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IDAHO PUBLIC
UTILITIES COMMISSION

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9
10 *Attorney for Time Warner Cable*
11 *Information Services (Idaho), LLC*
12

13 **Before the**
14 **IDAHO PUBLIC UTILITIES COMMISSION**
15

Application of)
)
TIME WARNER CABLE INFORMATION) Case No. TIM-T-08-01
SERVICES (IDAHO), LLC)
)
For a Certificate of Public Convenience and) **REBUTTAL TESTIMONY OF JULIE**
Necessity to Provide Competitive Facilities-) **LAINÉ ON BEHALF OF TIME**
Based Local and Interexchange) **WARNER CABLE INFORMATION**
Telecommunications Services within the) **SERVICES (IDAHO), LLC**
State of Idaho)

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17
18 Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR THE
19 RECORD.

20 A. My name is Julie Laine and I am Group Vice President, Regulatory of Time Warner
21 Cable. My business address is 60 Columbus Circle, New York, NY 10023. My
22 telephone number is (212) 364-8482 and my email address is julie.laine@twcable.com.

23 Q. HAVE YOU PROVIDED TESTIMONY IN THIS MATTER PREVIOUSLY?

24 A. Yes. I provided written testimony on behalf of Time Warner Cable Information Services
25 (Idaho), LLC ("TWCIS") on May 14, 2010.

26 Q. HAVE YOU REVIEWED THE REBUTTAL TESTIMONY FILED BY COMMISSION
27 STAFF ON MAY 27, 2010, AS AMENDED ON JUNE 3, 2010?

1 A. Yes.

2 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

3 A. The purpose of my testimony is to respond to: (i) Staff's unsupported assertion that
4 TWCIS will not provide service to the "public," and therefore is not a "telephone
5 corporation" eligible to receive a certificate of public convenience and necessity
6 ("CPCN"); (ii) Staff's inaccurate description of the services that TWCIS intends to
7 provide, and consequent failure to appreciate the barriers to entry faced by TWCIS in the
8 absence of a CPCN; and (iii) Staff's inaccurate description of TWCIS's efforts to
9 interconnect with Verizon in Idaho.

10 Q. WHAT IS STAFF'S LEGAL BASIS FOR CONCLUDING THAT TWCIS'S LOCAL
11 INTERCONNECTION SERVICE WILL NOT BE PROVIDED TO "THE PUBLIC"?

12 A. Staff provides no such basis. Staff merely asserts that it defines "service to the public" to
13 mean "directly to the consumer or end user and not on a wholesale basis."¹

14 Q. IS THERE CONTRARY AUTHORITY ON THIS POINT?

15 A. Yes. Like Idaho Code § 61-121(1), the federal Communications Act of 1934, as
16 amended, defines a "telecommunications service" as one offered "to the public."² Yet,
17 the Federal Communications Commission has, on numerous occasions, rejected the view
18 that the reference to "the public" in this statutory definition was intended to exclude
19 wholesale telecommunications services.³ In fact, the FCC has found that "[i]t is clear . . .
20 that the definition of telecommunications services . . . includes wholesale services when

¹ Staff Rebuttal Testimony at 6.

² See 47 U.S.C. § 153(46).

³ See, e.g., *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Order on Reconsideration, 12 FCC Rcd 8653, at ¶ 33 (1997).

1 offered on a common carrier basis.”⁴ Thus, the FCC has determined that “providers of
2 wholesale telecommunications services enjoy the same rights as any ‘telecommunications
3 carrier’ under . . . the Act.”⁵

4 Q: WHY SHOULD THIS COMMISSION ADHERE TO FEDERAL PRECEDENT?

5 A: As an initial matter, the FCC is an expert agency that has established precedent in this
6 area through careful deliberation over a period of years. The FCC has explained that
7 wholesale carriers that furnish inputs to other service providers are common carriers
8 because they serve the subset of the public that can make use of the relevant offering, and
9 courts have upheld those determinations.⁶ In contrast, Staff’s position is entirely
10 unsupported and at odds with federal and state policy favoring the promotion of
11 competition. This Commission accordingly should interpret Idaho Code § 61-121(1) to
12 be consistent with the well-established and judicially approved federal precedent.
13 Moreover, Staff’s interpretation of Idaho Code § 61-121(1) would effectively preclude
14 TWCIS from providing, within the state of Idaho, “telecommunications services” as
15 defined by the federal Communications Act. Accordingly, any such interpretation
16 invites, and would merit, preemption under Section 253 of the Act.

17 Q: HAVE OTHER STATES REJECTED TWCIS’S PROPOSED SERVICES?

18 A: No. As TWCIS noted in its direct testimony, Time Warner Cable indirectly controls 26
19 competitive local exchange carriers (*i.e.*, one in each of 26 different states) that have
20 obtained a CPCN or equivalent authority to operate as a local exchange carrier, as
21 provided for under relevant state commission rules. In the aftermath of the *TWC*
22 *Declaratory Ruling*, no state authority has indicated that any Time Warner Cable

⁴ *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, at ¶ 11 (2007) (“*TWC Declaratory Ruling*”).

⁵ *Id.* at ¶ 9.

⁶ *See Verizon Cal., Inc. v. FCC*, 555 F.3d 270, 276 (D.C. Cir. 2009) (rejecting claim that a wholesale carrier

1 affiliated local exchange carrier's intention to provide wholesale local
2 telecommunications services would be a reason to deny such authority. In fact, all of
3 these entities limit their service offerings to wholesale and commercial customers.
4 Moreover, the local exchange service tariffs and price sheets filed by several of these
5 entities describe the very same service offerings that TWCIS proposes to offer in Idaho.

6 Q: DO YOU AGREE WITH STAFF'S SUGGESTION THAT TWCIS DOES NOT NEED
7 A CPCN AND THAT IDAHO STATUTES ALLOW "EASIER ENTRY INTO THE
8 MARKET THAN THE FEDERAL ACT"⁷?

9 A: No. Staff provides no basis for this assertion, but appears to assume, incorrectly, that
10 "the absence of a CPCN does not preclude [TWCIS] from entering the Idaho market as a
11 wholesale provider."⁸ In fact, the inability of TWCIS to obtain a CPCN has created
12 numerous barriers to entry, which Staff simply chooses to ignore. Of course, TWCIS
13 would not be pursuing this application for a CPCN if it could enter the market and obtain
14 interconnection and other necessary inputs without such operating authority.

15 Q: DO YOU AGREE WITH STAFF'S ASSERTION THAT TWCIS SHOULD BE ABLE
16 TO OBTAIN TELEPHONE NUMBERS, ROUTE CALLS, ETC. EVEN WITHOUT A
17 CERTIFICATE?

18 A: No. As an initial matter, Staff concedes its lack of expertise with respect to numbering
19 and related matters.⁹ This lack of expertise is compounded by Staff's failure to
20 understand the nature of the service that TWCIS will provide, and its relationships with
21 its customers and other service providers. Tellingly, Staff assumes that "the companies
22 that TWCIS provides wholesale service to, the companies providing service to end users,

serving only one VoIP provider could not qualify as a "telecommunications carrier").

⁷ Staff Rebuttal Testimony at 7.

⁸ *Id.*

⁹ *Id.* at 11 ("I am not a numbering subject matter expert . . .").

1 should be able to obtain numbers.”¹⁰ In fact, TWCIS’s customers will be Voice over
2 Internet Protocol (“VoIP”) and other service providers that themselves lack CPCNs, and
3 thus have no ability to obtain numbers or other critical resources themselves. As the FCC
4 has explained, retail VoIP providers commonly rely on wholesale providers like TWCIS
5 to obtain numbering resources for their end users.¹¹ Accordingly, there is no reason to
6 reject TWCIS’s experience-based arguments in favor of the admittedly uninformed views
7 of Staff.

8 Q: IS THE “ADDITIONAL INFORMATION” PROVIDED BY STAFF WITH RESPECT
9 TO PREVIOUS INTERCONNECTION NEGOTIATIONS BETWEEN TWCIS AND
10 VERIZON ACCURATE?

11 A: No. Verizon has consistently refused to enter into an interconnection agreement with
12 TWCIS until TWCIS obtains a CPCN. Verizon has not based such refusals on the
13 understanding that TWCIS intends to provide retail services. Further, Verizon has never
14 represented to TWCIS that it would enter into an interconnection agreement covering
15 only “wholesale” services. Notably, Staff’s rebuttal testimony provides no foundation for
16 hearsay claims to the contrary. When TWCIS requested that Staff provide a basis for
17 these claims, Staff provided only the e-mail attached as Exhibit A. Notably, that e-mail
18 merely reiterates Verizon’s refusal to execute an interconnection agreement with TWCIS
19 in the absence of a CPCN. Nowhere does that e-mail state that Verizon would enter into
20 an interconnection agreement with TWCIS covering “wholesale” services generally.
21 More importantly, nowhere does Verizon represent that it would enter into an
22 interconnection agreement with TWCIS covering the specific types of services that
23 TWCIS intends to offer. Further, while that e-mail makes oblique references to the

¹⁰ *Id.*

¹¹ See *TWC Declaratory Order* at ¶ 13 (noting that the Commission precedent has “expressly contemplated that VoIP providers would obtain access to and interconnection with the PSTN through competitive carriers.”).

1 availability of “other wholesale and commercial” agreement forms, nowhere does it state
2 that these forms would not also require TWCIS to obtain a CPCN. In fact, nothing in that
3 e-mail even remotely suggests that Verizon views TWCIS’s intended service as a
4 “wholesale” service not subject to certification.

5 Q: DOES THIS CONCLUDE YOUR TESTIMONY?

6 A. Yes.

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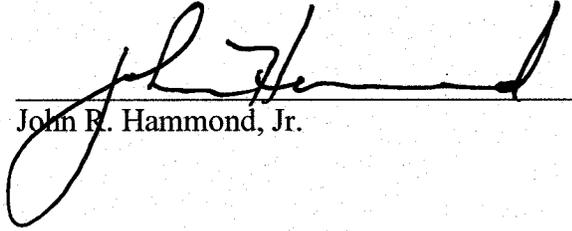
I HEREBY CERTIFY that on this 8th day of June, 2010, a true and correct copy of the foregoing document was served on the following individuals by the method indicated below:

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