BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKETS NOS. 2008-325-C, 2008-326-C, 2008-327-C, 2008-328-C, and 2008-329-C

ORDER NO. 2009-356

JUNE 5, 2009

IN RE:	Docket No. 2008-325-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 Telephone Services in the Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation.	)	ORDER GRANTING AMENDMENTS TO CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY
	Docket No. 2008-326-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 Telephone Services in the Service Area of Fort Mill Telephone Company d/b/a Comporium Communications and for Alternative Regulation.	)	
	Docket No. 2008-327-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 Telephone Services in the Service Area of Home Telephone Company, Inc. and for Alternative Regulation.	)	
	Docket No. 2008-328-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 Telephone Services in the Service Area of	)	

PBT Telecom, Inc. and for Alternative Regulation.	)
	)
Docket No. 2008-329-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 Telephone Services in the Service Area of Rock Hill Telephone Company d/b/a Comporium Communications and for Alternative Regulation.	)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Applications of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable ("TWCIS" or the "Company") to amend its Certificate of Public Convenience and Necessity to include the services areas of Farmers Telephone Cooperative, Inc., ("Farmers"), Fort Mill Telephone Company d/b/a Comporium Communications ("Fort Mill"), Home Telephone Company, Inc. ("Home"), PBT Telecom, Inc. ("PBT"), and Rock Hill Telephone Company d/b/a Comporium Communications ("Rock Hill"), hereinafter referred to collectively as the "RLECs" or individually as an "RLEC." [1]

The Applications were filed on August 22, 2008, pursuant to Section 253 of the Telecommunications Act of 1996, S.C. Code Ann. § 58-9-280 (Supp. 2008), and the

[1] On November 18, 2008, TWCIS withdrew its Application for authority to serve St. Stephens Telephone Company, Inc.'s service area. *See*, Docket No. 2008-300-C.

Rules and Regulations of the Commission. In its Applications, TWCIS requested that it be authorized to operate under an alternative regulatory plan pursuant to S.C. Code Ann. § 58-9-575 and § 58-9-585 in the service areas of the RLECs and that the Commission continue to waive the requirements of S.C. Code Ann. Regs. 103-610 and 103-631, as well as any requirement that the Company maintain its books and records in accordance with the NARUC Uniform System of Accounts.

TWCIS is currently certificated to provide interexchange and local voice services pursuant to Order No. 2004-213 and Order No. 2005-385(A).

By letter, the Commission instructed TWCIS to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Applications. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in this matter. TWCIS filed proofs of publications with the Commission between October 1, 2008 and October 2, 2008 for each individual docket. Petitions to Intervene were filed by each RLEC in their respective dockets on September 10, 2008. Pursuant to S.C. Code Ann. § 58-4-10(B)(Supp. 2008), the South Carolina Office of Regulatory Staff ("ORS") is a party of record in this proceeding.

On September 18, 2008, the RLECs filed a Return to TWCIS' Motion for Protective Treatment of Exhibit 3 contending that TWCIS had not properly sought confidential treatment and that the information was not trade secret. TWCIS responded clarifying that it only sought confidential treatment of the number of access lines TWCIS is serving in South Carolina. TWCIS also requested on October 9, 2008, that the

Commission appoint a hearing officer to hear and decide procedural motions. The Commission issued a Directive on October 15, 2008, in which it granted TWCIS' request for confidential treatment and appointed Randall Dong as Hearing Officer. *See* Order Nos. 2008-718; 2008-719; 2008-720; 2008-721; and 2008-722.

On October 13, 2008, TWCIS filed Motions to Compel responses to discovery propounded to each RLEC and, in the alternative sought a Motion in Limine preventing the RLECs from raising the issue of whether the grant of the Applications would adversely affect the availability of affordable basic local exchange service or adversely impact the public interest. On December 1, 2008, the Hearing Officer ruled in part denying and in part granting TWCIS' Motion to Compel certain Interrogatories and Production of Document Requests.

On October 22, 2008, the RLECs filed a Motion to Consolidate on the grounds that the Applications involved similar questions of law and fact. TWCIS filed a Return to the RLECs' Motion to Consolidate on November 11, 2008, recommending that the Commission hold the RLEC Motion in abeyance until after the submission of prefiled testimony. The Hearing Officer ruled on December 11, 2008, to grant the Motion to Consolidate, finding that the prefiled testimony submitted by the parties identified common issues of fact and law, that judicial economy would be best served by consolidation, and that no prejudice would result to any party as a result of consolidation. The Hearing Officer granted TWCIS' Motion to Allow Julie Laine to Testify by Videoconference on December 19, 2008, and granted TWCIS' Motions for Protective Treatment of certain redacted information contained in the Applications and ORS's

Motion for Confidential Treatment for certain portions of Christopher J. Rozycki's testimony on December 30, 2008.

A hearing in this matter was conducted on January 6-7, 2009. At the hearing, TWCIS was represented by C. Bradley Hutto, Esquire, Frank Ellerbe, III, Esquire, and Bonnie D. Shealy, Esquire. ORS was represented by Nanette S. Edwards, Esquire, and Jeffrey M. Nelson, Esquire, and the RLECs were represented by Margaret Fox, Esquire, John Bowen, Jr., Esquire, and Thomas J. Navin, Esquire. Mr. Navin was admitted *pro hac vice*. (T. Vol. I at 8).

The Commission heard testimony from eight witnesses. Ms. Charlene Keys, Mrs. Julie Laine, Mr. Frank Knapp, Mr. Warren R. Fischer, and Dr. August H. Ankum testified on behalf of the Company and in support of the Applications. On behalf of the RLECs, Mr. Douglas Meredith and Mr. H. Keith Oliver presented testimony requesting certain conditions be required or in the alternative, that the Applications be denied. ORS presented one witness, Mr. Christopher J. Rozycki, who testified that the Applications satisfy the requirements of Section 58-9-280(B).

Based on the evidence and testimony in the record, we hold that the Applications should be granted subject to the provisions set forth in this Order.

II. JURISDICTION

S.C. Code Ann. §58-9-280(B) (Supp. 2008) provides that the Commission may grant a request for a certificate to operate as a telephone utility to furnish local telephone service in the service territory of an incumbent LEC, subject to the conditions and

exemptions as set forth in that statute and applicable federal law. Pursuant to Order No. 2004-213, the Commission granted a Certificate of Public Convenience and Necessity to TWCIS to provide competitive, facilities based intrastate local and interexchange voice telecommunications service within the State of South Carolina, subject to the Stipulation between TWCIS and the South Carolina Telephone Coalition ("SCTC") which required notice prior to serving areas of the RLECs. By Order No. 2005-385(A), the Commission granted an amendment of TWCIS' Certificate to include Alltel South Carolina, Inc.'s service area.

It is unnecessary at this time for this Commission to readdress the issue of whether Voice Over Internet Protocol (VOIP) service is a communication service subject to the jurisdiction of this Commission. This Commission has previously found that it has jurisdiction over the service offered by TWCIS, and for purposes of submitting the Applications at issue here, TWCIS has acknowledged and agrees that its interconnected VOIP service, Digital Phone, is a regulated "telecommunications service" and as such, its rates, terms and conditions are tariffed and subject to the jurisdiction of the Commission. Its own witness, Mrs. Laine, testified that by filing for authority as a CLEC, TWCIS has committed to complying with all applicable rules, regulations and policies of the Commission, and she acknowledged that TWCIS is a telephone utility (T. Vol. II at 668; 704). Mrs. Laine also acknowledged that Digital Phone should be regulated to the same extent the Commission regulates other CLECs. (T. Vol. II at 704). Accordingly, there is currently no contested issue as to whether Digital Phone service is a telecommunications service as that term is defined by Section 58-9-10.

III. TESTIMONY AND EVIDENCE

Section 58-9-280 (B) provides that in contemplating whether to grant a certificate, the Commission may require, not inconsistent with the federal Telecommunications Act of 1996, that: (1) the applicant show that it possesses the technical, financial, and managerial resources sufficient to provide the services requested; (2) the service to be provided will meet the service standards that the Commission may adopt; (3) the provision of the service will not adversely impact the availability of affordable local exchange service; (4) the applicant, to the extent it may be required to do so by the Commission, participate in the support of universally available telephone service at affordable rates; and (5) the provision of the service does not otherwise adversely impact the public interest.

TWCIS asserts that it meets all five criteria, and ORS agrees with that assertion. The RLECs contend that this Commission should grant TWCIS' Applications only to the extent that TWCIS will "maintain compliance with its own commitments pursuant to its application, as well as with the parameters established by the FCC in the *Time Warner Declaratory Ruling*"[2] and recommend specific conditions be required of TWCIS in exchange for granting the Applications (T. Vol. II at 728-729; 740-741).

[2] *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 ("Time Warner Declaratory Ruling")*, 22 FCCR 3513 (March 1, 2007).

A. TECHNICAL, FINANCIAL AND MANAGERIAL RESOURCES

The Company presented the testimony of Ms. Charlene Keys, V.P. and General Manager of TWCIS' Columbia and Hilton Head markets, and Mrs. Julie Laine, Group V.P. Regulatory, in support of the Company's position that it possesses the technical, financial and managerial resources to provide its services. Digital Phone service is currently offered in the service areas of Verizon, AT&T, Windstream f/k/a Alltel, Hargray Telephone, Bluffton Telephone and Horry Telephone Cooperative. (T. Vol. I at 31). Mrs. Laine testified that TWCIS will rely on its current management team for technical and managerial support including its local employees led by Ms. Keys. (T.Vol. II at 609). She also described TWCIS' financial health. TWCIS' revenues for 2007 totaled over $33 million with net income of $5 million. (T. Vol. II at 619).

Mr. Rozycki, on behalf of ORS, testified that TWCIS has demonstrated that it possesses the technical, financial, and managerial resources sufficient to provide the services requested throughout the entire state of South Carolina as it has operated in the State pursuant to Order No. 2004-213. He also stated that ORS has not received significant service complaints concerning TWCIS. (T. Vol II at 1396).

We conclude that TWCIS has demonstrated that it possesses the necessary technical, financial, and managerial resources to provide its proposed services in the RLECs' service areas. We note that no party asserted that TWCIS lacks the necessary technical, financial, and managerial resources to provide the proposed services.

B. SERVICE STANDARDS

At the hearing, Mrs. Laine asserted that TWCIS complies with all applicable service standards set by the Commission (T. Vol. II at 654). Mr. Rozycki testified that TWCIS currently offers Digital Phone Service in South Carolina and that it meets the service standards which the Commission has adopted. The Company has filed the requisite service quality reports. (T. Vol. II at 1384). We find that TWCIS has complied and intends to continue to comply with the Commission's service standards. Again, no party offered testimony or presented evidence that TWCIS has failed to meet the Commission's service standards.

C. PROVISION OF THE SERVICE WILL NOT ADVERSELY IMPACT THE AVAILABILITY OF AFFORDABLE LOCAL EXCHANGE SERVICE

In reaching a finding in this matter, this Commission must also determine whether the entry of TWCIS will adversely impact the availability of affordable local exchange service. In support of its position that there would be no such adverse impact, TWCIS presented two witnesses, Mr. Warren R. Fischer, the Chief Financial Officer for QSI Consulting, Inc., and Dr. August H. Ankum, Senior V.P. at QSI Consulting, Inc., who described the financial health of the RLECs. The RLECs presented the testimony of Mr. Douglas Meredith, Director – Economics and Policy for John Staurulakis, Inc., and Mr. H. Keith Oliver, Sr. V.P. of Corporate Operations for Home Telephone Company. The RLECs' witnesses set forth certain requirements that they requested this Commission impose as a condition to granting the TWCIS Applications. The ORS presented the

testimony of Mr. Rozycki who supported TWCIS' request to extend service to the RLEC service areas.

Mr. Warren R. Fischer testified that because the RLECs have elected alternative regulation, their rates for residential and single-line business customers are subject to a statewide average for two years with any increases subject to an inflation-based index adopted by the Commission.[3] Thus, there are limits as to the amount and timing of any price increase for residential and single-line business rates. Additionally, he asserted that the RLECs have the financial strength to withstand competitive entry. (T. Vol. I at 319). Mr. Fisher noted that Farmers had $104 million in retained earnings; that Fort Mill has paid out $15 million in dividends and had $51 million in retained earnings; that Home has paid out a significant amount of dividends over the last five years; that PBT Telecom also paid out significant dividends over the last five years; and that Rock Hill paid out over $55 million in dividends while retaining about $165 million of earnings. (T. Vol. I at 321-324). During cross examination of Mr. Fischer, counsel for the RLECs appeared to contend that the rate of return on their regulated activities has decreased in recent years. (*See*, Hearing Exhibits 13-14). Because the RLECs are not rate of return regulated, the method of determining the RLECs' rate of return proposed at hearing was arrived at by dividing net operating income by net telecommunications plant as reported by the RLECs on the annual reports. However, it was never made clear whether net

[3] S.C. Code Ann. §58-9-576 (B) (3) and (5) set forth the parameters for price increases for LECs electing alternative regulation pursuant to §58-9-576(B). Upon election, the residential and single-line business rates are capped for two years unless at the time of election the rates were less than the statewide average. Additionally, during any given twelve month period the aggregate increases in the tariffed rates for other services must not exceed five percent of the aggregate revenues from other tariffed services during the prior twelve month period.

telecommunications plant included amounts associated with both regulated and non-regulated plant and whether net operating income was solely derived from regulated services. (T. Vol. I at 331-333). Notably, neither the accuracy of the amounts paid out in dividends nor the amounts associated with retained earnings were contested only whether those amounts were generated primarily from non-regulated operations. (T. Vol. I at 348-358). Mr. Fischer argued that it is difficult to comprehend that the RLECs would put their operations at risk by paying out substantial dividends based on total operations while believing that their rate of return on regulated operations was significantly decreasing over the same time period. (T. Vol. I at 350).

Dr. August H. Ankum, Senior V.P. at QSI Consulting, Inc., likewise contended that TWCIS' market entry would not adversely impact the affordability of basic services because of the price regulation elected by the RLECs. Additionally, he asserted that the RLECs are well positioned in the marketplace to compete for both regulated and non-regulated services by offering video, wireless, and internet in addition to traditional wireline telephone services. (T. Vol. I at 373-376). (*See also*, Hearing Exhibits 1-5). Dr. Ankum further testified that as an additional safeguard, the RLECs draw from both the Federal and State Universal Service Funds ("USF"). (T. Vol. I at 382-387).

On the other hand, the RLECs argue that TWCIS will only serve the least costly, most profitable areas in the RLECs service territories and that the resulting loss of revenues from these customers will diminish each RLECs ability to deploy and maintain service in the highest cost areas. (T. Vol. II at 1071-1072). The RLECs contend that

granting the Applications without requiring TWCIS to abide by the same regulations as those that govern the telecommunications services provided by the RLECs would adversely impact the availability of affordable local exchange service and could have profound public interest implications. (T. Vol. II at 1073). They also contend that the continued receipt of universal funding will not eliminate the negative revenue impact created by the entry of TWCIS into the rural service areas. (T. Vol. II at 1072-1073).

ORS testified that competitive alternatives, such as wireless and VOIP offerings by non-regulated companies such as Vonage, are already available in the RLEC service areas. (T. Vol. II at 1297-1298). Additionally, ORS asserted that based on the information provided by the Company and reviewed by ORS, TWCIS has not gained a significant market share in either AT&T's or Hargray's territory. (T. Vol. II at 1416-1417). (*See,* Confidential Hearing Exhibit 21).

No direct testimony was offered by the RLECs to advance the position that their regulated operations are not financially viable. While we recognize the RLECS are deeply concerned that TWCIS has a competitive advantage because the FCC has not classified Digital Phone as a telecommunications service, we have addressed this concern by determining that TWCIS is a regulated telephone utility and that Digital Phone is a telecommunications service. We conclude that approval of the Applications will not adversely impact the availability of affordable local exchange service.

D. PARTICIPATION IN THE STATE UNIVERSAL SERVICE FUND ("STATE USF")

Dr. Ankum testified that TWCIS' entry into the marketplace would advance universal service objectives by increasing the availability of quality service offerings at affordable rates. (T. Vol 1 at 381). ORS is the administrator of the State USF. ORS witness, Mr. Rozyci, testified that TWCIS is currently contributing to the State USF. (T. Vol. II at 1386; 1396). Mrs. Laine testified that TWCIS contributed $279, 918 to the State USF in 2007. (T. Vol.II at 613). The RLECs did not offer testimony or any evidence that TWCIS has failed to participate in the State USF but did request that the Commission require TWCIS to pay into the State USF based on the full voice portion of the service. The RLECs' concern is that carriers offering bundled services pay a discounted amount associated with the bundled local service as opposed to an amount based on the stand alone price or "full" price of the local service. (T. Vol. II at 1077; 1221-1222). We find that TWCIS is participating in the State USF. As to the issue of discounted payments into the State Universal Service Fund, we defer this issue to Docket No. 1997-239-C.

E. PROVISION OF THE SERVICE DOES NOT OTHERWISE ADVERSELY IMPACT THE PUBLIC INTEREST

Mr. Frank Knapp, Jr., the President and Chief Executive Officer of the South Carolina Small Business Chamber of Commerce, testified in support of TWCIS' Applications to serve the RLEC service areas, stating "We believe that competition gives small businesses more choices and acts as a check on prices...We want that same ability to choose our local telephone provider." (T. Vol. I at 175). He pointed to the creation of

the State USF and argued that the whole purpose of setting up the State USF was to allow the opportunity for competition in those areas. (T. Vol. I at 188 ll. 9-20). Mr. Fischer also testified in support of the Company that the granting of the Applications would not adversely impact the public interest. (T. Vol I at 196-197). Dr. Ankum argued that granting the Applications allows for more consumer choice to rural areas in the state. (T. Vol. I at 388-390). Ms. Keys and Mrs. Laine noted that TWCIS has made significant investments within South Carolina and employs over 1400 employees. (T. Vol I at 31; Vol. II at 611).

The RLECs' witnesses, Mr. Meredith and Mr. Oliver, request that the Commission grant TWCIS' Applications but condition the amended certificate so that TWCIS must continue using an unaffiliated non-VOIP third party CLEC, such as Sprint, for interconnection and comply with the FCC's *Time Warner Declaratory Ruling* and adopt other conditions set forth in more detail below. (T. Vol. II at 1073-1081).

A major concern of the RLECs is the continued confusion over the regulatory treatment of VOIP service and the fact that the FCC has not classified VOIP as a telecommunications service. (T. Vol. II at 741; 1052). The RLECs fear that this confusion will afford TWCIS an unfair competitive advantage in deploying its voice service. (T. Vol. II at 1052-1053). Another major concern voiced by the RLECs is that TWCIS enjoys a market power that the RLECs do not possess. (T. Vol. II at 1053). Mr. Oliver refutes the Company's contention that competition in this case is good for society and will have a positive impact on service offerings to consumers absent the creation of a

truly level playing field. (T. Vol. II at 1070). He argues that granting the Applications without the recommended conditions could have profound public interest implications and could adversely impact the availability of affordable local exchange service. (T. Vol. II at 1073; 1086).

We find no substantial evidence that TWCIS enjoys a competitive advantage over the RLECs. We conclude that approval of the TWCIS Applications will serve the public interest by increasing the level of competition and will allow residential customers to have access to a facilities-based competitive local service provider offering different pricing. However, we expressly find that TWCIS is subject to the same Commission orders, rules, regulations and requirements that apply to CLECs holding Certificates of Public Convenience and Necessity granted by this Commission. With this condition, the granting of the Applications is in the best interests of the citizens of the State of South Carolina.

F. ADDITIONAL CONDITIONS ON GRANT OF APPLICATIONS

Mr. Meredith recommended that the Commission (1) require TWCIS to comply with all applicable state rules and regulations; (2) require TWCIS to use Sprint as an intermediary carrier for Digital Phone VOIP service and prohibit TWCIS from seeking numbering resources directly from NANPA and from seeking interconnection directly with the RLECs; (3) require TWCIS and Sprint to abide by the Time Warner Declaratory Ruling; (4) prohibit TWCIS from providing wholesale telecommunications services other than high capacity point to point private line services; (5) require TWCIS to file the same

reports and comply with the same service quality standards applicable to the RLECs; and (6) require TWCIS' unaffiliated non-VOIP wholesale provider to establish a Point of Interconnection ("POI") within the RLEC service area or if the POI is outside the RLEC service area to bear the financial burden of transporting calls from the RLECs' boundary to the POI. (T. Vol. II at 740-741). Alternatively, Mr. Meredith recommends that if these conditions are not required that the Commission should review additional matters to ensure the public interest is met. (T. Vol. II at 754). Specifically, he recommended that the Commission should find that Digital Phone service is not a telecommunications service under Section 251 of the Telecommunications Act of 1996; determine that TWCIS does not satisfy 47 CFR 51.100; and that the Commission should establish a level playing field in the regulation of all services. (T. Vol. II at 754). In addition to the conditions identified by Mr. Meredith, Mr. Oliver recommended that the Commission require that the assigned numbers for TWCIS' VOIP service remain related to the geographic area or rate center for which they are intended; that TWCIS should pay into the State USF based on the full voice portion of their service offering; and that TWCIS should agree to make programming available to the RLECs on a "most favored nation" basis. (T. Vol. II at 1076-1079).

Mrs. Laine argued that the conditions recommended by the RLECs are not imposed on other CLECs and there is no reason to require such conditions of TWCIS. (T. Vol. II at 660). She stated that some of the conditions are so rigid as to prevent TWCIS from being able to react to changing business conditions, including changing its own vendors and suppliers. (T. Vol. II at 660-661). TWCIS has received certification

from other state commissions to provide its Digital Phone service and such conditions were not imposed. (T. Vol. II at 720-721). Mr. Meredith acknowledged that to impose the requested conditions or stipulations would be a case of "first impression" and that none of the other states have thus far imposed such conditions. (T. Vol. II at 1031-1033).

ORS witness, Mr. Rozycki, suggested the following conditions in response to questions from the Commissioners: (1) as long as TWCIS' VOIP service is not designated as a "telecommunications service" by the FCC, then TWCIS shall interconnect with the RLECs using the services of a certificated telecommunications carrier as prescribed by the FCC in its Order in WC Docket No. 06-55; (2) TWCIS shall comply with all the rules governing CLECs with the exception of the waivers granted in Order No. 2004-214; (3) TWCIS shall contribute to the State USF and shall comply with all current state rules governing the State USF; and (4) TWCIS shall not transmit any improperly identified traffic to the RLECs. (*See* Hearing Exhibit 20; T. Vol. II at 1407-1411).

We find based on the testimony and the evidence in the record that the Company has demonstrated that it possesses the technical, financial, and managerial resources sufficient to provide the services requested; that the Company will be able to meet the service standards that the Commission adopts; that the provision of the service will not adversely impact the availability of affordable local exchange service; that the Company is participating in the support of universally available telephone service and will continue to do so; and that the provision of the service does not otherwise adversely impact the public interest.

With regard to the conditions proposed by the RLECs, we believe it consistent with the public interest to require explicitly that if Time Warner continues its current practice of interconnecting through an underlying carrier, that carrier must be duly certificated by this Commission and be subject to all applicable rules and regulations. Furthermore, all traffic must be properly identified. Appropriate compensation must be paid to the RLECs for all interconnected traffic, and the State Universal Service Fund must be appropriately paid based upon the full voice portion of Time Warner's service. Telephone numbers must be assigned within their associated rate centers. All of these conditions are consistent with existing law and regulatory authority.

However, there is no authority to support the RLECs' request that we prohibit Time Warner from obtaining numbering resources from NANPA and assigning those numbers to its customers, or that we impose upon Time Warner the service quality standards and reporting requirements applicable to the RLECs. As a CLEC, Time Warner is governed by the same regulations as other CLECs. Furthermore, there is no legal support for the RLECs' request that we require Time Warner to interconnect only through Sprint absent application for approval to change underlying carriers. Time Warner has represented to this Commission that it has no current plans to interconnect with the RLECs other than through its current wholesale arrangement. Accordingly, in this Order, we address only Time Warner's interconnection through a wholesaler of its choosing.

We intend this Order to be fully consistent with the FCC's Time Warner Declaratory Ruling, which was issued in 2007 and reported at 22 F.C.C.R. 3513. In that

decision, the FCC held that CLECs providing wholesale telecommunications services to other service providers are entitled to interconnection under Section 251 of the Telecommunications Act of 1934, as amended. However, the FCC expressly limited its ruling to "telecommunications carriers that provide wholesale telecommunications service and that seek interconnection *in their own right* for the purpose of transmitting traffic to or from another service provider." The FCC also made clear that the Declaratory Ruling "in no way diminishe[d] the ongoing obligations of these wholesalers as telecommunications carriers, including compliance with any technical requirements imposed by [the FCC] or a state commission." Consistent with the declaratory ruling, we reiterate that any interconnecting carrier used by Time Warner must be certificated and regulated by this Commission.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. TWCIS is a limited liability company organized under the laws of the State of Delaware. TWCIS is registered with the South Carolina Secretary of State, and TWCIS holds a Certificate of Authority to transact business within the State of South Carolina from the South Carolina Secretary of State.

2. TWCIS is a provider of local exchange and interexchange telecommunications services and wishes to extend its services to the RLEC service areas in South Carolina.

3. TWCIS is a "telephone utility" as defined by S.C. Code Ann. Section 58-9-10.

4. Digital Phone Service is a regulated telecommunications service as defined by S.C. Code Ann. Section 58-9-10.

5. Digital Phone service is a fixed interconnected VOIP service as defined by 47 C.F.R. 9.3.

6. Neither the FCC nor the federal courts have expressly preempted state regulation of telecommunications services provided via fixed interconnected VOIP.

7. No party argued that this Commission lacked jurisdiction to issue an amended certificate or that this Commission lacked the authority to impose conditions on the granting of any amended certificate.

8. The Commission concludes that TWCIS has the financial, managerial, and technical resources to provide the telecommunications services it seeks to offer in the expanded service areas.

9. The Commission concludes that TWCIS' provision of service will not adversely impact the availability of affordable local exchange service.

10. The Commission concludes that TWCIS will participate in the support of universally available telephone service at affordable rates to the extent that TWCIS may be required to do so by the Commission.

11. The Commission concludes that TWCIS will provide services which will meet the service standards of the Commission.

12. The Commission concludes that the provision of telecommunications services by TWCIS will not adversely impact the public interest.

13. The Commission concludes that granting the Applications is in the best interests of the citizens of the State of South Carolina.

14. To the extent TWCIS utilizes a wholesale carrier, that carrier must be authorized to do business in the State of South Carolina, must hold a valid certificate of public convenience and necessity issued by this Commission, and must have an interconnection agreement with the RLECs.

15. TWCIS shall comply with all Commission Orders, rules and regulations.

16. We find that the Company's request for continued waivers of the requirements of S.C. Code Ann. Regs. 103-610, 103-631, and any requirement to maintain books and records in accordance with the Uniform System of Accounts should be granted. No party opposed the Company's request.

17. TWCIS shall contribute to the State Universal Service Fund in compliance with Commission Orders.

18. TWCIS shall not transmit any improperly identified traffic to the RLECs.

19. TWCIS shall assign telephone numbers in accordance with existing rate center boundaries.

IT IS THEREFORE ORDERED:

1. TWCIS' Certificate of Public Convenience and Necessity is amended to allow TWCIS to provide competitive, facilities-based intrastate local and interexchange voice telecommunications services in the service areas of Farmers Telephone Cooperative, Inc., ("Farmers"), Fort Mill Telephone Company d/b/a Comporium Communications ("Fort Mill"), Home Telephone Company, Inc. ("Home"), PBT

Telecom, Inc. ("PBT"), and Rock Hill Telephone Company d/b/a Comporium Communications ("Rock Hill").

2. TWCIS shall contribute to the State Universal Service Fund in compliance with Commission Orders.

3. TWCIS shall comply with all Commission orders, rules and regulations.

4. TWCIS shall only use underlying carriers that are authorized to do business in the State of South Carolina, that hold valid Certificates of Public Convenience and Necessity issued by this Commission, and that have interconnection agreements with the RLECs.

5. TWCIS shall operate in the RLEC service areas under the alternative regulatory plan as set forth by S.C. Code Ann. Sections 58-9-575 and 58-9-585 and approved in Order No. 2004-495.

6. TWCIS has the financial, managerial, and technical resources to provide the telecommunications services it seeks to offer to the expanded service areas.

7. TWCIS continues to meet all statutory requirements for the provision of service as a CLEC as delineated in S.C. Code Ann. Section 58-9-280 (Supp. 2008). Accordingly, TWCIS meets the statutory requirements to provide service in the proposed expanded service area.

8. The request for continued waivers of the requirements of S.C. Code Ann. Regs. 103-610 and 103-631 and any requirement to maintain books and records in accordance with the Uniform System of Accounts is granted.

9. TWCIS shall not transmit any improperly identified traffic to the RLECs.

10. TWCIS shall assign telephone numbers in accordance with existing rate center boundaries.

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

BY ORDER OF THE COMMISSION:

Elizabeth B. Fleming

Elizabeth B. Fleming, Chairman

ATTEST:

John E. Howard, Vice Chairman

(SEAL)