

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

In the Matter of	)	File No.: EB-SED-14-00013331
	)	
Time Warner Cable Inc.	)	Acct. No.: 201432100026
	)	
	)	FRN: 0007556251
	)	

**ORDER**

**Adopted: August 25, 2014**

**Released: August 25, 2014**

By the Acting Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has resolved its investigation into whether Time Warner Cable, Inc. (TWC) complied with the Commission's network outage reporting requirements. Under these rules, communications providers must report certain disruptions to their networks. The Commission has determined that prompt access to accurate information regarding the operation and security of crucial segments of the national telecommunications infrastructure would enable it to prevent disruptions in service that could threaten homeland security, public health and safety, as well as our nation's economic well-being, and would facilitate alternative means of communicating. Depending upon the nature of the network outage, communications providers must file certain reports with the Commission within defined timeframes. By requiring communications providers to report certain disruptions to their networks, these rules provide the Commission with the means to quickly analyze communications vulnerabilities and share aggregate information with industry to help prevent future outages and preserve network integrity. Here, TWC failed to file a substantial number of reports with respect to a series of reportable wireline and Voice over Internet Protocol network outages. TWC admits that its failure to timely file the required network outage reports violated the Commission's rules. To resolve the investigation, TWC will pay a civil penalty of \$1.1 million and implement a three-year compliance plan to ensure future compliance with the Commission's network outage reporting rules.

2. The Bureau and TWC have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether TWC possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. We therefore adopt the attached Consent Decree entered into between the Bureau and TWC. The Consent Decree resolves and terminates the Bureau's investigation into TWC's compliance with the Commission's regulations in 47 C.F.R. Part 4 regarding the reporting of network outages.

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>1</sup> and Sections 0.111 and 0.311 of the Commission's rules,<sup>2</sup> the Consent Decree attached to this Order **IS ADOPTED**.

7. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Terri Natoli, Time Warner Cable, Inc., 901 F Street, NW, Suite 800, Washington, DC 20004; and to Matthew A. Brill, Esq., Latham & Watkins, LLP, Counsel to Time Warner Cable, Inc., 555 Eleventh Street, NW, Suite 1000, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Acting Chief, Enforcement Bureau

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<sup>1</sup> 47 U.S.C. § 154(i).

<sup>2</sup> 47 C.F.R. §§ 0.111, 0.311.

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**CONSENT DECREE**

The Enforcement Bureau of the Federal Communications Commission and Time Warner Cable Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Time Warner Cable Inc. violated Sections 4.9 and 4.11 of the Commission's rules.<sup>3</sup> Under these rules, communications providers must report certain disruptions to their networks. The Commission has determined that prompt access to accurate information regarding the operation and security of crucial segments of the national telecommunications infrastructure would enable it to prevent disruptions in service that could potentially threaten homeland security, public health and safety, as well as our nation's economic well-being, and would facilitate alternative means of communicating. Depending upon the nature of the network outage, communications providers must file certain reports with the Commission within defined timeframes.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which TWC is subject by virtue of its business activities, including but not limited to, the Network Outage Reporting Rules.
  - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
  - (g) "Covered Employees" means all employees and agents of TWC who perform, or supervise, oversee, or manage the performance of, duties that relate to TWC's responsibilities under the Network Outage Reporting Rules.
  - (h) "Effective Date" means the date on which the Bureau releases the Adopting Order.

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<sup>3</sup> 47 C.F.R. §§ 4.9, 4.11.

- (i) “Investigation” means the investigation commenced by the Bureau upon receipt of a referral from the Commission’s Public Safety and Homeland Security Bureau regarding TWC’s compliance with the Network Outage Reporting Rules.
- (j) “Network Outage Reporting Rules” means Part 4 of the Rules, including Sections 4.9 and 4.11 of the Rules, and other Communications Laws governing the reporting of network outages.
- (k) “Parties” means TWC and the Bureau, each of which is a “Party.”
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “TWC” or “Company” means Time Warner Cable Inc. and its subsidiaries, affiliates, predecessors-in-interest, and successors-in-interest.

## II. BACKGROUND

2. Pursuant to Section 4.9(f) of the Rules, wireline communications providers<sup>4</sup> must report to the Commission an outage of at least 30 minutes duration that: (1) potentially affects at least 900,000 user minutes<sup>5</sup> of either telephony or paging; (2) affects at least 1,350 DS3 minutes;<sup>6</sup> (3) potentially affects any special offices and facilities;<sup>7</sup> or (4) potentially affects a 911 special facility.<sup>8</sup> Wireline communications providers must file with the Commission an electronic Notification within 120 minutes of discovering a reportable outage, an Initial Communications Outage Report (Initial Report) within 72 hours of discovery, and a Final Communications Outage Report (Final Report) within 30 days of discovery.<sup>9</sup> Pursuant to Section 4.9(g) of the Rules, Interconnected Voice over Internet Protocol (VoIP) providers must report to the Commission an outage of at least 30 minutes duration that potentially affects: (1) at least 900,000 user minutes of interconnected VoIP service and results in a complete loss of service;

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<sup>4</sup> TWC would be considered a wireline communications provider where it offers terrestrial communications through coaxial cable between its central office and end user locations. *See id.* § 4.3(g).

<sup>5</sup> “User minutes” are defined as “[a]ssigned telephone number minutes . . . for telephony, including non-mobile interconnected VoIP telephony, and for those paging networks in which each individual user is assigned a telephone number” or “the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage, for all other forms of communications.” *Id.* § 4.7(e).

<sup>6</sup> “DS3 minutes” are defined as “the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of previously operating DS3 circuits that were affected by the outage.” *Id.* § 4.7(d).

<sup>7</sup> “Special offices and facilities” include major military installations, key government facilities, nuclear power plants, and certain airports. *Id.* § 4.5(b).

<sup>8</sup> An outage that potentially affects a 911 special facility occurs whenever: (1) there is a loss of communications to Public Safety Answering Points (PSAPs) potentially affecting at least 900,000 user-minutes; (2) there is a loss of 911 call processing capabilities in one or more E-911 tandems/selective routers for at least 30 minutes duration; (3) one or more end-office or mobile switching center switches or host/remote clusters is isolated from 911 service for at least 30 minutes and potentially affects at least 900,000 user-minutes; or (4) there is a loss of ANI/ALI (associated name and location information) and/or a failure of location determination equipment for at least 30 minutes and potentially affecting at least 900,000 user-minutes. *See id.* §4.5(e).

<sup>9</sup> *See id.* § 4.9(f).

(2) any special offices and facilities; or (3) a 911 special facility.<sup>10</sup> VoIP providers must file with the Commission an electronic Notification: (1) within 24 hours of discovering a reportable outage meeting the user minute threshold or potentially affecting any special offices and facilities,<sup>11</sup> or (2) within 240 minutes of discovering a reportable outage potentially affecting a 911 special facility.<sup>12</sup> In either event, VoIP providers must submit a Final Report to the Commission within 30 days of discovering the reportable outage.<sup>13</sup> Pursuant to Section 4.11 of the Rules, the Notification, Initial Report, and Final Report must be submitted electronically to the Commission and contain specific information regarding the outage, service effects, and communications provider.<sup>14</sup>

3. TWC is a wireline communications and interconnected VoIP service provider. In September 2013, the Commission's Public Safety and Homeland Security Bureau (PSHSB) notified TWC that it had failed to file a required Final Report in connection with a reportable VoIP network outage for which it had timely filed a required Notification. Further investigation by PSHSB revealed that TWC had failed to file a substantial number of Initial Reports and/or Final Reports with respect to a series of reportable wireline and VoIP network outages for which TWC had timely filed the required Notifications. After learning from PSHSB of the overdue Initial Reports and Final Reports, TWC submitted the reports required by PSHSB by November 8, 2013. PSHSB subsequently referred this matter to the Bureau for investigation. In response to an inquiry from the Bureau's Spectrum Enforcement Division,<sup>15</sup> TWC admitted that it failed to timely file with the Commission a substantial number of required Initial Reports and/or Final Reports.<sup>16</sup>

### III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** TWC agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. **Admission of Liability.** TWC admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that the circumstances described in paragraph 3 herein constitute violations of the Commission's Network Outage Reporting Rules.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this

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<sup>10</sup> *See id.* § 4.9(g).

<sup>11</sup> *See id.* § 4.9(g)(1)(ii).

<sup>12</sup> *See id.* § 4.9(g)(1)(i).

<sup>13</sup> *See id.* § 4.9(g)(2).

<sup>14</sup> *See Id.* § 4.11.

<sup>15</sup> *See* E-mail from JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Terri B. Natoli, Vice President, Regulatory Affairs, Time Warner Cable, Inc. (Feb. 25, 2014, 17:38 EDT) (on file in EB-SED-14-00013331).

<sup>16</sup> Declaration of Julie P. Laine, Group Vice President, Regulatory, Time Warner Cable Inc. (Mar. 21, 2014) (on file in EB-SED-14-00013331).

Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, TWC agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against TWC concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against TWC with respect to TWC's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, TWC shall designate a Senior Vice President with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall have specific knowledge of the Network Outage Reporting Rules and shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that TWC complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to having general knowledge of the Communications Laws and specific knowledge of the Network Outage Reporting Rules necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall serve in the business unit of TWC that is most directly responsible for the filing of network outage reports with the Commission and shall have business or legal responsibility for TWC's network outage reporting.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, TWC agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Network Outage Reporting Rules, TWC shall implement the following procedures.

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, TWC shall establish Operating Procedures that all Covered Employees must follow to help ensure TWC's compliance with the Network Outage Reporting Rules. TWC's Operating Procedures shall incorporate internal procedures and policies specifically designed to ensure that TWC timely files required Notifications, Initial Reports, and Final Reports for all reportable network outages, as well as policies and procedures establishing active oversight and compliance monitoring by the Compliance Officer. TWC also shall continue to use new network outage report tracking tools that employ automated notifications, escalations, and reminders, and shall continue to review its network outage reporting processes on at least a monthly basis in order to enhance its compliance with the Network Outage Reporting Rules.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Network Outage Reporting Rules and set forth the Operating Procedures that Covered Employees

shall follow to help ensure TWC's compliance with the Network Outage Reporting Rules. TWC shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. TWC shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

- (c) **Compliance Training Program.** TWC shall establish and implement a Compliance Training Program on compliance with the Network Outage Reporting Rules and the Operating Procedures. TWC's Compliance Training Program shall address, at a minimum: (i) the methods, procedures, and calculations used to identify reportable network outages, including network outage events related to unprotected DS3 circuits; (ii) the time periods within which Notifications, Initial Reports, and Final Reports must be filed with the Commission; and (iii) the potential internal disciplinary and regulatory consequences of failing to comply with the Network Outage Reporting Rules and TWC's Operating Procedures. All Covered Employees shall be trained pursuant to TWC's Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program session shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. TWC shall repeat the compliance training on an annual basis and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (d) **Outage Reporting.** Within sixty (60) calendar days after the Effective Date, TWC shall include in all network outage report filed with the Commission the date and time that TWC discovered that the underlying network outage was reportable using the following two separate fields: (1) Date Outage Determined Reportable, and (2) Local Time Outage Determined Reportable (24 hr clock (nnnn)).
- (e) **Monthly Verification of Filed Outage Reports.** Within thirty (30) calendar days after the Effective Date, the Compliance Officer shall designate a Covered Employee to review, on a monthly basis, electronic copies of TWC's filed network outage reports to verify that TWC has timely filed all required Notifications, Initial Reports, and/or Final Reports for all reportable network outages. The designated Covered Employee shall report the results of these reviews to the Compliance Officer.

11. **Compliance Reports and Meetings.** TWC shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of TWC, stating that the Compliance Officer has personal knowledge that TWC (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree; and (iv) has taken steps to promptly identify any late-filed network outage reports, has

promptly addressed any instances of late-filed network outage reports, and has taken steps to prevent the recurrence of such late filings.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules<sup>17</sup> and be subscribed to as true under penalty of perjury in substantially the same form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of TWC, shall provide the Commission with a detailed explanation of (i) each instance of noncompliance; (ii) the steps that TWC has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that TWC has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Josh Zeldis at Josh.Zeldis@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.
- (e) Beginning on the Effective Date, TWC shall, at the request of the Bureau, meet with the Bureau once each 60-day period during the term of the Consent Decree to discuss TWC's adherence to the Compliance Plan and its performance under the Network Outage Reporting Rules. TWC agrees to provide the Bureau with information the Bureau requests concerning these topics.

12. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 9 through 11 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

13. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act<sup>18</sup> against TWC or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by TWC with the Act, the Rules, or Commission orders.

14. **Civil Penalty.** TWC will pay a civil penalty to the United States Treasury in the amount of one million one hundred thousand dollars (\$1,100,000) within thirty (30) calendar days after the Effective Date. TWC shall send electronic notification of payment to Josh Zeldis at Josh.Zeldis@fcc.gov, JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of

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<sup>17</sup> 47 C.F.R. § 1.16.

<sup>18</sup> 47 U.S.C. § 208.

payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>19</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions TWC should follow based on the form of payment it selects:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If TWC has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

15. **Waivers.** TWC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. TWC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither TWC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and TWC shall waive any statutory right to a trial *de novo*. TWC hereby agrees to waive any claims it may have under the Equal Access to Justice Act<sup>20</sup> relating to the matters addressed in this Consent Decree.

16. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

17. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which TWC does not expressly consent) that provision will be superseded by such Rule or Commission order.

18. **Successors and Assigns.** TWC agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

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<sup>19</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>20</sup> Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501–1.1530.

19. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.
20. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.
21. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.
22. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.
23. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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Travis LeBlanc  
Acting Chief  
Enforcement Bureau

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Date

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Jeff Zimmerman  
Senior Vice President & Deputy General Counsel  
Time Warner Cable Inc.

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Date