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OPEN MEETING ITEM



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MICHAEL P. KEARNS
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BOB STUMP



ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUN - 1 2009

DATE: JUNE 1, 2009
DOCKET NOS: T-20449A-08-0044

DOCKETED BY

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

TIME WARNER CABLE INFORMATION SERVICES (ARIZONA), LLC
DBA TIME WARNER CABLE
(CC&N/RESELLER/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JUNE 10, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JUNE 23, 2009 AND JUNE 24, 2009

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE APPLICATION OF
TIME WARNER CABLE INFORMATION
SERVICES (ARIZONA), LLC, DBA TIME
WARNER CABLE, FOR APPROVAL OF A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD AND
FACILITIES-BASED LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES AND
RESOLD AND FACILITIES-BASED LONG
DISTANCE TELECOMMUNICATIONS
SERVICES.

DOCKET NO. T-20449A-08-0044

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: April 23, 2009
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring
APPEARANCES: Ms. Joan S. Burke, Osborn Maledon, on behalf of Time Warner Cable Information Services (Arizona), LLC, dba Time Warner Cable; and
Ms. Maureen Scott, Senior Staff Counsel, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

This case involves an application by Time Warner Cable Information Services (Arizona), LLC, dba Time Warner Cable ("TWCIS"), for a Certificate of Convenience and Necessity ("CC&N") to provide resold and facilities-based local exchange and resold and facilities-based long distance telecommunications services in a service area including the entire State of Arizona.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

1 **FINDINGS OF FACT**

2 1. On January 23, 2008, TWCIS filed with the Arizona Corporation Commission
3 (“Commission”) an application for a CC&N authorizing it to provide resold and facilities-based local
4 exchange and resold and facilities-based long distance telecommunications services in a service area
5 including the entire State of Arizona.¹

6 2. On April 18, 2008, the Commission’s Utilities Division Staff (“Staff”) issued a Letter
7 of Insufficiency and First Set of Data Requests, to which TWCIS filed responses, including a revised
8 proposed tariff, on July 9, 2008.

9 3. On February 12, 2009, Staff issued a Staff Report in this matter, recommending
10 approval of the application.

11 4. On February 13, 2009, a Procedural Order was issued scheduling a hearing in this
12 matter for April 23, 2009, and establishing other procedural requirements and deadlines.

13 5. On March 19, 2009, TWCIS filed an affidavit of publication showing that notice of
14 the application and hearing had been published in *The Arizona Republic* on March 13, 2009.²

15 6. On April 23, 2009, a full evidentiary hearing in this matter was held before a duly
16 authorized Administrative Law Judge of the Commission at the Commission’s offices in Phoenix,
17 Arizona. TWCIS and Staff appeared through counsel and provided evidence in the form of testimony
18 and exhibits. TWCIS provided the testimony of Vincent M. Paladini, Senior Regulatory Counsel for
19 Time Warner Cable, Inc. (“Time Warner Cable”), TWCIS’s parent company. Staff provided the
20 testimony of Armando Fimbres, Staff Public Utility Analyst. Staff was requested to file, as a late-
21 filed exhibit, its revised recommendation for TWCIS to file conforming tariffs.

22 7. On April 30, 2009, Staff filed its late-filed exhibit, to which TWCIS filed a response
23 on May 14, 2009, indicating no objection to the revised recommendation.

24 **Fitness and Properness to Obtain a CC&N**

25 8. TWCIS is a Delaware limited liability company authorized to transact business in the
26

27 ¹ TWCIS initially also requested authorization to provide alternative operator services, but subsequently withdrew that
request.

28 ² Although the notice published did not conform to the font size requirements prescribed in the Procedural Order, the
substantive information provided did conform, and Staff stated at hearing that it believed the notice was sufficient.

1 State of Arizona since February 2006. TWCIS is in good standing with the Commission's
2 Corporations Division.

3 9. TWCIS is a wholly owned subsidiary of Time Warner Cable, a public company traded
4 on the New York Stock Exchange. Time Warner Cable provides video, data, and voice service to
5 residential and commercial customers in the United States and, as of December 31, 2007, served
6 approximately 14.6 million customers primarily in New York, North Carolina, South Carolina, Ohio,
7 California, and Texas. Time Warner Cable is a subsidiary of Time Warner, Inc.

8 10. TWCIS currently holds a CC&N to provide facilities-based non-switched dedicated
9 point-to-point data transport telecommunications services in Yuma County, Arizona, as a result of
10 Decision No. 68824 (June 29, 2006), in which the assets and CC&N of ACC Telecommunications,
11 LLC, dba Adelphia LLC, were transferred to TWCIS. If the CC&N requested in this matter is
12 granted, TWCIS will apply to cancel the CC&N transferred to it through Decision No. 68824 because
13 it will become obsolete. (Tr. at 26-27.) TWCIS chose to apply for a new CC&N in this matter rather
14 than an extension of its existing CC&N because TWCIS believes that it is "cleaner" to start fresh and
15 that it can be difficult to locate files and understand information related to a CC&N that was
16 originally issued to another company. (Tr. at 26.)

17 11. TWCIS has not applied for authority to provide telecommunications services in any
18 other state.

19 12. TWCIS testified that neither it nor any of its officers, directors, or managers has been
20 or is currently involved in any formal or informal complaint proceedings before a state or federal
21 regulatory commission, administrative agency, or law enforcement agency. (Tr. at 19-20.)

22 13. TWCIS stated in its application that neither it nor any of its officers, directors, or
23 managers is currently involved in any civil or criminal investigation; has been involved in any civil or
24 criminal investigation; has had judgment entered in any civil matter or by any administrative or
25 regulatory agency; or has been convicted of any criminal act within the last 10 years.

26 14. Staff reports that there have been no formal complaint proceedings involving TWCIS,
27 that there have been no civil or criminal proceedings against TWCIS, and that TWCIS has no history
28 of complaints in Arizona.

1 **Technical Capabilities**

2 15. TWCIS has been providing facilities-based, non-switched, dedicated point-to-point
3 data transport telecommunications services in Yuma County since approximately June 2006. TWCIS
4 currently has a few customers who purchase only data telecommunications services and receive no
5 voice services from TWCIS. (Tr. at 12, Ex. A-1.)

6 16. Although TWCIS has applied for a CC&N that would provide very broad authority,
7 TWCIS initially intends to make available only non-switched local or interexchange services and
8 limited switched access services, all using existing facilities in Yuma County. (Tr. at 14-16.)

9 17. TWCIS also intends to pursue an interconnection agreement with Qwest to allow it to
10 provide a greater variety of services, (Tr. at 14), but does not at this time intend to offer services to
11 residential customers, (Tr. at 17). One of TWCIS's goals in obtaining the broad CC&N authority
12 requested is to acquire status as a competitive local exchange carrier ("CLEC"), because CLECs
13 qualify for certain treatment under the law, and CLEC status will place it in a better position to
14 negotiate with incumbent local exchange providers ("ILECs"), such as Qwest. (Tr. at 30.)

15 18. TWCIS also chose to apply for broad authority in this matter to obviate the need for
16 CC&N expansion proceedings in the future and the delay in bringing additional services to market
17 that such proceedings would involve. (See Tr. at 40.)

18 19. TWCIS intends to file additional tariffs in the future as it decides to expand the
19 services that it will provide beyond those included in the revised proposed tariff filed in this matter.
20 (Tr. at 17.) TWCIS did not include in the tariff any products that it is not yet ready to market, both
21 for competitive reasons and because a description of the services at this time could prove to be
22 inaccurate when a product is ready to go to market. (Tr. at 22.) TWCIS testified that it would not be
23 possible, within a year, for it to provide a conforming tariff for every service it would be authorized
24 to provide under the CC&N requested. (Tr. at 29.) Staff described TWCIS's proposed tariff as an
25 "access tariff." (Tr. at 36.)

26 20. Through contract, TWCIS can use all of the facilities of Time Warner Cable, which
27 owns a fiber-based network that can be used to provide a variety of different communications
28 services, some of which are regulated by the Commission as telecommunications services. (Tr. at 20.)

1 Indeed, TWCIS has access to the facilities, personnel, and finances of Time Warner Cable and its
2 affiliates, including fiber, coaxial, last-mile facilities, trucks, engineers, installers, and marketing
3 personnel. (Tr. at 24.) Time Warner Cable intends for TWCIS to be the retail provider and wholesale
4 provider of telecommunications services that are within the Commission's jurisdiction. (Tr. at 20-21.)
5 Time Warner Cable essentially uses a franchise model, with TWCIS and other affiliates rolling up to
6 a regional organization and ultimately to Time Warner Cable headquarters for support. (Tr. at 24.)

7 21. TWCIS does not currently own any of its own facilities, but desires to have the
8 authority to do so if it makes good business sense in the future. (Tr. at 24-25.)

9 22. Staff believes that TWCIS possesses the technical capabilities to provide the services
10 it is requesting the authority to provide.

11 **Financial Resources**

12 23. TWCIS estimated that it will generate less than \$250,000 in revenue from
13 telecommunications services provided to Arizona customers during its first 12 months of operations
14 and that its operating expenses during the same time period will be less than \$80,000.

15 24. TWCIS will rely on the financial capability of Time Warner Cable to fund its
16 operations in Arizona and will receive working capital from Time Warner Cable as needed.

17 25. For the period ending December 31, 2007, Time Warner Cable had total assets of
18 \$56.6 billion and net income of \$1.1 billion.

19 26. Staff believes that TWCIS, as a wholly owned subsidiary of Time Warner Cable, will
20 have access to capital resources as well as banking relationships that will permit it to provide the
21 services it is requesting the authority to provide.

22 **Proposed Rates**

23 27. TWCIS will be providing service in areas where an ILEC and various CLECs are
24 currently providing telephone service. TWCIS will need to compete with those providers to obtain
25 customers. Thus, TWCIS is not expected to be able to exert market power, and the competitive
26 process should result in rates that are just and reasonable.

27 28. TWCIS projected in its application that the net book value of its Arizona jurisdictional
28 assets expected to be used in the provision of telecommunications services to Arizona customers at

1 the end of its first 12 months of operations will be approximately \$315,000. Staff determined that
2 TWCIS's fair value rate base ("FVRB") at the end of its first 12 months of operations would be equal
3 to its projected net book value. Although Staff considered TWCIS's FVRB in analyzing its proposed
4 rates, Staff did not give the FVRB substantial weight, as the rates ultimately to be charged by TWCIS
5 will be heavily influenced by the market, and rates for competitive services are generally not set
6 according to rate-of-return regulation.

7 29. Staff reviewed the rates proposed in TWCIS's revised proposed tariff and determined
8 that they are comparable to the rates charged by CLECs, ILECs, and major long distance carriers
9 operating in the State of Arizona.

10 **Performance Bond/Irrevocable Sight Draft Letter of Credit**

11 30. Both of the proposed tariffs filed by TWCIS in this matter indicate that, to safeguard
12 its interests, TWCIS may require some of its customers to make advance payment before service and
13 facilities are furnished.

14 31. Because TWCIS is requesting a CC&N to provide resold and facilities-based local
15 exchange and resold and facilities-based long distance telecommunications services and intends to
16 collect advance payments, Staff believes that TWCIS should be required to obtain a performance
17 bond or irrevocable sight draft letter of credit ("ISDLOC") to protect its customers in the amount of
18 \$235,000, which reflects \$10,000 for resold long distance, \$25,000 for resold local exchange,
19 \$100,000 for facilities-based long distance, and \$100,000 for facilities-based local exchange.

20 **Competitive Services**

21 32. TWCIS has requested that the services to be authorized under the CC&N requested in
22 this matter be classified as competitive.

23 33. Staff states that the local exchange services are competitive because ILECs hold a
24 virtual monopoly in the local exchange service market and have the ability to offer the same services
25 that TWCIS has requested authority to offer. In addition, Staff stated that many of the CLECs and
26 local exchange resellers also offer substantially similar services.

27 34. Staff states that the interexchange services are competitive because there are a large
28 number of facilities-based and resold interexchange carriers providing both interLATA and

1 intraLATA interexchange service throughout the State, and various ILECs also provide intraLATA
2 interexchange services in many areas of the State. Staff believes that TWCIS will not have market
3 power and thus will not have the capability to adversely affect prices or restrict output to the
4 detriment of telephone service subscribers.

5 **Regulatory Requirements**

6 35. A.A.C. R14-2-1308(A) requires a local exchange carrier to make local number
7 portability available to facilitate the ability of a customer to switch between authorized local carriers
8 within a given wire center without changing the customer's telephone number and without
9 impairment of quality, functionality, reliability, or convenience of use.

10 36. A.A.C. R14-2-1204(A) requires all telecommunications service providers that
11 interconnect to the public switched network to provide funding for the Arizona Universal Service
12 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers
13 that begin providing basic local exchange service after April 26, 1996, to pay AUSF charges as
14 provided under A.A.C. R14-2-1204(B)(1) and those that begin providing toll service after April 26,
15 1996, to pay AUSF charges as provided under A.A.C. R14-2-1204(B)(2). A.A.C. R14-2-
16 1204(B)(3)(b) requires all other telecommunications service providers that interconnect to the public
17 switched network and begin providing telecommunications service after April 26, 1996, to make
18 written elections as to how they will be categorized for purposes of AUSF assessments.

19 37. Commission rules require TWCIS to file a tariff for each competitive service that
20 states the maximum rate as well as the effective (actual) price that will be charged for the service.
21 Under A.A.C. R14-2-1109(A), the minimum rate for a service must not be lower than the total
22 service long-run incremental cost of providing the service. Any change to TWCIS's effective price
23 for a service must comply with A.A.C. R14-2-1109, and any change to the maximum rate for a
24 service in TWCIS's tariff must comply with A.A.C. R14-2-1110.

25 38. A.A.C. R14-2-1901 et seq. establish requirements to protect Arizona consumers from
26 unauthorized carrier changes ("slamming") and apply to each public service corporation providing
27 telecommunications services within the State of Arizona and over which the Commission has
28 jurisdiction.

1 39. A.A.C. R14-2-2001 et seq. establish requirements to protect Arizona consumers from
2 unauthorized carrier charges (“cramming”) and apply to each public service corporation providing
3 telecommunications services within the State of Arizona and over which the Commission has
4 jurisdiction.

5 40. A.A.C. R14-2-1107 requires a competitive telecommunications service provider to file
6 an application for authorization with the Commission before it discontinues service; the rule also
7 establishes customer notice requirements and other requirements related to discontinuance of service.

8 **Staff’s Recommendations**

9 41. Staff recommends approval of TWCIS’s application to provide resold and facilities-
10 based local exchange and resold and facilities-based long distance telecommunications services in
11 Arizona and further recommends:

- 12 a. That TWCIS comply with all Commission rules, orders, and other
13 requirements relevant to the provision of intrastate telecommunications
14 services;
- 15 b. That TWCIS abide by the quality of service standards that were approved by
16 the Commission for Qwest in Docket No. T-01051B-93-0183;
- 17 c. That TWCIS be prohibited from barring access to alternative local exchange
18 service providers who wish to serve areas where TWCIS is the only provider
19 of local exchange service facilities;
- 20 d. That TWCIS be required to notify the Commission immediately upon changes
21 to TWCIS’s name, address, or telephone number; that such notification be
22 placed in all relevant dockets involving TWCIS; and that TWCIS make
23 conforming changes to its tariffs on file with the Commission if any of these
24 change;
- 25 e. That TWCIS cooperate with Commission investigations, including but not
26 limited to those regarding customer complaints;
- 27 f. That TWCIS offer Caller ID with the capability to toggle between blocking
28 and unblocking the transmission of the telephone number at no charge;

- 1 g. That TWCIS offer Last Call Return service that will not return calls to
2 telephone numbers that have the privacy indicator activated;
- 3 h. That the Commission authorize TWCIS to discount its rates and service
4 charges to the marginal cost of providing the services; and
- 5 i. That TWCIS's proposed services be classified as competitive.

6 42. Staff further recommends that TWCIS be ordered to comply with the following and
7 that its CC&N be rendered null and void, after an opportunity for a hearing or other due process, if it
8 fails to do so:

- 9 a. TWCIS shall docket a conforming tariff consistent with its application and the
10 Commission's Decision in this matter within 365 days from the date of the
11 Commission's Decision or 30 days prior to providing service, whichever
12 comes first. For other new service offerings authorized under its CC&N, and
13 to the extent TWCIS provides Local Exchange or Long Distance service
14 offerings in the future, TWCIS shall file a tariff for approval by the
15 Commission 30 days prior to providing service. TWCIS shall be deemed to be
16 providing Local Exchange and Long Distance services at the point it is directly
17 interconnecting to the Public Switched Telephone Network ("PSTN") for the
18 purposes of delivering originating local exchange or long distance traffic from
19 its end-users or terminating local exchange or long distance traffic from other
20 carriers to TWCIS's end-users.
- 21 b. TWCIS shall procure a performance bond or ISDLOC in the amount of
22 \$235,000, which minimum amount should be increased, in increments of
23 \$117,500, when the total amount of the advances, deposits, and/or
24 prepayments collected from TWCIS's customers is within \$23,500 of the bond
25 amount or ISDLOC amount.
- 26 c. TWCIS shall file the original performance bond or ISDLOC with the
27 Commission's Business Office and copies of the performance bond/ISDLOC
28 with Docket Control, as a compliance item in this docket, within 30 days of the

1 effective date of a Decision in this matter. The original performance
2 bond/ISDLOC must remain in effect until further order of the Commission.
3 The Commission may draw on the performance bond/ISDLOC on behalf of,
4 and for the sole benefit of, TWCIS's customers if the Commission finds, in its
5 discretion, that TWCIS is in default of its obligations arising from its CC&N.
6 The Commission may use the performance bond/ISDLOC funds, as
7 appropriate, to protect TWCIS's customers and the public interest and may
8 take any and all actions the Commission deems necessary, in its discretion,
9 including but not limited to returning prepayments or deposits collected from
10 TWCIS's customers.

11 d. TWCIS shall abide by the Commission's rules addressing Universal Service in
12 Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service
13 providers that interconnect into the public switched network shall provide
14 funding for the Arizona Universal Service Fund. TWCIS shall make the
15 necessary monthly payments required by A.A.C. R14-2-1204(B).

16 43. TWCIS testified that it is willing to comply with Staff's recommendations made in the
17 Staff Report. (Tr. at 12.)

18 44. Staff's original recommendation for TWCIS's tariff filing was for TWCIS to "docket
19 a conforming tariff for each service within its CC&N within 365 days from the date of an Order in
20 this matter or 30 days prior to providing service, whichever comes first." Staff testified, however,
21 that its original recommendation was not intended to mean that TWCIS would be required to file
22 tariffs for resold long distance, facilities-based long distance, resold local exchange, and facilities-
23 based local exchange services within a year after the Decision in this matter. (Tr. at 35-37.) Staff
24 testified that it would be acceptable instead for TWCIS to docket a conforming tariff for each service
25 initially to be provided under the CC&N within 365 days from the date of an order or 30 days prior to
26 providing service. (Tr. at 37.) Staff was requested to file a late-filed exhibit revising its original
27 recommendation to reflect its intention and including language related to additional tariff filings as
28 new services are to be provided by TWCIS. (Tr. at 37-38.) In its late-filed exhibit, Staff replaced the

1 just and reasonable and in the public interest for TWCIS to establish rates and charges for
2 competitive services that are not less than TWCIS's total service long-run incremental costs of
3 providing the competitive services approved herein.

4 9. Staff's recommendations set forth in Findings of Fact Nos. 41 and 42, as modified by
5 Findings of Fact No. 45, are reasonable and should be adopted.

6 10. TWCIS's fair value rate base is not useful in determining just and reasonable rates for
7 the competitive services it proposes to provide to Arizona customers.

8 11. TWCIS's rates, as they appear in its proposed tariff, are just and reasonable and
9 should be approved.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the application of Time Warner Cable Information
12 Services (Arizona), LLC, for a Certificate of Convenience and Necessity to provide resold and
13 facilities-based local exchange and resold and facilities-based long distance telecommunications
14 services in Arizona is hereby granted, conditioned upon compliance with Staff's recommendations
15 set forth in Findings of Fact Nos. 41 and 42, as modified by Findings of Fact No. 45.

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1 IT IS FURTHER ORDERED that if Time Warner Cable Information Services (Arizona),
2 LLC, fails to meet the conditions outlined in Findings of Fact No. 42, as modified by Findings of
3 Fact No. 45, within the timeframes therein, the Certificate of Convenience and Necessity
4 conditionally granted herein shall become null and void after an opportunity for a hearing or other
5 due process.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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10 CHAIRMAN _____ COMMISSIONER

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12 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

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14 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto set my hand and caused the official seal of the
17 Commission to be affixed at the Capitol, in the City of Phoenix,
18 this _____ day of _____, 2009.

19 _____
20 MICHAEL P. KEARNS
21 INTERIM EXECUTIVE DIRECTOR

22 DISSENT _____

23 DISSENT _____
24 SNH:db

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1 SERVICE LIST FOR:

TIME WARNER CABLE INFORMATION
SERVICES (ARIZONA), LLC, DBA TIME
WARNER CABLE

3 DOCKET NO.:

T-20449A-08-0044

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