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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF TIME WARNER CABLE INFORMATION )** CASE NO. **TIM-T-08-01**  
**SERVICES (IDAHO), LLC FOR A )**  
**CERTIFICATE OF PUBLIC CONVENIENCE )**  
**AND NECESSITY TO PROVIDE LOCAL )** STAFF'S ANSWER TO  
**EXCHANGE AND INTEREXCHANGE )** TIME WARNER'S PETITION  
**TELECOMMUNICATIONS SERVICES )** FOR RECONSIDERATION  
**WITHIN THE STATE OF IDAHO )**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, D. Neil Price, Deputy Attorney General, and, pursuant to Commission Rule of Procedure 331.05, does hereby submit Staff's Answer to the Petition for Reconsideration.

**PROCEDURAL BACKGROUND**

On November 14, 2008, Time Warner Cable Information Services (Idaho), LLC ("TWCIS" or "Company") filed an Application for a Certificate of Public Convenience and Necessity (CPCN) pursuant to *Idaho Code* §§ 61-526 through -528, IDAPA 31.01.01.111 and Commission Order No. 26665 to provide competitive facilities-based local and interexchange telecommunications services within the State of Idaho. Staff and representatives of TWCIS entered into a prolonged period of discussions regarding the Company's initial Application. On November 14, 2009, the Company filed a supplement to its Application.

On December 4, 2009, the Commission issued a Notice of Application and Modified Procedure. Thereafter, Commission Staff was the only party to submit written comments regarding TWCIS' Application. Subsequently, Staff and representatives of the Company entered into another series of discussions during which the parties agreed that TWCIS would be permitted to issue a written reply to Staff's comments. On January 29, 2010, TWCIS submitted a written response to Staff's comments.

On February 23, 2010, the Commission issued an Order denying TWCIS' Application for a CPCN. See Order No. 31012. On March 16, 2010, TWCIS filed a Petition for Reconsideration of the Commission's Order.

**STAFF'S ANSWER TO TIME WARNER'S  
PETITION FOR RECONSIDERATION**

1. *TWCIS' Application for a CPCN is Inapposite to the Applications Submitted by ALEC, Inc. and Eltopia Communications, LLC.*

In its Petition, TWCIS alleges that the Commission's decision to deny the Company a CPCN was unduly discriminatory because the Commission has previously granted CPCN's to "carriers that proposed to provide services comparable to those proposed by TWCIS." TWCIS Petition at 3-5. In making its argument of disparate treatment, TWCIS specifically referenced the Applications of ALEC, Inc. ("ALEC"), Case No. ALE-T-09-01, and Eltopia Communications, LLC ("Eltopia"), Case No. ECL-T-07-01. *Id.* at 3-4.

Staff notes that it had numerous discussions with representatives for ALEC prior to submitting its recommendation that ALEC receive a CPCN to provide local exchange telecommunications services in Idaho. During those discussions, ALEC indicated that it intended to provide local exchange services to small business customers and to eventually expand its offerings to include residential customers. This statement was supported by the Company's illustrative tariff and price list pages 50 through 52, and on pages 47 through 49 in the Company's final tariff currently on file with the Idaho Public Utilities Commission. Among the various service offerings, the ALEC tariff lists monthly rates for: Business Exchange Access Line Service, optional custom calling features, directory listings (including non-published and non-listed numbers), directory assistance, busy line verification and interrupt service. These services are typically associated with end-users. *See* Application of ALEC, Inc., Idaho PUC Tariff No. 1.

This stands in stark contrast from Staff's discussions with Time Warner. The Company's representatives have explicitly stated that its intent was to be a provider of wholesale services in Idaho, and the Company did not intend to offer end-user services. The proposed price list submitted in the Application supports this business strategy. Nothing in the proposed price list suggests that the Company plans to offer end-user services. The only reference to end-user services in the price list is a reference to employee rates where it states that the "Company may offer special rates or rate packages to its employees or employees of its affiliates." See Proposed Price List, page 41.

Moreover, Staff's recommendation that the Commission approve ALEC's Application was conditional. Staff recommended that ALEC agree to the following conditions prior to the issuance of a Certificate: (1) compliance with the Number Pool Administrator and Order No. 30425 mandating number resource utilization forecast (NRUF) reporting; (2) contribution to the Idaho Universal Service Fund, Idaho Telecommunications Relay System (TRS) Idaho Telephone Assistance Program (ITSAP) and any future reporting requirements deemed appropriate for competitive telecommunications providers; (3) filing a final and complete price list with the Commission containing all of its rates, terms and conditions; and (4) an agreement from the Company to relinquish its certificate and any telephone numbers if, within one year of the issuance of a CPCN, the Company is not offering local exchange telecommunications services in Idaho. See Commission Order No. 30944. Thus, ALEC stipulated to special conditions, including but not limited to, the relinquishment of its certificate if it failed to offer local exchange telecommunications services in Idaho within a year.<sup>1</sup>

TWCIS also referenced the Application of Eltopia Communications, LLC ("Eltopia"), Case No. ECL-T-07-01, as support for its argument that the Commission's denial of its Application for a CPCN constituted "blatant discrimination against TWCIS. . . ." TWCIS Petition at 5. In response, Staff reiterates the assessment it made in its comments regarding Eltopia's 2007 Application for a CPCN: "Eltopia's service has the capability to provide both voice and data services over the same trunk, and in some cases, the customer may desire fewer than five voice lines, which would qualify as basic local exchange service." See Staff Comments, Case No. ECL-T-07-01 (emphasis added).

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<sup>1</sup> See also Case Nos. BVN-T-09-01 (Order No. 31030), ENT-T-09-01 (Order No. 30950), ITN-T-09-01 (Order No. 30995) and MNT-T-08-02 (Order No. 30794).

In contrast, TWCIS' Application does not reveal any promissory intent by the Company to offer, now or in the immediate future, services which would qualify as basic local exchange service. Instead, TWCIS assures the Commission that its proposed Local Interconnection Service "will be offered on a wholesale basis to facilities-based providers of interconnected VoIP services . . ." and not to end use customers. TWCIS Petition at 6 (emphasis added). As previously stated, serving as the wholesale provider of services that may ultimately qualify as basic local exchange service once they are actually delivered to residential and small business customers does not constitute the provision of "basic local exchange service," as outlined in *Idaho Code* § 62-603(1). Staff Comments, Case No. TIM-T-08-01 at 5.

2. *The Commission's Authority to Issue a CPCN to TWCIS is Constrained by Statute.*

If the Company concedes that it does not meet the definition of a "telephone corporation" for purposes of the *Idaho Code* § 62-604 exemption then the Commission should ignore TWCIS' plea for a CPCN. In its Petition, TWCIS argues that a Commission finding that the Company does not meet the statutory definition of a "telephone corporation" removes any "basis for using *Idaho Code* § 62-604 to preclude TWCIS from seeking a CPCN." TWCIS Petition at 8.

TWCIS' argument is misguided. The plain language of Title 61 delineates that the Commission has the authority to issue a CPCN to either a "street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation. . . ." *Idaho Code* § 61-526. The Company cannot have it both ways. If TWCIS declares that it is not a qualifying "telephone corporation" then the Commission should accept the Company's admission and consider the matter closed.

a. TWCIS' Application Should Be Evaluated Based on its Own Relative Merit or Lack Thereof.

TWCIS does not stop there. The Company argues that even if it is "exempt" from the provisions of Title 62 nothing in the definition of that word, "or *Idaho Code* § 62-604, requires an exempt party to forego, or precludes the Commission from facilitating benefits or advantages otherwise available for similarly situated entities." *Id.* at 9. In other words, rather than requesting that the Commission to issue a CPCN because the CPCN enabling statute is generally applicable to the Company, TWCIS seems to argue that it is entitled to a CPCN because "other similarly situated entities" have received the benefits of a CPCN.

Assuming that TWCIS' assertion is accurate and its proposed services are similar to other telecommunications providers that have previously received a CPCN from the Commission, Staff contends that TWCIS' Application should be evaluated based solely upon the relevant statutory criteria and legal authority. The Commission is not bound by its prior rulings. *See* Commission Rule 326; IDAPA 31.01.01.326. Inasmuch as other "similarly situated entities" have been granted a CPCN in contravention of Idaho Code, Staff wholly supports appropriate actions by the Commission to rescind their certificates.

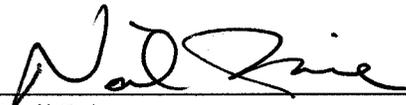
3. *A CPCN is not a Prerequisite for Entry into the Idaho Telecommunications Market.*

TWCIS is not prejudiced by the Commission's decision to deny its Application for a CPCN. The denial of the Application does not discourage "effective competition" because it does not prevent TWCIS from obtaining interconnection with incumbent local exchange carriers. *See Idaho Code* § 62-602 (emphasis added). As the Commission noted in its previous Order, "a CPCN is not required for telephone corporations offering non-basic local exchange services or to obtain interconnection with the network of an Idaho ILEC." Order No. 31012. "Telephone corporations 'providing other non-basic local exchange telecommunications services as defined in *Idaho Code* § 62-603' need only comply with the notice and price list or tariff requirements found in *Idaho Code* §§ 62-604 and 62-606." *Id.* (citing Order No. 30991 at 3.)

#### CONCLUSION

Staff respectfully requests that the Commission deny TWCIS' Petition for Reconsideration of Commission Order No. 31012 denying the Company's Application for a CPCN.

Respectfully submitted this 23rd day of March 2010.

  
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Neil Price  
Deputy Attorney General

N:TIM-T-08-01\_np\_Staff Answer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 23<sup>rd</sup> DAY OF MARCH 2010, SERVED THE FOREGOING **STAFF'S ANSWER TO TIME WARNER'S PETITION FOR RECONSIDERATION**, IN CASE NO. TIM-T-08-01, BY E-MAILING AND MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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