STATE OF SOUTH CAROLINA

(Caption of Case)
App. of Time Warner Cable Information Services to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Farmers Telephone Cooperative, Inc., and for Alternative Regulation

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2008 - 325 - C

(Please type or print)

Submitted by: Margaret M. Fox, Esquire
Address: McNair Law Firm, P. A.
P. O. Box 11390
Columbia, SC 29211

SC Bar Number: 65418
Telephone: 803-799-9800
Fax: 803-753-3219
Other:
Email: pfox@mcnair.net

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
☐ Electric	☐ Affidavit	☐ Letter	☐ Request
☐ Electric/Gas	☐ Agreement	☐ Memorandum	☐ Request for Certification
☐ Electric/Telecommunications	☐ Answer	☐ Motion	☐ Request for Investigation
☐ Electric/Water	☐ Appellate Review	☐ Objection	☐ Resale Agreement
☐ Electric/Water/Telecom.	☐ Application	☐ Petition	☐ Resale Amendment
☐ Electric/Water/Sewer	☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Gas	☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☒ Telecommunications	☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Transportation	☐ Discovery	☒ Prefiled Testimony	☐ Subpoena
☐ Water	☐ Exhibit	☐ Promotion	☐ Tariff
☐ Water/Sewer	☐ Expedited Consideration	☐ Proposed Order	☐ Other:
☐ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
☐ Other:	☐ Interconnection Amendment	☐ Publisher's Affidavit	
	☐ Late-Filed Exhibit	☐ Report	

MCNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

www.mcnair.net

Margaret M. Fox
pfox@mcnair.net

THE TOWER AT 1301 GERVAIS
1301 GERVAIS STREET, 11th FLOOR
COLUMBIA, SOUTH CAROLINA 29201

POST OFFICE BOX 11390
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803)799-9800
FACSIMILE (803)753-3219

December 8, 2008

Mr. Charles L. A. Terreni
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

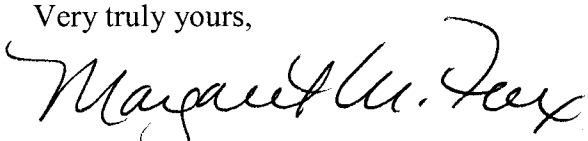
Re: Application of Time Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Farmers Telephone Cooperative, Inc., and for Alternative Regulation Docket No. 2008-325-C

Dear Mr. Terreni:

Enclosed for filing please find the Testimony of Douglas Duncan Meredith and the Testimony of H. Keith Oliver both on behalf of Farmers Telephone Cooperative, Inc. in the above- referenced docket. By copy of this letter and certificate of service, a copy of both testimonies is being served on all parties of record.

Thank you for your assistance.

Very truly yours,



Margaret M. Fox

MMF/rwm
Enclosure

cc: Parties of Record

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

IN RE:

Application of TWCIS Cable	)	
Information Services (South Carolina), LLC	)	
d/b/a TWCIS Cable to Amend Its	)	Docket No. 2008-325-C
Certificate of Public Convenience and	)	
Necessity to Provide Telephone	)	
Services in Service Area of Farmers Telephone	)	
Cooperative, Inc. and for Alternative Regulation	)	

DIRECT TESTIMONY OF

DOUGLAS DUNCAN MEREDITH

ON BEHALF OF

FARMERS TELEPHONE COOPERATIVE, INC.

I. Introduction

Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT AND POSITION.

A: My full name is Douglas Duncan Meredith. I am employed by John Staurulakis, Inc. ("JSI") as Director – Economics and Policy. JSI is a telecommunications consulting firm headquartered in Greenbelt Maryland. My office is located at 547 Oakview Lane, Bountiful, Utah 84010. JSI has provided telecommunications consulting services to rural local exchange carriers since 1963.

Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND.

A: As the Director of Economics and Policy at JSI, I assist clients with the development of policy pertaining to economics, pricing and regulatory affairs. I have been employed by JSI since 1995. Prior to my work at JSI, I was an independent research economist in the District of Columbia and a graduate student at the University of Maryland – College Park.

In my employment at JSI, I have participated in numerous proceedings for rural and non-rural telephone companies. These activities include, but are not limited to, the creation of forward-looking economic cost studies, the development of policy related to the application of the rural safeguards for qualified local exchange carriers, the determination of Eligible Telecommunications Carriers, and the sustainability and application of universal service policy for telecommunications carriers.

In addition to assisting telecommunications carrier clients, I have served as the economic advisor for the Telecommunications Regulatory Board of Puerto Rico since 1997. In this capacity, I provide economic and policy

advice to the Board Commissioners on all telecommunications issues that have either a financial or economic impact. I have participated in a number of Arbitration panels established by the Board to arbitrate interconnection issues under Section 252 of the Telecommunications Act of 1996 (the "Act").

I am participating or have participated in numerous national incumbent local exchange carrier and telecommunications groups, including those headed by NTCA, OPASTCO, USTA, and the Rural Policy Research Institute. My participation in these groups focuses on the development of policy recommendations for advancing universal service and telecommunications capabilities in rural communities and other policy matters.

I have testified or filed pre-filed regulatory testimony in various states including South Carolina, New Hampshire, New York, Michigan, Wisconsin, North Dakota, South Dakota, Vermont, Texas, Kentucky, Utah, Maine and Tennessee. I have also participated in regulatory proceedings in many other states that did not require formal testimony, including Florida, Louisiana, Mississippi, North Carolina, Puerto Rico and Virginia. In addition to participation in state regulatory proceedings, I have participated in federal regulatory proceedings through filing of formal comments in various proceedings and submission of economic reports in an enforcement proceeding.

I have a Bachelor of Arts degree in economics from the University of Utah, and a Masters degree in economics from the University of Maryland – College Park. While attending the University of Maryland – College Park, I was also a Ph.D. candidate in Economics. This means that I completed all coursework, comprehensive and field examinations for a Doctorate of Economics without completing my dissertation.

Q: ON WHOSE BEHALF ARE YOU TESTIFYING?

A: I am testifying in this docket on behalf of Farmers Telephone Cooperative, Inc. ("Farmers" or "RLEC")

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: My purpose in providing this testimony to the Public Service Commission of South Carolina ("Commission" or "PSC") is to recommend the grant of TWCIS Application to Amend its Certificate of Public Convenience and Necessity only to the extent that TWCIS will maintain compliance with its own commitments pursuant to its application, as well as with the parameters established by the FCC in the *Time Warner Declaratory Ruling*.[1] If, in the alternative, TWCIS does not agree to maintain these commitments and not abide by the parameters established in the *Time Warner Declaratory Ruling*, then I recommend that the Commission evaluate further the application and either deny certification or adopt additional conditions to ensure critical public interest considerations will be met.

Q: PLEASE SUMMARIZE YOUR TESTIMONY.

A: My testimony will consist of discussion on the following issues:

- Describe TWCIS' application to amend its Certificate of Public Convenience and Necessity ("CPCN"). Specifically,
  - TWCIS requests the ability to provide (1) facilities-based interconnected VoIP services; and (2) high-capacity point to point, private line non-voice intrastate transmission services

[1] *See generally 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, WC Docket N. 06-55 (March 1, 2007) ("Time Warner Declaratory Ruling").

- TWCIS will provide its facilities-based interconnected VoIP services through a wholesale interconnection service it purchases and receives from Sprint, a third-party non-affiliated competitive local exchange carrier ("CLEC").

- Respond to certain allegations or inaccuracies raised by TWCIS' witnesses in supporting the application.

- Recommend that the Commission amend TWCIS' CPCN to the extent that the following holds true in Farmer's service territory:
  - Pursuant to the requested amendment to its CPCN, TWCIS is operating in accordance with its own statements regarding the specific services sought in its application;
  - TWCIS is operating in accordance with the parameters set forth in the FCC's *Time Warner Declaratory Ruling*;
  - TWCIS complies with the same quality service standards and report filing requirements that apply to Farmers; and
  - TWCIS' unaffiliated non-VoIP wholesale provider establishes a Point of Interconnection ("POI") within Farmers' service area or, if the POI is outside Farmers' service area, the provider bears the financial burden of transporting calls from Farmers' boundary to the POI.

If TWCIS does not agree to meet its own commitments and follow the *Time Warner Declaratory Ruling* and if the Commission does not want to condition its order amending the CPCN addressing these specific commitments, then I recommend

- The Commission deny the application, or alternatively
- Review additional matters necessary to ensure the public interest is being met by TWCIS. Specifically, the Commission should

- Declare that Digital Phone service is not a telecommunications service that warrants Section 251 interconnection under the Federal Act;
- Determine that TWCIS does not satisfy section 51.100 of the FCC's rules by offering Digital Phone service; and,
- Grant the certificate only to the extent the Commission establishes a level playing field by regulating Farmers and TWCIS in an equal manner as to all services, as discussed in more detail in Keith Oliver's testimony.

II. TWCIS' Application to amend its Certificate of Public Convenience and Necessity

Q: PLEASE DESCRIBE TWCIS' APPLICATION TO AMEND ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE TELEPHONE SERVICE.

A: TWCIS has indicated that it seeks to amend its Certificate of Public Convenience and Necessity ("CPCN") for the purpose of "serving customers in the geographic areas currently served by [Farmers]."[2] Pursuant to the requested amendment, TWCIS states that it "plans to provide facilities-based interconnected VoIP services and intrastate point to point, private line telecommunications services."[3]

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[2] *See Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Direct Testimony of August H. Ankum, PH.D. on Behalf of TWCIS Cable Information Services (South Carolina) LLC, p. 3 (Nov. 24, 2008) ("Ankum Direct Testimony).

[3] *Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Testimony of Julie P. Laine on Behalf of TWCIS Cable Information Services (South Carolina) LLC, p. 4 (Nov. 24, 2008) ("Laine Testimony).

Q: ARE FACILITIES –BASED INTERCONNECTED VOIP SERVICES AND INTRASTATE NON-VOICE TELECOMMUNICATIONS SERVICES THE ONLY SERVICES THAT TWCIS HAS REQUESTED TO PROVIDE PURSUANT TO AN AMENDMENT TO THE CPCN?

A: Yes.

Q: WHAT IS THE FACILITIES-BASED INTERCONNECTED VOIP SERVICE PROPOSED BY TWCIS?

A: TWCIS indicates that it will offer interconnected VoIP services over cable systems facilities owned and managed by its affiliate Time Warner Cable.[4] Interconnected VoIP customers use a voice-enabled cable modem connecting to the customer's home in order to make calls through the service.[5] The system uses laser-fed fiber optic and coaxial cables to transmit and deliver transmission signals to and from the interconnected VoIP customers.[6]

Q: HAS THE FCC DEFINED 'INTERCONNECTED VOIP SERVICES'?

A. Yes. The FCC defines 'Interconnected VoIP' as "a service that (1) [e]nables real-time, two-way communications; (2) [r]equires a broadband connection from the user's location; (3) [r]equires Internet protocol-compatible customer premises equipment (CPE); and (4) [p]ermits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network."[7]

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[4] *Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, PUBLIC VERSION Testimony of Charlene Keys on Behalf of TWCIS Cable Information Services (South Carolina) LLC ("Keys Testimony"), p. 3 (Nov. 24, 2008).

[5] *Id.*, p. 3.

[6] *Id.*, pp.3-4.

[7] 47 C.F.R. § 9.3.

1 **Q: IS TWCIS' DESCRIPTION OF ITS INTERCONNECTED VOIP SERVICE**
2 **CONSISTENT WITH THE FCC'S DEFINITION OF INTERCONNECTED**
3 **VOIP?**
4 A: It appears so. To the extent that TWCIS' service has the characteristics required
5 under the FCC's definition of interconnected VoIP, then TWCIS' service will
6 meet the definition.

7 **Q: HOW WILL TWCIS PROVIDE THE INTERCONNECTED VOIP**
8 **SERVICE PURSUANT TO ITS REQUESTED AMENDMENT TO THE**
9 **CPCN?**
10 A: TWCIS has repeatedly and consistently represented that it will continue to
11 rely on Sprint Communications Co, LP ("Sprint") to provide "the physical
12 interconnection to the public switched telephone network necessary for
13 TWCIS to offer its retail VoIP services to the public."[8] TWCIS has entered
14 into a contractual relationship with Sprint in order to purchase Sprint's
15 wholesale interconnection services.[9] Sprint will also continue to provide the
16 delivery of E911 service, telephone number portability and the delivery of
17 long distance traffic.[10]

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[8] *Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Time Warner Cable Information Services (South Carolina), LLC's Answers to Farmers Telephone Cooperative, Inc.'s First Set of Interrogatories ("TWCIS Answers to Interrogatories – 1st Set"), Interrogatory Nos. 1-4, 1-5iii, 1-9, 1-9x, 1-12, 1-18 (Nov. 10, 2008). TWCIS Answers to Interrogatories – 1st Set are attached hereto as Exhibit DDM-1.

[9] *See id.*, Interrogatory No. 1-4 and *Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, PUBLIC VERSION Testimony of Julie P. Laine on Behalf of TWCIS Cable Information Services (South Carolina) LLC ("Laine Testimony"), p. 8, lines 20-22 (Nov. 24, 2008).

[10] *See* Keys Testimony, p. 4 and Laine Testimony, p. 8.

Q: BASED ON THIS RELATIONSHIP, HOW WILL CUSTOMERS MAKE CALLS USING TWCIS' DIGITAL PHONE VOIP SERVICE?

A: TWCIS provides that calls placed between two Time Warner Digital Phone customers in South Carolina would be transported entirely in Internet protocol format between each customer's voice-enabled cable modem on Time Warner's private network.[11] If, however, one of the called parties is not a Time Warner Digital Phone customer, the Internet protocol voice packets are routed to a media gateway device and are converted to traditional circuit switched voice signals. The gateway device routes the call to the PSTN through Sprint's network via the wholesale interconnection service purchased by TWCIS and Sprint would complete the call to its final destination. [12]

Q: WHAT IS THE OTHER SERVICE THAT TWCIS HAS REQUESTED TO PROVIDE PURSUANT TO THE CPCN AMENDMENT?

A: TWCIS represents that, in addition to the provision of its interconnected VoIP services, it will provide a non-voice transmission service comprised of "high-capacity, point-to-point, point-to-multipoint and multipoint-to-multipoint dedicated connections between one or more customer locations and/or TWCIS."[13] This transmission service is a private line telecommunications service.[14]

Q: HAS TWCIS MADE ANY OTHER REPRESENTATIONS PURSUANT TO ITS REQUEST TO AMEND THE CPCN?

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[11] *See* Keys Testimony, p. 4.

[12] *See id.*

[13] Laine Testimony, pp. 4-5.

[14] *Id.*, p. 4.

A: Yes. TWCIS represents that it "will not offer or support any voice or data services" other than the services they have requested to provide pursuant to their application to amend the CPCN.[15]

III. TWCIS' Compliance with the FCC's *Time Warner Declaratory Ruling* and its Own Representations

Q: PLEASE DISCUSS THE *TIME WARNER DECLARATORY RULING* PROCEEDING.

A: On March 1, 2006 Time Warner Cable[16] petitioned the FCC for a declaratory ruling affirming that "wholesale telecommunications carriers are entitled to obtain interconnection with incumbent LECs to provide wholesale telecommunications services to other service providers[] (including VoIP-based providers)."[17] Time Warner Cable indicated in its petition that it purchased wholesale telecommunications services from competitive telecommunications carriers, including Sprint Communications Company, providing access to the PSTN enabling Time Warner Cable to provide VoIP service to customers.[18]

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[15] *See* TWCIS Answers to Interrogatories – 1st Set, Interrogatory No. 1-5iv (Exhibit DDM-1).

[16] Farmers believes that Time Warner Cable is an affiliate of TWCIS. In TWCIS' Responses to Interrogatories, TWCIS indicates that a legal entity named Time Warner Cable does not exist, but identifies Time Warner Cable, Inc. as "the parent company of all of the entities identified herein that are involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina." TWCIS Answers to Interrogatories – 1st Set, Interrogatory No. 1-2 (d) (Exhibit DDM-1). Furthermore, Time Warner Cable's application was also signed by the Vice President and Associate General Counsel to Time Warner, Inc. Time Warner, Inc. is identified as "the parent company of Time Warner Cable, Inc." in the TWCIS' Responses to Interrogatories. TWCIS Answers to Interrogatories – 1st Set, Interrogatory No. 1-2(k) (Exhibit DDM-1).

[17] *See generally, Petition of Time Warner Cable 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*, Petition for Declaratory Ruling, WC Docket No. 06-55 (Mar. 1, 2006) (Time Warner Petition); *see also* Time Warner Declaratory Ruling at ¶ 2.

[18] *See* Time Warner Application, p. 4; *see also* Time Warner Declaratory Ruling at ¶2.

Q: IS THIS THE WAY TWCIS HAS NOW PROPOSED TO PROVIDE ITS VOIP SERVICE PURSUANT TO ITS APPLICATION TO AMEND ITS CPCN?

A: Yes, this is exactly the way TWCIS has proposed to offer its VoIP services.

Q: WHAT WAS THE OUTCOME OF TIME WARNER CABLE'S PETITION?

A: The FCC granted Time Warner Cable's request, declaring that wholesale telecommunications providers may obtain interconnection for the purpose of providing wholesale telecommunications services to VoIP providers.

Q: PLEASE DESCRIBE THE FCC'S DECISION IN THAT PROCEEDING.

A: In its *Time Warner Declaratory Ruling*, the FCC established that telecommunications carriers providing telecommunications services "*in their own right*" were permitted to obtain interconnection pursuant to section 251 of the Communications Act of 1934, as amended ("Act"), for the purpose of providing wholesale telecommunications.[19] In making its ruling, the FCC expressly acknowledged the ability of wholesale telecommunications carriers to provide access to the PSTN for VoIP providers.[20]

Q: WHAT WERE THE PARAMETERS SET FORTH BY THE FCC'S DECLARATORY RULING?

A: The FCC acknowledged that only telecommunications carriers providing telecommunications services had interconnection rights and that telecommunications services include wholesale services when offered on a common carrier basis.[21] The FCC also noted that telecommunications

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[19] *Id.* at ¶ 16 (emphasis in original).

[20] *See id.* at ¶ 13 (stating, ". . .the Commission expressly contemplated that VoIP providers would obtain access to and interconnection with the PSTN through competitive carriers.")

[21] *See id.* at ¶ 11.

carriers must comply with the FCC's rule section 51.100,[22] providing that a carrier may only obtain interconnection for the purpose of providing telecommunications services. Accordingly, a carrier must be providing telecommunications services over an interconnection arrangement before it may offer information or other non-telecommunications services over the same arrangement.[23] Finally, the FCC established that as an "explicit condition" to wholesale telecommunications rights to interconnection, the wholesale carrier must take responsibility for appropriately identifying and compensating an incumbent LEC for the termination of all traffic exchanged, including traffic from a VoIP provider or other third party carrier.[24]

Q: WHAT IS THE SIGNIFICANCE OF THE FCC'S RULING TO THE IMMEDIATE PROCEEDING?

A: The FCC has determined that a telecommunications carrier may provide wholesale services if it is providing telecommunications services on a common carrier basis. It has specifically approved the very wholesale telecommunications relationship that TWCIS now has with Sprint in South Carolina and for which TWCIS seeks an amendment to its CPCN.

Q: HAS THE FCC DETERMINED THAT TWCIS' DIGITAL PHONE VOIP SERVICE IS A TELECOMMUNICATIONS SERVICE?

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[22] 47 C.F.R. § 51.100.

[23] *See id.* at ¶ 15, fn 39; *see also F. Cary Fitch D/B/A/ Fitch Affordable Telecom Petition For Arbitration Against SBC Texas Under § 252 of the Communications Act*, Proposal for Award, Texas PUC Docket No. 29415, p. 20 (Jun. 2005), *aff'd, F. Cary Fitch v. Public Utility Commission of Texas*, No. 07-5008 (5th Cir. 2008) ("*Fitch v. TX PUC*"). The Fifth Circuit Court of Appeals described section 51.100 on appeal as being "the heart of this dispute" on the issue of the use of interconnection facilities to carry non-telecommunications service traffic. The Fifth Circuit also stated that "a carrier may only obtain interconnection facilities *for telecommunications purposes.* Otherwise, a carrier could obtain interconnection facilities unnecessary for telecommunications service and instead use them for information service. *Id.*, p. 21 (emphasis added).

[24] *See* Time Warner Declaratory Ruling, ¶17.

1 A: No. The FCC has not made a determination concerning the regulatory status
2 of interconnected VoIP service.[25]

3 **Q: SINCE TWCIS' DIGITAL PHONE VOIP SERVICE IS NOT CLASSIFIED**
4 **AS A TELECOMMUNICATIONS SERVICE UNDER FEDERAL**
5 **REGULATION, IS THERE ANY PROHIBITION PREVENTING TWCIS**
6 **OFFERING ITS DIGITAL PHONE SERVICE IN [FARMER]'S SERVICE**
7 **TERRITORY?**
8 A: No. It appears that TWCIS may offer its Digital Phone VoIP Service without
9 a CPCN from the Commission in exactly the same manner it is representing
10 it will offer this service in the future; namely, to use Sprint as its intermediary
11 carrier to interface with the public switched telephone network.

12 IV. Response to Certain Allegations and
13 Representations by TWCIS' Witnesses

14 **Q: HAVE YOU REVIEWED THE TESTIMONY FILED BY TWCIS IN**
15 **SUPPORT OF ITS APPLICATION TO AMEND IT CPCN?**
16 A: Yes.

17 **Q: DO THE TWCIS WITNESSES ALLEGE THAT COMPETITION IS**
18 **BENEFICIAL TO THE PUBLIC INTEREST?**
19 A: Yes. Ms. Laine and Dr. Ankum both extol the virtues of competition.[26] What
20 is missing from their assessment is any analysis of the clear and unequivocal
21 determination by Congress that in some instances competition is not in the
22 public interest. Specifically, in two instances Congress requires that state
23 commissions evaluate the benefits and potential injuries competition may

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[25] *See* TWCIS Answers to Interrogatories – 1st Set, Interrogatory No. 1-8 (Exhibit DDM-1).

[26] *See* Testimony of August H. Ankum, Ph.D. on Behalf of TWCIS Cable Information Services (South Carolina) LLC ("Ankum Testimony"), p. 6, line 10 – p. 8, line 3 (Nov. 24, 2008) and Laine Testimony, p. 6, line 10-13.

have on small rural telephone companies.[27] While these statutory protections have not been asserted in this proceeding, these two Congressional directives show that unqualified promotion of competition in areas served by rural carriers should not be used to make judgments involving the public interest.

Notwithstanding the failure of TWCIS' analysis, it really makes no difference because TWCIS is able to offer its Digital Phone VoIP Service without an amended CPCN. Thus, to the extent any benefits TWCIS alleges will accrue to rural areas, the grant of a CPCN is not required to achieve these aims.

Q: IS TWCIS PROPOSING TO OFFER ITS DIGITAL PHONE VOIP SERVICE TO ALL CUSTOMERS IN AREAS SERVED BY FARMERS?

A: No. TWCIS is only going to offer service to its customers and to those households and businesses where Time Warner Cable has infrastructure. Time Warner Cable has a limited footprint and cannot cover the entire area served by rural carriers.[28]

Q: DOES TWCIS' FAILURE TO TAKE INTO ACCOUNT ITS LIMITED FOOTPRINT IMPAIR ITS CLAIM THAT BENEFITS WILL ACCRUE TO RURAL AREAS?

A: Yes. Rural carrier rates generally are established on a study area basis. Thus, inherent in a rural carrier's price structure is the implicit support of high cost outlying areas from low cost high density areas. Time Warner's footprint largely covers low cost high density areas. Rural carriers receive support to offer basic telecommunications services to all customers – both

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[27] *See* 47 U.S.C. § 214 and § 251(f)(1).

[28] This is confirmed by TWCIS testimony stating it will provide Digital Phone VoIP Service when it expands its cable network. TWCIS provides no timelines or even the guarantee it will expand its network that currently does not cover the service territory of the rural carriers. *See* Laine Testimony, p. 5, lines 8-11.

high cost and low cost customers. Farmers will continue to provide these essential services to all customers. However, by introducing competition into limited high density areas, this creates an incentive for Farmers to focus its attention and resources for advanced services on high density areas in order to compete with TWCIS. Any benefits that accrue to customers from fostering competition in rural areas will be limited to those living in relatively high density areas. Thus, fostering competition in rural areas will have the tendency to increase the disparity from rural outlying areas and high density low cost areas. This analysis is missing from TWCIS' petition and should be given weight in the Commission's judgment in this proceeding.

Q: DR. ANKUM ARGUES THAT FARMERS HAS LARGE ADVANTAGES OF INCUMBENCY (ANKUM TESTIMONY, PAGE 11, LINE 5). DO YOU AGREE WITH THIS ASSESSMENT?

A: No. The size and scope of Time Warner and its affiliate offerings is well recognized. Time Warner is a multi-million customer company with nearly unlimited resources at its disposal. The allegation that Farmers somehow has more incumbent leverage than Time Warner is flawed.

V. Primary Recommendation in this Proceeding

Q: WHAT SHOULD THIS COMMISSION CONSIDER WHEN MAKING ITS DECISION ON TWCIS' APPLICATION FOR AN AMENDMENT?

A: It should consider to what extent TWCIS will maintain compliance with its own statements and commitments in this proceeding and the extent to which it will maintain compliance with the FCC's *Time Warner Declaratory Ruling* and specifically condition the granting of the application on such commitments and compliance. In this testimony, I have demonstrated that TWCIS' has requested an amendment to its CPCN to expand its service areas to include the Farmers service territory for the purpose of providing only two services: (1) retail VoIP services; and (2) point-to-point, private line,

transmission services. I have also demonstrated that TWCIS has made commitments to utilize Sprint's wholesale interconnection in the provision the retail VoIP services pursuant to an amendment to its CPCN. Finally, I have demonstrated that Time Warner Cable requested and was granted a declaratory ruling establishing the validity of its wholesale relationship with Sprint based on the parameters set forth in that decision.

Q: WHAT IS YOUR RECOMMENDATION TO THE COMMISSION?

A: I recommend that the Commission grant the application to amend TWCIS' CPCN to the extent that TWCIS will maintain compliance with the commitments it has made pursuant to its application, as well as with the parameters set forth in the FCC's *Time Warner Declaratory Ruling.*

These parameters or conditions include:

- That the Commission requires that the TWCIS Digital Phone VoIP Service comply with all applicable State rules and regulations. This requires that the Commission not rely on TWCIS' voluntary acceptance, but instead would make this condition mandatory.
- That the Commission requires that TWCIS continue to use Sprint as an intermediary carrier for Digital Phone VoIP Service. This would mean that the Commission prohibits TWCIS from seeking numbering resources directly from NANPA and that TWCIS will not seek interconnection directly with the RLECs.
- The Commission requires that TWCIS and Sprint abide by the *Time Warner Declaratory Ruling*.
- The amended certification allows TWCIS to provide its high capacity point to point private line service in Farmers' service area insofar as it is offered on a common carriage basis.
- Other than the high capacity point to point private line service, the Commission requires that TWCIS not provide wholesale telecommunications services.

- The Commission requires TWCIS to file the same reports and comply with the same service quality standards that are applicable to Farmers.
- The Commission requires TWCIS' unaffiliated non-VoIP wholesale provider to establish a Point of Interconnection ("POI") within Farmers' service area or, if the POI is outside Farmers' service area, to bear the financial burden of transporting calls from Farmers' boundary to the POI.

These parameters or commitments need to be incorporated into the Commission's order granting with conditions TWCIS' application to amend its certificate.

VI. Alternative Recommendation in this Proceeding

Q: IF TWCIS DOES NOT AGREE TO THESE COMMITMENTS OR IF THE COMMISSION IS NOT WILLING TO ORDER THESE SPECIFIC COMMITMENTS IN ITS ORDER, WHAT CONCERNS DO YOU HAVE REGARDING THE APPLICATION?

A: Without clear and specific conditions identified in the Commission's order as I have described, I have serious reservations about amending TWCIS' CPCN. My first concern centers on the classification of Digital Phone VoIP Service. I don't believe it is sound public policy for the Commission to amend TWCIS' CPCN without clear statements identifying the classification of the service and the conditions attached to the service. I believe the grant of a CPCN for a service that is not defined as telecommunications under the federal law and regulation will create confusion regarding the rights and responsibilities between carriers. This confusion is not in the public interest.

Second, I believe that TWCIS' voluntary commitments are unavailing given the past practices of Time Warner and its affiliates that involve a "bait and switch" tactic.

Q: WHAT IS A "BAIT AND SWITCH?"

A: A bait and switch in this context is when an entity obtains a certificate under one set of facts and then seeks to change the underlying facts and still retain the certificate. A bait and switch has occurred in other jurisdictions where TWCIS obtains a certificate to provide local exchange service in a particular service area and through filings or actions has indicated that it may either rely on an unaffiliated telecommunications carrier for interconnection or its own affiliated carrier.[29] In Maine, Time Warner Cable filed a letter with the Maine PUC conceding this possibility and stating further that "TWC Digital Phone currently relies on the first model [unaffiliated CLEC], although it may choose to transition to the second approach [affiliated carrier] at some point in the future."[30] In Maine, at that time, TWCIS had obtained a certification to provide local exchange services in the rural ILEC areas. However, CRC, a certificated unaffiliated CLEC was the carrier requesting interconnection with the rural ILECs. Time Warner indicated that it did not intend to provide any local exchange services and that it was committed to working with CRC to obtain access to the PSTN to provide its VoIP service. Understandably, the rural ILECs were quite concerned with which entity would ultimately interconnect with the ILECs, especially in light of Time Warner Cable's letter to the Maine PUC.

Similarly in this immediate proceeding, in response to interrogatories served by Farmers TWCIS has represented that it is working with Sprint to obtain interconnection with the PSTN[31] and that it has no plans to provide a local exchange service in the RTC service areas.[32] In fact, Sprint currently has an

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[29] *See, e.g.*, Letter to Amy Mulholland Spelke, Maine Public Utility Commission, from Julie Laine, Time Warner Cable (May 29, 2008) ("Laine Letter") (Attached hereto as Exhibit DDM-2).

[30] *Id.*, p. 1.

[31] *See* TWCIS Interrogatories – 1st Set, Interrogatory Nos. 1-4, 1-5iii, 1-9, 1-9x, 1-12 & 1-18 (Exhibit DDM-1).

[32] *See* TWCIS Interrogatories – 1st Set, Interrogatory Nos. 1-6 & 1-7 (Exhibit DDM-1).

interconnection agreement with Farmers. Also similarly, Farmers has grave concerns as to TWCIS' ultimate intentions. TWCIS has changed its position before. In the same letter to the Maine PUC Time Warner Cable indicates that its affiliate, TWCIS is a "local and interexchange telecommunications carrier" and that, "at any time [TWC may] shift its approach and rely on TWCIS" for wholesale interconnection "in addition to, or in lieu of, CRC."[33]

Based on the foregoing information, Farmers questions whether an amendment to TWCIS' CPCN will result in TWCIS ultimately being the entity providing the wholesale interconnection services in its service territories. Such action would be contrary to the *Time Warner Declaratory Order* requiring that interconnected VoIP providers work through CLECs who provide telecommunications in their own right to interconnect with incumbent local exchange carriers.

Q: ARE THERE ADDITIONAL CONCERNS THAT FARMERS HAS WITH TWCIS' APPLICATION?

A: Yes. Farmers also questions whether there will be additional intermediary carriers between TWCIS and Sprint because Time Warner Cable also stated in its May 29 letter to the Maine PUC that another TWCIS affiliate, TWC Communications, LLC, may "for internal business reasons[,] . . . purchase and pass through" to TWC Cable from CRC the wholesale interconnection services "on a private carriage basis."[34]

The problem in Maine was that neither the rural ILECs, nor the Commission, were able to accurately discern the true nature of TWCIS's provision of service. This is probably exactly where TWCIS wanted the state of the record to be, as it sought to claim the rights of a telecommunications carrier

[33] *See* Laine Letter (Exhibit DDM-2).

[34] *See id.*

without committing to provide a telecommunications common carrier service in the rural ILEC service areas.

Ultimately, the proceeding in Maine was dismissed on other grounds. But, the parties will conduct a generic hearing to determine the validity of TWCIS' VoIP provision in those areas of that state.

Q: WHY WOULD TWCIS GO THROUGH THE TROUBLE OF WORKING WITH SPRINT TO OBTAIN INTERCONNECTION IF THE GOAL IS TO OBTAIN INTERCONNECTION DIRECTLY WITH FARMERS?

A: It appears that TWCIS' goal is to obtain interconnection with Farmers for the purpose of exchanging interconnected VoIP traffic in any manner it can. In North Carolina for example, TWCIS' attempts to obtain interconnection directly through its own certificated affiliate have thus far been unsuccessful.

Q: PLEASE DESCRIBE THE CIRCUMSTANCES SURROUNDING THIS PROCEEDING IN NORTH CAROLINA?

A: Time Warner Cable Information Services, LLC ("TWCIS") had sought interconnection with entities that qualified as Telephone Membership Corporations ("TMC") pursuant to N.C. Gen. Stat., sec. 117-30, and which had federal rural exemptions from section 251(c) of the Act. TWCIS sought to utilize the interconnection with the TMCs to provide a wholesale service to its customer, affiliated VoIP provider Time Warner Cable. Time Warner Cable was to provide retail VoIP services to end user customers in the TMCs' service areas.

The TMCs declined negotiations with TWCIS pursuant to the rural exemption of section 251(f) of the Act. Thereafter TWCIS filed a petition with the North Carolina Rural Electrification Authority ("NCREA") for arbitration and to lift the rural exemptions. The NCREA is the state regulatory authority having jurisdiction over the TMCs. In its order

dismissing TWCIS' petition to lift the rural exemptions, as well as the arbitration proceedings, the NCREA concluded that TWCIS "is not a telecommunications carrier and, therefore, is not permitted to seek interconnection rights pursuant to section 251 of the [Act]."[35]

In the North Carolina case, TWCIS had sought to perform the same function as an intermediary wholesale provider between the TMCs and Time Warner Cable as Sprint is seeking to perform in the immediate case between Farmers and TWCIS. TWCIS had represented to the TMCs at the time of its request for interconnection, that it was certified to provide service in the state of North Carolina pursuant to the North Carolina Utilities Commission ("NCUC") certificate of public convenience and necessity. In the North Carolina case, however, TWCIS had indicated that it intended to provide telecommunications services. Yet, at the time of its application submission, TWCIS represented to the NCUC in its certification application a disclaimer providing that "nothing in [TWCIS'] submission should be construed as a concession or agreement . . . that the services at issue in this Application constitute telecommunications services, local exchange services, common carrier offering, or services that are otherwise subject to federal or state regulation."[36]

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[35] *Petition of Time Warner Cable Information Services (North Carolina), LLC for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish Interconnection Agreements with Atlantic, Randolph and Star Telephone Membership Corporations,* Docket No. TMC-1, Sub 1, p.5 (Jul. 19, 2006). After its petition for arbitration and the lifting of the rural exemption was dismissed in North Carolina, TWCIS requested reconsideration of the NCREA decision, but this request was also dismissed. Subsequently, TWCIS took the NCREA decision to the U.S. District Court for the Eastern District of North Carolina Western Division where it is pending.

[36] *Application of Time Warner Cable Information Services for Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller*, Order Granting Certificates, Docket Nos. P-1262, Sub 0 and Sub 1, p.2 (Jul. 24, 2003) (as described in the comments of BellSouth and rephrased by the NCUC).

The TWCIS disclaimer places special emphasis on the character of the intermediary wholesale interconnection services that it proposed to offer in North Carolina as a certificated carrier. This special emphasis becomes even more significant when considering that TWCIS application seeking an extension of its certification to gain entry into the Farmers' service area in this South Carolina case. Although TWCIS now denies any such plans to offer a wholesale interconnection, TWCIS appears to attempt to put itself in the same position to provision wholesale interconnection services in South Carolina as it sought to provide in North Carolina and for which it disclaimed all responsibility for its service as a telecommunications service, a local exchange service, a common carrier offering, or a service "subject to federal or state regulation." Except in this instance, it is only seeking an expansion to its certification on the basis of a wholesale/retail point to point transmission service, for which it could have sought more limited certification. Once certification has been expanded, it can proceed with seeking direct interconnection without further review of its actions by this Commission.

After its petition for arbitration and the lifting of the rural exemption was dismissed in North Carolina, TWCIS requested reconsideration of the NCREA decision, but this request was also dismissed. Subsequently, TWCIS took the NCREA decision to the U.S. District Court for the Eastern District of North Carolina Western Division where it is pending.

Q: WHAT IS THE CURRENT ARRANGEMENT BETWEEN TWCIS AND SPRINT IN OTHER AREAS OF SOUTH CAROLINA?

A: Sprint, a third-party carrier, has obtained interconnection with incumbent and dominant carriers in their respective service areas throughout South Carolina, including in Farmers' area. Through these contractual arrangements with other carriers, Sprint provides "the physical interconnection with the public

1 switched telephone network necessary for TWCIS to offer its retail VoIP
2 services."[37]

3 **Q: IS TWCIS REQUIRED TO HAVE A CPCN TO OFFER ITS DIGITAL**
4 **PHONE VOIP SERVICES THROUGH ITS ARRANGEMENT WITH**
5 **SPRINT?**
6 A: No. It appears that TWCIS is not required to have a CPCN to offer a retail
7 non-telecommunications VoIP service through its arrangement with Sprint.
8 Sprint, however, must obtain the CPCN in order to offer its wholesale
9 interconnection services as a telecommunications provider on a common
10 carrier basis.
11
12 TWCIS states that it is not a telecommunications provider[38] and is not
13 planning to offer local exchange services in Farmers' service area.[39] In
14 addition, it appears that TWCIS' request for an amendment of its CPCN is
15 unnecessary in order to provide Digital Phone VoIP Service using the
16 business model it describes in testimony and in response to interrogatories.

17 **Q: IS SPRINT ALREADY CERTIFICATED IN FARMERS' AREA?**
18 A: Yes. Thus, TWCIS is already equipped with the requisite networks and
19 arrangements pursuant to federal regulations and this Commission's rules for
20 TWCIS to offer its retail VoIP services on a competitive basis in Famers'
21 service territory.

22 **Q: WHY DOES SPRINT'S AUTHORIZED PRESENCE IN FARMERS' AREA**
23 **ENABLE TWCIS TO PROCEED WITH OFFERING ITS COMPETITIVE**
24 **RETAIL VOIP SERVICE?**

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[37] Interrogatory No. 1-12 (Exhibit DDM-1).

[38] TWCIS Interrogatories – 1st Set, Interrogatory Nos. 1-8 & 1-9x (Exhibit DDM-1).

[39] *Id.*, Interrogatory Nos. 1-6 & 1-7 (Exhibit DDM-1).

1 A: To the extent that Sprint is a certificated telecommunications provider
2 offering wholesale interconnection on a common carrier basis, it is entitled to
3 interconnect with Famers. Through its contractual relationships with Sprint,
4 accordingly, TWCIS may obtain access to the public switched telephone
5 network in order to offer its retail VoIP service. Absent such a relationship
6 with Sprint, however, TWCIS is not entitled to interconnection because it is
7 not a telecommunications provider offering a telecommunications service on
8 a common carrier basis.[40] My concern is that if an amendment to TWCIS'
9 certification is approved without clear and defined conditions, TWCIS will
10 seek interconnection and numbering resources for a service that does not
11 qualify it for these rights.

12 **Q: WOULD TWCIS BE ABLE TO SEEK INTERCONNECTION FOR ITS**
13 **DIGITAL PHONE SERVICE EVEN IF IT PROVIDED POINT-TO-POINT**
14 **PRIVATE LINE TRANSMISSION?**
15 A: No, even assuming that the point-to-point service is offered on a common
16 carriage basis – I disagree with this assumption – TWCIS would not be able
17 to seek interconnection with incumbent carriers under Section 252 of the
18 Telecommunications Act. A request of this nature would not meet the
19 requirements of FCC's rule 47 C.F.R. §51.100(b).

20 **Q: WHAT IS FCC RULE 47 C.F.R. § 51.100?**
21 A: FCC rule 47 C.F.R. § 51.100 establishes a telecommunications carrier's
22 general duty pursuant to section 251 of the Act. Section 51.100(b) prescribes
23 the type of interconnection access granted by one telecommunications carrier

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[40] *See TWCIS 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, WC Docket N. 06-55 ("TW Declaratory Ruling"), ¶ 14 (March 1, 2007)(stating in relevant part, "we emphasize that the rights of telecommunications carriers to section 251 interconnection are limited to those carriers that, at a minimum, do in fact provide telecommunications services to their customers. . . .").

1 to another telecommunications carrier that has obtained interconnection
2 pursuant to section 251. The section provides:

3 (b) A telecommunication carrier that has interconnected or gained
4 access under Sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act,
5 may offer information services through the same arrangement, so
6 long as it is offering telecommunications services through the same
7 arrangement as well.[41]

8 **Q: HOW DOES SECTION 51.100 APPLY TO TWCIS?**

9 A: Section 51.100 addresses the exchange of traffic between two carriers via an
10 interconnection arrangement. The carrier obtaining the interconnection must
11 be transmitting telecommunications traffic pursuant to sections 251(a)(1),
12 251(c)(2), or 251(c)(3) of the Act as an initial criterion for establishing the
13 connection under section 51.100. Only after this initial criterion is
14 established for telecommunications service traffic may a telecommunications
15 carrier use the excess capacity of the same interconnection facility to
16 exchange non-telecommunications service traffic.[42] TWCIS may not obtain
17 interconnection pursuant to section 51.100 for non-telecommunications
18 purposes.[43] In other words, in this specific case that addresses local
19 interconnection, TWCIS must exchange local telecommunications service
20 traffic over any trunks and facilities requested in an interconnection before it
21 can use the same interconnection arrangement to exchange non-
22 telecommunications services traffic. Point-to-Point private line service will
23 not be offered through the switched interconnection trunks between TWCIS

[41] 47 C.F.R. § 51.00(b).

[42] *See, e.g., F. Cary Fitch D/B/A/ Fitch Affordable Telecom Petition For Arbitration Against SBC Texas Under § 252 of the Communications Act*, Proposal for Award, Texas PUC Docket No. 29415, p. 20 (Jun. 2005), *aff'd, F. Cary Fitch v. Public Utility Commission of Texas*, No. 07-5008 (5th Cir. 2008) ("*Fitch v. TX PUC*"). The Fifth Circuit Court of Appeals described section 51.100 on appeal as being "the heart of this dispute" on the issue of the use of interconnection facilities to carry non-telecommunications service traffic. The Fifth Circuit also stated that "a carrier may only obtain interconnection facilities *for telecommunications purposes*. Otherwise, a carrier could obtain interconnection facilities unnecessary for telecommunications service and instead use them for information service. *Id.*, p. 21 (emphasis added).

[43] *See id.*

and incumbent carriers and will not qualify for interconnection under this rule.

Q: DOES TWCIS HAVE ANY LOCAL TELECOMMUNICATIONS TRAFFIC TO EXCHANGE WITH FARMERS IN THIS PROCEEDING?

A: No. TWCIS has indicated that the only services it will provide are retail VoIP services and business point-to-point transmission services.

Q. HAS THE FCC ADDRESSED ITS RULE § 51.100 IN REGARDS TO VOIP SERVICE?

A. Yes. The FCC has recognized that the provision of VoIP service alone does not grant a carrier interconnection rights.[44] The FCC states "we emphasize that the rights of telecommunications carriers to section 251 interconnection are limited to those carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis."[45] The FCC also provides that although the fact that a telecommunications carrier is also providing non-telecommunications services does not dispose of its rights, the telecommunications carrier must also be "*offering telecommunications services through the same arrangement.*"[46] Accordingly, if the interconnection arrangement is used exclusively for the transmission of VoIP service traffic, a non-telecommunications service, then it is not meeting section 51.100 and the carrier does not have rights to Section 251/252 interconnection.

Q: ARE THERE ANY IMPORTANT DISTINCTIONS BETWEEN SPRINT'S WHOLESALE INTERCONNECTION SERVICE AND A WHOLESALE INTERCONNECTION OFFERED BY TWCIS?

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[44] *See* TW Declaratory Ruling, ¶14 & fn 39 (March 1, 2007).

[45] *Id.* at ¶ 14.

[46] *Id.* at fn 39 (quoting 47 C.F.R. § 51.100) (emphasis in original).

A: Yes. At least one other state has found Sprint's wholesale interconnection offering to be consistent with the FCC's *Time Warner Declaratory Ruling* proceeding.[47] Specifically, Sprint has been found to be offering telecommunications services on a common carrier basis.[48] Thus, Sprint is meeting section 51.100 and is entitled to interconnection pursuant to section 251 of the Act.

Conversely, TWCIS has been unsuccessful in its attempts to establish interconnection rights based on the provision of wholesale interconnection services in at least one state where certain facts were contested.[49] Specifically, TWCIS' wholesale interconnection has been offered only to its affiliated VoIP affiliate. In addition, the offering of this service has been determined to not be a telecommunications service.[50]

Q: IN WHICH STATE WAS A TWCIS WHOLESALE ARRANGEMENT REJECTED BY THE STATE AUTHORITY?

A: North Carolina. The circumstances of this rejection is described above.

Q: DOES TWCIS APPEAR TO BE A COMMON CARRIER FOR PURPOSES OF ITS POINT-TO-POINT TRANSMISSION OFFERINGS?

A: No. TWCIS does not appear to be a common carrier for purposes of its transmission offerings. Despite having a document on file with the Commission which is identified to be an intrastate tariff, there are several

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[47] *See Sprint Communications Company v. Public Util. Commission*, No. A06-CA-065-SS, United States District Court for the Western District of Texas, Austin Division (Appeal of Docket No. 31038).

[48] *Sprint Communications Company v. Public Util. Commission*, No. A06-CA-065-SS, United States District Court for the Western District of Texas, Austin Division (Appeal of Docket No. 31038).

[49] *Petition of Time Warner Cable Information Services (North Carolina), LLC for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish Interconnection Agreements with Atlantic, Randolph and Star Telephone Membership Corporations*, Order Consolidating and Dismissing Proceedings, Docket No. TMC-1, Sub 1 (July 11, 2006).

[50] *Id.*

important aspects of TWCIS's service offering that are characteristic of a private, individualized service offering, not a common carrier offering.

Q: WHAT DOES IT MEAN TO BE OFFERING A SERVICE ON A COMMON CARRIER BASIS?

A: A telecommunications carrier is offering its telecommunications services on a common carrier basis when it "hold[s] oneself out indiscriminately" to the public.[51] "But a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal."[52]

Q: WHY SHOULD THE COMMISSION FIND THAT TWCIS IS NOT OFFERING ITS BROADBAND TRANSMISSION SERVICE ON A COMMON CARRIER BASIS?

A: There is one very important reason. TWCIS has not disclosed a rate for the transmission service.

TWCIS's tariff is short and without specific provisions that would actually completely govern the terms and conditions of service.[53] It appears that TWCIS's tariff is little more than a marketing tool, only providing a general overview of the high capacity transmission services. There is only a broad discussion about which portion of the service is governed pursuant to the tariff. It can only be presumed that the non-tariffed Individual Case Basis ("ICB") service agreements will actually govern other critical service components such as operations, compensation, enforcement, and dispute resolution provisions. Furthermore, although a single basic rate element is

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[51] *See, e.g., National Association of Regulatory Utility Commissioners v. FCC, as amended,* 525 F2d 630 (Jan. 28, 1976)("NARUC I"); *see also Southwestern Bell Telephone Company v. Federal Communications Commission*, 19 F.3d 1475 at ¶ 12 (Apr. 5, 1994) ("Southwestern Bell Decision").

[52] *See* NARUC I.

[53] *See* TWCIS proposed Tariff, Exhibit 7 to TWCIS Application.

referenced in the tariff, it is clear that TWCIS will negotiate ICB rates with its customers in accordance with individualized considerations. Thus, TWCIS is able, in large part, to make individualized decisions with respect to its high capacity transmission service agreements, in particular cases, and on which terms it wishes to deal. Furthermore, these high capacity transmission service agreements are not filed with any state or federal authority so "there is no specific regulatory compulsion to serve all indifferently."[54]

The intent of TWCIS and Time Warner for their arrangement to be a private one outside the scope of common carriage is reinforced multifold by their initial refusal to provide their agreement even to the Commission, and by their subsequent insistence that agreements be subject to a protective order that denies access to the agreements to many participants in this proceeding, and finally by their continued redaction of material terms from the agreements provided to the limited group entitled to receive them. TWCIS cannot reasonably be described as a common carrier in relation to the services provided to Time Warner.

Q: IF TWCIS IS NOT A COMMON CARRIER FOR PURPOSES OF ITS TRANSMISSION SERVICE IN FARMERS' SERVICE AREA, DOES IT QUALIFY FOR SECTION 251 INTERCONNECTION?

A: No. To the extent that TWCIS is not a common carrier for purposes of its broadband transmission service in Farmers' service area, it is not qualified as a telecommunications carrier that is able to obtain Section 251 interconnection.

[54] *See* Southwestern Bell Decision at ¶ 15 (stating "If the carrier chooses its clients on an individual basis and determines in each particular case 'whether and on what terms to serve' and there is no specific regulatory compulsion to serve all indifferently, the entity is a private carrier for that particular service and the Commission is not at liberty to subject the entity to regulation as a common carrier."). While such an entity is not subject to being regulated as a common carrier, such entity is also not entitled to rights of common carriers.

1 **Q: WHAT IS YOUR ALTERNATE RECOMMENDATION TO THE**
2 **COMMISSION ON THIS ISSUE?**
3 A: My recommendation is that the Commission determine that if TWCIS wishes
4 to obtain a certificate for its Digital Phone VoIP Service without agreeing to
5 the conditions I have identified earlier, the Commission must review
6 additional matters necessary to ensure the public interest is being met by
7 TWCIS. Specifically, the Commission should: (1) Declare that Digital
8 Phone service is not a telecommunications service that warrants Section 251
9 interconnection under the Federal Act; (2) Determine that TWCIS does not
10 satisfy section 51.100 of the FCC's rules by offering Digital Phone service;
11 and, (3) Grant the certificate only to the extent the Commission establishes a
12 level playing field by regulating Farmers and TWCIS in an equal manner as
13 to all services, as discussed in more detail in Keith Oliver's testimony.
14
15 **Q: DOES THIS CONCLUDE YOUR PRE-FILED DIRECT**
16 **TESTIMONY?**
17 A: Yes.

EXHIBIT DDM-1

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2008-325-C

In Re: Application of Time Warner Cable Information Services (South Carolina) LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation	)

TIME WARNER CABLE INFORMATION SERVICES (SOUTH CAROLINA), LLC'S ANSWERS TO FARMERS TELEPHONE COOPERATIVE, INC.'S FIRST SET OF INTERROGATORIES

Time Warner Cable Information Services (South Carolina) LLC, d/b/a Time Warner Cable ("TWCIS"), by and through its undersigned counsel, hereby submits the within responses to the First Interrogatories of Farmers Telephone Cooperative, Inc. ("Farmers").

GENERAL OBJECTIONS

TWCIS has the following General Objections that apply to all of Farmers' interrogatories. Additional objections are raised in response to specific interrogatories where appropriate.

1. TWCIS objects to each interrogatory to the extent that it calls for the disclosure or production of information protected by attorney-client privilege, the attorney work product doctrine, or any applicable privilege, immunity or limitation on discovery. TWCIS will not respond to any interrogatory seeking such privileged information. TWCIS does not intend to waive any of the privileges asserted in this objection by any inadvertent responses that may occur.

2. TWCIS objects to each interrogatory to the extent that it is vague, ambiguous, overly broad and would subject TWCIS to oppression, harassment, undue burden and expense.

3. TWCIS objects to each definition, instruction and interrogatory to the extent it seeks responses that are unreasonably cumulative, duplicative or publicly available.

4. TWCIS objects to each interrogatory to the extent it seeks information relating to matters that are not relevant to the claims or defenses of any party or the subject matter of this proceeding.

5. TWCIS objects to each interrogatory to the extent it calls for a legal conclusion.

6. TWCIS objects to each interrogatory to the extent it purports to require TWCIS to obtain information from, or respond on behalf of, entities over which TWCIS has no control. To the extent that Farmers' requests seek such information, they are unduly burdensome and attempt to impose obligations on TWCIS that exceed the permissible scope of discovery under the Rules of the Public Service Commission of South Carolina. TWCIS therefore responds to each interrogatory based on information known to TWCIS.

RESPONSES TO FARMERS' INTERROGATORIES

Interrogatory No. 1-1: Please provide a corporate organizational chart that shows Time Warner, Inc. ("Time Warner") and its affiliates, as defined in S.C. Code Ann. § 35-2-201.

Answer:

See Exhibit 4 to the Application filed in this Docket.

Interrogatory No. 1-2: Please describe the corporate relationships (i.e., owner, affiliate, subsidiary, partner, etc.), including all intermediate relationships, between Time Warner and the following entities. For each entity also identify its legal name and all d/b/a's, assumed names, trade marks, service marks, and brands, and describe the existing and planned or contemplated roles of the entity in the provided of telephone, telecommunications, voice, data, or cable television services in South Carolina. If the entity is not affiliated with Time Warner in any way, please state "none."

Answer:

(a) Time Warner Cable:
No such legal entity exists.

(b) Time Warner Cable Capital, L.P.:
This entity is not involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(c) Time Warner Cable I LLC:
This entity is not involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(d) Time Warner Cable Inc.:

This legal entity is the parent company of all of the entities identified herein that are involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(e) Time Warner Cable Information Services (International), LLC:

No such legal entity exists.

(f) Time Warner Cable Information Services:

No such legal entity exists.

(g) Time Warner Cable Information Services, LLC:

No such legal entity exists.

(h) Time Warner Cable Information Services (South Carolina), LLC:

This is the Applicant in the current proceeding. As explained in that Application, Time Warner Cable Information Services (South Carolina), LLC offers Digital Phone interconnected VoIP services and Business Class Phone interconnected VoIP services to residential and business customers, respectively, in portions of South Carolina and private line and point to point transmission/telecommunications services to business customers in portions of South Carolina. In addition, Time Warner Cable Information Services (South Carolina), LLC seeks to offer Digital Phone interconnected VoIP services and Business Class Phone interconnected VoIP services to residential and business customers, respectively, and private line and point to point transmission/telecommunications services to business customers in the portions of South Carolina served by Farmers Telephone Company.

(i) Time Warner Cable – SC Political Action Committee:

This entity is not involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(j) Time Warner Entertainment Company L.P.:

This entity is not involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(k) Time Warner Inc.:

Time Warner Inc. is currently the parent company of Time Warner Cable Inc.

(l) Time Warner, Inc.:

To the extent this request refers to Time Warner Inc., TWCIS states that Time Warner Inc. is currently the parent company of Time Warner Cable Inc.

(m) Time Warner NY Cable LLC:
This legal entity holds certain cable television franchises in South Carolina.

(n) Time Warner Operations Inc.:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(o) Time Warner Telecom of South Carolina, LLC:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(p) tw telecom of south carolina, llc:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(q) T W C Construction, Inc.:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(r) T.W.C., Inc.:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, data, or cable television services in South Carolina.

(s) TW Capital Partners, LP:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(t) TW Capital, LLC:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(u) TW Communications, Inc.:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(v) T-W Construction Company LLC:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, data, or cable television services in South Carolina.

(w) TWC Communications, LLC:

This entity is not involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(x) TWC Holdings, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(y) TWC Management, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(z) TWC Services, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(aa) TWC, Inc., the Construction Division:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(bb) TWC, LLC:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(cc) T W Investments, LLC:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(dd) T W Telecom, L.P.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(ee) T.W. Enterprises, Inc. of the Carolinas:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(ff) T.W. Technologies, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(gg) T.W. Utility Services, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(hh) TW Associates, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(ii) TW Group, LLC:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(jj) TW Holdings, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(kk) TW Investors, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(ll) TW Landscaping, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(mm) TW of Bluefield, Inc.:

There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(nn) TW Partners Agency of Alabama, Inc.:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(oo) TW Real Estate, LLC:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(pp) TW Recreational Services, Inc.:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(qq) TW Services, Inc.:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(rr) TW Services, LLC:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(ss) TW Telecom Holdings, Inc.:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(tt) TW Telecom of South Carolina, LLC:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(uu) TW, LLC:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

(vv) TW-JD Office Building, LLC:
There is no affiliation between this entity and Time Warner Inc., Time Warner Cable, or any entity identified herein involved in the provision of telephone, telecommunications, voice, or cable television services in South Carolina.

Interrogatory No. 1-3: Identify all entities which have entered or plan or contemplate to enter into a partnership, LLC, joint venture or contractual relationship for the purpose of engaging in a line of business (hereinafter "business partner" for purposes of these interrogatories) with an affiliate of Time Warner.

Answer:

TWCIS objects to this interrogatory on the grounds that it is vague, overly broad, unduly burdensome, and seeks information that is speculative and irrelevant to the subject matter of this proceeding. Time Warner companies have entered into myriad contractual relationships and TWCIS could not possibly identify them all, even apart from the fact that doing so would serve no valid purpose.

Interrogatory No. 1-4: Identify all Time Warner affiliates and business partners previously existing, currently existing or anticipated to exist in the future, including those listed in Interrogatory 1-2 and those identified in response to Interrogatory 1-3, that were, are or may be involved directly or indirectly in the provision of voice or data services to customers in the State of South Carolina. The entities identified in response to this Interrogatory shall be referred to collectively as the "Time Warner Companies," and individually as a "Time Warner Company" for purposes of these interrogatories.

Answer:

TWCIS objects to this interrogatory on the grounds that it is vague, overly broad, unduly burdensome, and seeks information that is speculative and irrelevant to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that, in order to provide voice services in South Carolina, it has entered into a contractual relationship with Sprint Communications Company, L.P. ("Sprint") whereby TWCIS purchases wholesale telecommunications services from Sprint.

Interrogatory No. 1-5: For the Time Warner Companies providing, or involved with providing, voice or data services to customers in South Carolina, please respond to the following:

i. Identify the services offered by each Time Warner Company.

Answer:

TWCIS offers the following services in portions of South Carolina, and seeks to offer the same services in areas served by the rural local exchange carriers ("RLECs"), including Farmers: (1) Digital Phone interconnected VoIP services to retail residential customers; (2) Business Class Phone interconnected VoIP services to retail business customers; and (3) high capacity private line, point to point transmission/telecommunications services to wholesale and retail business customers. These services are described in TWCIS' tariff on file with the South Carolina Public Service Commission a copy of which is filed as Exhibit 7 to the Application in this proceeding.

ii. Are these services used in the provision or support of local exchange service?

Answer:

TWCIS objects to this interrogatory on the grounds that it calls for a legal conclusion and seeks information that is privileged, speculative, and irrelevant to this proceeding. Subject to and without waiving its objections, TWCIS states that the Federal Communications Commission ("FCC") has yet to determine whether interconnected VoIP services such as Digital Phone or Business Class Phone are "telecommunications services" or "information services" within the meaning of the Communications Act. Accordingly, the FCC has not determined whether such services are "local exchange services." Moreover, the FCC has determined that, regardless of the proper statutory classification of interconnected VoIP services, states may not impose regulatory requirements that conflict with the FCC's "pro-competitive deregulatory rules and policies" concerning the provision of such services. *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404, 22415 at ¶ 20 (2004) ("*Vonage Order*"). Nonetheless, TWCIS voluntarily submits to the regulatory jurisdiction of the Public Service Commission of South Carolina ("PSC") and, unless and until the FCC provides further clarification, TWCIS is committing to accept regulatory treatment as a telephone utility within the State of South Carolina. TWCIS qualifies as a telephone utility as that term is defined by S.C. Code Section 58-9-10(6).

iii. Are these services used in the provision or support of wholesale services?

Answer:

TWCIS does not intend to provide wholesale interconnection services in the RLECs' service areas in connection with the provision of Digital Phone and Business Class Phone. Sprint will provide the physical interconnection to the public switched telephone network necessary for TWCIS to offer its retail VoIP services to the public. In connection with its high capacity transmission/telecommunications services, TWCIS will offer dedicated, point to point connections to its business customers on a wholesale or retail basis. No other Time Warner company will provide or be involved in providing wholesale telecommunications services within the RLECs' service areas.

iv. Are these services used in the provision or support of any other voice or data service?

Answer:

TWCIS will not offer or support any voice or data services than those described above.

Interrogatory No. 1-6: Is any Time Warner Company currently providing retail local exchange service within the service territory of Farmers? If so, please respond to the following:

i. Please identify the Time Warner Company or Companies currently providing the retail local exchange service.
ii. Please describe the retail local exchange service(s) that is being provided within the service territory.
iii. Is the retail local exchange service(s) provided via resale or facilities based?
iv. Is the retail local exchange service(s) tariffed?
v. Is the retail local exchange service(s) provided in all of Farmers' exchanges? If no, please list the exchanges where the retail local exchange(s) service is being provided.

Answer:

Neither TWCIS nor any other Time Warner Company is currently providing retail local exchange service within the service territory of Farmers.

Interrogatory No. 1-7: Is any Time Warner Company seeking, planning or contemplating to provide retail local exchange service within the service territory of Farmers? If so, please respond to the following:

i. Please identify the Time Warner Company or Companies seeking, planning or contemplating to provide the retail local exchange service.
ii. Please describe the retail local exchange service(s) that will be provided within the service territory.
iii. Will the retail local exchange service(s) be provided via resale or facilities based?
iv. Will the retail local exchange service(s) be tariffed?
v. Will the retail local exchange service(s) be provided in all of Farmers' exchanges?

If no, please list the exchanges where the retail local exchange(s) service will be provided.

Answer:

TWCIS objects to this interrogatory on the grounds that it calls for a legal conclusion and seeks information that is privileged, speculative, repetitive and irrelevant to this proceeding. Subject to and without waiving its objections, the confidential information requested will be provided to counsel once the parties have executed a joint protective agreement.

Interrogatory No. 1-8: Is any Time Warner Company seeking, planning or contemplating to provide a telecommunications service in Farmers' service area that is not a local exchange service? If so, please respond to the following:

i. Please identify the Time Warner Company or Companies seeking, planning or contemplating to provide the telecommunications service(s).

ii. Identify and describe all telecommunications services that are not local exchange services that the Time Warner Company or Companies is seeking, planning or contemplating to offer?

Answer:

TWCIS objects to this interrogatory on the grounds that it calls for a legal conclusion and seeks information that is privileged, speculative, and irrelevant to this proceeding. Subject to and without waiving its objections, TWCIS states that Digital Phone and Business Class Phone are retail interconnected VoIP services, and, as noted above, the FCC has yet to determine whether interconnected VoIP services such as Digital Phone or Business Class Phone are "telecommunications services" or "information services" within the meaning of the Communications Act. In addition, TWCIS plans to offer high capacity private line, point to point transmission/telecommunications services to business customers on a wholesale and retail basis. For a complete description of the services TWCIS proposes to offer see its tariff attached to its Application as Exhibit 7.

Interrogatory No. 1-9: Is any Time Warner Company seeking, planning or contemplating to provide any wholesale interconnection services or wholesale telecommunications services (collectively, referred to as "Wholesale Services") in Farmers' service area? If yes, please identify which Time Warner Company or companies is seeking to provide the Wholesale Services, describe the Wholesale Services to be provided, and, for each Wholesale Service to be provided, please respond to the following:

Answer:

TWCIS does not intend to provide any wholesale interconnection services in the RLECs' service areas in connection with the provision of Digital Phone and Business Class Phone. Sprint will provide the physical interconnection to the public switched telephone network necessary for TWCIS to offer its retail VoIP services to the public. In addition, TWCIS plans to offer high capacity private line, point to point transmission/telecommunications services to business customers on a wholesale and retail basis.

i. Is or will the Wholesale Service be tariffed?

Answer:

The high capacity transmission services that TWCIS seeks to offer to both retail and wholesale customers will be tariffed.

ii. Identify the Farmers exchanges in which the Time Warner Company or Companies seeks, plans or contemplates to provide the Wholesale Service.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is irrelevant to the subject matter of this proceeding. TWCIS further objects to this request on the ground that it seeks confidential and sensitive business data. Subject to and without waiving its objections, the confidential information requested will be provided to counsel once the parties have executed a joint protective agreement.

iii. Identify all potential Wholesale Service customers each Time Warner Company or Companies is seeking, planning or contemplating to provide Wholesale Services projects for itself in South Carolina over the next five years.

Answer: TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is irrelevant to the subject to matter of this proceeding. Subject to and without waiving its objections, TWCIS plans to operate as a common carrier and, as such, will offer its high capacity transmission services to every customer (including wholesale customers) in South Carolina that it can reach with its existing infrastructure.

iv. Identify all Wholesale Service customers each Time Warner Company or Companies currently has in the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is irrelevant to the subject matter of this proceeding. In particular, services offered or provided beyond the service areas of the objecting ILECs are wholly irrelevant to this proceeding. TWCIS further objects to this request on the ground that it seeks confidential and sensitive business data.

v. Identify all Wholesale Service customers each Time Warner Company or Companies currently has in Farmers' service area.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is irrelevant to the subject matter of this proceeding. TWCIS further objects to this request on the ground that it seeks confidential and sensitive business data. Subject to and without waiving its objections, the confidential information requested will be provided to counsel once the parties have executed a joint protective agreement.

vi. Identify which of the Wholesale Service customers identified in the previous questions for each Time Warner Company is an interconnected VoIP provider as this term is defined by the FCC in 47 C.F.R. § 52.21 and § 54.5.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is irrelevant to the subject matter of this proceeding. In particular, services offered or provided beyond the service areas of the objecting ILECs are wholly irrelevant to this proceeding. TWCIS further objects to this request on the ground that it seeks confidential and sensitive business data. Subject to and without waiving its objections, the confidential information requested will be provided to counsel once the parties have executed a joint protective agreement.

vii. Identify all Time Warner Companies which provide access to telephone numbers for its Wholesale Service customers in the State of South Carolina and nationwide. For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this request as vague and overly burdensome to the extent it requests information regarding any "business partner of an affiliate of Time Warner" involved in the provision of voice or data services. Subject to and without waiving its objections, TWCIS states that neither TWCIS nor any Time Warner company provides access to telephone numbers for any wholesale service customers in the State of South Carolina. Time Warner Cable Information Services (New Hampshire), LLC provides its customer, TWC Digital Phone LLC, access to telephone numbers to enable the provision of interconnected VoIP service within the State of New Hampshire. However, Time Warner Cable Information Services (NH), LLC's Wholesale Service offerings will soon be

migrated to a third-party, unaffiliated wholesale telecommunications carrier, at which time Time Warner Cable Information Services (New Hampshire), LLC will cease to provide that service. No other Time Warner company provides access to telephone numbers for wholesale service customers.

viii. Identify all Time Warner Companies which provide numbers to its Wholesale Service customer(s) for that customer's VoIP service in the State of South Carolina and nationwide. For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this request as vague, overly broad, and overly burdensome to the extent it requests information regarding any "business partner of an affiliate of Time Warner" involved in the provision of voice or data services. Subject to and without waiving its objections, TWCIS states that neither TWCIS nor any Time Warner Cable affiliate provides telephone numbers to any wholesale service customer in the State of South Carolina. Time Warner Cable Information Services (New Hampshire), LLC provides telephone numbers to its customer, Time Warner Cable Digital Phone, LLC, to enable the provision of VoIP service within the State of New Hampshire. However, Time Warner Cable Information Services (NH), LLC's service offerings will soon be migrated to a third-party, unaffiliated wholesale telecommunications carrier, at which time Time Warner Cable Information Services (New Hampshire), LLC will cease to provide that service. No other Time Warner company provides numbers for wholesale service customers.

ix. Identify how many numbers each Time Warner Company has provided to its Wholesale Service customers that are in use by end user customers in the State of South Carolina and nationwide. For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, repetitive, and seeks information that is irrelevant to the subject matter of this proceeding. In particular, services offered or provided beyond the RLECs' service areas are wholly irrelevant to this proceeding. Subject to and without waiving its objections, TWCIS states that it has not provided and has no current plans to provide telephone numbers to wholesale customers in the State of South Carolina.

x. Please identify all telecommunications services (as defined by 47 U.S.C. § 153 (46)) that each Time Warner Company provides to its Wholesale Service customers, by company.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, repetitive, and seeks information that is irrelevant to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that it does not intend to provide wholesale interconnection services in the RLECs' service areas in connection with the provision of Digital Phone and Business Class Phone. Sprint will provide the physical interconnection to the public switched telephone network necessary for TWCIS to offer its retail VoIP services to the public. TWCIS will offer high capacity private line, point to point transmission/telecommunications services to business customers on a wholesale and retail basis. No other Time Warner company will provide any wholesale services within the RLECs' service areas.

Interrogatory No. 1-10: Please respond to the following questions on behalf of each Time Warner Company. The following questions address which services each Time Warner Company considers to be telecommunications services (as defined by 47 U.S.C. § 153 (46)), as well as the delivery of such services by each Time Warner Company, where applicable:

i. Does the Time Warner Company consider the provision of 10 digit telephone numbers a telecommunications service?
ii. If the Time Warner Company has provided numbers to a Wholesale Service customer, are the numbers associated with local exchange telecommunications service?
iii. Does the Time Warner Company consider the porting of numbers a telecommunications service?
iv. Does the Time Warner Company consider the provision of 911 and telephone relay service (TRS) to its Wholesale Service customers a telecommunications service?
v. Does the Time Warner Company consider operator services and directory assistance telecommunications services?
vi. In which service territories in South Carolina are 911, TRS, Toll, and directory listings available from the Time Warner Company? Please describe how the Time Warner Company delivers these services.
vii. Does the Time Warner Company consider the calls originated by its Wholesale Service customers that provide interconnected VoIP services to be telecommunications service?

Answer:

TWCIS objects to this interrogatory on the grounds that it is vague, calls for a legal conclusion and seeks information that is privileged, speculative and irrelevant to the

subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that it plans to offer the following services in the areas served by the RLECs, including Farmers: (1) Digital Phone interconnected VoIP services to residential customers; (2) Business Class Phone interconnected VoIP services to business customers; and (3) high capacity private line, point to point transmission/telecommunications services to wholesale and retail business customers. In connection with each of these services, TWCIS is submitting to the regulatory jurisdiction of the PSC and, unless and until the FCC provides further clarification, TWCIS is committing to accept regulatory treatment as telephone utility within the State of South Carolina. TWCIS accordingly will provide all services required of CLECs, making its subjective and speculative views regarding the appropriate classification of the features and services identified above wholly irrelevant. The regulatory classification of interconnected VoIP or, for that matter, other services that TWCIS does not intend to provide, is irrelevant to this proceeding.

Interrogatory No. 1-11: Please describe the network configuration of each Time Warner Company that provides Wholesale Service to Wholesale Service customers. The description should describe the network configuration of the company while providing the Wholesale Services to its Wholesale Service customers.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and seeks information that is irrelevant to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that there is no established network configuration that TWCIS uses to provide wholesale high capacity private line, point to point transmission services to customers in South Carolina. In connection with the wholesale high capacity private line, point to point transmission services described herein and in the Application, the network is designed and provisioned on an individual case basis.

Interrogatory No. 1-12: What is each Time Warner Company's projected number of end users in Farmers' service area that will interconnect through a Time Warner Company's service in the next 5 years?

i. How many of these projected customers are business customers?
ii. How many of these projected customers are residential customers?

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, repetitive, and seeks information that is irrelevant to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that it TWCIS does not intend to provide interconnection services in South Carolina. Sprint, a

third-party carrier, will provide the physical interconnection to the public switched telephone network necessary for TWCIS to offer its retail VoIP services to the public.

Interrogatory No. 1-13: Does any Time Warner Company contribute to the South Carolina Universal Service Fund? If so, please identify the Time Warner Companies, provide the amount of contributions by company for the years 2005, 2006, and 2007, and specify whether any portion of the contribution is based on interconnected VoIP retail revenue.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and, to the extent is seeks information related to "any Time Warner Company" seeks information that is irrelevant to South Carolina and to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that Time Warner Cable Information Service (South Carolina), LLC contributes to the South Carolina Universal Service Fund based upon its interconnected VoIP revenues and revenues derived from the sale of high capacity transmission/telecommunications services in South Carolina. Time Warner Cable is currently gathering responsive information and will supplement this response as soon as its research is complete.

Interrogatory No. 1-14: Does any Time Warner Company contribute to the federal Universal Service Fund? If so, please identify each of the Time Warner Companies, and provide the amount of contributions by company for the years 2005, 2006, and 2007. For each Time Warner Company, please indicate whether the company bases its estimate of VoIP-based service revenues on the FCC proxy percentage of traffic in the interstate jurisdiction, or provides a traffic study to justify the interstate traffic amounts.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and, to the extent is seeks information related to "any Time Warner Company" seeks information that is irrelevant to South Carolina and to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that Time Warner Cable Information Service (South Carolina), LLC contributes to the Federal Universal Service Fund based upon its interconnected VoIP revenues and revenues derived from the sale of interstate high capacity transmission/telecommunications services in South Carolina. Time Warner Cable is currently gathering responsive information and will supplement this response as soon as its research is complete.

For interconnection VoIP revenues, TWCIS further states that, in accordance with Federal Communications Commission rules, it reports its interstate revenues based upon a traffic study on file with the Federal Communications Commission.

Interrogatory No. 1-15: In any areas nationwide, where any Time Warner Company provides Wholesale Service, has any Time Warner Company received a bill for intrastate and/or interstate switched access charges for traffic terminated to an ILEC? If so, please identify the Time Warner Company or Companies. For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and, to the extent is seeks information related to "any Time Warner Company" seeks information that is irrelevant to South Carolina and to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that Time Warner Cable Information Service (New Hampshire), LLC has received a bill for access charges relating to traffic terminated to an ILEC in New Hampshire.

Interrogatory No. 1-16: For the Time Warner Company or Companies identified in Interrogatory 1-15, has the Time Warner Company or Companies paid the access bill? If not, has the Time Warner Company or Companies ever disputed payment of an ILEC access bill on the grounds that the service in question utilizes VoIP or for any other reason? If yes, please provide a description of the dispute and resolution for each Time Warner Company. For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and, to the extent is seeks information related to "any Time Warner Company" seeks information that is irrelevant to South Carolina and to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that Time Warner Cable Information Service (New Hampshire), LLC has paid all access bills that it received (with the exception of bills not yet due and for erroneous charges).

Interrogatory No. 1-17: Please respond to the following on behalf of each Time Warner Company:

i. What if any retail services are any of the Time Warner Companies providing to end user customers in the State of South Carolina? Please specify which Time Warner Company is offering which retail service(s).

Answer:

TWCIS objects to this interrogatory on the grounds that it is repetitive and, therefore, unduly burdensome. Subject to and without waiving its objections, TWCIS states again that it offers the offers the following retail services in portions of South Carolina, and seeks to offer the same services in areas served by the RLECs, including Farmers: (1) Digital Phone interconnected VoIP services to retail residential customers; (2) Business Class Phone interconnected VoIP services to retail business customers; and (3) high capacity private line, point to point transmission/telecommunications services to wholesale and retail business customers. These services are described in TWCIS' tariff on file with the South Carolina Public Service Commission which is Exhibit 7 to the Application in this proceeding.

ii. What if any retail services are any of the Time Warner Companies providing to end user customers nationwide? For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, repetitive, and seeks information that is wholly irrelevant to the subject matter of this proceeding. In particular, retail services offered outside the State of South Carolina are beyond the scope of this certificate expansion proceeding.

Subject to and without waiving its objections, TWCIS responds that Time Warner Cable Information Services (South Carolina), LLC does not offer any services outside of the State of South Carolina. TWC Digital Phone LLC provides retail interconnected VoIP services, branded as Digital Phone and Business Class Phone, in other states states. In addition, other Time Warner Cable companies that are certificated by state public utility commissions to provide telecommunications services offer high capacity private line, point to point transmission/telecommunications services to wholesale and retail customers in other states.

iii. Have any of the Time Warner Companies, at any time, obtained a certificate of public convenience and necessity or other authorization to provide local exchange telecommunications service? If yes, please list each state where certification has been granted. For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and asks for information that is not relevant to this proceeding. Subject to and without waiving its objections, TWCIS states that several Time Warner Cable companies have been certificated by certain states to provide local and/or interexchange telecommunications services, as follows:

1. In 1993, 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.

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

3. On July 24, 2003, 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.

4. On January 21, 2004, Time Warner Cable Information Services (Texas), LLC was certificated by the Texas Public Utility Commission to provide local and interexchange telecommunications services in Texas.

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

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

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

8. On May 24, 2004, 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 portions of South Carolina.

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

10. On August 26, 2004, 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.

11. On October 22, 2004, Time Warner Cable Information Services (Hawaii), LLC was certificated by the Hawaii Public Utilities Commission to provide local and interexchange telecommunications services in Hawaii.

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

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

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

15. On August 5, 2005, 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.

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

17. On March 1, 2006, Time Warner Cable Information Services (Mississippi), LLC was certificated by the Mississippi Public Service Commission to provide local and interexchange services in Mississippi.

18. On March 3, 2006, Time Warner Cable Information Services (Oklahoma), LLC was certificated by the Corporation Commission of the State of Oklahoma to provide local and interexchange services in Oklahoma.

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

20. On June 27, 2006, Time Warner Cable Information Services (Arizona), LLC was certificated to provide certain telecommunications services in Arizona.

21. On November 6, 2007, Time Warner Cable Information Services (Georgia), LLC certificated to provide local services in Georgia.

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

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

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

1. On September 14, 2004, Time Warner Cable Information Services (New Jersey), LLC filed an application before the State of New Jersey Board of Public Utilities to provide local and interexchange telecommunications services in New Jersey. That application remains pending.

2. On January 23, 2008, 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.

3. On July 7, 2008, Time Warner Cable Information Services (Colorado), LLC filed applications before the Colorado Public Utilities Commission to provide local and interexchange telecommunications services in Colorado. These applications remain pending.

iv. Are any of the Time Warner Companies currently providing a retail service called "Digital Phone" service? In the past five years, have any of the Time Warner Companies provided a retail service called "Digital Phone" service? For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is repetitive and therefore unduly burdensome. Subject to and without waiving its objections, TWCIS states that it provides Digital Phone and Business Class Phone interconnected VoIP services in the State of South Carolina currently, and has done so within the past five years. In addition, TWC Digital Phone LLC and other Time Warner Cable entities provide Digital Phone and Business Class Phone interconnected VoIP services in other states.

v. If any of the Time Warner Companies have offered or are offering a retail service called "Digital Phone," has this service ever been offered pursuant to a certificate of public convenience and necessity or other authorization in any state? If so, please list the states. If not, under what type of authority was this service offered to end users? For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is unduly burdensome, overly broad and not relevant to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that it offers Digital Phone service pursuant to a certificate of public convenience and necessity in South Carolina in areas of the state outside the RLEC territories.

TWCIS further states that TWC Digital Phone LLC provides Digital Phone and Business Class Phone interconnected VoIP services in Maine, New Hampshire, Massachusetts, New York, New Jersey, Pennsylvania, Virginia, North Carolina, Georgia, Alabama, Kansas, Nebraska, Idaho, Washington, Arizona, California, Ohio, Texas, Missouri, Colorado, Hawaii, Illinois, Indiana, Kentucky, Michigan, and West Virginia. Pursuant to the FCC's preemption decision in a case involving Vonage Holdings Corporation and the Minnesota Public Utilities Commission, *see Vonage Order*, 19 FCC Rcd at 22415 at ¶¶ 20, 32, TWC Digital Phone LLC does not provide Digital Phone or Business Class Phone interconnected VoIP services pursuant to a certificate of public convenience and necessity in any of the above states. In Wisconsin, Time Warner Cable Information Services (Wisconsin), LLC provides Digital Phone and Business Class Phone interconnected VoIP services pursuant to a certificate of public convenience and necessity, in accordance with an Order of the Wisconsin PSC requiring it to do so. Time Warner Cable Information Services (South Carolina), LLC obtained a certificate of public convenience and necessity in South Caorlina in 2004 to provide Digital Phone interconnected VoIP service in areas of South Carolina outside the RLEC territories and now seeks to expand that certificate to provide services within the RLEC territories.

vi. If the "Digital Phone Service" was offered pursuant to a certificate of public convenience and necessity or other authorization by any of the Time Warner Companies, have any of these companies ever filed a letter with a state commission indicating that it would no longer provide the "Digital Phone" service pursuant to its state certification of public necessity and convenience or other authorization? If so, in which states has this occurred? Please provide copies of the filed letters and correspondence. For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is unduly burdensome, overly broad and not relevant to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that, following the FCC's issuance of the *Vonage Order*, various Time Warner Cable companies submitted letters with state commissions indicating that they would no longer provide Digital Phone service pursuant to a state certificate of public convenience and necessity or tariff.

vii. If any of the Time Warner Companies have ever filed a letter with a state commission indicating that it would no longer provide the "Digital Phone" service pursuant to its state certification or authorization, what was the reason for withdrawing the provision of "Digital Phone" service from state certification or authorization? For purposes of this question, "Time Warner Company" includes any affiliate of Time Warner or a business partner of an affiliate of Time Warner that was, is or may be involved directly or indirectly in the provision of voice or data services to customers outside the State of South Carolina.

Answer:

TWCIS objects to this interrogatory on the grounds that it is unduly burdensome, overly broad and not relevant to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that various Time Warner Cable companies filed such letters as a result of the FCC's *Vonage Order*, which preempted state certification and tariffing requirements for interconnected VoIP services.

viii. Do any of the Time Warner Companies believe that "Digital Phone" service is a telecommunications service? If yes, please explain the basis for this belief.

Answer:

TWCIS objects to this interrogatory on the grounds that it calls for a legal conclusion and seeks information that is privileged, speculative, and irrelevant to this proceeding. Subject to and without waiving its objections, TWCIS states, as noted above, that the

FCC has yet to determine whether interconnected VoIP services such as Digital Phone or Business Class Phone are "telecommunications services" or "information services" within the meaning of the Communications Act. Nonetheless, TWCIS voluntarily submits to the regulatory jurisdiction of the PSC and, unless and until the FCC provides further clarification, TWCIS is committing to accept regulatory treatment as a telephone utility within the State of South Carolina.

Interrogatory No. 1-18: Please state how each Time Warner Company provides or plans to provide service to its residential and business telephone customers. Specifically who provides the dial tone, features, and long distance services? If this is provided by a third Party, please identify the third party and describe how/where the Time Warner Company interconnects with the third party provider.

Answer:

TWCIS provides retail interconnected VoIP service, including dial tone and features, to its residential and business telephone customers. Sprint provides to TWCIS the physical interconnection to the public switched telephone network necessary for TWCIS to offer its retail VoIP services to the public. Sprint's services also include the provision of 911, long distance, and operator /directory assistance services.

Interrogatory No. 1-19: Does any Time Warner Company use assets owned by any subsidiary or division of Time Warner Inc. in order to provide customers digital telephone service? If so, please identify the subsidiary (hereinafter for purposes of this set of Interrogatories defined as "Time Warner Cable") and describe what assets are used. If not, please describe how end users are served – i.e. who owns the cable that goes into the house or business.

Answer:

TWCIS objects to this interrogatory on the grounds that it is unduly burdensome, overly broad, and seeks information not relevant to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that it utilizes cable facilities owned by Time Warner Cable Inc., the parent company of TWCIS, to provide Digital Phone and Business Class Phone interconnected VoIP services in South Carolina.

Interrogatory No. 1-20: Please describe the network elements (i.e., the physical cable loop that serves the customer), where the Time Warner Company connects or interconnects with Time Warner Cable in order to use this network facility.

Answer:

TWCIS objects to this interrogatory on the grounds that it is unduly burdensome, overly broad, and seeks information not relevant to the subject matter of this proceeding. Subject to and without waiving its objections, TWCIS states that no "network elements" interconnect TWCIS and Time Warner Cable Inc. Time Warner Cable Inc. allocates bandwidth capacity as part of its existing cable facilities to TWCIS for the provision of Digital Pone and Business Class Phone interconnected VoIP services in South Carolina.

Interrogatory No. 1-21: Does Time Warner Cable charge the Time Warner Company for using this cable as described above? If yes, how much does Time Warner Cable charge the Time Warner Company to use this cable?

Answer:

TWCIS objects to this interrogatory on the grounds that it is overly broad, unduly burdensome and seeks information that is irrelevant to the subject matter of this proceeding. Furthermore, internal charges between TWCIS and Time Warner Cable Inc. are confidential business information.

Interrogatory No. 1-22: Is Time Warner Cable willing to provide the same network assets to other carriers other than the Time Warner Company? If not, why not?

Answer:

TWCIS objects to this interrogatory on the ground that it is not relevant to the subject matter of this proceeding. Subject to and without waiving its objection, TWCIS states that Time Warner Cable Inc. is not subject to any network unbundling requirement under Title II of the Communications Act. Nevertheless, Time Warner Cable Inc. would be willing to consider any reasonable request for use of its network facilities if a third party sought to negotiate an agreement to provide such access.

Interrogatory No. 1-23: Does Time Warner Cable consider itself to be a telecommunications carrier as defined in 47 U.S.C. §153? Please explain the basis for your response.

Answer:

TWCIS objects to this interrogatory on the ground that it is not relevant to the subject matter of this proceeding. Subject to and without waiving its objection, TWCIS states

that Time Warner Cable Inc. is not a telecommunications carrier. (*See* Response to Interrogatory No. 1-8 for TWCIS' response to the question whether it is a telecommunications carrier.)

Interrogatory No. 1-24: Does Time Warner Cable Information Services (South Carolina), LLC consider itself to be a telephone utility, as defined in S.C. Code Ann. § 58-9-10(6)? If yes, list the specific services Time Warner Cable Information Services (South Carolina), LLC believes the Commission will have the authority to regulate.

Answer:

TWCIS objects to this interrogatory on the grounds that it is repetitive, calls for a legal conclusion and seeks information that is privileged, speculative, and irrelevant to this proceeding. Subject to and without waiving its objections, TWCIS states, as noted above, that the FCC has yet to determine whether interconnected VoIP services such as Digital Phone and Business Class Phone are "telecommunications services" or "information services" within the meaning of the Communications Act. Nonetheless, TWCIS voluntarily submits to the regulatory jurisdiction of the PSC and is committing to accept regulatory treatment a telephone utility — within the State of South Carolina. TWCIS qualifies as a telephone utility as that term is defined by S.C. Code Section 58-9-10(6). TWCIS, in its application, seeks certification for the provision of the following services: (1) Digital Phone interconnected VoIP services; (2) Business Class Phone interconnected VoIP services; and (3) high capacity private line, point to point transmission/telecommunications services.

Interrogatory No. 1-25: Do the Time Warner Companies believe they should be regulated differently than traditional phone companies or CLECs? If yes, please explain why.

Answer:

TWCIS objects to this interrogatory on the grounds that it is vague, calls for a legal conclusion and seeks information that is privileged, speculative, and irrelevant to this proceeding. Subject to and without waiving its objections, TWCIS states, as noted above, that the FCC has yet to determine whether interconnected VoIP services such as Digital Phone or Business Class Phone are "telecommunications services" or "information services" within the meaning of the Communications Act. Nonetheless, TWCIS voluntarily submits to the regulatory jurisdiction of the PSC and is committing to accept regulatory treatment as a competitive local exchange carrier ("CLEC") within the State of South Carolina.

Interrogatory No. 1-26: Which of the following services should not be considered to meet the definition of "telecommunications service" in S.C. Code Ann. § 58-9-10(15) and in 47 U.S.C. § 153(46)? Please identify and provide a corresponding response for each Time Warner Company.

i. Providing dial tone to end users via a TDM switch over traditional copper pair of wires
ii. Reselling ILEC telephone wires and using its own TDM or VoIP switch to provide dial tone to end users
iii. Providing dial tone to end users via a TDM or 'VoIP switch over traditional copper pair of wires or fiber
iv. Providing dial tone to end users over Time Warner Cable owned wires, using an owned or through third-party TDM or VoIP switch.

Answer:

TWCIS objects to this interrogatory on the grounds that it calls for a legal conclusion and seeks information that is privileged, speculative, repetitive and irrelevant to this proceeding. Subject to and without waiving its objections, TWCIS states, as noted above, that the FCC has yet to determine whether interconnected VoIP services such as Digital Phone and Business Class Phone are "telecommunications services" or "information services" within the meaning of the Communications Act. Nonetheless, TWCIS voluntarily submits to the regulatory jurisdiction of the PSC and is committing to accept regulatory treatment as a telephone utility within the State of South Carolina. The regulatory classification of interconnected VoIP or, for that matter, other services that TWCIS does not intend to provide, is irrelevant to this proceeding.

Interrogatory No. 1-27: Do the Time Warner Companies believe that all "telecommunications service," as defined in S.C. Code Ann. § 58-9-10(15) and in 47 U.S.C. § 153(46), should be regulated equally, regardless of its technology – (i.e., cable, fiber, copper wire, TDM, or VoIP)? If not, why not?

Answer:

TWCIS objects to this interrogatory on the grounds that it is vague, calls for a legal conclusion and seeks information that is privileged, speculative, and irrelevant to this proceeding. Subject to and without waiving its objections, TWCIS states, as noted above, that the FCC has yet to determine whether interconnected VoIP services such as Digital Phone and Business Class Phone are "telecommunications services" or "information services" within the meaning of the Communications Act. Nonetheless, TWCIS voluntarily submits to the regulatory jurisdiction of the PSC and is committing to accept regulatory treatment as a telephone utility within the State of South Carolina. The regulatory classification of interconnected VoIP or, for that matter, other services that TWCIS does not intend to provide, is irrelevant to this proceeding.

Interrogatory No. 1-28: List the areas in Farmer's service territory in which Time Warner Cable or an affiliated company provides video and/or cable television services. For each area, list the date Time Warner Cable or an affiliated company began providing video and/or cable television services.

Answer:

TWCIS objects to this interrogatory on the grounds that it is unduly burdensome, vague, and not relevant to the subject matter of this proceeding. Subject to and without waiving its objections, the confidential information requested will be provided to counsel once the parties have executed a joint protective agreement.

Interrogatory No. 1-29: State Time Warner Cable Information Services (South Carolina), LLC's net income for each of the past five years.

Answer:

TWCIS objects to this interrogatory on the grounds that it calls for confidential and sensitive business data. Subject to and without waiving its objection, TWCIS states that it will provide such information once the parties have executed a joint protective agreement.

Dated this 10th day of November, 2008.

C. Bradley Hutto, Esquire
Williams & Williams
Post Office Box 1084
Orangeburg, South Carolina 29115
cbhutto@williamsattys.com
Telephone 803-534-5218
Facsimile 803-536-6544

and

ROBINSON, MCFADDEN & MOORE, P.C.

By _____

Frank R. Ellerbe, III
Bonnie D. Shealy
1901 Main Street, Suite 1200
Post Office Box 944
Columbia, SC 29202
Telephone: (803) 779-8900
fellerbe@robinsonlaw.com
bshealy@robinsonlaw.com

Attorneys for Time Warner Cable Information Services, (South Carolina), LLC

EXHIBIT DDM-2

290 Harbor Drive
Stamford, CT 06902
Tel 203-328-0671
Fax 203-328-4042
Cell 917-757-1221
julie.laine@twcable.com

Julie P. Laine
Vice President & Chief Counsel, Telephony

TIME WARNER
CABLE

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MAINE PUBLIC
UTIL. COMM.

May 29, 2008

VIA ELECTRONIC MAIL
Ms. Amy Mulholland Spelke
Maine Public Utilities Commission
242 State Street, 18 SHS
Augusta, ME 04333

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MAINE PUBLIC
UTIL. COMM.

Dear Amy:

This letter follows up on our recent discussion regarding the different Time Warner Cable entities involved in the provision of Digital Phone service and Time Warner Cable Information Services (Maine), LLC's ("TWCIS (ME)") tariff and regulated activities.

Introduction

As we have explained in the past, the entity that provides Digital Phone (and now Business Class Phone) to retail customers is TWC Digital Phone LLC ("TWC Digital Phone").[1] TWC Digital Phone itself does not operate as a telecommunications carrier under federal or state law. Rather, it is an "interconnected VoIP" provider as defined under Federal Communications Commission rules and provides retail interconnected VoIP services to residential and commercial customers throughout the country. In order to do so, TWC Digital Phone must purchase wholesale telecommunications services from a telecommunications carrier so that it can be sure that its end users' calls are transmitted to and from the public switched telephone network ("PSTN"). It can do so in one of two ways. First, TWC Digital Phone can rely on an unaffiliated competitive local exchange carrier ("CLEC") and purchase wholesale telecommunications services from that CLEC either directly or indirectly. In that case, the unaffiliated CLEC will obtain interconnection with the incumbent local exchange carrier ("ILEC") in the relevant area. Second, TWC Digital Phone can rely on an affiliated carrier to provide it with telecommunications services, in which case the affiliated carrier will obtain interconnection from the ILEC. TWC Digital Phone currently relies on the first model, although it may choose to transition to the second approach at some point in the future.

TWCIS (ME) is a local and interexchange telecommunications carrier, regulated under state and federal law. As detailed below, TWCIS (ME) offers wholesale telecommunications

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[1] *See* Time Warner Cable Information Services (Maine), LLC Response to May 9, 2007 Procedural Order, Docket Nos. 2005-227 and 2006-739 (filed May 16, 2007) ("*TWCIS May 2007 Letter*").

services to the public pursuant to an effective tariff on file at the Maine Public Utilities Commission but currently has no customers. TWCIS (ME) also provides retail interstate telecommunications and intends to begin offering intrastate (non-voice) telecommunications on a retail basis in the near future.

Current Model for Providing Digital Phone

TWC Digital Phone currently relies on Country Road Communications ("CRC") for the wholesale telecommunications services that are necessary for the provision of Digital Phone interconnected VoIP services. Accordingly, CRC obtains interconnection agreements with ILECs and physically exchanges telecommunications traffic with those ILECs in the areas of Maine in which TWC Digital Phone provides service. Additionally, in its role as the wholesale telecommunications carrier to TWC Digital Phone, CRC also obtains telephone numbers, submits local number portability port requests to other carriers, and administers intercarrier compensation for the traffic it exchanges. CRC currently has interconnection agreements in place with Fairpoint Communications, f/k/a Verizon of Maine; TDS Telecom; legacy FairPoint Communications; Pine Tree Telephone and Telegraph Company; and Saco River Telegraph and Telephone Company. In addition, for several months CRC has been seeking to negotiate interconnection agreements with UniTel, Inc.; Oxford West Telephone Company; Oxford Telephone Company; Lincolnville Telephone Company; and Tidewater Telecom, Inc.

Thus, in the areas where CRC has interconnected with an incumbent LEC, it in turn is able to provide interconnection-related telecommunications services in support of TWC Digital Phone. TWC Digital Phone could purchase such wholesale telecommunications services directly from CRC, but for internal business reasons it relies on an affiliate to purchase and pass through such services on a private carriage basis. Specifically, an entity called TWC Communications, LLC purchases service from CRC and, operating as a private carrier, resells such services to TWC Digital Phone. Importantly, whether zero or 100 entities were interposed between TWC Digital Phone and CRC makes no difference from a regulatory standpoint: the *only* entity that provides a regulated "telecommunications service" (*i.e.*, operates as common carrier) in this scenario is CRC. TWCIS, in fact, has no role under this business model.

Although TWCIS currently does not participate in the provision of Digital Phone, that has no bearing on its status as a common carrier for other purposes. *See Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994) (noting that an entity may be a common carrier with respect to some forms of telecommunications and not others.) Most significantly, pursuant to tariff, TWCIS offers wholesale telecommunications services akin to those provided by CRC. While TWC Digital Phone has chosen at this point to utilize CRC's wholesale services instead—and no other retail provider has yet to order service out of TWCIS's wholesale tariff—TWC Digital Phone may at any time shift its approach and rely on TWCIS, as TWCIS pointed out in the *TWCIS May 2007 Letter*, and as described further below.[2]

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[2] Moreover, TWCIS intends in the near future to offer non-voice intrastate telecommunications services to businesses in Maine.

Potential Alternative Model for Digital Phone

In the interest of speeding and simplifying its market entry, TWC Digital Phone to date has relied primarily on unaffiliated entities to interconnect with the PSTN; however, it may decide to purchase wholesale telecommunications services from TWCIS in addition to, or in lieu of, CRC. It is my understanding that some other leading cable telephony providers rely exclusively on affiliated telecommunications carriers to interconnect and exchange traffic with incumbent LECs. In addition, TWC Digital Phone itself uses this model in New Hampshire.

Under this scenario, if TWC Digital Phone chooses to pursue such a business model, it would obtain wholesale telecommunications services from TWCIS under its existing tariff. In that case, TWCIS would obtain and implement interconnection agreements with ILECs; obtain telephone numbers; submit local number portability requests to other carriers; and administer intercarrier compensation in connection with traffic it exchanges. Today, however, neither TWC Digital Phone nor any other entity is purchasing telecommunications services from the TWCIS tariff on file in Maine. Additionally, although TWCIS has approved interconnection agreements with Fairpoint Communications f/k/a Verizon of Maine and Maine Telephone Company, it has not to date purchased service under those agreements. In compliance with Maine law, however, TWCIS has an effective tariff on file with the Commission and offers its wholesale telecommunications services indiscriminately to the public, i.e., to a certain class of customers.

Potential Implications for Access to Telephone Numbers

Although TWCIS appreciates the Commission's desire to conserve telephone numbers, we respectfully submit that CRC is entitled under federal law to obtain numbers based on its provision of wholesale telecommunications services to TWC Digital Phone, regardless of where CRC's facilities are located and regardless of TWC Digital Phone's or any other Time Warner Cable entity's regulatory status. The FCC has made clear that wholesale carriers like CRC that provide telecommunications services to VoIP providers such as TWC Digital Phone have a right to obtain telephone numbers for that specific purpose. *See Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, FCC 07-188, ¶ 20 (Nov. 8, 2007) ("Interconnected VoIP providers that have not obtained a license or certificate of public convenience and necessity from the relevant states . . . may make numbers available to their customers through commercial arrangements with carriers (*i.e.*, numbering partners)."); *see also 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 ¶ 10 (WCB 2007) (explaining that wholesale carriers serving VoIP providers have full rights and obligations relating to numbering). Accordingly, regardless of the role played by TWCIS, CRC is plainly entitled to obtain telephone numbers for use by Digital Phone customers.

Please let me know if I can answer any additional questions.

Sincerely,

Julie P. Laine

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

IN RE:

Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend Its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation	)	Docket No. 2008-325-C

DIRECT TESTIMONY

OF

H. KEITH OLIVER

ON BEHALF OF

FARMERS TELEPHONE COOPERATIVE, INC.

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is H. Keith Oliver. My business address is 579 Stoney Landing Road, Moncks Corner, South Carolina 29461.

Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?

A. I am employed by Home Telephone Company, Inc. as the Company's Senior Vice President of Corporate Operations.

Q. PLEASE BRIEFLY OUTLINE YOUR EDUCATION, TRAINING, AND EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY?

A. I received a Bachelor of Science degree in Business Administration from the College of Charleston in May 1977. After being licensed as a Certified Public Accountant in May of 1979, I continued work in public accounting until October of 1984 when I was hired in the finance area at Home Telephone Company. In December of 1999, I was named Vice President of Finance and in November 2004 promoted to Senior Vice President of Corporate Operations. In this position, I am responsible for the development and execution of all regulatory and legislative policy matters as well as all financial matters, including various corporate support functions. I have previously served on several South Carolina Telephone Association ("SCTA") committees, including having served as Chairman of the SCTA Accounting Committee and Interconnect Committee.

I am also associated with several national organizations. I previously served as chairman of the United States Telecom Association ("USTelecom"), Small Company Caucus which at that time represents over 500 small member companies of USTelecom In addition I have served on I also previously served on USTelecom's telecom policy committee and their regulatory tactics committee. Currently, I serve as Chairman of the Board of Directors for the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"). OPASTCO is an international trade organization representing over 600 small incumbent local exchange carriers serving primarily rural areas throughout the United States and portions of Canada. I have appeared before this Commission many times in the past to present testimony on behalf of the SCTA and the South Carolina Telephone Coalition ("SCTC").

Q. ON WHOSE BEHALF ARE YOU TESTIFYING TODAY BEFORE THIS COMMISSION?

A. I am presenting testimony today on the behalf of Home Telephone Company, Inc., Farmers Telephone Cooperative, Inc., Fort Mill Telephone Company, d/b/a Comporium Communications, PBT Telecom, Inc., and Rock Hill Telephone Company, d/b/a Comporium Communications (collectively, the "Rural LECs") in this and related dockets.

1 **Q. WHAT ARE THE RURAL LECS ASKING FOR THE COMMISSION TO DO IN**
2 **THESE DOCKETS?**
3 **A.** Time Warner Cable Information Services (South Carolina), LLC ("TWCIS") has
4 asked the Commission to expand its certificated authority to provide service in
5 the areas served by the Rural LECs. On behalf of the Rural LECs, I am
6 respectfully requesting that the Commission carefully consider TWCIS' request
7 because it creates a new entry into the crowded and confused field of
8 telecommunication companies, raises difficult public interest questions and, if
9 not handled properly, could adversely impact the availability of affordable local
10 exchange service, as I explain in more detail below.
11 Specifically, we ask that the Commission grant TWCIS' application, but
12 condition TWCIS' amended certificate so that TWCIS must continue using an
13 unaffiliated non-VoIP third party CLEC such as Sprint for interconnection with
14 the Rural LECs, and comply with the FCC's time Warner Declaratory Ruling
15 Order, and on the other conditions discussed in detailed herein.
16
17 **II. PURPOSE OF THE APPLICATION**
18 **Q. CAN YOU EXPLAIN WHAT MAKES THE APPLICATION DIFFERENT FROM**
19 **THE MANY OTHER CERTIFICATION REQUESTS THIS COMMISSION HAS**
20 **CONSIDERED OVER THE YEARS AND WHY IT IS SO IMPORTANT TO THE**
21 **RURAL LECS?**
22 **A.** Yes. There are several factors. First and foremost is the continued confusion
23 over the regulatory treatment of Voice-over Internet Protocol ("VoIP") service. I

1 will explain the nature of VoIP a little later in my testimony. The Federal
2 Communications Commission ("FCC") has yet to determine from a regulatory
3 perspective whether VoIP should be classified as a telecommunications service
4 or as an information service. As explained in more detail in my testimony, the
5 Rural LECs are very concerned that TWCIS will exploit the uncertainty
6 surrounding the regulatory classification of VoIP and obtain an unfair
7 competitive advantage in deploying itsvoice service.

8 The second factor of concern is the extreme size and therefore market
9 power that TWCIS brings to the market. This concept is best illustrated if one
10 were to substitute TWCIS with one of the major Region Bell Operating
11 Companies ("RBOCs") such as AT&T or Verizon. Should one of these RBOCs
12 request to extend their certification into the areas served by the Rural LECs,
13 this would undoubtedly raise serious concerns regarding the impact that such
14 certification would have on the marketplace, especially if the certification would
15 allow the RBOC to restrict its service to the lowest cost areas and the most
16 profitable customers. These types of concerns are magnified in this context
17 due to the fact that Time Warner Cable, TWCIS' parent company and the entity
18 which has been identified in TWCIS' testimony as providing funding, financing,
19 and capital for TWCIS, is the second largest cable company in America. Given
20 this fact, it becomes evident that TWCIS' application not only brings many of
21 the same challenges that would accompany an RBOC application to serve
22 these rural areas but also new, unique challenges given the market power that
23 Time Warner Cable, its affiliates, and the broadcast channels already possess

in the cable TV, publishing, media and Internet services fields and in its newly developing voice service offerings.

Finally, this application differs from previous applications in that it makes clear that the Commission can no longer consider an application based solely on the provision of voice services. Providers are offering "bundled" services due to the total convergence of video, voice and data services. Because of the increasing use of broadband networks to deliver these services, it is clear that applications for certification to provide voice services can no longer be considered without taking into consideration all of the services that are delivered over those networks. The Commission can and should use this application to consider the broader issue of regulation of the broadband network provider verses the services provided over the network. This Commission has consistently been a national leader in new and innovative regulatory regimes. Our state's leadership in access reform, local rate rebalancing, state universal service funding, broadband expansion and progressive regulation is recognized throughout the nation. This application gives this Commission an opportunity to provide leadership in a world where the next generation of technology to deliver voice will be treated the same as existing traditional circuit switched network technology that is considered a regulated service. This case makes clear that the network is what is important and not the type of content or data that happens to be passing over it.

Q. HAS TWCIS PREVIOUSLY SOUGHT TO EXPAND ITS CERTIFICATED AUTHORITY TO PROVIDE SERVICE IN THE AREAS SERVED BY THE RURAL LECS AND IF SO, WHAT TYPE OF SERVICE DID IT PROPOSE TO PROVIDE?

A. Yes. In 2003, TWCIS sought a Certificate of Public Convenience and Necessity ("CPCN") to provide facilities-based VoIP services throughout the State of South Carolina. The South Carolina Telephone Coalition (hereinafter referred to as the "SCTC") intervened in the proceeding and pre-filed testimony raising a number of concerns. TWCIS and SCTC later entered into a stipulation whereby TWCIS would not offer its VoIP services in areas where incumbent rural local exchange carriers held rural exemptions pursuant to 47 U.S.C. § 251(f)(1). The Commission granted TWCIS limited authority to offer its VoIP services within the State subject to the restrictions set forth in the stipulation.

On October 1, 2004, TWCIS filed an Application seeking to expand its authority to provide VoIP service in the five areas served by the Rural LECs. The matter was designated as Docket No. 2004-280-C, and the Commission held a hearing to determine the merits of the Application. In its original Application, TWCIS described the services for which it sought authority as follows: "TWCIS plans to provide facilities-based local and long distance Internet protocol ('IP') voice service, targeted to the residential market in [Rural LECs'] service areas...." Later, without amending its Application, TWCIS,

through its pre-filed testimony of its witness Julie Patterson, clearly changed the authority it was requesting:

> Since the Vonage Order preempts the state from imposing certification and tariffing requirements, TWCIS intends to withdraw the retail service offerings in its current tariff once a new non-regulated entity is created to provide the retail voice services currently being offered by TWCIS. TWCIS intends to remain a certificated carrier and <u>will obtain interconnection services from incumbent LECs and eventually offer wholesale services to the newly created non-regulated entity</u>.

(Emphasis added). During testimony presented at the hearing, TWCIS yet again changed its position when Ms. Patterson testified that TWCIS was seeking authority to provide "telecommunications services" as a "full-fledged" telecommunications carrier. After the hearing, the Commission issued an Order denying TWCIS' request for certification due to "failure of proof" with respect to TWCIS' original Application. The Commission later denied TWCIS' request for reconsideration of Order No. 2005-412, and again stated that there was "a failure of proof with respect to the original Application." As the Commission stated in its Order Denying Reconsideration, "Upon reflection, it is still not clear exactly what authority TWCIS is seeking in this proceeding." Order No. 2005-484 at 3.

TWCIS appealed the Commission's orders, and both the Circuit Court and the Supreme Court of South Carolina affirmed the Commission's denial of a certificate to TWCIS. As the Commission found, and as affirmed by the Circuit court and the Supreme Court, it was not clear from the record of the case what services TWCIS proposed to provide and, therefore, TWCIS failed to

meet the threshold statutory and regulatory requirements necessary for approval of a certificate.

Q. WHAT IS YOUR UNDERSTANDING AS TO THE TYPES OF SERVICES THAT TWCIS IS SEEKING TO PROVIDE IN THIS APPLICATION AND WHAT IS YOUR BASIS FOR THIS UNDERSTANDING?

A. According to testimony, TWCIS has declared that it "plans to provide facilities-based interconnected VoIP services and intrastate point to point, private line telecommunications services"[1] and that the VoIP services will be Time Warner Cable's Digital Phone.[2] However, it appears that TWCIS can already provide its Digital Phone service without seeking to expand its certification, and the Rural LECs are not sure why TWCIS has filed this application.

As set forth in the FCC's Time Warner Declaratory Ruling,[3] it appears that TWCIS can use a third-party wholesale provider and offer VoIP services within Rural LEC areas today. In its answer to interrogatories, TWCIS has declared that it has entered into a contractual relationship with Sprint to

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[1] *See Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Testimony of Julie P. Laine on Behalf of TWCIS Cable Information Services (South Carolina) LLC ("Laine Testimony"), p. 4 (Nov. 24, 2008).

[2] *See Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, PUBLIC VERSION Testimony of Charlene Keys on Behalf of TWCIS Cable Information Services (South Carolina) LLC ("Keys Testimony"), p. 4 (Nov. 24, 2008).

[3] *See 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, WC Docket N. 06-55 (March 1, 2007) ("Time Warner Declaratory Ruling").

purchase Sprint's wholesale interconnection services for providing its Digital Phone service.[4]

Thus, it is not clear why TWCIS has filed this application to expand its certification to provide Time Warner Cable's Digital Phone service. Further, given the history cited above and proceedings involving Time Warner in other states, the Rural LECs are extremely concerned that TWCIS will not follow the Time Warner Declaratory Ruling if the Commission were to grant TWCIS' application without imposing any conditions for TWCIS to follow that ruling. Accordingly, the Rural LECs believe that the Commission should grant the application for expanded certification but impose reasonable requirements which I outline in this testimony.

Q. HOW WOULD YOU DESCRIBE TIME WARNER CABLE'S DIGITAL PHONE SERVICE?

A. Glenn A. Britt, President and Chief Executive Officer of Time Warner Cable, of which TWCIS is an indirect wholly-owned subsidiary, described Time Warner Cable's Digital Phone service in testimony before the U.S. Senate Committee on Commerce, Science & Transportation as follows:

> Time Warner Cable's Digital Phone service is delivered over a managed network with quality of service standards designed to

[4] *Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Time Warner Cable Information Services (South Carolina), LLC's Answers to Farmers Telephone Cooperative, Inc.'s First Set of Interrogatories ("TWCIS Answers to Interrogatories – 1st Set"), Interrogatory Nos. 1-4, 1-5iii, 1-9, 1-9x, 1-12, 1-18 (Nov. 10, 2008).

> ensure that customers are provided with the same high quality of service they have come to expect from traditional telephone service. The upgraded, two-way capable, digital network that we have built during the past several years is the central component of the architecture used to provide Digital Phone services. We are deploying devices called 'softswitches' on a regional basis, which manage, route, and control calls originating from and terminating into our network and provide vertical telephone features (such as caller ID and call waiting) without the need for a Class 5 circuit switch. Using the softswitch architecture, calls travel over a network managed by Time Warner Cable—not the public Internet—as they move toward their final destination, whether that is on our network or a location on the Public Switched Telephone Network (PSTN). When calls to reach customers not served by Time Warner Cable must traverse the PSTN, Time Warner Cable completes these calls through its relationships with competitive local exchange carriers.[5]

Q. IN WHAT WAY IS THE DIGITAL PHONE SERVICE SIMILAR TO SERVICE PROVIDED BY TELEPHONE COMPANIES?

This description of Time Warner Cable's Digital Phone service is strikingly similar to the way many rural telecommunications providers are currently providing telecommunications service to their customers. Indeed. all of the Rural LECs have implemented IP technology in their loop plant as facilities are updated and replaced, and some of the Rural LECs have also implemented softswitch technology.

[5] *See* Transcript of testimony of Mr. Glenn A. Britt, currently President & Chief Executive Officer, Time Warner Cable, given at full committee hearing on VoIP held by the U.S. Senate Committee on Commerce, Science & Transportation on Feb. 24, 2004 (http://commerce.senate.gov/hearings/) at 1-2. When the Testimony was given, Mr. Britt was Chairman and Chief Executive Officer of Time Warner Cable.

1 **Q. HOW DOES DIGITAL PHONE SERVICE DIFFER FROM VONAGE'S VOIP**
2 **SERVICE?**
3 **A.** Significant differences exist between Vonage's VoIP service and Time
4 Warner Cable's Digital Phone service. One of these differences is that
5 Vonage's VoIP service is "nomadic" while Digital Phone is a "fixed" VoIP
6 service. Vonage's service is considered nomadic because the service is
7 provided via portable terminal equipment which subscribers can install
8 themselves on any broadband connection to the Internet and use the
9 service from that location. In contrast, Time Warner Cable's Digital
10 Phone is a "fixed" VoIP service in which the subscriber's service is
11 restricted to the location where the terminal equipment has been
12 physically installed.
13 This distinction is extremely important because the FCC has yet
14 to address whether the preemption granted to Vonage in the FCC's
15 Vonage Order[6] should be extended to fixed VoIP services such Digital
16 Phone. This fact was confirmed by the U.S. Court of Appeals for the
17 Eight Circuit when it reaffirmed the Vonage Order in which the court
18 stated,

19 [t]he order only suggests the FCC, if faced with the precise
20 issue, would preempt fixed VoIP services. Nonetheless,
21 the order does not purport to actually do so and until that
22 day comes it is only a mere prediction. . . . Indeed, as we
23 noted, the FCC has since indicated VoIP providers who

[6] *See Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Pub. Util. Commn.*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (Vonage Order), aff'd, Minnesota Pub. Util. Comm'n. v. FCC, 483 F3d 570 (8th Cir Mar. 21, 2007) ("Minnesota PUC Decision").

can track the geographic end-points of their calls do not qualify for the preemptive effects of the Vonage order." [7]

Another major difference between Vonage's VoIP service and Time Warner Cable's Digital Phone service is that Vonage's service utilizes the public Internet while Digital Phone does not. This distinction is critical because Vonage's use of the public Internet in the provision of its services was central to the FCC's determination that preemption of state authority was necessary. In the Vonage Order, the FCC determined that Vonage's service falls "squarely" within how the term "Internet" is defined in section 230 of the Telecommunications Act of 1996 (the "Act").[8] Based on this finding, the FCC ruled that "in interpreting section 230's phrase 'unfettered by Federal or State regulation,' [the FCC] must preempt states from imposing traditional common carrier regulations" on Vonage's service.[9]

Record evidence, however, makes it clear that Time Warner Cable's Digital Phone service does not use the Internet in the way that it is defined in Section 230 of the Act and thus should not qualify for the preemption from state regulation granted to Vonage. Testimony by TWCIS specifically states, "[u]nlike Internet phone providers such as Vonage, we do not use the public

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[7] *Minnesota PUC Decision*, 483 F.3d 570 at Section III *citing Universal Service Contribution Methodology,* WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7546, para. 56 (2006).

[8] Vongage Order at para. 33. The FCC observed that in section 230, Congress defined the Internet as "an *international* network of federal and nonfederal interoperable packet switched data networks" and declared that Vonage's service is "unquestionably an Internet service" as defined by section 230 of the 1996 Act because it places and receives calls over the Internet. *Id.* at n.115 (citing 47 U.S.C. § 230(f)(1) (emphasis added in Vonage Order).

[9] Vonage Order at para. 35.

Internet to transport calls."[10] The testimony then explains that Time Warner Cable's Digital Phone uses the technology known as "Internet protocol" which "digitizes information."[11]

III. CORRECTION OF INACCURACIES IN TWCIS' TESTIMONY

Q. GIVEN THIS DESCRIPTION OF THE TYPE OF VOIP SERVCIE THAT TWCIS PROPOSES TO PROVIDE, DO YOU AGREE WITH MS. LAINE'S CLAIMS IN HER TESTIMONY THAT GRANTING TWCIS' AMENDED CERTIFICATE WILL INCREASE COMPETITION USING NEW TECHNOLOGY AND THAT TWCIS REPRESENTS ONE OF THE BEST HOPES FOR VIABLE COMPETITION IN THE RESIDENTIAL MARKET?[12]

A. No. Ms. Laine falls into the trap of the traditional way of thinking that equates what is simply a new service provider over a broadband pipe to the offering of a new service. The truth is TWCIS is not really offering either a new service, or any different technology than that used by the Rural LECs. In fact, in many cases, they are continuing to deploy bandwidth limited coaxial cable to the home in communities where the ILEC is actually deploying fiber to the home. The concept of VoIP service is yesterday's news. It has been in existence for ten or more years. All recognize that it is the way voice traffic will be transported in the broadband world. To the extent that an individual has a broadband connection, the individual can use a VoIP service today from an

[10] Keys Testimony, p. 4.

[11] *Id.*

[12] Laine Testimony, p. 6.

1 almost unlimited number of potential providers. So in fact TWCIS' entry into
2 the Rural LECs' markets will not really increase competition in those markets –
3 TWCIS certainly is not deploying a "unique new technology" nor will TWCIS'
4 Digital Phone service be "the best hope" for viable competition in residential
5 markets since residential customers today can choose from a number of VoIP
6 as well as wireless providers in the Rural LECs' markets. On the contrary, it
7 appears that the only benefits that will be received by granting TWCIS'
8 application will be benefits that TWCIS will enjoy by gaining certain rights
9 reserved by federal law to telecommunications service providers while
10 minimizing any obligations associated with these rights.
11
12 **Q. DO YOU AGREE WITH MS. LAINE'S ASSESSMENT THAT GRANTING**
13 **TWCIS' APPLICATION WILL ENHANCE AVAILABILITY OF AFFORDABLE**
14 **LOCAL EXCHANGE SERVICE BY INCREASING COMPETITION?**
15 **A.** No, I disagree on two counts. First by Ms. Laine's own testimony, she states
16 TWCIS will serve "every consumer it can reach within its network" and will
17 expand its network into new areas where business conditions warrant.[13] The
18 fact is that TWCIS only serves the lowest cost-to-serve subscriber and only
19 expands its video network into areas that are lowest cost and the most
20 profitable to serve. Even if TWCIS is granted its application and receives
21 certification to provide voice services in the Rural LEC areas, this fact will not
22 change. It is evident that TWCIS seeks certification for areas that already have

[13] Laine Testimony, p. 5.

1 broadband service and thus are areas in which consumers already have
2 access to VoIP services and broadband service from numerous providers.
3 Second, by TWCIS' own testimony, TWCIS does offer what has been
4 known as stand-alone basic local exchange service. In his testimony, Dr.
5 Ankum presents a chart comparing rates that has one column labeled
6 "Cheapest Stand Alone Local Phone Service" showing all Rural LECS offering
7 a stand-along basic local service offering for $14.35 (pursuant to Commission
8 Order) and TWCIS offering a similar service for $49.95.[14] Given this disparity
9 in rates, it appears that the customer that only wants "affordable local exchange
10 service" will not be able to receive such service from TWCIS.
11
12 **Q. MS. LAINE, DR. ANKUM AND MR. FISCHER ALL APPEAR TO CLAIM**
13 **THAT STATE AND FEDERAL UNIVERSAL SERVICE FUNDING WILL**
14 **SOMEHOW PROTECT OR MAKE WHOLE ANY ILEC LOSSES THE RURAL**
15 **LECS MAY SUFFER DUE TO TWCIS' OPEATIONS IN THE RURAL LEC**
16 **AREAS.[15] ARE THESE CLAIMS CORRECT?**
17 **A.** No. There are several factors which prevent full recovery of ILEC losses which
18 are due to the gains made by competitors. For example, certain restraints have

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[14] *See Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Direct Testimony of August H. Ankum, PH.D. on Behalf of TWCIS Cable Information Services (South Carolina) LLC, p. 18 (Nov. 24, 2008).

[15] *See* Laine Testimony, p. 7; Ankum Testimony, p. 21; *Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Direct Testimony of Warren R. Fischer, C.P.A. on Behalf of Time Warner Cable Information Services (South Carolina) LLC ("Fischer Testimony"), p. 2-12 (Nov. 24, 2008).

been built into federal universal service support mechanisms such as the freezing of federal high cost loop support funding which prevent full recovery. Also, the uncertainty over what actions will be taken in the near future by the FCC and/or Congress concerning universal service funding and the interrelated intercarrier compensation cast doubt on even the continuation of current funding levels.

Q. WHAT PURPOSE IS THERE IN TWCIS' REFERENCE TO THE UNIVERSAL SERVICE RECOVERY MECHANISMS IN ITS TESTIMONY?

A. In testimony, TWCIS goes to great lengths to attempt to show that no real financial harm will occur to the Rural LECs in the areas where TWCIS plans to serve.[16] Yet TWCIS also goes to great lengths to assert that losses that occur can be easily recovered through universal service funding or perhaps raising local rates.[17] Because TWCIS plans to serve only the low cost areas, it appears that TWCIS is in effect proposing that whatever revenue is lost by the Rural LEC by losing customers to TWCIS in the low cost areas, will in fact be made up through increased high cost universal service funding or through increased local rates imposed upon the Rural LEC customers that TWCIS does not serve. It appears from testimony that TWICS is suggesting that it is appropriate to allow for rate increases in rural areas to allow for their entry into the market while at the same time saying that no harm will occur.

[16] *See, e.g.* Fischer Testimony, pp. 2-12.

[17] *Id.*

Q. IN HIS TESTIMONY, DR. ANKUM STATES THAT TO REDUCE COSTS TO ILECS THAT LOSE CUSTOMERS TO TWCIS, THE ILECs COULD "SCALE BACK MAINTENANCE ON THOSE FACILITIES AS WELL AS CANCEL CERTAIN PLANNED NETWORK UPGRADES."[18] ARE THESE REAL OPTIONS IN YOUR OPINION?

A. No, they are not, but they point to the vast differences between the way TWCIS serves the market and the way Rural LECs serve their markets. As the carrier of last resort ("COLR") the Rural LECs must, by Commission rule, build out and be able to serve all customers within their service areas. The Rural LECs are also bound by Commission-mandated maintenance regulations. Rural LECs are part of the communities in the areas that they serve and serve the entire customer base - not just the areas that are least costly and more profitable to serve. As regulated carriers, the Rural LECs offer consistent service and rates to both high and low cost customers. In effect, TWCIS' proposal seems to say that TWCIS will gladly serve the low cost customer and allow the ILEC to reduce maintenance, defer upgrades, or raise rates on the remainder of the Rural LEC customer base to make up the difference.

[18] Ankum Testimony, p. 10.

1 **Q. IN HIS TESTIMONY, DR. ANKUM STATES THAT EVEN IF THE RURAL**
2 **LECS WERE TO EVENTUALLY LOSE UP TO TWENTY PERCENT OF**
3 **THEIR ACCESS LINES, THE LECS WOULD BE FINANCIALLY WELL**
4 **POSITIONED TO ABSORB SUCH ATTRITION.[19] DO YOU AGREE?**
5 **A.** Absolutely not. Even if one were to assume all lines were equal in terms of
6 revenues, this assertion would not be true. In fact, all access lines are not
7 equal – generally often less than twenty percent of the access lines provide
8 eighty percent of the revenue. Thus, the lowest cost twenty percent of the
9 customer base may only account for a few percent of total cost. Theoretically,
10 in a worst case scenario, if the Rural LECs' lowest cost customers were also
11 their highest usage customers, the Rural LECs could lose eighty percent of
12 their revenues while only "potentially" eliminating a few percentage points of
13 cost.
14
15 **Q. MS. KEYS POINTS OUT SOME OF THE WAYS THE MARKETPLACE**
16 **BENEFITS WHEN PROVIDERS OFFER BUNDLED SERVICES.[20] WHAT**
17 **POTENTIAL IMPACT DOES THIS BUNDLING OF SERVICES CONCEPT**
18 **HAVE ON THE ILEC?**
19 **A.** I agree with Ms. Keys' assessment in the ways that bundling can be beneficial
20 for consumers. Customers benefit from a single point of contact and discounts
21 on the overall package of service offerings.
22 The concept of bundling, however, highlights the potential dangers that
23 could come with TWCIS' presence in the rural marketplace. TWCIS and its

[19] Ankum Testimony, p. 11.
[20] *See* Keys Testimony, pp. 5-6.

affiliated parent company, Time Warner Cable, comprise an extremely large company, which due to size and vertical integration with video programmers, is in a position to receive video programming for a much lower cost than the small Rural LECs. The actual extent of this disparity in programming costs is unknown due to the fact that programming contracts are considered confidential. The best industry estimates are that companies such as TWCIS and Time Warner Cable enjoy over a thirty percent cost advantage in programming. In addition, TWCIS and Time Warner also enjoy significant benefits in the provision of Internet services to consumers since they are able to exchange Internet traffic without charge between themselves and other large Internet providers through "peer-to-peer" networks. Smaller rural broadband providers generally are excluded from such arrangements or are required to pay above market prices for connection of their customers Internet traffic to these networks. This of course creates an even greater disparity in the ability for small rural providers to compete with the bundled offerings of TWCIS and other large providers due to the tremendous cost savings that these large carriers enjoy that are not available to the smaller providers.

1 **Q. DR. ANKUM STATES THAT TWCIS' MARKET ENTRY IS DIFFERENT FROM**
2 **THAT TRADITIONALLY USED BY "OTHER CLECS, WHO TYPICALLY**
3 **ENTER MARKETS BY TARGETING BUSINESS CUSTOMERS, A**
4 **STRATEGY WHICH SOME ILECS HAVE AT TIMES DISPARAGED AS**
5 **'CHERRY PICKING.'"[21] DO YOU AGREE WITH THIS STATEMENT?**
6 **A.** The Rural LECs are concerned that Dr. Ankum is seeking to convince the
7 Commission that since TWCIS will be mainly serving residential customers, it
8 would not be targeting the more profitable customers, which in metropolitan
9 areas typically are the business customers. In reality, unlike the RBOCs who
10 serve the metropolitan areas and make most of their profit from business
11 customers, the Rural LECS serve predominantly residential customers.
12 It is true that TWCIS is different from other CLECs, but for another
13 reason. As stated in TWCIS' testimony, TWCIS has sizable revenues and
14 "maintains a close relationship" with its parent, Time Warner Cable, the nation's
15 second largest cable operator "which provides funding, financing, and the
16 capital necessary to provide services to customers in the expanded service
17 area.[22] Due to its sheer size and financial resources, TWCIS possesses the
18 potential to create market disruption by serving only the lower cost service
19 areas within the Rural LEC areas. Because of the provision of cable TV
20 service in these areas, TWCIS and Time Warner Cable are already well

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[21] Ankum Testimony, p. 10

[22] *See* Laine Testimony at 4 ("TWCIS' total revenues for 2007 totaled over $33 million with net income of $5 million"). According to an Associated Press report dated Nov. 5, 2008, Time Warner Cable earned $301 million in the third quarter 2008 and saw revenue climb to $4.34 billion. The report also stated that revenue from its voice services rose 37 percent to $421 million as the result of an increase in digital phone subscribers.

established in these areas and certainly should not be considered new entrants. Their voice service will be almost identical to that provided by the Rural LECs, yet without affirmative action by this Commission they will be able to utilize their size and market power unconstrained by even the same degree of regulation to which the rural LECs are subjected.

Q. WHAT ARE YOUR THOUGHTS REGARDING DR. ANKUM'S ASSERTIONS THAT TWCIS' ENTRY INTO THE RURAL LECS' MARKETS WILL HAVE A "POSITIVE IMPACT ON THE LEC'S SERVICE OFFERING" AND HIS ASSERTIONS THAT IN GENERAL COMPETITON IS GOOD FOR SOCIETY AND SHOULD BE ENCOURAGED? [23]

A. While I agree that competition can be good for society, in this case, Dr. Ankum fails in his efforts to provide the specific details. When one examines these details, it becomes clear that the nature of the competition proposed by TWCIS would in fact be detrimental to many that reside in the rural areas served by the Rural LECs.

Our companies believe there are great benefits to be obtained through competition in the telecommunications arena. However, in this situation, TWCIS would be permitted to gain a tremendous competitive advantage over the Rural LECs by leveraging the multiple marketplace advantages it and its parent company, Time Warner Cable, already possess due to their being the incumbent cable provider in the least costly-to-serve areas while not having to provide service in the higher cost areas where, as the COLR, the Rural LEC

[23] Ankum Testimony, pp. 6-8.

must serve. The Rural LECs urge this Commission to ensure that a truly level playing field is created and that customers in the most rural areas where TWCIS chooses not to serve are not harmed.

Q. DO YOU AGREE WITH DR. ANKUM'S TESTIMONY THAT TWCIS' APPLICATION IS "CONSISTENT WITH UNIVERSAL SERVICE OBJECTIVES AND ITS FURTHER ENTRY INTO THESE MARKETS WILL NOT HARM THE AVAILABILITY OR QUALITY OF SERVICES, INCLUDING ACCESS TO ADVANCED TELECOMMUNICATIONS?"[24]

A, No. As I have already explained in my testimony, TWCIS will be serving only in the least costly areas in the Rural LECs' service areas where applicable densities have been met for their cable TV company. It is in these areas where the most profitable customers reside. TWCIS will undoubtedly target these more profitable customers as it further enters these markets. The loss of revenues from these customers cannot help but diminish each of the Rural LEC's ability to deploy and maintain service in the highest cost areas. This struggle will become exponentially more difficult as TWCIS targets the customers that are the least costly to serve and that are the most profitable.

The Rural LECs provide the same service at the same price to their entire customer base. Since TWCIS will not be serving the higher cost areas, there is no question that it will be able to offer lower rates for the customer they serve in the lower cost areas. The Rural LECs will be forced to either disaggregate rates so that they can be lower in the areas in which the Rural

[24] Ankum Testimony, p. 20.

1 LECs compete with TWCIS or the Rural LECs will risk losing most of their
2 customers. Either way, the revenues of the Rural LECs will decline with little or
3 no cost reduction. Today, each Rural LEC offers similar pricing and service
4 within its entire service area regardless of the cost to serve in different parts of
5 the service area – clearly a form of internal cost recovery is occurring between
6 the Rural LEC low cost and high cost areas. The elimination of the revenue
7 flow from the low cost areas will clearly harm the Rural LEC's ability to serve its
8 highest cost areas and consequently, and will not promote universal service.
9
10 **Q. DOES NOT THE CONTINUED RECEIPT OF UNIVERSAL SERVICE**
11 **FUNDING BY THE RURAL LEC ELIMINATE THE NEGATIVE REVENUE**
12 **IMPACT CREATED BY TWCIS?**
13 **A.** No. Universal service support in general accounts for around one third of most
14 rural LECs' revenue flows. The balance comes from fees for local services or
15 wholesale charges such as access. These revenue flows would be impacted
16 when a customer moves to TWCIS service.
17 To illustrate, it is apparent that TWCIS' service offerings are targeted
18 only to the highest revenue customers since, as previously noted in my
19 testimony, the lowest rate the company offers is $49.95, which is substantially
20 higher than the $14.35 stand-alone base local service rate offered by the Rural
21 LECs. Accordingly, it appears that the customers that TWCIS will target are
22 not only the lowest cost-to-serve customers but also the highest volume users
23 as well. It is likely that these customers generate a disproportionate amount of

both local and access revenues to the Rural LECs and thus the loss of their revenues would be even more harmful than the average customer. In this example, universal service support revenues may be maintained, but it would certainly not protect the Rural LEC from other revenue losses. Little if any cost would be eliminated, plant would be stranded, and the only way to make up for these losses would be to raise other rates where possible for which the remaining customers would have to bear as well as defer plant upgrades or diminish maintenance.

IV. APPLICATION OF REASONABLE REGULATIONS

Q. DO THE RURAL ILECS OPPOSE TWCIS' APPLICATION?

A. No. The Rural ILECs believe that the Commission should grant the application for expanded certification but adopt reasonable requirements which I outline below. As I have already demonstrated in my testimony, the Digital Phone service that TWCIS seeks to provide is almost indistinguishable from the telecommunications services provided by the Rural LECs. Granting the application for expanded certification without also ensuring that TWCIS must abide by the same regulations as those that govern the telecommunications services provided by the Rural LECs would adversely impact the availability of affordable local exchange service and could have profound public interest implications. Accordingly, to ensure that the citizens of this state are best served, the Rural ILECs urge the Commission to step into the same role as

1 protector for the consumer for voice services offered by TWCIS as they do
2 today for traditional LEC providers.
3
4 **Q. WHAT WOULD THESE ADDITIONAL REGULATIONS ENTAIL?**
5 **A.** First, as discussed in more detail in Douglas Meredith's testimony, the
6 Commission should condition TWCIS' amended certificate in Rural LEC areas
7 on TWCIS' continuing to use Sprint or a similar unaffiliated non-VoIP CLEC as
8 its wholesale interconnection services provider. This will ensure that the
9 provisions of the FCC's Time Warner Declaratory Ruling Order are met and
10 fully complied with.
11 Second, because of the distinguishing characteristics already
12 enumerated in my testimony, TWCIS should have reasonable requirements
13 which accompany granting of the application for expanded certification in the
14 areas served by the Rural LECs.
15 Further, without imposing additional requirements, TWCIS should be
16 required by this Commission to operate under the same regulatory
17 requirements as the Rural ILECs in those areas where it is requesting
18 certification. Due to the regulatory uncertainty surrounding the classification of
19 VoIP service, and to ensure that it is clear that the benefits of certification are
20 accompanied by the concomitant responsibilities, the Commission should
21 impose specific requirements when granting the certification to TWCIS.

The Rural ILECs believe that that these requirements should at a minimum include filing of all reports that ILECs are required to file, and meeting all service standards.

Q. YOU NOTED THAT TWCIS' STAND-ALONE BASIC LOCAL SERVICE IS PROVIDED AT A MUCH HIGHER RATE THAN STATEWIDE AVERAGE ILEC RATES. WHY IS THIS IMPORTANT?

A. It is important to recognize that TWCIS is unwilling to abide by the same standards that govern the Rural LECs. At the same time, Time Warner and TWCIS have attempted to attack universal service funding principles for years. The Commission should recognize that TWCIS is simply a completely different provider from the traditional LEC in rural areas, and is not the type of carrier that would qualify for universal service funding for precisely these reasons.

Additionally, the Rural ILECs are concerned that TWCIS will serve only lower cost, profitable areas. In addition by only offering a higher price service, TWCIS will be able to further increase its profits by ignoring lower margin stand alone subscribers. There would likely be instances where customers only take the Rural LEC's basic voice service and obtain video and broadband from TWCIS because the Rural LEC offers a basic voice service that the customer is not able to obtain from TWCIS. This provides TWCIS with an unfair competitive advantage.

1 **Q. ARE THERE ANY CONCERNS THAT SHOULD BE ADDRESSED WHEN**
2 **GRANTING THE CERTIFICATION?**
3 **A.** Yes. As noted above, we ask that the Commission require TWCIS to obtain
4 interconnection from an unaffiliated non-VoIP CLEC such as Sprint.
5 Additionally, even with interconnection through Sprint, there are a number of
6 concerns.
7 Due to confusion which has arisen regarding identification of the types
8 and jurisdiction of traffic (otherwise known as "phantom traffic") and the
9 significant impact that such problems have on access revenues, the
10 Commission should require TWCIS, as a condition of certification, to properly
11 identify all traffic that it passes to Sprint or other third party carrier to be
12 completed to the Rural LECs, and only assign numbers to customers who are
13 physically located in the rate center where the NPA-NXX is associated.
14 Additionally, TWCIS should commit that it will not request
15 interconnection directly with the Rural LECs. To ensure that the Rural LECs
16 do not have to bear the financial burden of transporting calls beyond their ILEC
17 boundaries and existing points of interconnection ("POIs"), TWCIS and its third
18 party connecting carrier should be required to either establish a POI within the
19 service area of the Rural LEC they seek to serve or, if not, bear the financial
20 burden of transporting the traffic from the Rural LEC boundary to the POI.
21 Further, the Commission should require as a condition of certification
22 that TWCIS is not permitted to obtain numbering directly and must continue to
23 work through Sprint for numbering resources and porting. In addition, the

1 Commission should require that assigned numbers for TWCIS' VoIP service
2 remain related to the geographic area or rate center for which they are
3 intended.

4 Finally, as a condition to certification, TWCIS should be required to fund
5 state USF based on the full voice portion of their service offering. Where this
6 service is bundled, TWCIS should be required to calculate the voice revenues
7 in the same manner as the rural LECs. The assessment should be based on
8 all voice related revenues as state USF funding is based on interstate and
9 intrastate revenues.
10
11 **Q. ARE THERE ISSUES SPECIFIC TO VOIP THAT THIS COMMISSION**
12 **SHOULD CONSIDER IN GRANTING THE CERTIFICATION TWCIS**
13 **REQUIRES?**
14 **A.** Yes, we are in a period of great technological change. The whole concept of
15 the public switched network is at risk and may one day basically go away. We
16 are concerned that TWCIS and other VoIP providers may establish private
17 ENUM data bases that would allow VoIP traffic to completely avoid the public
18 switched network and the associated fees. This would allow the large national
19 players to in effect cut out the small rural carriers and force them to use higher
20 cost switched termination services or that TWCIS and like situated carriers
21 would create price discrimination in access to their ENUM data base.
22

1 **Q. ARE VOICE SERVICES THE ONLY SERVICES WITH WHICH THE RURAL**
2 **LECs HAVE CONCERNS?**
3 **A.** No. This application deals with the elimination of boundaries. In seeking all of
4 the rights of a voice provider, TWCIS also argues strongly for the use of
5 bundled offerings. Thus there is grave concern that TWCIS seeks to use the
6 power that it and its parent company, Time Warner Cable, possess in the video
7 and broadband markets to create competitive advantages that the Rural LECs
8 do not have.
9 Thus, the Rural ILECs believe that this application process in actuality
10 should address the creation of a level playing field in granting TWCIS'
11 application. As the Commission is aware, the lines between cable TV service,
12 Internet service and traditional voice service has basically disappeared.
13 TWCIS, through its affiliation with the number two cable operator, Time Warner
14 Cable, enjoys a tremendous advantage in obtaining video programming at a
15 much lower cost than the rural LECs. The Time Warner companies are able to
16 use their tremendous size and their vertical integration with their programmers
17 and other programmers to create a wholesale programming cost advantage
18 where they are in a position to offer other large integrated video companies
19 reduced pricing on programming in exchange for the same type reductions on
20 other vertical programming. By most estimates rural video providers are at a
21 thirty percent or more programming price disadvantage. This allows TWCIS to
22 under-price rural video providers and then "bundle" the voice product to unfair
23 compete for business. Accordingly, the Rural ILECS believe that, as an act of

good faith, TWCIS should agree to make programming available to the rural LECs with whom they compete on a "most favored nation" basis.

Q. ARE THERE SIMILAR CONCERNS ABOUT THEIR BROADBAND INTERNET OFFERING?

A. Yes, large companies such as TWCIS are often able to use "peer-to-peer" relations to backbone interconnect. Again, this gives such companies tremendous advantage over small rural carriers, especially in the context of bundling of service offerings.

V. CONCLUSION AND SUMMARY

Q. ARE THERE ANY OTHER COMMENTS YOU WOULD LIKE TO MAKE?

A. This Commission has before it the opportunity, based on TWCIS' own request, to ensure that a proper level of regulatory oversight and control is extended to what is clearly a major telecommunications player within South Carolina. All parties recognize that the telecommunications world has changed. It is no longer about individual services such as voice, data or even video. The broadband network has reduced all of those services to bits and bites that are transported over the network. What we know as "service" simply becomes applications on the broadband "pipe". The Commission must seize the opportunity before it to recognize this shift and ensure the citizens of this state are protected. It must consider regulating the network provider, regardless of the service. It must ensure that market power is balanced by regulatory

1 restraint and realize that in this new marketplace providers can use advantages
2 in one area to create unfair competitive advantage in other areas.
3
4 **Q. CAN YOU SUMMARIZE THE ACTIONS THAT YOU ARE ASKING THIS**
5 **COMMISSION TO TAKE?**
6 **A.** Yes. The Rural LECs are asking the Commission to do just what TWCIS
7 requests in its application - create a level playing field – yet recognizing the
8 entire competitive market place. The Rural LECs urge the Commission to
9 consider the various competitive advantages TWCIS and its parent, Time
10 Warner Cable, bring to the total Rural LEC market and not allow a provider like
11 TWCIS to unfairly leverage advantages they have, especially in the regulated
12 voice market. The Rural LECs believe that the best way for the Commission to
13 do this is to grant TWCIS' application, conditioned on the following:
14 1) TWCIS shall continue using an unaffiliated non-VoIP third party CLEC
15 such as Sprint for interconnection with the incumbent Rural LEC to
16 comply with the FCC's Time Warner Declaratory Ruling Order and in the
17 event that the FCC should one day rule that VoIP is a deregulated
18 service.
19 2) TWCIS shall abide by all of the conditions and rules governing
20 telecommunications carriers in South Carolina, including but not limited
21 to the filing of financial and maintenance-related reports and compliance
22 with all quality of service standards applicable to the Rural LECS.

1 3) TWCIS shall contribute to the state universal service fund based on total
2 voice revenues consistent with the way all other providers currently fund
3 the system. When voice services are bundled with other services
4 TWCIS shall pro-rate revenues subject to state universal service fund
5 assessments in the same manner as the Rural LECs.
6 4) TWCIS shall comply with the phantom traffic and number resource
7 provisions outlined herein.
8 5) TWCIS will not request direct interconnection with the Rural LECs.
9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**
10 **A.** Yes it does.

BEFORE

THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2008-325-C

IN RE: Application of Time Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Farmers Telephone Cooperative, Inc., and for Alternative Regulation	)	**CERTIFICATE OF SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the Testimony of Douglas Duncan Meredith and one (1) copy of the Testimony of H. Keith Oliver both on behalf of Farmers Telephone Cooperative, Inc. upon the following counsel of record by causing said copies to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as follows

Frank Ellerbe, III, Esquire
Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P. C.
Post Office Box 944
Columbia, South Carolina 29202

Jeffrey M. Nelson, Esquire
Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

C. Bradley Hutto, Esquire
Williams & Williams
Post Office Box 1084
Orangeburg, South Carolina 29115

Rebecca W. Martin

Rebecca W. Martin
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 753-3319

December 8, 2008

Columbia, South Carolina