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May 6, 2005

VIA HAND DELIVERY

Mr. Charles L. A. Terreni
Chief Clerk/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 Interexchange and Local Voice Services in Service Areas of Certain Incumbent Carriers Who Currently Have a Rural Exemption
Docket No. 2004-280-C

Dear Mr. Terreni:

Enclosed for filing on behalf of Farmers Telephone Cooperative, Inc., Fort Mill Telephone Company, d/b/a Comporium Communications, Inc., Home Telephone Company, PBT Telecom, Inc., St. Stephen Telephone Company, and the South Carolina Telephone Coalition, please find an original and ten (10) copies of a Proposed Order in the above-captioned matter. By copy of this letter and Certificate of Service, all parties of record are being served with a copy of this testimony via hand delivery.

Please clock in a copy and return it with our courier.

Thank you for your assistance.

Very truly yours,

Margaret M. Fox

Margaret M. Fox

MMF/rwm
Enclosures

cc: Parties of Record

173907
ACCEPTED
Legal 5-11-05

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2004-280-C

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 Interexchange and Local Voice Services in Service Areas of Certain Incumbent Carriers Who Currently Have a Rural Exemption	)	**PROPOSED ORDER** (on behalf of RLECs)

2005 MAY -9 AM 11:35

I. PROCEDURAL BACKGROUND

This matter comes before the South Carolina Public Service Commission ("Commission") upon the application 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 application, TWCIS seeks to provide interexchange and local voice services in the service areas of the following incumbent local exchange carriers: Farmers Telephone Cooperative, Inc. ("Farmers"); Fort Mill Telephone Company, d/b/a Comporium Communications, Inc. ("Ft. Mill"); Home Telephone Company, Inc. ("Home"); PBT Telecom, Inc. ("PBT"); and St. Stephen Telephone Company ("St. Stephen") (collectively, the rural incumbent local exchange carriers or "RLECs"). Each of the RLECs has a rural telephone

company exemption pursuant to Section 251(f)(1) of the Federal Telecommunications Act of 1996.

A public hearing was held in this matter on March 31, 2005. TWCIS was represented by Frank R. Ellerbe, III and Bonnie D. Shealy. TWCIS presented the direct and rebuttal testimony of Julie Y. Patterson.

The RLECs and intervenor the South Carolina Telephone Coalition ("SCTC") were represented by M. John Bowen, Jr., and Margaret M. Fox. They presented the direct testimony of Emmanuel Staurulakis and of H. Keith Oliver.

The Office of Regulatory Staff ("ORS") was represented by Benjamin P. Mustian. ORS did not present a witness.

II. SUMMARY OF TESTIMONY

JULIE Y. PATTERSON

Ms. Patterson, Vice President and Chief Counsel, Telephony for Time Warner Cable, testified on behalf of TWCIS. In her direct testimony, Ms. Patterson described the company's corporate structure, presented evidence on the financial, technical and managerial abilities of TWCIS, and discussed the proposed expansion of TWCIS' certificated authority. She testified that TWCIS currently provides to its customers "features similar to those offered by traditional analog telephone service but utilizes IP technology to transport telephone calls." TR. at 15. Since the time the application was filed, the Federal Communications Commission ("FCC") has issued an order regarding Vonage's Voice over Internet Protocol ("VoIP") service. See 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, released November 12, 2004 (the "Vonage Order"). According to Ms. Patterson, the Vonage Order preempts the Commission from imposing certification and tariffing requirements with respect to certain VoIP services and, therefore, 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. TR at 16. 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. Id. Ms. Patterson testified that, while the Vonage Order is being appealed, and without conceding that any of the services at issue are subject to state or federal regulation, TWCIS and the to-be-created non-regulated entity will voluntarily comply with all applicable rules respecting the collection of universal service fund charges, taxes, reporting requirements, and 911 services. TR at 17. Ms. Patterson testified that TWCIS predominately uses the facilities of Time Warner Cable to provide the IP voice services. TR at 17. Calls destined for the Public Switched Telephone Network ("PSTN") are currently carried by MCI, but TWCIS intends to start negotiating its own interconnection agreements with local carriers. TR at 17-18. Ms. Patterson requested exemptions from certain South Carolina regulatory requirements. TR at 21. Ms. Patterson testified that, in her opinion, the issuance of an amended certificate to TWCIS would be in the public interest and would not adversely impact the availability of affordable local exchange service. TR at 21-22. She further testified that TWCIS would comply with all applicable service standards established by the Commission. TR at 21. Ms. Patterson asked that TWCIS be permitted to operate under the same alternative regulatory scheme within the RLECs' service areas as was previously granted to TWCIS in the areas it currently serves. TR at 22.

In her Rebuttal Testimony, Ms. Patterson reiterated her belief that the Vonage Order preempts the Commission from applying state certification and tariffing requirements with respect to TWCIS' IP voice service. TR at 24-25. She also reiterated her belief that granting the application would not adversely impact the availability of affordable local exchange service and would meet the public interest standard. TR at 25-26.

EMMANUEL STAURULAKIS

Emmanuel Staurulakis, President of John Staurulakis, Inc. (JSI), a telecommunications consulting firm, testified on behalf of the RLECs and the SCTC. Mr. Staurulakis testified that the Vonage Order does not preempt the authority of the Commission to act upon TWCIS' request to expand its certificated authority to include areas served by the Rural LECs. TR at 136. Mr. Staurulakis asked the Commission to deny the application for expanded authority, given the potential adverse impact that TWCIS's VoIP service offering may have on the availability of affordable local exchange service to all rural telecommunications customers in the state. TR at 135.

Mr. Staurulakis testified regarding the differences between TWCIS's proposed VoIP service and the service at issue in the Vonage case. See TR at 137; 154-157. Mr. Staurulakis noted that the Vonage Order did not address the issues of whether or not IP-based service providers are subject to the payment of access charges and universal service fund contributions and that those issues are the subject of a pending FCC proposed rulemaking. TR at 138.

Mr. Staurulakis stated it was not clear to him what TWCIS is seeking from the Commission in this proceeding. On the one hand, TWCIS indicates that it will voluntarily comply with all applicable rules of the Commission, at least until such time as all appeals

associated with the Vonage proceeding have been decided. On the other hand, TWCIS intends to move its retail VoIP services to a non-regulated entity where the services presumably will no longer be bound by Commission rules and regulations. TR at 139. By agreeing to voluntarily comply with Commission rules and regulations, TWCIS hopes to receive its expanded authority as a telecommunications provider. Having such authority will allow it to seek interconnection with the Rural LECs and request local number portability ("LNP"). Once it obtains interconnection and LNP, TWCIS will then offer a wholesale VoIP service to the newly created non-regulated entity that will then sell VoIP service to retail customers, without having to worry about complying with any Commission rules or regulations. TR at 139. Mr. Staurulakis testified that the Commission should deny the request made by TWCIS for expanded authority on the basis that TWCIS has no intention of abiding by Commission rules and regulations with respect to its retail service offering. See TR at 140.

In addition, according to Mr. Staurulakis, the failure by TWCIS to meet the state public interest standard is a major reason why the Commission should deny the request by TWCIS for expanded authority. TR at 141. According to Mr. Staurulakis, TWCIS has not demonstrated in its application that the provision of its VoIP service will not adversely impact the availability of affordable local exchange service to all subscribers residing in the service areas of the Rural LECs. TR at 141. In fact, Mr. Staurulakis testified, the introduction of a VoIP service offering by TWCIS will likely have an impact on the level of network access and universal service revenues received by the RLECs, requiring the affected companies to consider raising local rates to those subscribers that may never have access to TWCIS's VoIP service. TR at 141. The TWCIS facilities being utilized to provide cable television service today and over which TWCIS proposes to offer its VoIP service are located in the more densely populated areas of the Rural

LEC serving areas. TR at 141-142. The access revenues derived from traditional toll calls originated by subscribers residing in the more densely populated areas of each rural serving area are instrumental in maintaining affordable basic local exchange rates for the remaining rural subscribers in those areas. According to Mr. Staurulakis, the IP-based service being proposed by TWCIS may result in a form of rural "cream skimming". TR at 142.

In Mr. Staurulakis' opinion, until the FCC and perhaps Congress provide additional guidance on these critical issues, the Commission should deny the request of TWCIS. Otherwise, the continued availability of affordable basic local exchange service may be in jeopardy for all South Carolinians. TR at 146.

H. KEITH OLIVER

The RLECs and the SCTC also presented the testimony of H. Keith Oliver, Vice President of Finance for Home Telephone Company. Mr. Oliver asked the Commission to deny TWCIS' request to expand its certificated authority to provide service in five additional areas served by the RLECs because it is not in the public interest and because of its adverse impact on the availability of affordable local exchange service. TR at 181. Mr. Oliver went on to describe VoIP service, testifying that, from a customer's standpoint, the VoIP service TWCIS proposes to provide is really no different from traditional telephone service. TR at 181-182.

Mr. Oliver went on to testify that most VoIP calls rely on the PSTN to make the service work, and the PSTN has been built and maintained by telecommunications companies. TR at 184. While TWCIS has built cable facilities in areas that it deems profitable from a business standpoint, the PSTN has been built with the goal of providing ubiquitous telephone service throughout the United States to provide universal service. TR at 184. TWCIS needs the PSTN to

make its VoIP service work. TR at 184. According to Mr. Oliver, it is essential to recognize that without the PSTN, TWCIS' VoIP customers can only call other VoIP customers and not customers on the PSTN. TR at 184.

Mr. Oliver also pointed out that, while TWCIS suggests that it will compensate other carriers and comply with Commission regulations regarding contributions to the State USF and other requirements, it has only agreed to do so until issues involving IP-enabled services are resolved at the federal level, and has only agreed to comply with "applicable" regulations while continuing to maintain that the service it seeks to provide is non-regulated and that none of the Commission's regulations apply to TWCIS. TR at 185, 194. Mr. Oliver stated that TWCIS' request should be denied, given the uncertainty in this area and the potentially devastating impact it could have on customers in rural areas if a carrier is permitted to provide service and later stops compensating other carriers for use of the PSTN. TR at 185.

According to Mr. Oliver, TWCIS has not demonstrated that provision of the service will not adversely impact the availability of affordable local exchange service. TR at 186. Mr. Oliver testified in detail regarding the adverse impact the selective provision of service by TWCIS will likely have on the availability of affordable local exchange service in areas served by rural telephone companies. TR at 186-191. Mr. Oliver pointed out that TWCIS is not a start-up company that is trying to enter the rural marketplace, but a highly specialized company that has the potential to drastically impact the provision of telecommunications services in South Carolina within a very short time frame. TR at 186. TWCIS generally only has facilities in the more populated areas of rural companies. The areas they would serve tend to be in the least costly to serve and therefore most profitable portions of a rural carrier's services territory. The impact of the TWCIS application could be the loss of a rural company's lower cost customers,

leaving the rural LEC with only higher cost customers to serve. TR at 188. According to Mr. Oliver, the loss in revenue would not result in any real decrease in cost, because the RLECs, as carriers of last resort who have an obligation to serve all requesting customers, would be left with telephone plant they would be required to leave in place in the event the current customer or a new customer in that location decided that they wanted to obtain service again from the LEC. TR at 189.

Mr. Oliver testified that cream skimming in service areas where economies of scale make it difficult for even one service provider to operate could leave some customers with no service at all. TR at 190. TWCIS' proposed VoIP service branded as Digital Phone will only be available where Time Warner Cable provides High-Speed Internet or its Cable Service. TR at 191. The customer must first subscribe to one or both of those services, and then must pay the TWCIS rate of $39.95 to $49.95 for its Digital Phone service. TR at 191. According to Mr. Oliver, only customers who subscribe to Time Warner Cable's High-Speed Internet and/or Cable Service and make an average of at least $25 dollars worth of toll calls per month would be likely to be attracted to TWCIS' VoIP service offering. TR at 191.

III. DISCUSSION

The first question to be decided is exactly what the Commission is being asked to do in this case. In its application, TWCIS asked the Commission to expand its certificate of public convenience and necessity which, among other things, granted TWCIS authority to provide VoIP Digital Phone service in certain areas of the state, to include the service areas of the RLECs. See TWCIS Application at ¶ 9. In its testimony, however, TWCIS stated that it intended to create a non-regulated entity to offer the VoIP Digital Phone service in South Carolina. TWCIS still

wanted to receive a certificate from the Commission, however, in order to provide service within the service areas of the RLECs. See TR at 16. While the description of those services is not completely clear, it appears from the testimony and evidence of record that they chiefly involve obtaining services rather than providing them. Specifically, it appears that TWCIS is interested in receiving certification as a telecommunications carrier so that it can obtain network interconnection and other services from incumbent local exchange carriers like the RLECs. TWCIS would then provide those functionalities to its soon-to-be-created non-regulated entity, which would provide the Digital Phone VoIP service to end users. See, e.g., TR at 8-9 ("One reason we want to be certified is . . . we want to be able to negotiate Interconnection Agreements"); TR at 16 ("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"); TR at 38 ("At this point, we seek to obtain interconnection agreements and provide wholesale services to ourselves and to others and to tariff a wholesale offering"); TR at 56 ("We seek to provide a variety of non Internet protocol format telecommunications services in order to provide retail VoIP services and other services throughout the state of South Carolina") (emphasis added); TR at 56-57 ("[R]eally what we're looking to do here is to be able to step in and provide all of those transport and other telecommunications services that you show on the board that are provided [to TWCIS] today by MCI"); TR at 70 ("We need certification in order to obtain interconnection rights"); TR at 128 ("What we seek through this proceeding is the ability on our own, as full-fledged telecommunications carriers to obtain interconnection agreements on our own"). As Mr. Staurulakis testified:

> [I]t is not clear to me what TWCIS is seeking from the Commission. On the one hand, TWCIS indicates that it will voluntarily comply with all applicable rules of

> the Commission, at least until such time as all appeals associated with the Vonage proceeding have been decided. On the other hand, TWCIS intends to move its retail VoIP services to a non-regulated entity where I presume these services will no longer be bound by Commission rules and regulations. It would appear that TWCIS wants to have its cake and eat it too. By agreeing to voluntarily comply with Commission rules and regulations, TWCIS hopes to receive its expanded authority as a telecommunications provider. Having such authority will allow it to seek interconnection with the Rural LECs and request local number portability ("LNP"). Once it obtains interconnection and LNP, TWCIS will then offer a wholesale VoIP service to the newly created non-regulated entity that will then sell VoIP service to retail customers, without having to worry about complying with any Commission rules or regulations.

TR at 139.

Although TWCIS clearly changed the authority it was requesting between the time it filed its application and the time it filed testimony, TWCIS did not amend its application. Instead, TWCIS explained in its testimony the reason for the change. TWCIS stated that, with the FCC's issuance of the Vonage Order, the Commission is preempted from applying certification and tariffing requirements to TWCIS' Digital Phone service. TR at 16. Therefore, TWCIS was no longer asking for authority to provide that service, but instead intends to "obtain interconnection services from incumbent LECs and eventually offer wholesale services to the newly created non-regulated entity." TR at 16.

The RLECs and the SCTC, on the other hand, contend that the Commission is not preempted from applying certification and tariffing requirements to TWCIS' Digital Phone VoIP service, and that the Commission should make a determination as to whether it is appropriate for TWCIS to offer this service in the rural areas at issue. According to the RLECs' and SCTC's witnesses, the Commission should deny TWCIS' request for certification in the RLECs' service areas because TWCIS has not demonstrated that certification is in the public interest and because the selective provision of service by TWCIS in the rural areas would adversely impact the availability of affordable basic local exchange service in those areas.

A threshold issue, therefore, is whether or not the Vonage Order preempts this Commission from applying certification and tariffing requirements to TWCIS' Digital Phone VoIP service.

The Vonage Order is not a blanket preemption order. It specifically preempts only an order of the Minnesota Public Utilities Commission ("Minnesota PUC") that applied traditional telephone company regulations to Vonage's DigitalVoice service. See Vonage Order, ¶ 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 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 Minnesota PUC to apply its state requirements without negating valid federal policies and rules. Id. In contrast, the record of this proceeding is clear that TWCIS' Digital Phone service is separable (and, in fact, TWCIS does separate it) into interstate and intrastate components. See, e.g., TR at 89-90; TR at 123.

Likewise, the evidence shows that TWCIS' Digital Phone service is unlike Vonage's DigitalVoice service in other major respects. In describing the unique characteristics of Vonages' service, the FCC stated:

> First, Vonage customers must have access to a broadband connection to the Internet to use the service. Because Vonage does not offer Internet access services, DigitalVoice customers must obtain a broadband connection to the Internet from another provider. In marked contrast to traditional circuit-switched telephony, however, 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. According to Vonage, it does not know where in the world its users are when using DigitalVoice.

Vonage Order, ¶ 5.

TWCIS' Digital Phone customers do not need a "broadband connection to the Internet." Unlike Vonage's service, TWCIS Digital Phone customers do not need to use the Internet to complete calls. See TR at 48. TWCIS will provide Digital Phone to Time Warner cable television customers who do not have high speed Internet access, and there is no apparent requirement for the customer to obtain Internet access from another entity. See TR at 191. According to TWCIS' own witness, the use of the term "Internet protocol" does not mean these calls hit the Internet. "It does not require any use of the Internet. It simply refers to the packetization and the use of Internet protocol technology." TR at 48. Furthermore, TWCIS' Digital Phone service is not "fully portable" like Vonage's DigitalVoice service. As noted by the FCC, Vonage "does not know where in the world its users are using DigitalVoice." Id. TWCIS' Digital Phone, on the other hand, is intended to be used at the subscriber's premises only. TR at 70. It probably would not work if moved. TR at 70 ("You could conceivably take the modem with you to another home anywhere in the world and try to plug it in, and it would not operate."); see also TR at 88.

Another distinguishing characteristic of Vonage's service, "a suite of integrated capabilities and features that allows the user to manage personal communications dynamically, including but not limited to real-time, multidirectional voice functionality," does not appear to be shared by TWCIS' Digital Phone service. See Vonage Order, ¶ 7. In response to a question regarding whether TWCIS' service allows its customers to manage their communications dynamically, Mr. Staurulakis opined:

> Based on what I heard earlier, I don't get the impression that a Time Warner customer can go to a website and, in essence, reconfigure the services that they either already have ordered or want to order. My understanding of Vonage [is that they] designed their product specifically to bring those capabilities down to the customer level that that customer would have the ability to reconfigure that service in almost any way they wanted to based on what they had ordered, and if

> they wanted to order additional services, it could be very easily done, it'd be real-time. I don't, again based on what I've heard today, that [sic] the Time Warner service has that capability. . . . If you go back to paragraph 7 on page 4 [of the Vonage Order], I, again, just look at it based on what's in the record at the FCC. Vonage's real-time online account management feature allows customers to access their accounts 24 hours a day, which some of the services do, through an Internet web page to manage their communications by configuring service features, handling voice mail and editing user information. Going to the last sentence [of paragraph 7 of the Vonage Order], "Using other features, users may request that DigitalVoice ring simultaneously the user's Vonage number plus any other number in the United States or Canada regardless of who provides the service connected with the other number." So, again, I take that to read that the customer, it has a great deal of control over the [Vonage] service . . . .

TR at 156-157.

Another characteristic cited by the FCC is that,

> although Vonage's service uses North American Numbering Plan ("NANP") numbers as the identification mechanism for the user's IP address, the NANP number is not necessarily tied to the user's physical location for either assignment or use, in contrast to most wireline circuit-switched calls. . . . In other words, and again in marked contrast to traditional circuit-switched telephony, a call to a Vonage customer's NANP number can reach that customer anywhere in the world and does not require the user to remain at a single location.

Vonage Order at ¶ 9. As stated above, TWCIS' Digital Phone is intended to be used at the subscriber's premises only, and probably would not work if moved. TR at 70; TR at 88.

The FCC also cited the need for specialized CPE as a characteristic of Vonage's service. It is unclear from the testimony in this case whether TWCIS's Digital Phone service requires specialized CPE. Mr. Staurulakis testified this does not appear to be the case. TR at 137. In any event, even if specialized CPE is required, TWCIS's Digital Phone Service does not share other basic characteristics with Vonage's DigitalVoice service.

In fact, the evidence shows that TWCIS' Digital Phone service is more like landline service than it is like Vonage's service. See, e.g., TR at 149. From a customer's standpoint, the kind of VoIP service TWCIS proposes to provide is really no different from traditional telephone

service. TR at 181. The only difference is that, in the transmission of the message, internet protocol is used somewhere along the path of the call if it is a VoIP call. TR at 182. In fact, when asked whether TWCIS' service competes with Vonage's DigitalVoice service, TWCIS' witness responded that "the more apt comparison would be to the incumbent LEC service . . . . I think we're more of a competitive service to existing wireline telephone service today." TR at 92.

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' certificate of public convenience and necessity to provide local telecommunications services and Digital Phone VoIP services in South Carolina should be expanded to include the rural areas served by the RLECs.

2. The Commission's authority with respect to Digital Phone VoIP service is not preempted by the Vonage Order. TWCIS' Digital Phone service has few, if any, of the characteristics cited by the FCC in its order preempting the Minnesota PUC from applying state certification requirements to Vonage's DigitalVoice service.

3. 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 the applicant to meet the Commission's service standards for the service to be provided and to participate in the support of universally available telephone service at affordable rates. In addition, the Commission may require 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).

4. TWCIS' has not demonstrated that its provision of the service for which it requests certification would be in the public interest. It is not clear from the record whether the provision of these services (which appear to consist mainly of obtaining interconnection from the RLECs so TWCIS can provide those services on a wholesale basis to its own affiliated non-regulated entity) would be beneficial to anyone other than the Time Warner organization. Furthermore, while TWCIS insists it is not seeking certification for its Digital Phone service, its testimony on the public interest standard appears to focus on the Digital Phone service alone. See TR at 21-22 TR at 26. TWCIS cannot use the attributes of its Digital Phone service as the basis for demonstrating that certification would serve the public interest, while at the same time arguing that it is not seeking certification for that service. Therefore, we deny TWCIS request for certification as a telecommunications service provider on the basis that it has failed to demonstrate that the public interest would be served thereby.

5. We also deny TWCIS' request for certification as a telecommunications service provider because of our concern that the provision of service in the manner proposed by TWCIS could adversely impact the availability of affordable basic local exchange service. TWCIS has stated it intends to provide service where Time Warner Cable has facilities. See, e.g., TR at 21 ("the proposed service relies on existing cable television facilities to reach customer premises . . . .") As discussed below, the selective provision of service in the rural areas will likely have an adverse impact on the availability of affordable basic local exchange service.

6. TWCIS has stated it is not requesting certification for its Digital Phone VoIP service. However, as stated above we have the authority to consider whether it is appropriate to

issue a certificate of public convenience and necessity for such services, and we are not preempted by the Vonage Order from doing so. Furthermore, TWCIS' application requested a certificate for its Digital Phone VoIP service. According to TWCIS, the reason it changed its position on certification is because it believes the Vonage Order preempts the Commission from applying certification requirements to TWCIS' Digital Phone service. In that we have found we are not so preempted, we will proceed to consider whether it is in the public interest to grant TWCIS the authority to provide Digital Phone service in the RLEC service areas.

7. While TWCIS suggests that it will compensate other carriers and comply with Commission regulations regarding contributions to the State USF and other requirements, it has only agreed to do so until issues involving IP-enabled services are resolved at the federal level, and has only agreed to comply with "applicable" regulations while continuing to maintain that the service it seeks to provide is non-regulated and that none of the Commission's regulations apply to TWCIS. Most VoIP calls rely on the PSTN to make the service work, and the PSTN has been built and maintained by telecommunications companies. TWCIS appears to have no intention of abiding by this Commission's rules and regulations with respect to its proposed Digital Voice VoIP service offering, including the Commission's service quality standards. See TR at 58-59 (Ms. Patterson stated that the Vonage Order was not clear regarding whether or not service quality standards were preempted, but stated her opinion that, in South Carolina, service quality standards are linked by statute to certification and, therefore, would be preempted); TR at 62 ("no portion of the retail offering to the end-user would be subject to state certification, tariffing and related requirements.") Thus, it would not be in the public interest to issue TWCIS a certificate to provide these services.

8. Certification of TWCIS to provide Digital Phone VoIP service in the service areas of the RLECs should be denied, given the uncertainty in this area and the potentially devastating impact it could have on customers in rural areas if a carrier is permitted to provide service and later stops compensating other carriers for use of the PSTN.

9. TWCIS has not demonstrated that provision of the Digital Phone VoIP service will not adversely impact the availability of affordable local exchange service. In fact, we find the opposite to be true. As Mr. Oliver and Mr. Staurulakis testified, the selective provision of service by TWCIS will likely have an adverse impact on the availability of affordable local exchange service in areas served by rural telephone companies. TR at 141-143, 186-191. As Mr. Oliver pointed out, TWCIS is not a start-up company that is trying to enter the rural marketplace, but a highly specialized company that has the potential to drastically impact the provision of telecommunications services in South Carolina within a very short time frame. See TR at 186. TWCIS generally only has facilities in the more populated areas of rural companies. See TR at 188. The areas they would serve tend to be in the least costly to serve and therefore most profitable portions of a rural carrier's services territory. Id. TWCIS' selective provision of service in the rural areas would likely take away the rural companies' lower cost customers, leaving the rural LECs with only higher cost customers to serve. Id. Additionally, the loss of revenues from these customers would not result in a corresponding reduction in costs because the RLECs, as carriers of last resort who have an obligation to serve all requesting customers, would be left with telephone plant they would be required to leave in place. TR at 189.

10. The selective provision of service (or cream skimming) in service areas that are costly to serve could lead to a situation where the carrier of last resort cannot remain viable, and customers in sparsely populated areas could be left with no service at all. See TR at 190. This

Commission has an obligation to ensure that all subscribers have access to affordable basic telephone service. It is essential that we take the necessary steps to insure that there is a viable carrier of last resort in each and every service area in the state.

11. TWCIS' proposed Digital Phone VoIP service will be provided only to select customers. TWCIS intends to provide the service only in those areas where Time Warner Cable provides High-Speed Internet or its Cable Service and only to those customers who also subscribe to one or both of those services. See TWCIS South Carolina Tariff No. 1 at p. 9 ("The Company's IP Voice Service is offered solely to residential Customers who are subscribers to Time Warner Cable's cable modem and/or cable television service."); TWCIS Application at ¶ 9 (stating that TWCIS intends to provide service in the RLECs' areas pursuant to the current South Carolina Tariff No. 1, which is on file with the Commission and incorporated by reference). Time Warner Cable has constructed facilities only in the more densely populated portions of the rural LECs' service areas. TR at 187-188, 141-142. While the provision of TWCIS' Digital Phone service will offer a competitive alternative to these customers, it should not come at the expense of other customers in the rural areas. TWCIS' proposed provision of Digital Phone VoIP service in the rural areas in this manner would not be in the public interest.

IT IS THEREFORE ORDERED 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 St. Stephen Telephone Company is hereby denied.

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

BY ORDER OF THE COMMISSION:

_____
Chairman

ATTEST:

_____
Executive Director

(SEAL)

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2004-280-C

2005 MAY -6 PM 4:36

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 Interexchange and Local Voice Services in Service Areas of Certain Incumbent Carriers Who Currently Have a Rural Exemption	**CERTIFICATE OF SERVICE**

I, Rebecca W. Martin, Secretary for McNair Law Firm, P. A., do hereby certify that I have this date served one (1) copy of the attached Order in the above–referenced matter on the following parties of record by causing said copy to be deposited with the United States Mail, first class postage prepaid, affixed thereto and addressed as follows:

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May 6, 2005

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