STATE OF SOUTH CAROLINA

(Caption of Case)
App. of Time Warner Cable Information Services (SC), LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Tel. Svcs. in the Svc. Area of Rock Hill Telephone Co., d/b/a Comporium Comm. and For Alt. Regulation

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2008 - 329 - C

(Please type or print)

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

SC Bar Number: 65418
Telephone: 803-799-9800
Fax: 803-753-3278
Other:
Email: pfox@mcnair.net

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 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
ATTORNEYS

Margaret M. Fox

pfox@mcnair.net
T (803) 799-9800
F (803) 753-3219

March 23, 2009

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.; Fort Mill Telephone Company, d/b/a Comporium Communications; Home Telephone Company, Inc.; PBT Telecom, Inc.; and Rock Hill Telephone Company, d/b/a Comporium Communications; and for Alternative Regulation
Docket Nos. 2008-325-C; 2008-326-C; 2008-327-C; 2008-328-C; and 2008-329-C.

Dear Mr. Terreni:

Enclosed for filing please find a Proposed Order (On Behalf of the RLECs) in the above- referenced docket. By copy of this letter and certificate of service, a copy of this Proposed Order is being served on all parties of record.

Thank you for your assistance.

Sincerely,

Margaret M. Fox

Margaret M. Fox

McNair Law Firm, P. A.
The Tower at 1301 Gervais
1301 Gervais Street
11th Floor
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

MMF:rwm
Enclosures

cc: All Parties

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

Docket Nos. 2008-325-C, 2008-326-C, 2008-327-C,
2008-328-C, and 2008-329-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 (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 Fort Mill Telephone Company, d/b/a Comporium Communications, and for Alternative Regulation (Docket No. 2008-326-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 Home Telephone Company, Inc., and for Alternative Regulation (Docket No. 2008-327-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 (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 Rock Hill Telephone Company, d/b/a Comporium Communications, and for Alternative Regulation (Docket No. 2008-329-C)	)

PROPOSED ORDER (ON BEHALF OF RLECs)

I. PROCEDURAL BACKGROUND

This matter comes before the South Carolina Public Service Commission ("Commission") upon five separate applications of Time Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable ("TWCIS") to amend the Certificate of Public Convenience and Necessity issued to TWCIS by the Commission in Order No. 2004-213 in Docket No. 2003-362-C. By its applications filed in the five dockets referenced above, TWCIS seeks to provide certain facilities-based intrastate telecommunications and voice services, as further described in the application and in TWCIS' current South Carolina Tariff No. 1 on file with the Commission and attached as Exhibit 7 to the respective applications, in the service areas of the following incumbent local exchange carriers: Farmers Telephone Cooperative, Inc. ("Farmers") (Docket No. 2008-325-C); Fort Mill Telephone Company, d/b/a Comporium

Communications ("Ft. Mill") (Docket No. 2008-326-C); Home Telephone Company, Inc. ("Home") (Docket No. 2008-327-C); PBT Telecom, Inc. ("PBT") (Docket No. 2008-328-C); and Rock Hill Telephone Company, d/b/a Comporium Communications ("Rock Hill") (Docket No. 2008-329-C) (collectively, the rural incumbent local exchange carriers or "RLECs"). Each of the RLECs is a rural telephone company, as defined in 47 U.S.C. § 153(37), and each has a rural telephone company exemption pursuant to 47 U.S.C. § 251(f)(1).

The matters were consolidated for hearing purposes by directive of the Hearing Officer dated December 11, 2008.

A public hearing was held in this matter on January 6-7, 2009. TWCIS was represented by Frank R. Ellerbe, III, Bonnie D. Shealy, and C. Bradley Hutto. TWCIS presented the direct testimony of Charlene Keys, Vice President and General Manager of Time Warner Cable's Columbia and Hilton Head markets; Frank Knapp, President and Chief Executive Officer of the South Carolina Small Business Chamber of Commerce; and Warren R. Fischer, C.P.A., Chief Financial Officer for QSI Consulting, Inc. TWCIS also presented the direct and rebuttal testimony of August H. Ankum, Ph.D., Senior Vice President of QSI Consulting, Inc.; and Julie P. Laine, Group Vice President, Regulatory, for Time Warner Cable. Ms. Laine's testimony was presented via videoconference, pursuant to the directive of the Hearing Officer dated December 19, 2008.

The RLECs were represented by M. John Bowen, Jr., Margaret M. Fox, and Thomas J. Navin. Mr. Navin was admitted *pro hac vice*. They presented the direct and surrebuttal testimony of Douglas Duncan Meredith and of H. Keith Oliver.

The Office of Regulatory Staff ("ORS") was represented by Nanette S. Edwards and Jeffrey M. Nelson. They presented the direct testimony of Christopher J. Rozycki.

II. HISTORY OF PRIOR PROCEEDINGS

TWCIS has previously requested certification in the RLEC service areas, and it is helpful to summarize the prior proceedings in order to provide a context for the applications at issue here.

In 2003, TWCIS sought a Certificate of Public Convenience and Necessity to provide facilities-based Voice-over Internet Protocol ("VoIP") services throughout the State of South Carolina. The South Carolina Telephone Coalition ("SCTC"), an organization of rural local exchange telephone companies, intervened in the proceeding and pre-filed testimony raising a number of concerns. TWCIS and SCTC later entered into a stipulation on the record of the proceeding 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 those areas served by Farmers, Fort Mill, Home, PBT, and St. Stephen Telephone Company ("St. Stephen"). 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 [RLECs'] service areas...." Later, without amending its Application, TWCIS, through its pre-filed testimony of Ms. Julie Patterson (now Ms. Julie Laine), 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 will obtain interconnection services from incumbent LECs and eventually offer wholesale services to the newly created non-regulated entity.

(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, this Commission issued an Order denying TWCIS' request for certification due to "failure of proof" with respect to TWCIS' original Application. We 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 we stated in our 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. See Time Warner Cable Information Services (South Carolina), LLC v. Public Service Comm'n of South Carolina, 377 S.C. 368, 660 S.E.2d 497 (2008). As this Commission found, and as affirmed by 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.

TWCIS filed new applications to serve the same RLEC areas and, additionally, Rock Hill Telephone Company, on August 22, 2008. Docket Nos. 2008-325-C through 2008-330-C were opened to address the six applications. On November 18, 2008, TWCIS withdrew its request as to St. Stephen Telephone Company in Docket No. 2008-330-C.

In the applications at issue here, TWCIS requests authority to provide Voice Over Internet Protocol ("VoIP") telephone services to residential and business customers using its own privately managed IP network and the public switched telephone network (i.e., what is generally known as interconnected VoIP service),[1] as well as intrastate non-voice transmission services consisting of high-capacity, point-to-point, point-to-multipoint and multipoint-to-multipoint dedicated connections between one or more customer locations and/or TWCIS. See TWCIS Applications at ¶ 9; see also Tr. at 649-650.

III. DISCUSSION

1. Commission Authority

Despite the fact that there have been prior proceedings involving certification requests by TWCIS, this case marks the first time we have been asked to make a determination as to whether a certificate should be granted to TWCIS, or any other carrier, to provide interconnected VoIP service to end users in the RLEC areas of South Carolina. As discussed above, TWCIS first stipulated that its certificate would not cover RLEC areas, then took the position that the Commission did not have the authority to regulate TWCIS' end user interconnected VoIP service. TWCIS apparently is now taking the position that this service is a Commission-regulated service in South Carolina, and that TWCIS needs a certificate from the Commission in order to provide interconnected VoIP service to end user customers in South Carolina. Tr. at 679-680.

Given TWCIS' past and current positions on the regulation of its interconnected VoIP service, there has been some confusion over TWCIS' suggestions that it is here before the Commission on a "voluntary" basis. See, e.g., Hearing Exhibit No. 16 (TWCIS' response to RLEC Interrogatory No. 1-5(ii), wherein TWCIS states in part that it "voluntarily submits to the

[1] *See* 47 C.F.R. § 9.3; *see also* Tr. at 731-732.

regulatory jurisdiction of the Public Service Commission of South Carolina.") Ms. Laine clarified at the hearing, however, that TWCIS believes it is required to obtain a certificate from the Commission in order to provide interconnected VoIP service, and that TWCIS is before the Commission "voluntarily" only in the sense that all applicants are voluntary applicants. See Tr. at 679-682.

This Commission clearly has the authority to regulate interconnected VoIP service.[2] Furthermore, this authority is not preempted by federal law. In the Vonage Order,[3] the Federal Communications Commission ("FCC") reviewed the Minnesota Public Utilities Commission's ("MPUC") decision to apply state regulation to the VoIP services of Vonage. The FCC found that, for Vonage's DigitalVoice service,

> it is not relevant where that broadband connection is located or even whether it is the same broadband connection every time the subscriber accesses the service. Rather, Vonage's service is fully portable; customers may use the service anywhere in the world where they can find a broadband connection to the Internet.[4]

The Vonage Order is not a blanket preemption order. Using conflict preemption analysis, it specifically preempts the MPUC's application of traditional telephone company regulation to Vonage's DigitalVoice service to the extent such regulation conflicts with federal regulation. See Vonage Order at ¶ 1. The FCC went on to state that it would likely preempt other services that "share similar basic characteristics" with the Vonage DigitalVoice service. Id. The single most important characteristic of Vonage's service – in fact, the only characteristic that was

---

[2] *See* S.C. Code Ann. § 58-9-10(6) (definition of "telephone utility" includes "persons and corporations, their lessees, assignees, trustees, receivers or other successors in interest owning or operating in this State equipment or facilities for the transmission of intelligence by telephone for hire, including all things incident thereto and related to the operation of telephones"); *see also* Title 58, Chapter 9 generally regarding Commission's regulation of services offered by telephone utilities.

[3] *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, *Memorandum Opinion and Order*, FCC 04-267 (rel. November 12, 2004) ("*Vonage Order*").

[4] *Vonage Order* at ¶ 5.

mentioned in the first paragraph of the FCC's order – is the inability to separate DigitalVoice into interstate and intrastate communications, thereby making it impossible for the MPUC to apply its state requirements without negating valid federal policies and rules. Id. In contrast, TWCIS has testified in past proceedings that the interconnected VoIP service it offers in South Carolina pursuant to its Tariff No. 1 on file with the Commission is separable and, in fact, that TWCIS can and does separate it into interstate and intrastate components. See, e.g., Transcript of proceedings in Docket No. 2004-280-C at 89-90; 123. As the FCC has subsequently made clear, interconnected VoIP is not subject to preemption, but is subject to state regulation, if the interconnected VoIP provider has the ability to track the jurisdictional confines of customer calls.[5]

In any event, TWCIS stated on the record of this proceeding that it is not taking the position that the Commission's authority is preempted by the Vonage Order, and that it believes the Commission's authority in this matter is not limited in any way. Tr. at 679-682.

For all of the reasons stated above, this Commission has the authority to consider the applications at issue here pursuant to the statutory provisions of S.C. Code Ann. § 58-9-280(B).

Furthermore, the Commission has the authority to place conditions on TWCIS' certificate. The authority to regulate a service, and to grant or deny certification to a carrier proposing to provide that service, carries with it the authority to place conditions on the granting of the certificate in order to ensure that the public interest is not harmed. The Supreme Court of South Carolina has repeatedly stated that "a regulatory body possesses not only the powers expressly conferred on it but also those which must be inferred or implied to effectively carry out

[5] *See Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171,90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, para. 56 (2006), *aff'd in part, vacated in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007).

the duties for which it is charged." City of Rock Hill v. S.C. Dep't of Health and Envtl. Control, 302 S.C. 161, 165, 394 S.E.2d 327, 330 (1990); see also City of Columbia v. Bd. of Health and Envtl. Control, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987); Carolina Water Svc., Inc. v. S.C. Public Service Comm'n, 272 S.C. 81, 87, 248 S.E.2d 924, 927 (1978). One of the duties with which the Commission is expressly charged in certification matters is to ensure that the public interest is not adversely impacted. See S.C. Code Ann. § 58-9-280(B)(3) and (5). Because the Commission is duty-bound to deny a certificate if the Commission believes the public interest will not be served, the Commission clearly has the discretion to place conditions on the grant of authority in order to ensure protection of the public interest.

In fact, TWCIS' own witness agreed that the Commission has the authority to place conditions on TWCIS' certificate, although TWCIS believes the conditions proposed in this proceeding are not warranted. Tr. at 682, lines 2-9.

2. Statutory Certification Requirements

S.C. Code Ann. § 58-9-280(B) provides that the Commission may grant a certificate to operate as a telephone utility to an applicant proposing to furnish local telephone service in the service territory of an incumbent LEC. In determining whether to grant a certificate, the Commission may require that the:

(1) applicant show that it possesses technical, financial, and managerial resources sufficient to provide the services requested;

(2) service to be provided will meet the service standards that the commission may adopt;

(3) provision of the service will not adversely impact the availability of affordable local exchange service;

(4) applicant, to the extent it may be required to do so by the commission, will participate in the support of universally available telephone service at affordable rates; and

(5) provision of the service does not otherwise adversely impact the public interest.

Ms. Laine testified regarding TWCIS' technical, financial, and managerial ability to provide the services for which certification is sought in each of the RLEC areas. Tr. at 608-609, 618-619, 628-629, 638-639, 648-649. Ms. Laine further testified that TWCIS' service will meet the Commission's service standards. Tr. at 613-614, 623-624, 633-634, 643-644, 654. Ms. Laine testified that TWCIS currently contributes to the state and federal universal service funds based on its interconnected VoIP revenues and revenues derived from the sale of high capacity transmission services in South Carolina. Tr. at 613, 623, 633, 643, 653. Various TWCIS witnesses testified that granting the requested certification will serve the public interest, and that it will not adversely impact the availability of affordable basic local exchange telephone service. See, e.g., Tr. at 197-206, 367-390. ORS' witness also testified that TWCIS meets the statutory requirements for certification. See, e.g., Tr. at 1295-1299.

The RLECs testified that they do not oppose the Commission granting the certificates, provided that the Commission places reasonable conditions on the certificates to ensure that the public interest is protected. See, e.g., Tr. at 728, 1052.

The RLECs testified regarding their concerns with TWCIS' Applications, including TWCIS' limited footprint, the extreme size and market power of TWCIS' parent company, Time Warner Cable, and the unsettled regulatory classification of the service TWCIS proposes to provide. See, e.g., Tr. at 738-739, 1052-1054; see also Time Warner Cable, Inc.'s 2007 SEC Form 10-K, attached to the respective Applications as Exhibit 5, showing over 26 million homes passed by Time Warner Cable facilities nationally, and almost $16 billion in annual revenues.

The RLECs testified to the reasonableness of and need for specific conditions to be placed on TWCIS' certificates to serve the RLEC areas if TWCIS' certification requests are

granted. See, e.g., Tr. at 733-754, 1052-1081. At the hearing, the RLECs raised additional concerns regarding the continued availability of affordable local exchange service in the rural areas. For example, on cross-examination of TWCIS witness Warren Fischer regarding the exhibits to his testimony, RLECs' counsel demonstrated that the return on regulated telephone operations for Farmers, Fort Mill, and Rock Hill on a per books basis declined significantly over the time period from 2003 to 2007. See Tr. at 325-346; Hearing Exhibits 6, 7, 12, and 13. Farmers' rate declined from approximately 8.5% in 2003 to 1.35% in 2007. Tr. at 329-331; Hearing Exhibit No. 13. In addition, Farmers saw a decline in access lines of about 11% over that time period, as well as declining revenues from regulated operations. Tr. at 334-336. Similarly, Fort Mill's return on regulated operations declined from 11.32% to 5.54%, and Rock Hill's from 6.81% to 5.39%. See Tr. at 336-340; Hearing Exhibit No. 13.

The RLECs also testified regarding the distinct disadvantage they would have in responding to competition from a facilities-based provider such as TWCIS. The RLECs are required to provide stand-alone basic local exchange telephone service throughout their entire service areas, and must average rates across the service area. Tr. at 1246, 1259, 1017-1019. TWCIS, on the other hand, can choose where it wants to serve, and currently serves "clusters" or "pockets" of customers in the RLECs' rural service territories, providing service only to the more profitable customers. Tr. at 1246, 1018-1019. In fact, according to Mr. Oliver, Time Warner Cable covers only about 1% of Home's service area, but the population of that portion of Home's service area is much denser than the average population density for Home's service area, containing approximately 7-8% of Home's customer base. Tr. at 1274. Losing those customers to TWCIS would create a revenue impact of approximately $7 per month on Home's remaining subscribers. Id. While we believe competition can be beneficial, we have significant concerns

with the substantial rural population (in Home's example, initially 93% of its subscribers) who may not see any benefit from competition, but stand to see a significant adverse impact. We must weigh the benefits of competition for the few with the burden or cost of competition for the many.

Furthermore, suggestions by TWCIS and ORS witnesses that the RLECs could somehow be kept whole from the competitive loss of customers by simply requesting more State USF demonstrate a complete lack of understanding about how the State USF works. See, e.g., Tr. at p. 385, lines 9-13 (wherein TWCIS witness Dr. Ankum states that State USF revenues are likely to increase when line counts decrease because the State USF is based on embedded cost and is designed as a "make whole" mechanism); Tr. at p. 1297, line 18, through p. 1298, line 5 (wherein ORS witness Mr. Rozycki states that, if revenue losses increase the per line cost on an RLEC's remaining local loops, the RLEC can request additional State USF support). As Mr. Oliver stated, neither the State USF nor the federal USF is a "keep whole" mechanism. See Tr. at 1259-1260. If that were true, the RLECs' return on their regulated investment would not be declining. See Tr. at p. 1260, lines 1-2; see also Tr. at 325-346; Hearing Exhibits 6, 7, 12, and 13. The State USF allows companies to reduce certain rates for services that contain implicit support and to recover that support, on a dollar-for-dollar, revenue-neutral basis, from an explicit funding mechanism. On cross-examination, Mr. Rozycki conceded that "additional consideration from the Legislature" (i.e., legislative changes) may be needed in order for the RLECs to draw more funding from the State USF if needed as a result of competitive harm from TWCIS. See Tr. at 1405-1407.

While the RLECs have well-founded concerns over the adverse impact that granting TWCIS' certification requests could have on their ability to continue providing local exchange

service at affordable rates to rural customers in their areas, they are not opposing certification, provided that specific conditions are placed on TWCIS' certificates in order to protect the public interest with respect to TWCIS' provision of service in the RLEC areas.

Thus, it appears that the main issues for us to decide in this case are (1) whether it is appropriate and in the public interest for us to place conditions on TWCIS' certificate; and (2) if so, what conditions should be placed on the certificate.

3. Proposed Conditions for Certification

The RLECs testified that certain conditions are necessary in order to protect the public interest. First, the RLECs urged the Commission to condition TWCIS' certificate on its continued use of Sprint to provide interconnection with the RLECs. This is consistent with TWCIS' own assurances that it intends to continue to use Sprint to interconnect with the RLECs. See Hearing Exhibit No. 16 (TWCIS' response to RLEC Interrogatories No. 1-9(x), 1-12). It also will ensure compliance with the provisions of the FCC's Time Warner Declaratory Ruling Order.[6]

One of the central issues in this case involves the continuing confusion over the regulatory classification of interconnected VoIP service at the federal level. It is true that the FCC has yet to determine whether interconnected VoIP service is a "telecommunications service" as defined by federal law. This is an important consideration, because the rights and obligations contained in Section 251 of the federal Telecommunications Act apply to telecommunications carriers, defined as entities that provide "telecommunications services." See 47 U.S.C. § 153(44). Thus, if TWCIS is providing a telecommunications service, then TWCIS is

[6] Memorandum Opinion and Order, *In the Matter of 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*, WC Docket No. 06-55, DA 07-709 (rel. March 1, 2007) ("*Time Warner Declaratory Ruling Order*").

a telecommunications carrier and is entitled to interconnection and other rights under Sections 251 and 252 of the federal Act. If TWCIS is not providing a telecommunications service, then TWCIS is not a telecommunications carrier and is not entitled to interconnection and other rights under the federal Act. TWCIS will not say one way or the other whether it believes its interconnected VoIP service is a telecommunications service.[7]

According to the RLECs, this is precisely why TWCIS must continue using an intermediary competitive local exchange carrier ("CLEC") like Sprint – a carrier that clearly is a telecommunications carrier -- for interconnection with the RLECs. See Tr. at 741-746. This requirement takes into account the unique situation we have here – i.e., a provider of interconnected VoIP service that submits to state jurisdiction without acknowledging that it is a telecommunications carrier under the federal Telecommunications Act.

A requirement that TWCIS continue using Sprint for interconnection is also consistent with the Time Warner Declaratory Ruling Order, and would ensure that the provisions of that Order are upheld. In the Time Warner Declaratory Ruling Order, the FCC ruled that competitive local exchange carriers such as Sprint and MCI, that are entitled to interconnection in their own right (i.e., that "do in fact provide telecommunications services to their customers"),[8] may interconnect and exchange traffic with incumbent LECs when providing service on a wholesale basis to other service providers, including VoIP service providers.[9] In so ruling, the FCC emphasized, as noted above, that the intermediary carrier must be a telecommunications carrier

[7] In response to interrogatories regarding whether TWCIS' services will be used in the provision or support of local exchange service, TWCIS responded that the determination of whether interconnected VoIP services are "telecommunications services" or "information services" has not been made; and that TWCIS was voluntarily submitting to the jurisdiction of the Commission and committed "to accept regulatory treatment as a telephone utility within the State of South Carolina." *See* Hearing Exhibit No. 16 (TWCIS' response to RLEC Interrogatory No. 1-5(ii)).

[8] *Time Warner Declaratory Ruling Order* at ¶¶ 14, 16.

[9] *See Time Warner Declaratory Ruling* at ¶ 1.

entitled to interconnection in its own right.[10] Furthermore, the FCC expressly refused to take a position on whether or not any particular retail service provider was entitled to provide service to end users through such a wholesale arrangement.[11] The FCC also placed two explicit conditions on the wholesale carrier in such a situation. First, the FCC required that, where a LEC wins back a customer from a VoIP provider, the customer's number must be ported back to the LEC that wins the customer at the customer's request.[12] Second, the intermediary carrier must assume responsibility for compensating the incumbent LEC for the termination of traffic under the arrangement.[13]

The FCC was very careful to craft an order that allowed for the exchange of VoIP traffic while ensuring that the entity obtaining interconnection was entitled to do so in its own right, and that the rights of the interconnecting incumbent LECs and end user customers would be protected. If TWCIS is permitted to seek direct interconnection or interconnection through an affiliated entity without abiding by the arrangement that was specifically sanctioned by the FCC, the requirements the FCC placed on such an arrangement, which are intended to ensure the public interest, will be lost.

It is also worth noting that TWCIS represented that "it does not intend to provide wholesale interconnection services in the RLECs' service areas in connection with the provision of [its interconnected VoIP service]," and that "Sprint will provide the physical interconnection to the public switched telephone network necessary for TWCIS to offer its retail VoIP services to the public." See Hearing Exhibit No. 16 (TWCIS' response to RLEC Interrogatories No. 1-9(x), 1-12). However, TWCIS later stated it should not be limited to using Sprint, and

[10] *Time Warner Declaratory Ruling Order* at ¶¶ 14, 16.
[11] *Time Warner Declaratory Ruling Order* at ¶ 15.
[12] *Time Warner Declaratory Ruling Order* at ¶ 16.
[13] *Time Warner Declaratory Ruling Order* at ¶ 17.

"this is not an issue that should be of any concern to the RLECs." Tr. at 660-661. To the contrary, for the reasons cited above, the issue of which carrier interconnects with the RLECs is a matter of utmost concern to them. The RLECs contend that TWCIS should be held to its own statements, and should not be permitted to obtain certification under one scenario with the intention of changing the arrangement once it receives a certificate. See, e.g., Tr. at 741-743.

Many of the other conditions urged by the RLECs relate to the same concern regarding the interconnecting carrier, and their concerns in this regard will be alleviated if the Commission conditions TWCIS' certificates on the continued use of Sprint for interconnection services. Specifically, the RLECs have asked the Commission to place the following conditions on TWCIS' certificate:

(1) Ensure proper identification of and compensation for interconnected VoIP traffic exchanged. See Tr. at 734-736, 1076. With Sprint as the intermediary carrier, Sprint would be obligated by the Time Warner Declaratory Ruling Order to properly identify and compensate the RLECs for third party traffic it delivers to the RLEC.[14]

(2) Require the interconnecting carrier to establish a Point of Interconnection on the RLEC's network or, alternatively, pay the cost of transporting traffic outside of the RLEC's service area. See Tr. at 741, 1076. The Interconnection Agreements between Sprint and the RLECs require Sprint to establish a Point of Interconnection on the RLEC's network. See, e.g., Hearing Exhibit No. 17 (Interconnection Agreement between Farmers

[14] *Time Warner Declaratory Ruling Order* at ¶ 17.

Telephone Cooperative, Inc. and Sprint Communications Company, L.P.), Interconnection Attachment § 2.1.[15]

(3) Address the phantom (i.e., unidentified) traffic issue. See Tr. at 1076. Again, with Sprint as the intermediary carrier, Sprint would be obligated by the Time Warner Declaratory Ruling Order to properly identify and compensate the RLEC for third party traffic it delivers to the RLEC, which would reduce concerns with phantom traffic.

(4) Not allow the direct assignment of numbers to TWCIS. See Tr. at 740, 1076. If TWCIS uses Sprint for interconnection, Sprint would be the carrier that is obtaining numbers from the North American Numbering Plan Administration ("NANPA"), and there would be no reason for TWCIS to obtain its own numbers.

(5) Prohibit the assignment of telephone numbers to customers located outside of the associated rate center. See Tr. at 1076-1077. This is prohibited in the current Interconnection Agreements between the RLECs and Sprint. See, e.g., Hearing Exhibit No. 17 (Interconnection Agreement between Farmers Telephone Cooperative, Inc. and Sprint Communications Company, L.P.), Interconnection Attachment § 4.2 ("Both Parties agree to only assign telephone numbers from an NPA-NXX Code(s) to an End User Customer at an End User Customer Location located inside the Rate Center with which the

[15] Farmers, Fort Mill, Home, and PBT have entered into Interconnection Agreements with Sprint. Sprint has not requested interconnection with Rock Hill.

NPA-NXX Code(s) is associated, except in cases where either Party offers a Foreign Exchange Service.")[16]

In addition to the conditions stated above, the RLECs propose several other conditions. The RLECs have asked the Commission to impose the following requirements on TWCIS:

(1) Comply with service quality standards applicable to RLECs;

(2) Comply with reporting requirements applicable to RLECs; and

(3) Fund State USF based on the full voice portion of the service offering.

According to the RLECs, these conditions will ensure a level playing field between TWCIS and the RLECs. See Tr. at 1080.

The RLECs have also asked that TWCIS be held to its representations that the services for which it requests certification are the only services it will offer. Tr. at 733-734, 739-740; see Hearing Exhibit No. 16 (TWCIS' response to RLEC Interrogatory No. 1-5(iv), in which TWCIS stated it "will not offer or support any voice or data services other than those described above.") (Emphasis added.) The RLECs' concern with this issue, as with the issue of what carrier will actually interconnect with the RLECs, is that TWCIS has set forth a certain set of facts in order to gain certification, but admits that those facts may change once certification is obtained. See Tr. at 969. The RLECs' concern is not with different varieties of interconnected VoIP or high capacity transmission services, but with TWCIS offering a whole different class of service from that for which it obtains certification. Tr. at 1023. The nature of the services proposed to be offered by TWCIS and Time Warner Cable's extreme size, along with the concern that TWCIS will offer services only in limited areas, make TWCIS a different type of carrier than any that have appeared before the Commission in the past for certification in RLEC areas. The Commission should proceed cautiously and err on the side of protecting the public interest.

[16] *Ibid.*

4. Transmission Services

Finally, the question has been raised regarding whether TWCIS' proposed high capacity transmission services constitute telecommunications services. While TWCIS' certificates will include the authority to provide such wholesale services, we take no position at this time regarding whether they constitute telecommunications services. As testified to by the RLECs, and as evidenced by TWCIS' Tariff No. 1 on file with the Commission and attached as an exhibit to the respective Applications filed in these proceedings, TWCIS' point-to-point transmission services appear to be private, individualized service offerings as opposed to being offered on a common carrier basis, and thus, do not appear to qualify as telecommunications services. See TWCIS Tariff No. 1 (attached as Exhibit 7 to respective applications) at Section 3.4 (describing the High Capacity Transmission Services and stating that they "will be designed and provisioned on an Individual Case Basis (ICB) pursuant to contracts with Customers."); see also Tr. at 751-753; National Association of Regulatory Utility Commissioners v. FCC, as amended, 525 F.2d 630 (1976).

IV. FINDINGS AND CONCLUSIONS

1. The Commission has the authority, pursuant to S.C. Code Ann. § 58-9-280(B), to make a determination regarding whether TWCIS' applications for certificates of public convenience and necessity to provide interconnected VoIP and other services in the RLEC areas of South Carolina should be granted or denied.

2. The Commission's authority with respect to TWCIS' interconnected VoIP service is not preempted by the Vonage Order. TWCIS' interconnected VoIP service does not have the same basic characteristics as the service that was preempted by the FCC in the Vonage Order. TWCIS' own witness testified that TWCIS is not taking the position that the Vonage Order

preempts the Commission from requiring certification of interconnected VoIP providers in South Carolina. Tr. at p. 679, line 19, through p. 680, line 1.

3. The Commission also has the authority to place conditions on the grant of a certificate, for the reasons stated herein. TWCIS' own witness testified that the Commission's authority with regard to TWCIS certification request was "absolutely not" limited in any way. Tr. at p. 681, line 18, through p. 682, line 1. According to TWCIS' witness, this includes the authority to place conditions on the certificate. Tr. at 682, lines 2-9.

4. In determining whether certification to provide local voice services should be granted, the Commission should consider a number of factors. In addition to making findings regarding the sufficiency of the applicant's technical, financial and managerial resources, the Commission may require, among other things, a showing that the service to be provided will not adversely impact the availability of affordable local exchange service and that provision of the service will not otherwise adversely impact the public interest. See S.C. Code Ann. § 58-9-280(B).

5. TWCIS has demonstrated that it has sufficient technical, financial, and managerial resources to provide the services for which it seeks certification. See Tr. at 608-609, 618-619, 628-629, 638-639, 648-649.

6. TWCIS has committed to meeting all applicable service standards established by the Commission. See Tr. at 613-614, 623-624, 633-634, 643-644, 654.

7. TWCIS currently contributes to the state and federal universal service funds based on its interconnected VoIP revenues and revenues derived from the sale of high capacity transmission services in South Carolina. See Tr. at 613, 623, 633, 643, 653. We hereby direct

TWCIS to contribute to the state universal service fund as required by the Commission for services provided in the RLEC areas.

8. We find that significant concerns have been raised regarding the potential adverse impact of TWCIS' certification on the availability of affordable local exchange service in the RLEC areas, and on the public interest in general. See, e.g., Tr. at 325-346, 733-754, 1017-1019, 1052-1081, 1246, 1259, 1274; Hearing Exhibits 6, 7, 12, and 13. While these concerns may not rise to such a level that would compel us to deny certification, we find it appropriate to condition the grant of TWCIS' certificates to ensure the protection of the public interest. As RLEC witness Mr. Oliver stated, this Commission's responsibility is to ensure that rural telephone service providers remain in a position to offer affordable service throughout their service areas, not to help other carriers compete for video customers by being able to bundle video and voice service. See Tr. at 1247-1248.

9. We find the conditions proposed by the RLECs to be reasonable and warranted in this case, and we hereby adopt those conditions as detailed herein. These conditions will ensure that TWCIS' certificates are limited to those services for which certification was requested, and that TWCIS will operate through a certificated CLEC that is a telecommunications carrier entitled to interconnection. The conditions will ensure that the public interest is protected, that the provisions of the Time Warner Declaratory Ruling Order are upheld, and that TWCIS and the RLECs are operating on a level playing field.

10. The adoption of the reasonable conditions proposed by the RLECs will allow us to proceed cautiously, allowing TWCIS to provide interconnected VoIP service in the RLEC areas while maintaining some oversight on the process to ensure that the public interest is not harmed.

11. We make no finding at this time as to whether TWCIS' proposed high capacity transmission services are being offered on a common carriage basis or whether they constitute telecommunications services.

12. TWCIS requests certain waivers of the Commission's regulatory requirements, as previously granted to TWCIS for its non-rural service area in Commission Order No. 2004-213. Specifically, TWCIS requests a waiver of the requirements of 26 S.C. Code Ann. Regs. § 103-610, § 103-631, and the requirement to maintain its financial records in conformance with the Uniform System of Accounts. See Applications at para. 12. For the reasons stated in Order No. 2004-213, we find a waiver of these requirements to be reasonable and in the public interest, and we hereby grant the waiver request.

13. TWCIS requests that it be permitted to operate under the same alternative regulatory plan that was approved for TWCIS in Commission Docket No. 2003-362-C. We find this request to be reasonable and in the public interest, and we hereby grant the request for alternative regulation as previously detailed in Commission Order Nos. 2004-213 and 2004-495 in Docket No. 2003-362-C.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. TWCIS' request for certification as a telecommunications service provider in the rural service areas of Farmers Telephone Cooperative, Inc.; Fort Mill Telephone Company, d/b/a Comporium Communications, Inc.; Home Telephone Company, Inc.; PBT Telecom, Inc.; and Rock Hill Telephone Company is hereby granted, with the following conditions:

(a) TWCIS must continue to use Sprint to interconnect with the RLECs, until such time as the Commission approves a different interconnecting carrier;

(b) TWCIS must ensure that any interconnected VoIP traffic exchanged with the RLECs is properly identified and that the RLECs are properly compensated;

(c) TWCIS must ensure that Sprint (or other approved interconnecting carrier) establishes a Point of Interconnection on each RLEC's network or, alternatively, pays the cost of transporting traffic outside of the RLEC's service area;

(d) TWCIS must not obtain numbers directly from NANPA, but will obtain numbers from Sprint (or other approved carrier) for the provision of services to customers in RLEC areas;

(e) TWCIS must ensure that Sprint (or other approved carrier) will not assign telephone numbers to customers located outside of the associated rate center;

(f) TWCIS will comply with the same service quality standards applicable to RLECs;

(g) TWCIS will comply with the same reporting requirements applicable to RLECs;

(h) TWCIS will fund State USF based on the full voice portion of its service offerings;

(i) TWCIS' certificates are limited at this time to those services for which it requested certification in its respective applications.

2. TWCIS' requests for waiver of the requirements of 26 S.C. Code Ann. Regs. §§ 103-610 and 103-631, as well as the requirement to maintain its financial records in conformance with the Uniform System of Accounts, as previously granted to TWCIS for its non-rural service area in Commission Order No. 2004-213, are reasonable and in the public interest, and we hereby grant the requests for waiver of these requirements.

3. TWCIS' services will be regulated according to the alternative regulatory plan previously approved for TWCIS in Commission Docket No. 2003-362-C.

4. With respect to the provision of service in the RLEC areas, TWCIS shall comply with all other general conditions and requirements imposed on TWCIS in Commission Order No. 2004-213, including but not limited to requirements regarding rate design under alternative regulation; filing of tariffs; payment of access charges; origination and termination of calls within the same LATA; filing of annual reports, gross receipts, and State USF worksheets; filing of authorized utility representative forms; compliance with all Rules and Regulations of the Commission unless a regulation is specifically waived by the Commission; and compliance with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of 911 service.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

_____
Elizabeth B. Fleming, Chairman

ATTEST:

_____
John E. Howard, Vice Chairman

(SEAL)

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

Docket Nos. 2008-325-C, 2008-326-C, 2008-327-C,
2008-328-C, and 2008-329-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 (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 Fort Mill Telephone Company, d/b/a Comporium Communications, and for Alternative Regulation (Docket No. 2008-326-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 Home Telephone Company, Inc., and for Alternative Regulation (Docket No. 2008-327-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 (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 Rock Hill Telephone Company, d/b/a Comporium Communications, and for Alternative Regulation (Docket No. 2008-329-C)	)

CERTIFICATE OF SERVICE

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of a Proposed Order (On Behalf of RLECs) in the above-referenced matter upon the following counsels 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

March 23,2009

Columbia, South Carolina