



0000100345

BEFORE THE ARIZONA CORPORATION C

216

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

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

DOCKETED BY [Signature]

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. 71169

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:

**FINDINGS OF FACT**

1  
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.<sup>1</sup>

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.<sup>2</sup>

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.

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

24  
25 8. TWCIS is a Delaware limited liability company authorized to transact business in the  
26

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

28 <sup>2</sup> 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.

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

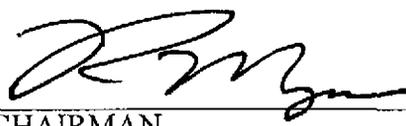
28

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.

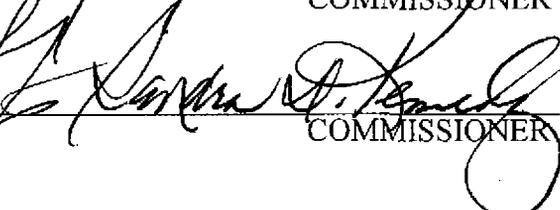
6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

8

9  

10 CHAIRMAN COMMISSIONER

11   

12 COMMISSIONER COMMISSIONER COMMISSIONER

13

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 30TH day of JUNE, 2009.

19 

20 MICHAEL P. KEARNS  
21 INTERIM EXECUTIVE DIRECTOR

22 DISSENT \_\_\_\_\_

23 DISSENT \_\_\_\_\_  
24 SNH:db

25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SERVICE LIST FOR:

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

DOCKET NO.:

T-20449A-08-0044

Joan S. Burke  
OSBORN MALEDON, P.A.  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012  
Attorneys for Time Warner Cable Information  
Services (Arizona), L.L.C.

Vincent M. Paladini, Senior Regulatory Counsel  
TIME WARNER CABLE, INC.  
290 Harbor Drive  
Stamford, CT 06902

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007