

December 29, 2020

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VIA ELECTRONIC MAIL  
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Ms. Debra Howland  
Executive Director and Secretary  
NH Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

Re: Time Warner Cable Information Services (New Hampshire), LLC – Request for  
Secretarial Letter regarding Designation as an Eligible Telecommunications Carrier

Dear Ms. Howland:

This letter is filed on behalf of Time Warner Cable Information Services (New Hampshire), LLC (“TWCIS”). CCO Holdings, LLC (“CCO Holdings”), an affiliate of TWCIS, was selected as a winning bidder in New Hampshire<sup>1</sup> under the FCC’s Rural Digital Opportunity Fund Phase I Auction (Auction 904) (“RDOF Auction”),<sup>2</sup> and CCO Holdings assigned its winning bid to TWCIS in the applicable RDOF Census Blocks in New Hampshire (“RDOF Census Blocks”). TWCIS’ receipt of RDOF Auction funding, however, is conditioned upon TWCIS obtaining designation as a federal Eligible Telecommunications Carrier (“ETC”) in those RDOF Census Blocks.<sup>3</sup> Receipt of RDOF funding would enable TWCIS to offer broadband Internet access services, and voice communications services using interconnected Voice over Internet Protocol (“VoIP”) technology to consumers in New Hampshire. This letter seeks confirmation that the New Hampshire Public Utilities Commission (“NHPUC”) lacks authority to regulate any VoIP services offered by TWCIS, and thus the NHPUC would not have jurisdiction to designate TWCIS as an ETC.

Under the federal Telecommunications Act, state commissions like the NHPUC are the primary authorities for designating ETCs. 47 U.S.C. § 214(e)(2). However, where a provider’s services are not subject to state jurisdiction, federal law authorizes the Federal Communications Commission (“FCC”) to grant the ETC designation. 47 U.S.C. § 214(e)(6).

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<sup>1</sup> See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, Public Notice, DA 20-1422 (Dec. 7, 2020) (“*Auction 904 Results Notice*”).

<sup>2</sup> See *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd 6077 (2020) (“*Auction 904 Procedures Public Notice*”).

<sup>3</sup> See *Auction 904 Results Notice*, at ¶ 36.

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Ms. Debra Howland  
Executive Director and Secretary  
NH Public Utilities Commission  
December 29, 2020  
Page 2

New Hampshire law provides that the NHPUC shall not:

...enact, adopt, or enforce, either directly or indirectly, any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law that regulates or has the effect of regulating the market entry, market exit, transfer of control, rates, terms, or conditions of any VoIP service or IP enabled service or any provider of VoIP service or IP-enabled service. VoIP services and IP-enabled services are not public utility services and a provider of VoIP service or IP-enabled service is not a public utility under RSA 362:2, or an excepted local exchange carrier under RSA 362:7, I(c) and shall not be regulated as a public utility in any manner other than as set forth in [RSA 362:7, III].

RSA 362:7, II. Also, the exceptions set forth in RSA 362:7, III would not allow the NHPUC to consider an ETC designation request with respect to VoIP services or IP-enabled services.

Accordingly, since the NHPUC is without authority to regulate any VoIP services offered by TWCIS, the NHPUC appears to lack jurisdiction under New Hampshire law to grant an ETC designation to TWCIS. Consequently, the appropriate course is for TWCIS to request the ETC designation from the FCC.

The FCC has previously determined that a carrier seeking ETC designation from the FCC may demonstrate that the FCC has jurisdiction “by submitting an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.” *In the Matter of Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order (DA 19-773, FCC Wireline Competition Bureau, Aug. 13, 2019), at 2 (internal quotations marks and citation omitted).

For the reasons discussed herein, TWCIS respectfully asks that the Commission issue a Secretarial Letter determining that TWCIS’s designation as an ETC is not subject to NHPUC jurisdiction under New Hampshire law.

TWCIS respectfully requests that the NHPUC provide its response to this letter expeditiously and, if possible, no later than December 31, 2020, to allow TWCIS sufficient time to prepare and file its ETC application with the FCC by January 6, 2021.

A hardcopy of this letter will not follow, in accordance with your letter of March 17, 2020, waiving the NHPUC’s paper filing requirements.

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Ms. Debra Howland  
Executive Director and Secretary  
NH Public Utilities Commission  
December 29, 2020  
Page 3

Thank you very much for your assistance. If you have any questions, please call me at (603) 473-4249, or you can reach me by electronic mail at [nmalmquist@drm.com](mailto:nmalmquist@drm.com).

Very truly yours,

DOWNS RACHLIN MARTIN PLLC  
Attorneys for Time Warner Cable Information Services (New Hampshire), LLC



By: \_\_\_\_\_  
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