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 IDAHO PUBLIC
 UTILITIES COMMISSION

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

**Before the
 IDAHO PUBLIC UTILITIES COMMISSION**

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| Application of |) | |
| |) | |
| TIME WARNER CABLE |) | |
| INFORMATION SERVICES |) | |
| (IDAHO), LLC |) | Docket No. TIM-T-08-01 |
| |) | |
| For a Certificate of Public Convenience and |) | SUPPLEMENT TO APPLICATION |
| Necessity to Provide Competitive Facilities- |) | FOR A CERTIFICATE OF PUBLIC |
| Based Local and Interexchange |) | CONVENIENCE AND |
| Telecommunications Services Within |) | NECESSITY |
| the State of Idaho |) | |
| |) | |

**APPLICATION OF TIME WARNER CABLE
 INFORMATION SERVICES (IDAHO), LLC**

Time Warner Cable Information Services (Idaho), LLC, d/b/a Time Warner Cable (“TWCIS”), by and through its attorneys, hereby files this supplement to its Application for a Certificate of Public Convenience and Necessity (“CPCN”) to provide competitive facilities-based local and interexchange telecommunications services statewide within the State of Idaho. TWCIS also files its proposed tariff with its supplement to replace the previously filed tariff that is in this docket. TWCIS filed its Application with the Idaho Public Utilities Commission (the “Commission”) on November 14, 2008.

SUPPLEMENT IN SUPPORT OF APPLICATION FOR A CERTIFICATE OF PUBLIC
 CONVENIENCE AND NECESSITY

TWCIS has met with members of the Commission Staff (the “Staff”) to discuss its Application in the interest of resolving any concerns about TWCIS’s entitlement to a CPCN. This Supplement sets forth additional reasons why TWCIS should be granted a CPCN, including the following:

- TWCIS’s Application and the services TWCIS proposes to provide satisfy the requirements to be granted a CPCN by the Commission set forth in Commission Final Order 26665, Commission Rule of Procedure 111, and *Idaho Code* § 61-526.
- While Title 62 of the Idaho Code relieves TWCIS from any obligation to obtain a CPCN, nothing in that Title remotely bars TWCIS from obtaining a CPCN voluntarily.
- Granting TWCIS a CPCN will promote competition and benefit consumers, consistent with the core principles of the Telecommunications Act of 1996 and the Idaho Telecommunication Act of 1988. By contrast, finding TWCIS ineligible for a CPCN based on a narrow construction of Titles 61 and 62 of the Idaho Code would conflict with federal law and policy, as well as state law promoting entry by facilities-based competitors.

For all of these reasons, and based on the information set forth in its Application, TWCIS respectfully requests that the Commission grant TWCIS a CPCN pursuant to *Idaho Code* §§ 61-528 through 61-528, Commission Rule of Procedure 111 and Order No. 26665. The grant of a CPCN would be consistent with the action of many other state

commissions.¹ TWCIS believes that a formal hearing is not necessary in this matter. However, TWCIS is prepared to submit the pre-filed direct testimony of Vincent Paladini, Senior Counsel, Time Warner Cable, in support of its Application, to the extent necessary.

I.

TWCIS HAS MET THE REQUIREMENTS FOR A CPCN

The Commission is vested with the authority to review the applications of public utilities for CPCNs that will operate in the State of Idaho and to grant such CPCNs where the applying company has met the qualifications set forth in the Idaho Code, Commission Rules and Orders No. 26665. *See Idaho Code §§ 61-526-528; Commission Rule of Procedure 31.01.01.111 & Commission Final Order 26665.* In Commission Final Order No. 26665 the Commission streamlined the process for telecommunications companies seeking a CPCN in Idaho, requiring that they submit the following information to the Commission:

- 1) The name, address and form of the business;
- 2) The date on which applicant proposes to begin construction or anticipates it will begin to provide service. A written description of customer classes and customer service[s] that the applicant proposes to offer to the public;
- 3) The applicant's proposed service territory;
- 4) Current detailed financial balance sheets of the applicant;
- 5) The applicant's latest annual report;
- 6) Maps of where the applicant proposes to provide service;

¹ The attached **Exhibit A** contains a list of the state authorizations TWCIS's competitive local exchange carrier affiliates have obtained in other jurisdictions.

- 7) Proposed tariffs and price lists;
- 8) Contact information for the applicant;
- 9) Whether or not the applicant proposes to require advanced deposits from customers.

Commission Final Order No. 26665 at pp. 3-8.

TWCIS filed the foregoing information with the Commission through its Application and attachments thereto. Accordingly, TWCIS submits that it has met the requirements to be granted a CPCN in Idaho.

II.

TWCIS HAS PROPOSED TO OFFER A BASIC LOCAL EXCHANGE SERVICE

Through informal discussions with the Commission Staff (the “Staff”), TWCIS understands that the Staff was not inclined to recommend grant of a CPCN based on the view that TWCIS had not included basic local exchange service among its proposed tariffed service offerings. In fact, TWCIS has proposed to offer a service that should be considered a form of basic local exchange service.

Idaho Code § 62-603(1) defines “basic local exchange service” as:

[T]he provision of access lines to residential and small business customers with the associated transmission of two-way interactive switched voice communication within a local exchange calling area.

Idaho Code § 62-603(1) *see also Idaho Public Utilities Commission Title 62*

Telephone Corporation Rules, 31.42.01.005.01. TWCIS’s Local Interconnection

Service, described in Section 3.3 of its proposed tariff (attached hereto as **Exhibit B**),

falls within the parameters of this statutory definition. Specifically, Local Interconnection Service enables two-way interconnection between the facilities of TWCIS's customers and the public switched telephone network ("PSTN"). Local Interconnection Service will be offered on a wholesale basis to facilities-based providers of interconnected VoIP services and will provide, among other things, the transport and termination of voice calls within a local calling area. These services will be used to connect TWCIS customers to the PSTN, thus enabling two-way interactive switched voice communications within the relevant local exchange calling area using soft switch technology. Local Interconnection Service will also provide TWCIS's interconnected VoIP provider customers with access to domestic and international toll services, operator services, telephone number resources, 911 calling, and related services and features. As such, Local Interconnection Service provides customers with the "transmission of two-way interactive switched voice communication within a local exchange calling area." This service will be used by facilities-based wholesale service providers to offer retail interconnected VoIP service to residential and small business customers in Idaho in competition with incumbent local exchange carriers. Thus, TWCIS's services will enable other service providers to offer residential and small business customers a competitive choice in telephone services, which in turn will lead to consumer benefits in the form of reduced rates and increased quality of service.

The foregoing description demonstrates that TWCIS intends to provide services that fall within the definition of "basic local exchange service" pursuant to *Idaho Code* § 62-603(1). In light of this information, and in consideration of the statement of

qualifications for a CPCN set forth in TWCIS's Application, TWCIS respectfully reiterates its request that the Commission grant it a CPCN.

III.

NOTHING IN TITLE 62 REMOTELY PROHIBITS THE GRANT OF A CPCN TO TWCIS

While TWCIS believes that its Local Interconnection Service qualifies as a basic local exchange service for the reasons set forth above, TWCIS would be entitled to a CPCN in any event. In its discussions with TWCIS, Staff suggested that TWCIS must provide a basic local exchange service to obtain a CPCN because *Idaho Code* § 62-604(1)(a) provides that telephone corporations that did not have a CPCN as of January 1, 1988 and that do not provide basic local exchange service shall be subject to Title 62 and further shall be exempt from Title 61. But an *exemption* from the requirements Title 61 does not mean that a competitive entrant is *foreclosed* from voluntarily seeking certification under that title. Indeed, there is no provision of Idaho law—including *Idaho Code* § 61-526, Commission Rule of Procedure 111 (IDAPA 31.01.01.111), and Commission Final Order No. 26665—that explicitly limits the grant of a CPCN to a carrier that provides basic local exchange service.³

A review of the legislative history of Title 62 shows that its primary purpose was to allow certificated rate-regulated telephone corporations to elect whether to remain rate regulated for telecommunications services other than basic local exchange service (such as for interLATA services). *See Statement of Purpose RS21609Cl, Telecommunications*

³ As discussed in the following section, this absence of any express limitation, together with federal law prohibiting barriers to entry and promoting local telephone competition, compels a construction of the Idaho Code that results in TWCIS's entitlement to a CPCN.

Regulatory Reform, H.B. 687 (1988); Statement of Purpose RS 14965, H.B. 224 (2005). Title 62 did not contemplate and was not designed to address the wholesale telecommunications services TWCIS intends to provide. Nothing in the legislative history of the 1988 legislation or the 2005 amendments thereto remotely suggests that a competitive carrier providing a service other than basic local exchange should be *precluded* from obtaining a CPCN.

Finally, while the Staff has suggested that TWCIS may provide only those specific services that are authorized in granting a CPCN, TWCIS submits that Idaho law contains no such limitation. Rather, if TWCIS is granted a CPCN, as it believes it must be, then it will be free to provide any additional services that it chooses to tariff.

IV.

SECTION 253 OF THE COMMUNICATIONS ACT, BACKED BY FEDERAL AND STATE POLICIES FAVORING COMPETITION, PRECLUDES A NARROW READING OF TITLES 61 AND 62

While a straightforward application of the relevant provisions supports granting a CPCN, TWCIS's entitlement to a certificate is all the more clear in light of (a) Section 253 of the Communications Act of 1934, as amended (the "Act"), which prohibits barriers to entry, and (b) the strong federal and state policies favoring entry by facilities-based competitors such as TWCIS. Indeed, finding TWCIS ineligible for a CPCN based on a cramped reading of Titles 61 and 62 would run afoul of federal law and undercut important policy objectives.

A key pillar in Congress's effort to open local telecommunications markets to competition was its enactment of Section 253 of the Act, which provides: "No State or local statute or regulation . . . may prohibit or have the effect of prohibiting the ability of

any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a). Unless a state requirement that has the effect of prohibiting entry is “*necessary* to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications service, [or] safeguard the rights of consumers”—and there has been no suggestion (nor could there be) that denying TWCIS a CPCN is necessary to fulfill such public interest goals—then such an entry barrier *must be* preempted. 47 U.S.C. §§ 253(b) (emphasis added), (d).⁴

The FCC’s decisions applying Section 253 expressly confirm that state certification requirements may not be construed in a manner that prohibits entry by competitive telecommunications carriers such as TWCIS.⁵ Moreover, FCC precedent leaves no doubt that TWCIS’s Local Interconnection Service qualifies both as a “telecommunications service” and a “local exchange service.” The *TWC Interconnection Order* clarified that “providers of wholesale telecommunications services enjoy the same

⁴ See also *Public Utility Commission of Texas*, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3470 ¶ 22 (1997) (“*Texas Preemption Order*”) (Section 253 “expressly empowers—indeed, obligates—the Commission to remove any state or local legal mandate that ‘prohibit[s] or has the effect of prohibiting’ a firm from providing any interstate or intrastate telecommunications service.”); *id.* at 3480 ¶ 41 (Congress enacted Section 253 “to ensure that no state or local authority could erect legal barriers to entry that would potentially frustrate the 1996 Act’s explicit goal of opening local markets to competition.”). The FCC has interpreted Section 253 broadly as a “command[] . . . to sweep away not only those state or local requirements that explicitly and directly bar an entity from providing any telecommunications service, but also those . . . that have the practical effect of prohibiting an entity from providing service.” *Id.* at 3470 ¶ 22.

⁵ See, e.g., *Texas Preemption Order*, 13 FCC Rcd at 3511 ¶ 107 (holding that Texas regulation that had the effect of prohibiting certification was “in direct conflict with with section 253(a), which is designed to prevent such restrictions on entry”); *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15655-56 ¶¶ 37-38 (1997) (striking down state policy that delayed the grant of CPCNs in rural areas), *aff’d*, *RT Communications, Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000); *AVR, L.P. d/b/a Hyperion of Tennessee, L.P., Petition for Preemption of Tennessee Code Annotated § 65-4-201(D) and Tennessee Regulatory Authority Decision Denying Hyperion’s Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Areas*, Memorandum Opinion and Order, CC Docket No. 98-92, 14 FCC Rcd 11064, 11071 ¶ 15 (1999) (same).

rights as any ‘telecommunications carrier’ under ... the Act.”⁶ Indeed, that decision confirmed that the precise telecommunications services that TWCIS proposes to provide in Idaho—“transport for the origination and termination on the PSTN through interconnection agreements with incumbent LECs”—qualify as “wholesale telecommunications services,”⁷ and, more specifically, local exchange services.⁸ Accordingly, because TWCIS will provide local exchange services as a matter of federal law, any decision denying authority to operate as a local exchange carrier within Idaho would be subject to preemption under Section 253.⁹

Even apart from the dictates of Section 253, the strongly pro-competitive principles of federal and state law compel reading Titles 61 and 62 in a manner that supports granting a CPCN to TWCIS.¹⁰ The Federal Telecommunications Act of 1996 and the Idaho Telecommunications Act of 1988 (the “Idaho Act”) were enacted in large part to promote competition in the telecommunications marketplace. As explained above, Congress sought to open up markets to competition by removing unnecessary regulatory barriers to entry. The Conference Report states that the Act:

⁶ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3517 ¶ 9 (WCB 2007) (“*TWC Interconnection Order*”).

⁷ *Id.* at 3513-14 ¶ 2.

⁸ *See, e.g., id.* at 3522 ¶ 16 n.46 (discussing duties of “wholesale local exchange carriers” providing the interconnection-related services at issue); *id.* at 3513 ¶ 1 (noting that wholesale carriers are entitled to the rights under section 251(b), which applies only to local exchange carriers).

⁹ As noted above, while the Commission is authorized to deny entry to the extent necessary to fulfill the public interest objectives in Section 253(b), it could not reasonably find that TWCIS’s entry would harm the public interest. Moreover, such a restriction would have to be applied to all carriers in a competitively neutral manner. *See* 47 U.S.C. § 253(b).

¹⁰ *Cf., e.g., United States Telecom Ass’n v. FCC*, 359 F.3d 554, 576 (D.C. Cir. 2004) (stating that the goal of promoting facilities-based competition must guide the FCC’s implementation of the Communications Act).

provide[s] for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced services and information technologies and services by opening all telecommunications markets to competition....

Conference Report, Telecommunications Act of 1996, House of Representatives, 104th Congress, 2d Session, H. Rept. 104-458, at p. 1 (emphasis added). Similarly, the Idaho

Act states:

[E]ffective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the mere presence of a competitor. Instead, for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation's local exchange calling area.

Idaho Code § 62-601(2).

Granting TWCIS a CPCN will promote these important objectives. TWCIS will provide facilities-based wholesale and retail intrastate telecommunications services to commercial customers in Idaho. These services will, in turn, be used to make available new and competitive service offerings that will be available to residential and commercial consumers in Idaho in furtherance of the public interest. It is well-established that increased competition leads to lower prices, service innovation, more responsive customer service, and other benefits that, over time stimulate consumer utility and demand for the services supplied by all providers, including the Incumbent Local Exchange Carriers. Moreover, Incumbent Local Exchange Carriers respond to robust competition by improving the efficiency of their operations and expanding the market to which they offer their services, ultimately benefiting consumers and the Idaho economy statewide.

In sum, granting TWCIS a CPCN will be consistent with the competition objectives embodied in federal and state law, as it will allow TWCIS to obtain necessary interconnection agreements and provide competitive telecommunications services in Idaho. TWCIS's entry will lead to an increase in the range of competitive choices available to users of telecommunications services and create an incentive for existing service providers to improve quality and decrease prices, thereby creating multiple public benefits. The Commission should evaluate TWCIS's Application and apply the law in a manner consistent with the overarching objective of promoting competitive entry and the consumer benefits that flow from it.

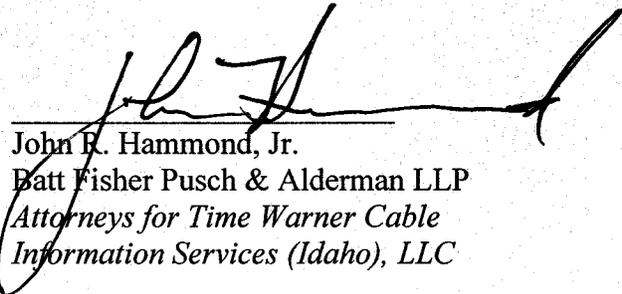
CONCLUSION

The Application and this Supplement demonstrate that it would be in the public interest to grant TWCIS a CPCN to provide competitive facilities-based local and interexchange telecommunications services within the State of Idaho.

WHEREFORE, TWCIS respectfully requests that the Commission:

1. Process this Application by Modified Procedure under the Commission's Rules of Procedure;
2. Grant TWCIS's request for a CPCN to provide competitive facilities-based local and interexchange telecommunications services within the State of Idaho; and
3. Grant such other relief as it deems necessary and appropriate.

Dated this 9 day of November, 2009.


John R. Hammond, Jr.
Batt Fisher Pusch & Alderman LLP
*Attorneys for Time Warner Cable
Information Services (Idaho), LLC*

CERTIFICATE OF SERVICE

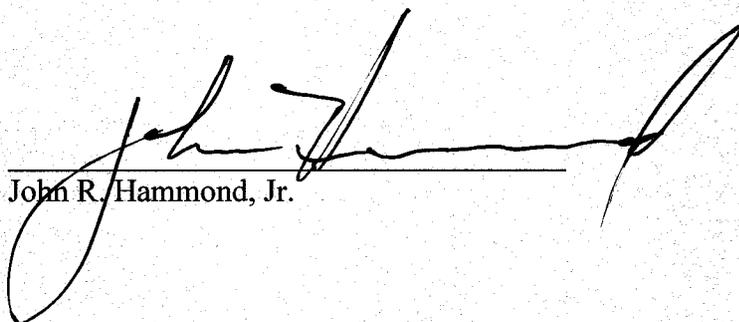
I HEREBY CERTIFY that on this 9 day of November, 2009, a true and correct copy of the foregoing document was served on the following individuals by the method indicated below:

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John R. Hammond, Jr.

Exhibit A

**List of TWCIS's Competitive Local Exchange Carrier Affiliates Have Obtained in Their
Jurisdictions**

Description of the Regulatory Status of the Time Warner Cable Affiliated CLECs

Time Warner Cable affiliates have been certificated by certain states to provide local and interexchange telecommunications services, as follows:

In 1993, Applicant's affiliate, Time Warner Cable ResCom of New York, LLC, was certificated by the New York Public Service Commission to provide local and interexchange telecommunications services in New York.

On February 11, 2003, Applicant's affiliate, Time Warner Cable Information Services (Maine), LLC, was certificated by the Maine Public Utilities Commission to provide local and interexchange telecommunications services in Maine.

On July 24, 2003, Applicant's affiliate, Time Warner Cable Information Services (North Carolina), LLC, was certificated by the North Carolina Utilities Commission to provide local and interexchange telecommunications services in North Carolina.

On January 21, 2004, Applicant's affiliate, Time Warner Cable Information Services (Texas), L.P., was certificated by the Texas Public Utility Commission to provide local and interexchange telecommunications services in Texas.

On February 3, 2004, Applicant's affiliate, Time Warner Cable Information Services (Kansas), LLC, was certificated by the Kansas Corporation Commission to provide local and interexchange telecommunications services in Kansas.

On March 12, 2004, Applicant's affiliate, Time Warner Cable Information Services (Missouri), LLC, was certificated by Public Service Commission of Missouri to provide local and interexchange telecommunications services in Missouri.

On March 16, 2004, Applicant's affiliate, Time Warner Cable Information Services (California), LLC, was certificated by the California Public Utilities Commission to provide local and interexchange telecommunications services in California.

On May 24, 2004, Applicant's affiliate, Time Warner Cable Information Services (South Carolina), LLC, was certificated by the South Carolina Public Service Commission to provide local and interexchange telecommunications services in South Carolina.

On June 30, 2004, Applicant's affiliate, Time Warner Cable Information Services (Wisconsin), LLC, was certificated by the Wisconsin Public Service Commission to provide local and interexchange telecommunications services in Wisconsin.

On August 26, 2004, Applicant's affiliate, Time Warner Cable Information Services (New Hampshire), LLC, was certificated by the New Hampshire Public Utilities Commission to provide local telecommunications services in New Hampshire.

On October 22, 2004, Applicant's affiliate, Time Warner Cable Information

Services (Hawaii), LLC, was certificated by the Hawaii Public Utilities Commission to provide local and interexchange telecommunications services in Hawaii.

On November 23, 2004, Applicant's affiliate, Time Warner Cable Information Services (Nebraska), LLC, was certificated by the Nebraska Public Service Commission to provide local and interexchange telecommunications services in Nebraska.

On April 4, 2005, Applicant's affiliate, Time Warner Cable Information Services (Massachusetts), LLC, filed with the Massachusetts Department of Telecommunications and Energy its Statement of Business Operations and initial tariff.

On August 1, 2005, Applicant's affiliate, Time Warner Cable Information Services (Ohio), LLC, was certificated by the Public Utilities Commission of Ohio to provide local and interexchange services in Ohio.

On August 5, 2005, Applicant's affiliate, Time Warner Cable Information Services (West Virginia), LLC, was certificated by the Public Service Commission of West Virginia to provide local and interexchange services in West Virginia.

On August 10, 2005, Applicant's affiliate, Time Warner Cable Information Services (Indiana), LLC, was certificated by the Indiana Utility Regulatory Commission to provide local and interexchange services in Indiana.

On April 28, 2006, Applicant's affiliate, Time Warner Cable Information Services (Kentucky), LLC was certificated to provide local and interexchange services in Kentucky.

On June 27, 2006, Applicant's affiliate, Time Warner Cable Information Services (Arizona), LLC was certificated to provide limited local services in Arizona.

On February 27, 2008, Applicant's affiliate, Time Warner Cable Information Services (Alabama), LLC was certificated to provide local and interexchange services in Alabama.

On August 31, 2008, Applicant's affiliate, Time Warner Cable Information Services (Washington), LLC was registered as a competitive telecommunications company in the State of Washington.

On October 28, 2008, Applicant's affiliate, Time Warner Cable Information Services (Colorado), LLC was certificated to provide local and interexchange telecommunications services in Colorado.

On January 28, 2009, Applicant's affiliate, Time Warner Cable Information Services (New Jersey), LLC was certificated to provide local and interexchange telecommunications services in New Jersey.

Time Warner Cable affiliates have filed applications for authority to provide local and interexchange telecommunications in certain states, as follows:

On January 23, 2008, Applicant's affiliate, Time Warner Cable Information Services (Arizona), LLC, filed an application before the Arizona Corporation Commission to provide local and interexchange telecommunications services in Arizona. That application remains pending.

On November 14, 2008, Applicant's affiliate, Time Warner Cable Information Services (Idaho), LLC, filed an application before the Idaho Public Utilities Commission to provide local and interexchange telecommunications services in Idaho. That application remains pending.