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October 28, 2008

VIA ELECTRONIC FILING

Mr. Charles Terreni, Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

Re: Time Warner Cable Information Services' Application to Amend its Certificate of Public Convenience & Necessity to Provide Telephone Services in the Service Area of PBT Telecom, Inc.
Docket No. 2008-328-C

Dear Mr. Terreni:

Enclosed for filing please find Time Warner Cable Information Services' ("TWCIS") Reply to the Return of PBT Telecom, Inc. to TWCIS Motion to Compel or, in the alternative, Motion *in Limine*. By copy of this letter we are serving the same on the parties of record. If you have any questions, please have someone on your staff contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy

Bonnie D. Shealy

BDS/tch
Enclosures
cc/enc: Randall Dong, Hearing Examiner (via email & U.S. Mail)
Nanette S. Edwards, Esquire (via email & U.S. Mail)
Jeffrey M. Nelson, Esquire (via email & U.S. Mail)
M. John Bowen, Jr. (via email & U.S. Mail)
Margaret M. Fox (via email & U.S. Mail)
Sue-Ann G. Shannon, Esquire (via email & U.S. Mail)
C. Bradley Hutto, Esquire (via email)
Julie P. Laine, Group Vice President Regulatory (via email)
Charlene Keys, Vice President & General Manager (via email)

MERITAS® LAW FIRMS WORLDWIDE

STATE 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 PBT Telecom, Inc. and for Alternative Regulation

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2008-328-C

(Please type or print)

Submitted by: Bonnie D. Shealy

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

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 Certificatio
☐ Electric/Telecommunications	☐ Answer	☐ Motion	☐ Request for Investigatior
☐ 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	

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2008-328-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 PBT Telecom, Inc., and for Alternative Regulation	)

TIME WARNER CABLE'S REPLY TO THE RETURN OF PBT TELECOM, INC. TO TIME WARNER CABLE'S MOTION TO COMPEL OR, IN THE ALTERNATIVE, MOTION *IN LIMINE*

Pursuant to 26 S.C. Code Ann. Regs. 103-829 and other applicable rules of the South Carolina Public Service Commission, Time Warner Cable Information Services (South Carolina) LLC, d/b/a Time Warner Cable ("TWCIS") files this Reply to PBT Telecom, Inc.'s ("PBT") Return to Time Warner Cable's Motion to Compel or in the Alternative, Motion *In Limine.* TWCIS seeks in its motion to compel to require PBT to provide certain information sought in discovery which PBT has refused to provide. Rule 103-833 of this Commission's Rules of Practice and Procedure allow TWCIS to obtain through interrogatories and requests to produce "[a]ny material relevant to the subject matter involved in the pending proceeding..." The information requested by TWCIS is relevant and PBT should be required to produce it.

I. The Information Sought By Time Warner Cable Is Relevant.

In this proceeding TWCIS seeks to extend its existing authority to operate as a telephone utility into areas of South Carolina where PBT is the incumbent local exchange carrier. The application is governed by S.C. Code Section 58-9-280(B). One of the items which the Commission can review under Section 58-9-280 is whether "provision of the service will not

adversely impact the availability of affordable local exchange service." Because of this provision, the effect of TWCIS' proposed entry upon the incumbent local exchange carrier, PBT Telephone, and, therefore, PBT's financial strength is entirely relevant to this proceeding. Accordingly, TWCIS is entitled to the discovery it seeks.

Section 58-9-280 has applied to every CLEC application filed and granted in South Carolina. It also applied to the previous applications TWCIS filed by which it obtained the authority under which it currently operates in South Carolina. In none of these previous proceedings has an issue been raised about whether the service proposed to be offered by the applicant will cause sufficient economic harm to the incumbent that the affordability of local exchange service will be affected. For this reason TWCIS approached PBT with a request that PBT clarify whether it would raise that issue in this proceeding. If PBT would agree that it was not going to raise the issue, then the scope of discovery could be narrowed. However, PBT has refused to respond to this request and state its position and instead has explicitly reserved the right to raise the issue of whether TWCIS's entry into their service territory will adversely impact the availability of local exchange service. Accordingly, unless and until PBT confirms that it will raise as an issue and argue that TWCIS' entry into its territory will adversely affect PBT and, as a result, the affordability of local service, PBT must be required to produce the financial information requested in the TWCIS discovery requests.

II. The Annual Reports Produced By PBT Are Insufficient.

PBT argues in its Return that the TWCIS motion should be denied because PBT produced copies of its publicly available Annual Reports filed with ORS and this Commission. In the first place that argument ignores the scope of discovery – TWCIS is entitled to receive information and documents relevant to the issues in the proceeding, not information which PBT

is willing to give. In addition, the Annual Reports are not a sufficient source of information about the finances of PBT and the other incumbent local exchange carriers.

TWCIS has begun to review the Annual Reports of PBT and the other five companies with which PBT is coordinating its efforts. That review raises questions about the information shown in the Annual Reports and demonstrates why TWCIS needs more detailed and specific financial information.

- It appears that some of the six ILECs classify revenues differently from others. For example, for 2007 Comporium company PBT Telecom, Inc. reported "Total Revenues" of $18,754,047 and reported no "Non-Operating Income", while Comporium company Rock Hill Telephone Company reported "Total Revenues" of $39,696,228 with an additional $27,888,178 in "Non-Operating Income".
- None of the Annual Reports of the six ILECs separately report revenues they receive from the federal or state universal service funds. While the six ILECs have produced that information in response to discovery requests, Time Warner Cable needs to know where and how those USF revenues are reflected in the Annual Reports.
- Farmers Telephone Cooperative reports $103,695,603 in year–end retained earnings on Schedule 3 to its 2007 Annual Report. That Schedule also shows that Farmers started 2007 with $125,668,581 in retained earnings. Changes during the year include: a "Miscellaneous" debit of $48,304,342; a "Miscellaneous" credit of $23,607,849; an "Other" credit of $27,209,815; and an "Other" credit of $76,485,788. Enormous sums of money are moving around on the Farmers balance sheet with absolutely no explanation in its Annual Reports.

These examples are given not to assert that the companies are failing to properly report their finances, but rather to show that the Annual Reports are insufficient sources of information

for TWCIS to use to respond to PBT's expected arguments regarding the effects of TWCIS' proposed entry into its territory. Accordingly, PBT's argument that the Annual Reports are sufficient should be rejected and it should be ordered to produce the financial information requested by TWCIS.

Dated this 28th day of October, 2008.

ROBINSON, MCFADDEN & MOORE, P.C.

By _____

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

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-328-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 PBT Telecom, Inc. and for Alternative Regulation**	)))))))))	**CERTIFICATE OF SERVICE**

This is to certify that I, Leslie Allen, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below **Time Warner Cable's Reply to the Return of PBT Telecom, Inc. to Time Warner Cable's Motion to Compel or, in the alternative, Motion *in Limine*** in the foregoing matter by causing a copy of same to be placed in the U.S. Mail in an envelope addressed as follows:

Nanette S. Edwards, Esquire
Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
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Columbia, SC 29211

M. John Bowen, Jr. Esquire
Margaret M. Fox, Esquire
McNair Law Firm, PA
P.O. Box 11390
Columbia, South Carolina 29211

Dated at Columbia, South Carolina this 28th day of October, 2008.

Leslie Allen

Leslie Allen