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VIA E-MAIL

June 2, 2010

John R. Hammond, Jr.
Fisher, Pusch & Alderman, LLP
PO Box 1308
Boise, ID 83701

Gary Wengrofsky, Manager Regulatory
Time Warner Cable, Inc.
290 Harbor Drive
Stanford, CT 06902

Re: Staff Amended Rebuttal Testimony in Case No. TIM-T-08-01 (Application for CPCN)

Gentlemen:

Please find enclosed Staff witness Grace Seaman's amended prefiled rebuttal testimony in the above-referenced case. This amended testimony corrects typographical errors and adds Code citations. In addition, the question and answer in Ms. Seaman's testimony which began on page 2, line 25 and continued on page 3 has been replaced.

For your convenience, I have included a "legislative format" of the amended testimony which portray the amendments to her rebuttal testimony. I have also included a clean copy dated today.

The Staff regrets any inconvenience caused by the amendment of its testimony. If you have any questions, please contact me at (208) 334-0312.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald L. Howell, II".

Donald L. Howell, II
Deputy Attorney General

Enclosures

cc: Jean Jewell
Neil Price
Joe Cusick
Grace Seaman

bls/L:TIM-T-08-01_Hammond_dh

BEFORE THE

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IDAHO PUBLIC UTILITIES COMMISSION

IDAHO PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF TIME WARNER CABLE INFORMA-)
TION SERVICES (IDAHO), LLC FOR A)
CERTIFICATE OF PUBLIC CONVE-)
NIENCE AND NECESSITY TO PROVIDE)
LOCAL EXCHANGE AND INTER-)
EXCHANGE TELECOMMUNICATIONS)
SERVICES WITHIN THE STATE OF)
IDAHO.)

CASE NO. TIM-T-08-01

AMENDED REBUTTAL TESTIMONY OF GRACE SEAMAN

IDAHO PUBLIC UTILITIES COMMISSION

JUNE 2, 2010

1 Q. Please state your name and address for the
2 record.

3 A. My name is Grace Seaman. My business address
4 is 472 West Washington Street, Boise, Idaho.

5 Q. By whom are you employed and in what capacity?

6 A. I am employed by the Idaho Public Utilities
7 Commission (Commission) as a Utilities Analyst. I
8 accepted the position with the Telecommunications Section
9 in June 2004. I am responsible for telecommunications
10 regulatory activities.

11 Q. Please give a brief description of your
12 educational background and experience.

13 A. I graduated from George Fox University with a
14 Bachelors of Arts degree in Management and Organization
15 Leadership in May 1998. I have attended various
16 regulatory, rates of return, economics, and service
17 rating programs including the New Mexico State University
18 "Camp" NARUC.

19 I worked for Mountain Bell/US WEST for 25 years
20 in the repair, dispatch, business office and marketing
21 departments. The last 21 years were spent in the
22 marketing department, in a variety of positions that
23 included sales, service, technical, project management,
24 and supervisory responsibilities.

25 Prior to accepting the position with the IPUC,

1 I was a Site Manager for CDI, a managed service provider,
2 at the Hewlett Packard main site. I supervised a team
3 that was responsible for installation and maintenance of
4 structured cabling, telephone/PBX and VoIP support, and
5 data network support.

6 Q. What is the purpose of your testimony?

7 A. The purpose of my testimony is to present the
8 evidence associated with Staff's recommendation regarding
9 Time Warner Cable Information Service (Idaho), LLC's
10 (TWCIS) Application for a Certificate of Public
11 Convenience and Necessity (CPCN); Case No. TIM-T-08-01.

12 Q. Please summarize your testimony.

13 A. Based on the information provided in the TWCIS
14 CPCN Application, Staff does not believe the services
15 that TWCIS proposes to provide in Idaho qualifies the
16 Company as a "telecommunications provider" as defined by
17 Idaho Code. TWCIS, therefore, cannot be granted a
18 Certificate of Public Convenience and Necessity (CPCN).

19 Q. What is TWCIS requesting in this case?

20 A. TWCIS is requesting that the Commission grant
21 the Company a CPCN (certificate) that will enable it to
22 operate as a competitive local exchange carrier (CLEC)
23 in the state of Idaho. CLECs compete with incumbent
24 local exchange carriers ("ILECs" or "incumbents").

25 Q. How does the certification process operate for

1 CLECs?

2 A. The laws pertaining to the regulation of CLECs
3 have evolved over time. In 1988, our Legislature enacted
4 the Telecommunications Act generally providing for the
5 introduction of competition in all telecommunication
6 services with one exception: the provision of local
7 exchange service to residential and business customers
8 with fewer than five (5) access lines. For those
9 incumbent telephone corporations providing local exchange
10 service, their existing CPCNs were intended to "represent
11 an exclusive service area franchise." *Idaho Code* § 62-
12 615(1) (subsequently repealed in 1997). Thus, carriers
13 such as Qwest's predecessor became subject to both Title
14 61 and Title 62 - Title 61 for the provision of its basic
15 local exchange service and Title 62 for the provision of
16 all other telecommunication services.

17 Q. What happened next?

18 A. Congress enacted the federal Telecommunications
19 Act of 1996 which sought to introduce competition in all
20 areas of telecommunications, including basic local
21 exchange service. In response to the federal Act, in
22 1997 Idaho repealed Section 62-615(1) and its "exclusive
23 franchise" language. Thus, CLECs could offer basic local
24 exchange services in competition with ILECs. In House
25 Bill 313, the Legislature restricted the Commission from

1 regulating the price for basic local exchange service
2 offered by new CLECs.

3 Q. Were there subsequent changes to the regulation
4 of CLECs?

5 A. Yes. In 2005 the Legislature again amended the
6 Idaho Telecommunications Act. In House Bill No. 224, the
7 Legislature amended Sections 62-604 and 62-605 to allow
8 telephone corporations to remove their basic local
9 exchange service from the Commission's Title 61 authority
10 and have such services regulated under the Commission's
11 Title 62 authority. In 2009, the Commission promulgated
12 Rule 114 that specified the information to be included by
13 CLECs when applying for CPCN applications. As stated in
14 the Rule, the Commission "uses the certification process
15 to register and review applicants to provide local
16 telecommunications services." IDAPA 31.01.01.114.

17 Q. Please describe the services that TWCIS
18 proposes to provide in Idaho.

19 A. In its application, TWCIS states that it is a
20 competitive telecommunications company that intends to
21 offer intrastate telecommunications services for
22 wholesale customers statewide. Supplement at 5. That
23 is, TWCIS does not offer basic local exchange service
24 directly to end users, but offers it on a wholesale basis
25 to CLECs. TWCIS is not itself a CLEC.

1 Q. Are CPCNs granted to companies that provide
2 services to wholesale providers?

3 A. No, CPCNs are granted to providers of local
4 exchange service as provided for in Rule 114.

5 Q. Would you please explain why you believe TWCIS
6 is not a telecommunications provider?

7 A. Yes. The Company admits to being a "wholesale
8 provider." Supplement at 5. This means that the Company
9 provides its services to other companies and not to the
10 "public" or end users.

11 Looking at *Idaho Code* §§ 61-121(1) and 62-
12 603(14), the definition of a "telephone corporation"
13 means every corporation or person, their lessees,
14 trustees, receivers or trustees appointed by any court
15 whatsoever, providing "telecommunications services" for
16 compensation within this state.

17 The definition of "telecommunication service"
18 in *Idaho Code* §§ 61-121(2) and 62-603(13), means the
19 transmission of two-way interactive switched signs,
20 signals, writing, images, sounds, messages, data, or
21 other information of any nature by wire, radio,
22 lightwaves, or other electromagnetic means (which
23 includes message telecommunication service and access
24 service), which originate and terminate in this state,
25 and are offered to or for the public, or some portion

1 thereof, for compensation [emphasis added]."

2 Because TWCIS does not offer services directly
3 to the public, the service cannot then be considered
4 telephone service, and it then cannot be considered a
5 "telephone corporation" in accordance with the definition
6 found in *Idaho Code* §§ 61-121(1) and 62-603(14).

7 Q. What does TWCIS say?

8 A. Ms. Laine states in testimony that TWCIS
9 qualifies as a "telephone corporation" under Idaho state
10 law.

11 Q. Do you agree with Ms. Laine?

12 A. No. The services that TWCIS proposes to
13 provide do not fit the services defined for a
14 telecommunications provider as I described in my earlier
15 testimony.

16 Q. How has Staff defined "service to the public"
17 in the past?

18 A. Staff defines "service to the public" to mean
19 directly to the consumer or end user and not on a
20 wholesale basis.

21 Q. Is this consistent with Staff's position in the
22 past?

23 A. Yes.

24 Q. Ms. Laine states in testimony that a CPCN will
25 enable TWCIS to provide facilities-based wholesale and

1 retail intrastate telecommunications services to
2 commercial customers in Idaho. Do you agree?

3 A. No, a CPCN is not necessary to provide
4 wholesale services and TWCIS has not shown that it will
5 be providing retail services to the public.

6 Q. Ms. Laine also states in testimony that there
7 is nothing in Idaho state law that precludes the
8 commission from granting the requested CPCN. Do you have
9 an opinion on this matter?

10 A. No. This is a legal matter that should be
11 argued through briefs submitted by legal counsel.

12 Q. In the supplement to the Application on page 7,
13 TWCIS asserts that "finding TWCIS ineligible for a CPCN
14 based on a cramped reading of Title 61 and 62 would run
15 afoul of federal law and undercut important policy
16 objectives." Do you agree?

17 A. No. Idaho statutes allow easier entry into the
18 market than the federal Act. Therefore, the Commission
19 cannot be considered guilty of "running afoul" of federal
20 law and "undercutting important policy objectives" if a
21 certificate is not granted, as suggested by TWCIS. Staff
22 does not believe the state's lack of regulatory
23 requirements, that is, no need for a CPCN or price list,
24 can be viewed as a barrier to entry.

25 Q. Ms. Laine states in testimony that TWCIS will

1 not be able to enter the Idaho market without a CPCN. Is
2 this an accurate statement?

3 A. No. Staff advised representatives of TWCIS
4 that the absence of a CPCN does not preclude the Company
5 from entering the Idaho market as a wholesale provider,
6 nor should it prevent it from entering into
7 interconnection agreements.

8 Q. Ms. Laine further states in testimony that the
9 Commission has previously granted CPCNs to other
10 applicants that proposed to offer services comparable to
11 those proposed by TWCIS. Specifically, she cites CPCNs
12 granted to ALEC Telecom, Inc. and Eltopia Communications,
13 LLC. Please explain why these companies were granted a
14 certificate.

15 A. ALEC Telecom, Inc. was granted a certificate on
16 November 13, 2009, for the following reasons: 1) In the
17 Application, under the heading telecommunications
18 service, item 2, Alec states that its future plans are to
19 expand its offering to retail, private line service, and
20 residential customers. Applicant may also provide local
21 telecommunications services on a resell basis; 2) On page
22 1 of the illustrative tariff is the following statement:
23 "This price list sets forth the service offerings, rates,
24 terms and conditions applicable to the furnishing of
25 local exchange services to small business customers

1 within the State of Idaho. The rates and rules contained
2 herein are subject to change pursuant to the rules and
3 regulations of the Idaho PUC; and 3) On page 12 of the
4 illustrative tariff, under the heading **Eligibility of**
5 **schools and libraries**, is the statement, "[s]ervices will
6 not be sold, resold or transferred in consideration for
7 money or any other thing of value." These statements
8 indicated to Staff that the company intended to provide
9 basic local exchange services to small business customers
10 and future plans could include residential customers.

11 Eltopia Communications, LLC was granted a
12 certificate on September 24, 2007, for the following
13 reasons: 1) The Company had already negotiated an
14 interconnection agreement with Northwest Telephone, Inc
15 and Verizon Northwest, Inc.; 2) In the illustrative price
16 list is the following statement: "This price list sets
17 forth the service offerings, rates, terms and conditions
18 applicable to the furnishing of local exchange services
19 to residential and small business customers within the
20 Cour d'Alene (sic), Idaho Service Area. The rates and
21 rules contained herein are subject to change pursuant to
22 the rules and regulation of the Idaho PUC;" and 3) The
23 illustrative tariff contained categories and rates for
24 directory listings. Directory listings are typically
25 associated with the public or end users.

1 Q. Do you wish to provide additional comments
2 regarding these companies?

3 A. Yes. Staff recognizes that some companies,
4 that obtained certificates in the past, may have been
5 wholesale service providers. Staff has tried to judge
6 all CPCN applications using the same criteria (telephone
7 companies who plan to provide local exchange services to
8 the public). Staff realized during the review process
9 that some companies did not intend to provide services as
10 described in the application, and as a result, Staff
11 began stipulating certain conditions as a requisite to
12 recommending CPCN approval. The certificates are now
13 granted on a conditional basis as follows: (1)
14 compliance with the Number Pool Administrator and Order
15 No. 30425 mandating number resource utilization forecast
16 (NRUF) reporting; (2) contribution to the Idaho Universal
17 Service Fund (USF), Idaho Telecommunications Relay System
18 (TRS), Idaho Telephone Service Assistance Program
19 (ITSAP), and any future reporting requirements deemed
20 appropriate for competitive telecommunication providers;
21 (3) filing a final and complete price list with the
22 Commission containing all of its rates, terms, and
23 conditions; and (4) an agreement from the Company to
24 relinquish its certificate and any telephone numbers if,
25 within one year of the issuance of a CPCN, the Company is

1 not offering local exchange telecommunications services
2 in Idaho.

3 These conditions were adopted after Eltopia was
4 granted a certificate, and included in the order for
5 ALEC's certification.

6 Q. Ms. Laine states in testimony that the denial
7 of a CPCN would leave TWCIS without the ability to obtain
8 telephone numbers, route calls, and obtain other inputs
9 necessary to operate as a CLEC. Please comment on this
10 statement.

11 A. I am not a numbering subject matter expert, but
12 agree that a wholesale service provider may not be able
13 to obtain numbers. However, the companies that TWCIS
14 provides wholesale service to, the companies providing
15 service to end users, should be able to obtain numbers.

16 Q. Ms. Laine states that one of the obstacles that
17 TWCIS would face without a CPCN is precluding
18 interconnection. Is this an accurate statement?

19 A. No. A lack of a CPCN should not prevent the
20 Company from entering into interconnection agreements.
21 Interconnection is governed by Section 251 of the Federal
22 Act of 1996.

23 Q. An Exhibit "A" is included in Ms. Laine's
24 testimony. Have you reviewed this exhibit?

25 A. Yes.

1 Q. Please describe the exhibit.

2 A. Exhibit A is a letter dated April 29, 2010,
3 from Verizon Global Wholesale and addressed to Mark Swan,
4 Time Warner Cable (sic) regarding an interconnection
5 agreement. In the letter, Mr. Swan states that "despite
6 several requests for the information, we have not
7 received the required certification information needed to
8 execute, deliver and file the Interconnection Agreement
9 documents. Therefore, Verizon considers the
10 Interconnection Agreement documents non-operational."

11 Q. Do you have additional information as it
12 relates to the Verizon letter?

13 A. Yes. In a conversation with a Verizon public
14 policy representative on May 26, 2010, I was given
15 additional information regarding the issuance of the
16 April 29, 2010 letter. I was informed that during
17 negotiations between the two companies, TWCIS advised
18 Verizon that it intended to provide local exchange
19 services to end-user customers in Idaho. Based on this
20 information, Verizon advised TWCIS that a CPCN would be
21 required to execute the agreement. Verizon, however,
22 confirmed that TWCIS, as a wholesale provider, would not
23 be required to obtain a CPCN to enter into an
24 interconnection agreement.

25 Q. Ms. Laine states in testimony that federal law

1 does not preclude the Commission from granting the
2 requested CPCN. She goes on to state that the
3 Communications Act of 1934, as amended, establishes a
4 clear nationwide policy in favor of competition and
5 expressly prohibits state legal requirements that
6 prohibit or have the effect of prohibiting competitive
7 entry by new service providers. Does the Staff
8 recommendation prohibit competition?

9 A. No. Staff believes neither Idaho Code nor
10 Staff's position in this case places restrictions on
11 TWCIS. The Company is free to compete in the essentially
12 unregulated Idaho market at will.

13 Q. Does this conclude your rebuttal testimony in
14 this proceeding?

15 A. Yes, it does.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 2ND DAY OF JUNE 2010, SERVED THE FOREGOING **AMENDED REBUTTAL TESTIMONY OF GRACE SEAMAN**, IN CASE NO. TIM-T-08-01, BY EMAILING A COPY THEREOF, TO THE FOLLOWING:

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SECRETARY

CERTIFICATE OF SERVICE