

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Petition of Time Warner Cable Inc. for</b>	)	<b>WC Docket No. 13-204</b>
<b>Preemption Pursuant to Section 252(e)(5) of the</b>	)	
<b>Communications Act, As Amended, of the</b>	)	
<b>North Carolina Rural Electrification Authority</b>	)	
<b>For Failure To Arbitrate an Interconnection</b>	)	
<b>Agreement with Star Telephone</b>	)	
<b>Membership Corporation</b>	)	

**COMMENTS OF COMPTTEL**

COMPTTEL, through undersigned counsel, hereby submits these comments in support of Time Warner Cable’s (“TWC”) Petition For Preemption of the North Carolina Rural Electrification Authority’s (“NCREA”) jurisdiction to arbitrate an interconnection agreement between TWC and Star Telephone Membership Corporation (“Star”). According to TWC, it has been attempting (unsuccessfully) to obtain an interconnection agreement to exchange local traffic with Star for nearly eight years.<sup>1</sup> Although TWC first filed an arbitration petition with the NCREA in March 2006, the NCREA has yet to agree to schedule the arbitration.<sup>2</sup> The tortured history of this case cries out for preemption of the NCREA’s jurisdiction to arbitrate an interconnection agreement between TWC and Star.

Section 252(e)(5) of the Communications Act, 47 U.S.C. §252(e)(5), provides that in any case where a State Commission fails to arbitrate an interconnection agreement, the Commission *shall* issue an order preempting the State Commission’s jurisdiction within 90 days of being

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<sup>1</sup> TWC Petition for Preemption at 1.

<sup>2</sup> *Id.* at 11.

notified and *shall* assume the responsibility of the State Commission with respect to the arbitration and act for the State Commission. The NCREA has failed to commence, let alone complete, an arbitration between TWC and Star in accordance with its statutory obligations. As a result, Section 252(e)(5) mandates that the Commission preempt the NCREA's jurisdiction and assume its arbitration responsibilities.<sup>3</sup>

TWC requested interconnection with Star pursuant to Sections 251(a) and 251(b) of the Act, 47 U.S.C. §§ 251(a), (b) in October 2005.<sup>4</sup> Section 251(a) imposes a universal duty on all telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. In its most recent attempt to avoid interconnecting with TWC for the exchange of local traffic, Star has petitioned the NCREA pursuant to Section 251(f)(2) of the Act to “suspend or modify” the application of the duties imposed by Section 251(b). Section 251(b) imposes on all local exchange carriers the duty to provide resale, number portability, dialing parity, access to rights of way and reciprocal compensation for the transport and termination of telecommunications traffic. Rather than proceed with arbitration of the interconnection issues in accordance with the time frames set forth in the statute, the NCREA has determined that it will not initiate an arbitration until after it has completed the adjudication of Star's suspension/modification petition and even then, only if Star's petition is denied in its entirety and TWC files a new petition for arbitration.<sup>5</sup>

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<sup>3</sup> Section 51.801 of the Commission's Rules provides that a State Commission fails to carry out its responsibilities under Section 252 of the Act if it fails to complete an arbitration within the time limits established in Section 252(b)(4)(C) of the Act. 47 C.F.R. §52.801. Section 252(b)(4)(C) provides that the State Commission shall conclude the resolution of any unresolved issues no later than 9 months after the date on which the local exchange carrier received the request to negotiate an interconnection agreement.

<sup>4</sup> *Id.* at 1, 3.

<sup>5</sup> *Id.* at 9.

In the absence of an interconnection agreement setting forth the terms and conditions on which Star and TWC would provide resale, number portability, dialing parity, access to rights of way and reciprocal compensation to one another, it would be impossible for the NCREA to determine whether suspension or modification of any or all of Star's Section 251(b) obligations is necessary "to avoid a significant adverse economic impact on users of telecommunications services generally; to avoid imposing a requirement that is unduly economically burdensome; or to avoid imposing a requirement that is technically infeasible."<sup>6</sup> In this regard, it is critical to emphasize that an incumbent carrier must demonstrate that the "application of Section 251(b) would be likely to cause undue economic burden *beyond the economic burden that is typically associated with competitive entry*" in order to justify a suspension or modification under Section 251(f)(2).<sup>7</sup> It appears that the economic burdens alleged in Star's petition for suspension/modification all stem from the fact of TWC's anticipated competitive entry into its service territory as opposed to any economic burden arising from the provision of resale, number portability, dialing parity, access to rights of way or reciprocal compensation.<sup>8</sup>

COMPTTEL supports TWC's assertion that the NCREA's refusal to resolve the issues raised in TWC's arbitration petition within the time frames mandated by the statute is legally impermissible and, therefore, sufficient to trigger the Commission's obligation to preempt the NCREA's jurisdiction and move forward with the arbitration itself. Section 251(f)(2) of the Act authorizes a State Commission to suspend or modify application of some or all of the requirements of Sections 251(b) under certain narrow circumstances. The interconnection

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<sup>6</sup> Section 251(f)(2)(A) and (B) of the Act.

<sup>7</sup> Section 51.405(d) of the Commission's Rules, 47 C.F.R. § 51.405(d) (emphasis added).

<sup>8</sup> See Non-Confidential Petition of Star Telephone Membership Corporation Pursuant to 47 U.S.C. §251(f)(2) filed in NCREA Docket No. TMC-5 on February 29, 2012.

requirement of Section 251(a) is a separate statutory mandate, however, and nothing in the Act authorizes a State Commission to suspend or modify a telecommunications carrier's obligation to interconnect with other carriers.<sup>9</sup> Moreover, interconnection is a prerequisite to the application of Section 251(b) obligations. For these reasons, the NCREA cannot use its adjudication of Star's suspension/modification request as an excuse to delay and/or avoid enforcement of TWC's right to arbitrate the Section 251(a) and (b) issues that Star has refused to negotiate. Whatever action the NCREA may ultimately take on Star's suspension/modification petition will have no impact on Star's obligation to interconnect with TWC. In order to preserve TWC's statutory right to interconnect with Star, this Commission must step into the breach and arbitrate the open issues that the NCREA has improperly declined to address in a timely manner.

The Commission has previously determined that "Congress did not intend to insulate small or rural LECs from competition, preventing subscribers in those communities from obtaining the benefits of competitive local exchange service, including innovative offerings."<sup>10</sup> Contrary to the intent of Congress, NCREA has succeeded in insulating Star from competition for the last eight years by failing to move forward with TWC's requested arbitration of open issues. Such inaction has prevented TWC from entering Star's market and safeguarded Star's wireline monopoly status not only to the detriment of TWC but also to the detriment of consumers in Star's serving area who have been denied the benefits of competition and a choice of providers.

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<sup>9</sup> Cf., *In the Matter of Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. For Preemption Pursuant to Section 253 of the Communications Act, as Amended*, WC Docket No. 10-143, Declaratory Ruling, FCC 11-83 (rel. May 26, 2011) at ¶¶14-16 (rural carrier's exemption under Section 251(f)(1) offers exemption only from requirements of Section 251(c) and does not impact its obligations under Sections 251(a) or 251(b)) ("*CRC Communications*").

<sup>10</sup> *CRC Communications* at ¶22.

Section 253(a) of the Act provides that no state or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission has appropriately interpreted the term “legal requirement” in Section 253(a) to capture a broad range of state and local actions that could thwart the development of competition.<sup>11</sup> The NCREA’s continuous erection of obstacles to the arbitration of an interconnection agreement between TWC and Star is just such an action and violates Section 253 by prohibiting the development of competition in Star’s service territory and allowing Star to unconscionably delay a potential competitor’s entry into its service territory. *See, In the Matter of the Public Utility Commission of Texas et al. Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 3460 at ¶41 (1997) (Congress enacted Section 253 to ensure that no state authority could erect legal barriers to entry that would potentially frustrate the Act’s goal of opening local markets to competition).

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<sup>11</sup> *In the Matter of The Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights of Way*, CC Docket No. 98-1, Memorandum Opinion and Order, FCC 99-402 at ¶3 (rel. Dec. 23, 1999).

For the foregoing reasons and those set forth in TWC's Petition for Preemption, the Commission should preempt the NCREA's jurisdiction over the interconnection dispute between TWC and Star without delay and assume responsibility for arbitrating an interconnection agreement between the two carriers.

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Respectfully submitted,

/s/

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