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IDAHO PUBLIC UTILITIES COMMISSION

March 25, 2011

Via Hand Delivery

Jean Jewell, Commission Secretary  
IDAHO PUBLIC UTILITIES COMMISSION  
472 W. Washington Street  
P. O. Box 83720  
Boise, Idaho 83720-0074

**RE: *In the Matter of an Investigation of an Appropriate Certification Process for Telecommunications Companies That Do Not Provide Basic Local Exchange Service; Case No. GNR-T-11-01***

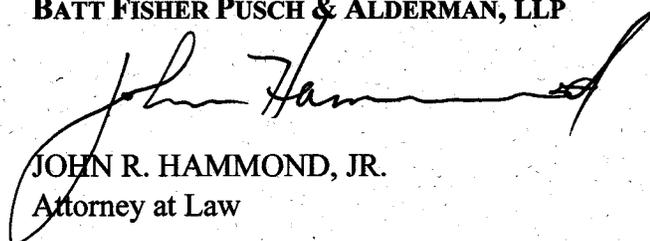
Dear Ms. Jewell:

Enclosed for filing are the original and nine (9) copies of the *Comments of Time Warner Cable Information Services (Idaho), LLC*, in response to the *Notice of Investigation and Notice of Modified Procedure* adopted by the Commission on February 25, 2011. Please provide a conformed copy of the same to my office.

Thank you for your assistance. If questions arise or additional information is required, please do not hesitate to contact me.

Sincerely,

**BATT FISHER PUSCH & ALDERMAN, LLP**



JOHN R. HAMMOND, JR.  
Attorney at Law

JRH/lfd  
Enclosures  
cc: Client

ORIGINAL

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2011 MAR 25 PM 4:00  
IDAHO PUBLIC  
UTILITIES COMMISSION

Attorney for Time Warner Cable Information Services (Idaho), LLC

Before the  
IDAHO PUBLIC UTILITIES COMMISSION

	)	Case No. GNR-T-11-01
IN THE MATTER OF AN	)	
INVESTIGATION OF AN APPROPRIATE	)	<b>COMMENTS OF TIME WARNER</b>
CERTIFICATION PROCESS FOR	)	<b>CABLE INFORMATION</b>
TELECOMMUNICATIONS COMPANIES	)	<b>SERVICES (IDAHO), LLC</b>
THAT DO NOT PROVIDE BASIC LOCAL	)	
EXCHANGE SERVICE	)	
	)	
	)	

Time Warner Cable Information Services (Idaho), LLC, d/b/a Time Warner Cable (“TWCIS”), by and through its attorneys of record, hereby submits these comments in response to the *Notice of Investigation and Notice of Modified Procedure* (“Notice”) adopted by the Commission on February 25, 2011.<sup>1</sup> In the Notice, the Commission “open[s] a docket to investigate whether some sort of certification process is appropriate for Title 62 telecommunications providers that do not provide basic local exchange service.”<sup>2</sup> TWCIS appreciates the Commission’s willingness to entertain this proposal, the adoption of which would

<sup>1</sup> *An Investigation of an Appropriate Certification Process for Telecommunications Companies That Do Not Provide Basic Local Exchange Service*, Case No. GNR-T-11-01, Order No. 32194 (Feb. 25, 2011).

<sup>2</sup> Notice at 2.

facilitate the ability of competitive service providers, including wholesale providers like TWCIS, to enter the Idaho market.

As TWCIS has explained previously, certification or some sort of similar grant of authority by the Commission is critical to enable a competitive service provider to obtain interconnection and other necessary inputs, as these inputs typically will not be provided unless evidence of such certification can be furnished. While a carrier that intends to provide a “basic local exchange service,” as defined by the Commission, can obtain a certificate of public convenience and necessity (“CPCN”) under the Commission’s existing procedures, a provider intending to offer a service that does not fit squarely within that definition cannot do so. This restriction creates a potentially insurmountable barrier to the ability of that provider to enter the Idaho market.

This barrier, although an unintentional one, likely contravenes federal law and well-established federal and state policies that favor greater telecommunications competition. The reality is that TWCIS’s inability to obtain a CPCN or some other form of certification in Idaho may yet prevent TWCIS from obtaining the inputs required to offer local exchange services in Idaho.<sup>3</sup>

TWCIS remains intent on facilitating the provision of competitive voice service to Idaho’s citizens by offering competitive, facilities-based wholesale and retail local intrastate telecommunications services within the state.<sup>4</sup> However, the Commission’s determination that it

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<sup>3</sup> See *Application of Time Warner Cable Information Services (Idaho), LLC for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Interexchange Telecommunications Services within the State of Idaho*, Case No. TIM-T-08-01, Order No. 31012 (Feb. 23, 2010), *recon. denied*, Order No. 32059 (Aug. 27, 2010).

<sup>4</sup> TWCIS’s services will include a Local Interconnection Service that will enable two-way interconnection between the facilities of TWCIS’s customers and the public switched telephone network (“PSTN”). TWCIS will offer this service on a wholesale basis to providers of interconnected Voice over Internet Protocol (“VoIP”) services, and will provide these customers with two-way interactive switched voice communications, as well as

would or could not issue to TWCIS any form of certification has unfortunately frustrated that objective. Accordingly, TWCIS welcomes and urges the Commission to promptly establish a process for the certification of competitive service providers that do not offer “basic” local exchange service.

## DISCUSSION

### **I. CERTIFICATION IS NECESSARY FOR COMPANIES OFFERING SERVICES OTHER THAN “BASIC LOCAL EXCHANGE SERVICE” TO COMPETE IN THE IDAHO MARKET**

The Notice asks whether certification by the Commission is “necessary for companies providing telecommunications services but not basic local exchange service.”<sup>5</sup> As TWCIS has explained previously, certification by the Commission is critical to enable a competitive service provider to obtain inputs that are prerequisites to operating as a local exchange carrier in Idaho.<sup>6</sup> Among other things, such certification facilitates the ability of service providers to obtain interconnection, numbering resources, Operating Company Numbers (“OCNs”), and other resources necessary to route calls via the PSTN. Because a process already exists for granting CPCNs to providers of “basic local exchange service,” those providers enjoy a competitive advantage in entering the Idaho market. Establishing a parallel process to enable providers of non-basic local exchange services to obtain certification from the Commission would help to

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access to domestic and international toll services, operator services, telephone number resources, 911 calling, and related services and features.

<sup>5</sup> Notice at 3.

<sup>6</sup> See *Application of Time Warner Cable Information Services (Idaho), LLC for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Interexchange Telecommunications Services within the State of Idaho*, Case No. TIM-T-08-01, Testimony of Julie Patterson Laine on Behalf of Time Warner Cable Information Services (Idaho), LLC, at 6-8 (May 13, 2010) (“Testimony of Julie Laine”).

create a level playing field for all service providers that would facilitate intrastate competition and benefit Idaho consumers.<sup>7</sup>

Notably, incumbent local exchange carriers (“ILECs”) typically will refuse to interconnect with an entity that does not hold a CPCN. In fact, Verizon initially refused to enter into an Idaho interconnection agreement with TWCIS because it could not produce a CPCN, even after TWCIS had explained that the Commission had ruled that TWCIS did not require a CPCN to obtain interconnection in Idaho.<sup>8</sup> Although TWCIS ultimately was able to secure an interconnection agreement in Idaho, it took months before the incumbent carrier was willing to proceed with an agreement in the absence of a CPCN. TWCIS faced an unfair disadvantage by being forced to expend significant time and resources to obtain that agreement. Those burdens presumably would have been avoided if the Commission had issued TWCIS a certificate upon its satisfaction of the relevant criteria.

Service providers that lack certification also face difficulties in 1) obtaining numbering resources for their customers; and 2) ensuring that calls are routed accurately. The North American Numbering Plan Administrator (“NANPA”) will not assign telephone number blocks to a provider that is not certificated by the relevant state commission.<sup>9</sup> Similarly, the National Exchange Carrier Association (“NECA”) requires that a service provider furnish evidence of operating authority before it will assign an OCN to the entity.<sup>10</sup>

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<sup>7</sup> TWCIS has argued that the Commission has discretion to treat services such as wholesale interconnection services as “basic” under Idaho law, but TWCIS assumes *arguendo*, in light of recent Commission rulings, that such wholesale services would not qualify as basic and thus would require an alternative form of certification.

<sup>8</sup> *See id.* at 7.

<sup>9</sup> *See, e.g., Telephone Number Requirements for IP-Enabled Service Providers*, Report and Order, 22 FCC Rcd 19531, at ¶ 12 (2007) (noting that NANPA “provides numbers only to entities that are licensed or certificated as carriers under the [Federal Communications] Act.”).

<sup>10</sup> TWCIS has faced a long uphill battle to secure an OCN assignment from NECA. After flatly refusing to provide an OCN for many months, NECA requested that TWCIS produce an order from the Commission that

Without an OCN, an entity cannot be listed in the Local Exchange Routing Guide (“LERG”) — which effectively precludes the entity from routing calls, as well as paying and collecting access charges for the traffic it carries. Again, the uncertainty and expense of attempting to obtain telephone number blocks or an OCN without a CPCN could be avoided if the Commission would issue a certificate to providers of services other than “basic local exchange services.”

**II. THE COMMISSION HAS BROAD AUTHORITY TO CERTIFICATE SERVICE PROVIDERS OFFERING SERVICES OTHER THAN “BASIC LOCAL EXCHANGE SERVICE,” AND TO CHOOSE THE FORM OF SUCH CERTIFICATION**

In the Notice, the Commission seeks comment with respect to its legal authority to issue certifications other than CPCNs, and what form such certification might take.<sup>11</sup> Idaho law gives the Commission broad authority to promote effective competition within the state’s borders. Notably, *Idaho Code* § 61-501 authorizes the Commission to “do all things necessary to carry out the spirit and intent of the provisions” of Titles 61 and 62. *Idaho Code* § 62-602 (“Legislative Intent”) clearly establishes that the legislature’s intent in adopting Title 62 was to encourage effective competition and to give the Commission the authority to empower competitive providers to enter local markets in Idaho.<sup>12</sup> As acknowledged by the legislature, “effective competition” requires “substantive and meaningful competition throughout the ... local exchange calling area.”<sup>13</sup>

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states that TWCIS is legitimately offering CLEC telecommunications services within Idaho and an interconnection agreement that shows that the ILEC considers TWCIS a CLEC for interconnection purposes. TWCIS recently may have been able to resolve this issue, but it has been a time-consuming and costly undertaking.

<sup>11</sup> Notice at 3.

<sup>12</sup> See Testimony of Julie Laine, at 5-6.

<sup>13</sup> *Idaho Code* § 62-602(2).

For the reasons noted above, such competition is effectively unattainable without some process for certificating providers that do not offer “basic local exchange service.” While *Idaho Code* § 62-604 exempts certain competitive service providers from the *obligation* to obtain CPCNs — which the legislature viewed as needlessly burdensome — nothing in that provision forecloses the Commission from otherwise authorizing providers to operate in Idaho where such authorization is necessary for providers to enter the market and compete effectively.<sup>14</sup>

The Commission also has the “full power and authority to implement the federal telecommunications act of 1996,”<sup>15</sup> which secures the right of telecommunications carriers, including wholesale carriers like TWCIS, to enter local markets and obtain interconnection, numbers, and other critical inputs from ILECs.<sup>16</sup> As a practical matter, a carrier can only exercise these federal rights if it first obtains certification from the Commission. Accordingly, *Idaho Code* § 62-615 provides the Commission with the authority to implement mechanisms to ensure that these federal rights are realized — including the proposed certification process.

For similar reasons, the Commission has broad authority to dictate the manner in which it certifies providers of services other than “basic local exchange service.” Simply put, *Idaho Code* does not require the Commission to adopt a particular form or designation —although for the reasons set forth above, the Commission should ensure that whatever mechanism it chooses is effective in facilitating the ability of such providers to enter the Idaho market. The most straightforward option would be for the Commission to exercise its discretion to establish a new

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<sup>14</sup> See Testimony of Julie Laine, at 6.

<sup>15</sup> *Idaho Code* § 62-615(1).

<sup>16</sup> See 47 U.S.C. § 251. The FCC has held that carriers that provide wholesale services, like TWCIS, are entitled to the same interconnection rights as retail carriers. See, e.g., *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007).

form of CPCN for providers of non-basic local exchange service. Alternatively, the Commission could choose to issue a written order in lieu of certification — as long as such an order makes crystal clear that the carrier in question is properly authorized to operate in Idaho and entitled to all of the inputs and other benefits guaranteed to local carriers under federal and state law.

In contrast, if the Commission declined to establish *any* process for authorizing the provision of non-basic local exchange services, such a decision, in TWCIS’s opinion, would be detrimental to telecommunications competition in the State of Idaho. The Commission accordingly has the opportunity to assist in the removal of such obstacles to intrastate competition by facilitating the entry of competitive carriers through an appropriate certification process.

### **III. ALL LOCAL SERVICE PROVIDERS SHOULD BE SUBJECT TO THE SAME TELEPHONE NUMBER CONSERVATION MEASURE**

Finally, the Notice seeks comment on measures “to ensure numbers are used efficiently by CLECs and other telecommunications providers.”<sup>17</sup> Presumably, the Commission is interested in ascertaining whether new or different measures would be needed if the Commission implements the proposed process for certificating providers of services other than “basic local exchange services.” If the Commission does implement such a process, it should not result in any need for the Commission to supplement its existing mechanisms to ensure that telephone numbers are used efficiently. Telephone numbers can and should be assigned in the same manner regardless of the service that a particular end-user customer selects, subject to the same rules for the assignment of number block resources.

In Time Warner Cable’s case, telephone numbers would be assigned to the wholesale carrier (TWCIS) rather than the non-carrier entity that provides retail VoIP service. However, a

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<sup>17</sup> Notice at 3.

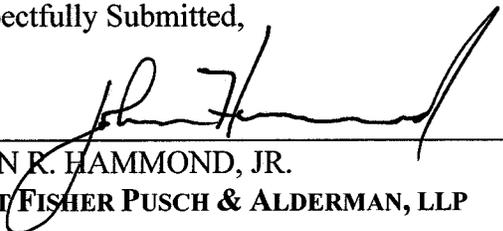
provider's adherence to that structure should have no impact on numbering policies, which already treat basic and "other-than-basic" local exchange services in a consistent manner.

### CONCLUSION

The Commission can more effectively promote telecommunications competition within Idaho by issuing certificates that enable service providers that intend to offer services other than "basic local exchange services" to obtain the inputs they need. The *Idaho Code* grants broad authority to the Commission for issuing such certifications. TWCIS respectfully encourages the Commission to take this necessary step towards removing the barrier to entry for competitive carriers into the Idaho market.

DATED This 25<sup>th</sup> day of March, 2011.

Respectfully Submitted,



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JOHN R. HAMMOND, JR.  
BATT FISHER PUSCH & ALDERMAN, LLP

*Attorney for Time Warner Cable  
Information Services (Idaho), LLC*

**CERTIFICATE OF SERVICE**

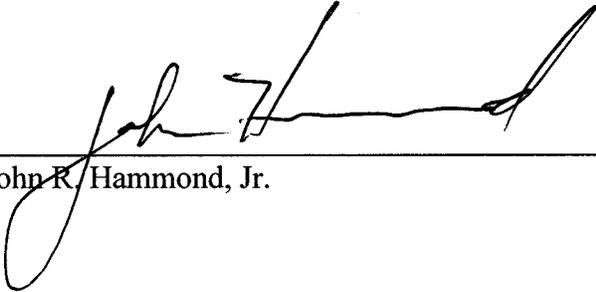
I HEREBY CERTIFY That on this 25<sup>th</sup> day of March, 2011, I caused a true and correct copy of the foregoing to be served upon the following individual(s) in the manner indicated:

Jean Jewell  
**IDAHO PUBLIC UTILITIES COMMISSION**  
472 W. Washington St.  
P.O. Box 83720  
Boise, ID 83720-5983

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John R. Hammond, Jr.