally refer to the number of miles of facilities laid or strung by a cable company.

<sup>53</sup> Nov. 29 Supplement at Att. 1; Public Interest Statement at 18.

<sup>54</sup> See *Applications Filed by Frontier Communications Corporation and Verizon Communications, Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, Memorandum Opinion and Order, 25 FCC Rcd 5972, 5980, para. 15-16 (2010) (finding that the transaction was unlikely to have anticompetitive effects because the parties did not compete for customers and had limited adjacent service territories); *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23305-06, para. 153 (2002) (*AT&T/Comcast Order*) (finding that Comcast and AT&T largely competed in separate geographic markets for telephony services, and to the extent their service areas overlapped, there was no material increase in concentration that would raise the potential of competitive harm).

<sup>55</sup> Letter from Matthew A. Brill and Elizabeth R. Park, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-148, at 1 (filed Dec. 14, 2011) (Dec. 14 Supplement).

somewhat mitigated by the presence of the incumbent LEC, which provides competing voice services in this overlap area. The Commission has found previously that cable-based providers are a strong competitive alternative to the incumbent LEC.<sup>56</sup> The incumbent LEC similarly represents a significant competitive alternative to the cable provider. The customers in this limited overlap area will therefore still have access to a facilities-based alternative to the incumbent LEC through the integration of Insight's networks with TWC's adjacent facilities, and, on balance, we do not find that the transaction will cause a significant reduction in competition in the companies' franchise areas.<sup>57</sup>

18. *Enterprise Services.* Our consideration of public interest harms also focuses on competition for enterprise and wholesale services. Consistent with Commission precedent, the relevant geographic market for such services is each customer's location, because it would be prohibitively expensive for an enterprise customer to move its office location in order to avoid a "small but significant and nontransitory increase in the price" of special access service.<sup>58</sup> In addition, as the Commission has found, there are significant entry barriers to putting competitive last-mile facilities into place.<sup>59</sup>

19. The record indicates that there are a very small number of commercial buildings in which both Insight and TWC have built last-mile facilities to serve customers. According to Applicants, in the areas in Columbus in which their networks overlap, Insight and TWC both have connections to **[Begin Confidential] [End Confidential]**. Insight serves **[Begin Confidential] [End Confidential]** commercial customers in **[Begin Confidential] [End Confidential]** of the buildings.<sup>60</sup> **[Begin Confidential] [End Confidential]**.<sup>61</sup> In previous transactions in which an incumbent LEC has acquired a competitive LEC, the Commission has identified competitive harm where the merging carriers both provide service to a building over their own facilities, and there is no evidence that another competitor is connected to or is

<sup>56</sup> Application at 10-11; *AT&T/BellSouth Order*, 25 FCC Rcd 5662, 5712-13, para. 93; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 98-178, Memorandum Opinion and Order, 14 FCC Rcd 3160, 3186, para. 48 (1999) (finding that, although the companies provided limited telephone service in the same markets, the transaction was in the public interest because the combined cable entity would provide an effective competitive alternative to the incumbent LEC).

<sup>57</sup> Application at 10-11, 17; Oct. 4 Supplement at Att. (Telecommunications Competitors in Insight Markets). See *NTELOS Notice*, 25 FCC Rcd at 16307 (finding that NTELOS' acquisition of FiberNet, a competitive LEC, would enable NTELOS to compete more effectively with incumbent LECs and cable companies). Applicants further assert that, in addition to the incumbent LEC and other competitors, they are focused on competing against several large "over-the-top" VoIP providers that operate in the overlap areas. Application at 17; Oct. 4 Supplement at Att. (Telecommunications Competitors in Insight Markets). Facilities-based interconnected VoIP providers, including cable companies such as Insight and TWC, own and control the last-mile facility between the customer's home and the provider's network. These providers typically have dedicated facilities, transport calls over a private network they own or lease, and may have a backup power source in the event of a service disruption. VoIP providers not meeting this definition are referred to as over-the-top VoIP providers, such as Vonage and Skype. The extent to which over-the-top providers rely on their own facilities varies from provider to provider, and they require the end user to obtain broadband transmission from a third-party provider. *AT&T/BellSouth Order*, 25 FCC Rcd 5662, 5712, para. 92 and n.266.

<sup>58</sup> *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4202-03, paras. 16-17 (2011) (*Qwest/CenturyLink Order*) (citing *SBC/AT&T Order*, 20 FCC Rcd at 18307, para. 28; *Verizon-MCI Order*, 20 FCC Rcd at 18449-50, para. 28)).

<sup>59</sup> *Qwest/CenturyLink Order*, 26 FCC Rcd at 4202-03, para. 16.

<sup>60</sup> Letter from Matthew A. Brill and Elizabeth R. Park, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-148, at 1-2 (filed Dec. 9, 2011) (Dec. 9 Supplement).

<sup>61</sup> *Id.*

likely to connect the building to its network.<sup>62</sup> In contrast, in this proceeding, Applicants are both competitive providers whose primary source of competition at those buildings is the incumbent LEC. In addition, Applicants report that **[Begin Confidential] [End Confidential]** last-mile connections to the commercial buildings served by both TWC and Insight such that **[Begin Confidential] [End Confidential]**.<sup>63</sup> In light of all these considerations, we find that the potential for reduced competition is limited in scope. Moreover, in addition to the incumbent LEC, Applicants identify at least seven other carriers that could potentially compete with TWC for commercial customers in Columbus.<sup>64</sup> We further take into account TWC's assertion that a core aspect of its corporate strategy is to provide communications services to enterprise and wholesale customers, that it has experience providing these services, and that, post merger, it intends to accelerate its offerings to compete aggressively against the incumbent LEC and other major providers in this market.<sup>65</sup> We find that these factors, collectively, mitigate our concerns about the potential loss of competition.

20. *MVPD Services.* Applicants state that Insight serves 670 cable customers in the areas in Columbus in which the companies' networks overlap by approximately 90 plant miles.<sup>66</sup> Customers in this overlap area currently have head-to-head cable competition between TWC and Insight, which we find to be beneficial to consumers. The Commission previously has concluded that the relevant geographic market for MVPD services is local because consumers make decisions based on the MVPD choices available to them at their residences and are unlikely to change residences to avoid a small but significant increase in the price of MVPD service.<sup>67</sup> Because it is impractical to analyze a separate geographic market for each individual customer, the Commission typically conducts its analysis based on the franchise areas of cable operators.<sup>68</sup> While Insight and TWC have some franchises for the same communities, their networks mostly serve separate portions of those communities, and as noted above, only 2,600 Insight customers currently have a choice between TWC and Insight cable television service. The Commission previously has found that, where cable providers primarily have not overbuilt cable systems reaching the same homes, the potential harm to competition based on small instances of overbuilding is not sufficient to create a material risk of public interest harm.<sup>69</sup> Similarly, we find here that the 2,600 Insight customers (out of approximately 643,000 customers system-wide) in the overbuild area represent a de minimis reduction in competition that is unlikely to have an adverse effect warranting

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<sup>62</sup> *Qwest/CenturyLink Order*, 26 FCC Rcd at 4202-03, paras. 16-17.

<sup>63</sup> December 9 Supplement at 1-2.

<sup>64</sup> Oct. 4 Supplement at Att. (Telecommunications Competitors in Insight Markets).

<sup>65</sup> Public Interest Statement at 13-14.

<sup>66</sup> *Id.* at 18.

<sup>67</sup> *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corporation, Transferee*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8235-36, para. 64 (2006) (*Adelphia/Time Warner/Comcast Order*).

<sup>68</sup> *AT&T Comcast Order*, 17 FCC Rcd at 23282, para. 90.

<sup>69</sup> *Adelphia/Time Warner/Comcast Order*, 21 FCC Rcd 8203, 8247, para. 91 (2006); Letter from William Gaston, Marco Island Cable, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 05-192 filed Feb. 13, 2006 (transaction resulting in the elimination of an overbuild cable competitor passing up to 8,000 residences did not create a material risk of public interest harm).

divestiture or other conditions.<sup>70</sup> In addition, Applicants state that the incumbent LEC and an additional provider hold authorizations from the Ohio Department of Commerce to provide competitive video service in the affected communities.<sup>71</sup>

#### D. Potential Public Interest Benefits

21. We also consider whether the proposed transaction is likely to generate public interest benefits. As discussed below, we find that such benefits are likely. On balance, we find that the benefits, taken as a whole, outweigh any potential public interest harms. Specifically, we find that grant of the Application will spur greater facilities-based competition for residential and enterprise customers and result in accelerated and expanded availability of IP-based services to Insight's customers.

22. The Commission applies a "sliding scale approach" when evaluating benefit claims. Under this sliding scale approach, where potential harms appear "both substantial and likely, the Applicants' demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand."<sup>72</sup> On the other hand, where potential harms appear to be less likely or less substantial, as in this case, we will accept a lesser showing to approve the transaction.<sup>73</sup> In this case, as explained above, we find limited public interest harms, particularly because the area in which Insight and TWC compete is extremely small. We also find the potential competitive benefits that are likely to result from the transaction are sufficient for us to find that the proposed transaction serves the public interest.

23. In particular, the proposed transaction likely will provide benefits to residential and business customers through the combined companies' increased ability to compete with the incumbent LEC in the provision of voice service and service bundles. For example, Applicants explain that the combination of their networks will create operating efficiencies and scale and scope advantages in procuring key inputs, such as long distance service, 911 connectivity, directory assistance, and other database services.<sup>74</sup> We anticipate that this will allow the merged entity to offer new services to a broader range of customers. Applicants assert that TWC is well positioned to compete vigorously with the incumbent LEC post-merger.<sup>75</sup> TWC has more than 4.4 million residential voice customers and 149,000 business voice customers in 28 states and has generally achieved higher voice penetration levels than

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<sup>70</sup> Applicants state that the proposed transaction will result in TWC gaining approximately 643,000 video subscribers from Insight, bringing its total video subscribers to approximately 13 million. Public Interest Statement at 21.

<sup>71</sup> *Id.* at 19, n.37.

<sup>72</sup> *Verizon/ALLTEL Order*, 23 FCC Rcd at 17496, para. 118; *EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation (Transfers) and EchoStar Communications Corporation (Transferees)*, 17 FCC Rcd 20559, 20631, para. 192 (2002) (*EchoStar-DirecTV HDO*) (quoting *SBC/Ameritech Order*, 14 FCC Rcd 14712, 14825, para. 256); *cf.* DOJ/FTC Guidelines § 4 ("The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.").

<sup>73</sup> *See, e.g., Applications of Cellco Partnership D/B/A/ Verizon Wireless and AT&T, Inc., Memorandum Opinion and Order and Declaratory Ruling*, WT Docket No. 06-96, 25 FCC Rcd 10985, 11009, para. 54 (2010) (*Cellco Partnership Order*); *Verizon/ALLTEL Order*, 23 FCC Rcd at 17496, para. 118.

<sup>74</sup> Application at 10-11, Letter from Matthew A. Brill and Elizabeth R. Park, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-148 (filed Jan. 10, 2012), at 1-2 (Jan. 10 Supplement).

<sup>75</sup> Jan. 10 Supplement at 1 ("TWC's larger footprint, generally higher voice penetration levels, and greater financial resources and stability will combine to create a stronger competitor to incumbent LECs in Insight's service areas.").

Insight, which has 292,800 voice customers in three states.<sup>76</sup> TWC states that its business voice subscribership increased by 46.1 percent in the third quarter of 2011 over 2010 levels, and its residential voice subscribership increased by 3.6 percent over the same period.<sup>77</sup> At the same time, Insight's total voice subscribership declined by 4.3 percent.<sup>78</sup> We agree that TWC's scale and scope suggests that it could be a stronger competitor to the incumbent telephone provider in Insight's service territory, thereby resulting in benefits for consumers. Applicants also claim that the combined companies will expand access to IP-based services for all customers.<sup>79</sup> The Commission has encouraged carriers to accelerate access to modern IP-based services for homes and businesses,<sup>80</sup> and we agree that TWC, as an all-IP based voice provider, will be positioned to expand service offerings to Insight customers.<sup>81</sup>

24. Applicants contend that the communities served by Insight, which operates in only three states, will benefit from TWC's much broader footprint and allow the combined companies to eliminate redundant facilities and rely on regional network infrastructure, particularly in the Cincinnati and Columbus, Ohio areas.<sup>82</sup> They assert that the proposed transaction will enable enterprise customers to have additional competitive options for customized or bundled services, including cloud computing services.<sup>83</sup> Consistent with our precedent, we agree that the broader service footprint of the combined company will increase its ability to compete, particularly for enterprise customers that have operations extending beyond Insight's current service area.<sup>84</sup> The Commission has recognized benefits associated with cable clustering in which a larger cable operator acquires a smaller in-region cable system thereby expanding the acquiring operator's footprint: in addition to improving marketing efficiencies and reducing costs, the Commission has found that clustering can result in increased facilities-based options for customers in geographic areas that are larger than a cable franchise area.<sup>85</sup> These increased options, the Commission has stated, can make cable operators more effective competitors to LECs, whose local service areas are usually much larger than a franchise area.<sup>86</sup>

25. Applicants claim that the cost savings of the transaction will be in the range of \$100

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<sup>76</sup> *Id.* at 2.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Application at 11-12; Public Interest Statement at 12-13. TWC states that it provides voice services exclusively through IP technologies today. Application at 11-12.

<sup>80</sup> See *Connect America Fund*, WC Docket No. 10-90; *National Broadband Plan for Our Future*, GN Docket No. 09-51, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, paras. 11, 51-52 (Nov. 18, 2011).

<sup>81</sup> TWC remains subject to the Commission's section 214 requirements associated with discontinuing circuit-switched services to any of Insight's existing customers. 47 C.F.R. § 63.71.

<sup>82</sup> Public Interest Statement at 12-14; Letter from Matthew A. Brill and Elizabeth R. Park, Counsel for Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-148, at 1-2 (filed Dec. 21, 2011) (Dec. 21 Supplement).

<sup>83</sup> Public Interest Statement at 13-14. TWC states that it recently acquired NaviSite, a provider of cloud computing services for enterprise customers. *Id.* See Dec. 21 Supplement at 1-2.

<sup>84</sup> Application at 10-11; Public Interest Statement at 11-12.

<sup>85</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-180, Thirteenth Annual Report, 24 FCC Rcd 542, 628, para. 180 (2009) (*Thirteenth Video Competition Report*) (citing *Adelphia/Time Warner Order*, 21 FCC Rcd at 8315-21, paras. 265-77)).

<sup>86</sup> *Thirteenth Video Competition Report*, 24 FCC Rcd at 628, para. 180.

million as a result of efficiencies such as consolidation of head-end facilities and a greater ability to negotiate volume discounts for programming and hardware.<sup>87</sup> They provide no supporting detail for this figure. Applicants assert that these savings will benefit subscribers by reducing upward pressure on rates and reducing expenses for items such as retransmission payments.<sup>88</sup> They also emphasize that the transaction will enable TWC to become a more effective competitor in providing local and regional advertising opportunities and that TWC will acquire control of and continue Insight's locally-originated information network in Kentucky and Indiana.<sup>89</sup> Applicants further assert that they will be able to compete more effectively with video programming offerings by direct broadcast satellite carriers and AT&T.<sup>90</sup> While we acknowledge the potential for such savings and efficiencies to benefit consumers,<sup>91</sup> Applicants have not offered specific data or made a commitment to pass savings on to their customers or substantiated the ways in which the transaction will enable the combined company to become a more effective competitor in the markets for video programming or advertising. We therefore do not rely on these potential benefits in our decision.

## V. CONCLUSION

26. We have analyzed the potential harms and benefits of the proposed transaction. On balance, we find that the potential public interest benefits, taken as a whole, outweigh the potential public interest harms. The combined company's broader service footprint, increased operating efficiencies, and greater scale and scope create a potentially stronger competitor to the incumbent LEC especially in light of the combined company's ability to offer IP-based voice and other services to residential and business customers throughout Insight's three-state region. We find that this outweighs the potential harm that could arise from eliminating Insight as a competitor in the limited area in which both companies compete. Accordingly, we find that the transaction serves the public interest, convenience, and necessity.

## VI. ORDERING CLAUSES

27. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i) and (j), and 652 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), and 572, and section 76.505 of the Commission's rules, 47 C.F.R. § 76.505, that the Petition for Waiver filed by Insight and TWC IS GRANTED.

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<sup>87</sup> Public Interest Statement at 12-14. Specifically, in its announcement of the merger, TWC explains that "after incurring onetime costs and capital expenditures, it [the merger] will create annual cost efficiencies of approximately \$100 million through programming expense savings and other cost reductions. The company expects to realize the bulk of the savings within two years of closing." *Id.* at 13 n.32 (citing *Time Warner Cable to Acquire Insight Communications* (press release), Aug. 15, 2011, available at [http://www.timewarnercable.com/nynj/about/in\\_the\\_news\\_details.ashx?PRID=3285&MarketID](http://www.timewarnercable.com/nynj/about/in_the_news_details.ashx?PRID=3285&MarketID)).

<sup>88</sup> Public Interest Statement at 13; Dec. 21 Supplement at 2.

<sup>89</sup> Public Interest Statement at 7, 14-15, 20.

<sup>90</sup> *Id.* at 11-12.

<sup>91</sup> *Adelphia/Time Warner Order*, 21 FCC Rcd at 8319-21, paras. 264-77; *Thirteenth Video Competition Report*, 24 FCC Rcd at 628-29, paras. 180-82.

28. IT IS FURTHER ORDERED that, pursuant to sections 4(i)–(j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)–(j), 214, 309, 310(d), the Applications to transfer control of domestic and international section 214 authorizations, satellite earth station registrations, and wireless licenses ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief, Wireline Competition Bureau

Mindel De La Torre  
Chief, International Bureau

Rick Kaplan  
Chief, Wireless Telecommunications Bureau

## APPENDIX

## SECTION 214 AUTHORIZATIONS

The following applications for consent to the transfer of control of section 214 authorizations to TWC are granted.

**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**

The domestic section 214 application for consent to transfer control of Insight from its current shareholders to TWC is granted.

## SATELLITE EARTH STATION APPLICATIONS

The applications of Insight Kentucky Partners II, L.P. and Insight Communications Midwest, LLC, subsidiaries of Insight, to transfer control to TWC of non-common-carrier receive only earth station registrations are granted. 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) is granted.

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0004843213 <sup>92</sup>	Insight Kentucky Partners II, LP	KNCN356
0004843245	Insight Communications Midwest, LLC	KWG830

<sup>92</sup> This has been designated by Applicants as the lead Wireless Telecommunications Bureau application.