

**Before the
Federal Communications Commission
Washington, DC 20554**

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

**NCREA COMMENTS TO
TIME WARNER CABLE INC.'S PETITION FOR PREEMPTION**

SEPTEMBER 6, 2013

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SUMMARY

The North Carolina Rural Electrification Authority (hereinafter “the NCREA”) requests that the Federal Communications Commission deny Time Warner Cable Inc.’s (hereinafter “TWC”) Petition for Preemption. The NCREA has not failed to arbitrate an interconnection agreement between Time Warner Cable Information Services (North Carolina), LLC (hereinafter “TWCIS”) and Star Telephone Membership Corporation (hereinafter “Star”), but has set forth a procedural schedule calling for an interconnection agreement to be considered pending resolution of Star’s Petition seeking suspension or modification of its 47 USC §251(b) obligations. Star filed a Petition pursuant to Section 251(f)(2) of the Communications Act of 1934 asking the NCREA to suspend or modify any obligation to provide specific Section 251(b) interconnection arrangements requested by TWCIS.

NCREA’s measured approach is reasonable, appropriate, and permissible pursuant to 47 USC §251(f)(2)(B) and 47 USC §252 of the Communications Act of 1934. By allowing Star’s Section 251(f)(2) Petition to be resolved before arbitrating an interconnection agreement, it will avoid the inefficiency that would arise should the parties be forced to determine whether to suspend or modify the application of any Section 251(b) requirements to a rural ILEC while simultaneously arbitrating an interconnection agreement for those same arrangements. The NCREA has not “failed to act” but has determined that for the sake of clarity and efficiency, Star’s Section 251(f)(2) Petition should be resolved before the parties are required to move forward with the arbitration of an interconnection agreement. TWC’s Petition for Preemption should be denied.

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**NCREA COMMENTS TO
TIME WARNER CABLE INC'S PETITION FOR PREEMPTION**

Time Warner Cable Inc. (hereinafter "TWC") has requested that the Federal Communications Commission issue an order preempting the jurisdiction of the North Carolina Rural Electrification Authority (hereinafter "the NCREA") to arbitrate an interconnection agreement between TWC's telecommunications carrier subsidiary, Time Warner Cable Information Services (North Carolina), LLC (hereinafter "TWCIS") and Star Telephone Membership Corporation (hereinafter "Star"). The NCREA has established a procedural schedule which requires Star and TWCIS to first complete the Section 251(f)(2) proceedings that were initiated by Star's Petition seeking modification or suspension of one or more of its Section 251(b) duties.¹ After the Section 251(f)(2) proceedings are complete, the NCREA has ordered that the parties shall proceed to Phase II. Phase II calls for TWCIS and Star to determine whether they can agree to the terms of an interconnection agreement. If they are unable to agree to the terms of an interconnection agreement, the Authority will then move forward with the arbitration of any disputed issues that exist between Star and TWCIS regarding interconnection.

¹ Order, Docket No. TMC-5, Sub 1, at 3-4 (N.C. Rural Elec. Auth. Apr. 2, 2013), attached as Exhibit 1.

The NCREA has carried out its duties as provided by the Telecommunications Act. The NCREA has not failed to act, therefore TWC's petition for preemption should be denied.

BACKGROUND

1. The Parties

In October 2005, TWCIS, a carrier affiliate of TWC, requested that Star, a telephone membership corporation, negotiate with TWCIS for an interconnection agreement. Star, based on its belief that it was subject to an exemption pursuant to Section 251(f)(1), did not negotiate an interconnection agreement, therefore on March 14, 2006, TWCIS filed with the NCREA a Petition for Arbitration with Star Telephone Membership Corporation and a Conditional Petition for Termination of Rural Exemption and Request for Consolidation with Petition for Arbitration.²

The North Carolina Rural Electrification Authority is an agency of the state of North Carolina established with the purpose of securing electric and telephone service for the rural districts of the state. The NCREA is a state commission as defined in the Telecommunications Act of 1996, 47 USC §153(48)(2013).

The NCREA board consists of five members, with each member being appointed by the North Carolina governor.³ The NCREA is established for the stated purpose of ensuring that people residing in rural communities are provided with adequate telephone service.⁴ The NCREA has a number of duties, including the following:

The Rural Electrification Authority shall have the authority to employ such personnel as shall be necessary to conduct surveys; to contact the telephone companies serving the general area for the purpose of arranging for extension of telephone service by

² Petition of Time Warner Cable Information Services (North Carolina), LLC for Arbitration with Star Telephone Membership Corporation and Conditional Petition for Termination of Rural Exemption (filed March 14, 2006), attached as Exhibit 2.

³ N.C. Gen. Stat. §117-1 (2013).

⁴ N.C. Gen. Stat. §117-29 (2013).

such companies to such community or communities; to make estimates of the cost of the extension of telephone service to such community or communities; to call upon the Utilities Commission of the State to fix such rates as will be applicable to such service; to secure for such community or communities any assistance which may be available from the federal government by gift or loan or in any other manner; to investigate all applications for the creation of telephone membership corporations and determine and pass upon the question of granting authority to form such corporation; to provide forms for making such applications, and to do all things necessary to a proper determination of the question of the establishment of such telephone membership corporations in keeping with the provisions of this Article; to act as agent for any such telephone membership corporation in securing loans or grants from any agency of the United States government; to prescribe rules and regulations and the necessary blanks for such membership corporations in making applications for grants or loans from any agency of the United States government; to do all other acts and things which may be necessary to aid the rural communities in North Carolina in securing telephone service.⁵

While members of the board are officers and directors of telephone and electric cooperatives (including Star) and/or associations representing such cooperatives, each member is required by law to recuse themselves and not participate in matters that present a conflict or a potential conflict.⁶ TWC mentions in its Petition for Preemption that Star is represented on the NCREA's board by Commissioner Ronnie Alderman, who has served on Star's board of directors for 13 years. Commissioner Alderman is not serving as Star's "representative" in his duties as an NCREA board member. The telephone and membership cooperatives do not have representatives on the Board. While members of the board may hold positions with the telephone and membership cooperatives, their duties as NCREA board members are separate and distinct from the duties they have to their respective telephone and electric cooperatives and to the associations representing such cooperatives.

⁵ N.C. Gen. Stat. 117-31 (2013). Petitioner states in its Petition that the NCREA is an agent for the electric and telephone member corporations. Time Warner failed to state that this agency relationship occurs in the context of electric and telephone membership corporations seeking loans or grants from the United States government.

⁶ Time Warner mentions in its Petition that Commissioner Ronnie Alderman, who has served on Star's board of directors for 13 years, is a member of the NCREA board. Commissioner Alderman has recused himself from participation in any and all proceedings before the NCREA involving TWCIS and Star to avoid any conflict or potential conflict.

2. Procedural History

In October 2005, TWCIS requested negotiation of an interconnection agreement with Star. After efforts between Star and TWCIS to negotiate an interconnection agreement were unsuccessful, on March 14, 2006, TWCIS filed a Petition for Arbitration with Star Telephone Membership Corporation and a Conditional Petition for Termination of Rural Exemption and Request for Consolidation with Petition for Arbitration.⁷ TWCIS filed its Petition directly to the NCREA as required by the Telecommunications Act.

On April 10, 2006, Star filed a Motion to Dismiss Time Warner Cable Information Services (North Carolina), LLC's Petition for Arbitration.⁸ The NCREA established a procedural schedule allowing Time Warner to respond to Star's Motion. Time Warner responded to Star's Motion and on May 10, 2006, the NCREA ordered Star to file reply comments on or before May 16, 2006.

After considering the responses and replies filed by Star and TWCIS, on July 19, 2006, the NCREA dismissed TWCIS's petition on the grounds that TWCIS was not a telecommunications carrier and was therefore not permitted to seek interconnection rights or compel arbitration pursuant to Section 252.⁹

On December 17, 2007, the NCREA received a request from TWCIS asking that it reconsider its order dismissing TWCIS's petition.¹⁰ On March 24, 2008, the NCREA determined that the request for reconsideration was not a remedy provided for by the Telecommunications

⁷ Petition of Time Warner Cable Information Services (North Carolina), LLC for Arbitration with Star Telephone Membership Corporation and Conditional Petition for Termination of Rural Exemption (filed March 14, 2006), Exhibit 2.

⁸ Motion to Star Telephone Membership Corporation to Dismiss Time Warner Cable Information Services (North Carolina) LLC's Petition for Arbitration (filed April 10, 2006), attached as Exhibit 3.

⁹ Order Consolidating and Dismissing Proceedings, Docket Nos. TMC-1, Sub 1 et al., at 6-7 (N.C. Rural Elec. Auth. July 19, 2006), attached as Exhibit 4.

¹⁰ Letter from Marcus W. Trathen, Counsel to TWC, to T. Scott Poole, Administrator, NCREA (filed Dec. 17, 2007), attached as Exhibit 5.

Act of 1996 and denied TWCIS's request for reconsideration of the Authority's July 19, 2006 order.¹¹

On May 2, 2008, TWCIS filed a complaint and request for declaratory and injunctive relief in federal district court to challenge the legality of the July 2006 order and the March 2008 order.¹²

On September 23, 2009, the US District Court for the Eastern District of North Carolina vacated and remanded both orders back to the NCREA to move forward with TWCIS's petitions.¹³ On December 7, 2009, the NCREA issued an order seeking comments from Star and TWCIS on the procedures necessary to comply with the court's ruling.

On January 27, 2010, the NCREA ordered that the matter would proceed in two phases: 1) the first phase would determine whether Star's rural exemption would be terminated; and 2) in the event the Authority determined that Star's rural exemption is terminated, the hearing officer would conduct an arbitration regarding an interconnection agreement between TWCIS and Star.¹⁴ During the pendency of the determination on Star's rural exemption, on May 26, 2011, the FCC issued a Declaratory Ruling stating that Section 251(f)(1) exempts rural LECs only from the requirements of Section 251(c) but has no impact on the rural LEC's obligations under Sections 251(a) and (b).¹⁵ In that same ruling, the FCC recognized that "carriers might obtain relief from the section 251(b) obligations in some instances pursuant to Section 251(f)(2)."¹⁶

¹¹ Order Denying Request for Reconsideration, Docket No. TMC-1, Sub 1 et al., at 2-3 (N.C. Rural Elec. Auth. March 24, 2008), attached as Exhibit 6.

¹² *Time Warner Cable Info. Servs. (N.C.), LLC v. Duncan*, Complaint for Declaratory and Injunctive Relief, No. 5:08 CV 202 (filed May 2, 2008).

¹³ *Time Warner Cable Info. Servs. (N.C.), LLC v. Duncan*, 656 F. Supp. 2d 565, 576 (E.D.N.C. 2009).

¹⁴ Order, Docket No. TMC-5, Sub 1, at 5 (N.C. Rural Elec. Auth. Jan. 27, 2010), attached as Exhibit 7.

¹⁵ *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 et al.*, Declaratory Ruling, 26 F.C.C.R. 8259, FCC 11-83, WC Docket No. 10-143(2011)(hereinafter "CRC Declaratory Ruling").

¹⁶ CRC Declaratory Ruling n. 49, 26 F.C.C.R. 8259.

On January 31, 2012, the NCREA terminated the rural exemption proceeding pursuant to the CRC Declaratory Ruling issued by the FCC.¹⁷ On February 29, 2012, Star filed its Confidential Petition of Star Pursuant to Section 251(f)(2).¹⁸ The NCREA was to rule on the Section 251(f)(2) petition within 180 days. TWCIS filed a Motion to Dismiss Star's Petition on March 23, 2012.¹⁹

Following NCREA's review of comments and reply comments from the parties and its review of the recommendation of the arbitrator, on April 2, 2013, the NCREA issued an order allowing Star's 251(f)(2) petition to move forward.²⁰ Similar to its prior approach in January 2010, the NCREA ordered that the matter proceed in two phases:

- 1) First the arbitrator shall determine whether a suspension or modification of any of Star's 47 USC §251(b) obligations is necessary; and
- 2) If obligations should not be suspended or modified, the parties shall proceed to Phase II, an interconnection agreement.²¹

While TWC argues that the NCREA is unwilling to act on TWCIS's pending arbitration petition at all, it is evident from the order that TWC's assertion is inaccurate. The NCREA will move forward with arbitration, but only after it determines whether any of Star's Section 251(b) obligations should be modified or suspended. TWC states in its petition that the NCREA has never completed an arbitration pursuant to Section 252(1). This characterization is improper. Pursuant to 47 USC §252, parties can participate in voluntary negotiations. The NCREA only gets involved if asked to participate in the event the parties are unable to come to an agreement.

¹⁷ Final Decision, Docket No. TMC-5, Sub 1 (N.C. Rural Elec. Auth. Jan. 31, 2012), attached as Exhibit 8.

¹⁸ Non-Confidential Petition of Star Telephone Membership Corporation Pursuant to 47 U.S.C. §251(f)(2), Docket No. TMC-5, Sub 1, at 15 (filed Feb. 29, 2012), attached as Exhibit 9.

¹⁹ Time Warner Cable Information Services (North Carolina), LLC Motion to Dismiss Petition for Suspension or Modification, Docket No. TMC-5, Sub 1 (filed March 23, 2012), attached as Exhibit 10.

²⁰ Order, Docket No. TMC-5, Sub 1, at 3-4 (N.C. Rural Elec. Auth. Apr. 2, 2013), Exhibit 1.

²¹ Exhibit 1.

In most circumstances, parties have overwhelmingly been able to resolve their differences before it became necessary for the NCREA to render a final decision in an arbitration docket.

TWC also argues that years have elapsed since TWCIS first sought to negotiate an interconnection agreement. While years have passed since TWCIS's initial request, those years have been spent deciding relevant issues and have led to lengthy litigation before the NCREA and up to the federal court. The NCREA has not been dormant, but has actively moved the proceedings between Star and TWCIS forward as suitable pursuant to the Telecommunications Act.

ARGUMENT

I. THE FCC SHOULD NOT PREEMPT THE NCREA'S JURISDICTION

1. The NCREA has not "failed to act."

Preemption by the Federal Communications Commission of the jurisdiction of a state regulatory agency is authorized by the Telecommunications Act of 1996, 47 USC §609, but only where the state commission fails to act to carry out its responsibility under 47 USC §252 in any proceeding or other matter under [252]."²² In *Global NAPs Inc. v. FCC*, 291 F.3d 832, 835 (D.C. Cir. 2002), the FCC recognized that "only if the state commission either does not respond to a request, or refuses to resolve a particular matter raised in a request, does preemption become a viable option." The court noted that "under this reading, the purpose of 252 is to hold the FCC out as an alternative forum for adjudication of certain disputes related to interconnection agreements; the statute does not authorize the Commission to sit as an appellate tribunal to review the correctness of state resolution of such disputes."²³

²² *Global NAPs Inc. v. FCC*, 291 F.3d 832, 835 (D.C. Cir. 2002).

²³ *Id.* at 837.

The NCREA has not “failed to act” but rather, has acted pursuant to the authority provided for in Section 251(f)(2). Section 251(f)(2)(B) allows a state Commission to suspend enforcement of the requirements of subsection (b) to which the petition applies with respect to the petitioning carrier or carriers. This section allows the NCREA to suspend all requirements that relate to Section 251(b) while the state commission is acting on the petition.

The NCREA’s actions are also appropriate as provided by Section 252(4)(C) which states that “the State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.” Star’s Petition involves both a determination of whether to suspend any of Star’s Section 251(b) obligations as well as a determination of an interconnection agreement. As required by Section 252, the NCREA has established a process allowing the NCREA to resolve issues related to the Section 251(f)(2) duties (that deal directly with interconnection rights) in order for the parties to arbitrate issues related to an interconnection agreement. The NCREA has not failed to act, despite TWC’s insistence. While TWC may not agree with the process, this disagreement cannot be characterized as NCREA’s failing to act.

Pursuant to 47 USC §252(e)(2)(B), a State Commission may reject an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251. It is procedurally appropriate to first determine what Section 251(b) requirements may be modified or suspended before having the parties enter into an interconnection agreement. Since the NCREA may reject an agreement that does not meet the

requirements of Section 251, the NCREA correctly determined that the Section 251 requirements should be decided before the interconnection agreement is arbitrated.

TWC cites to *Starpower Communications, LLC Petition for Preemption* in support of its argument that the NCREA has failed to act.²⁴ Starpower is distinguishable. Starpower filed a petition with the Virginia Commission seeking a declaratory ruling directing GTE to pay reciprocal compensation to Starpower for delivering GTE's traffic to Internet Service Providers (ISPs) served by Starpower. In that case, the Virginia Commission declined jurisdiction over the petition and specifically stated they "should take no action." The Virginia Commission encouraged the parties to seek relief from the FCC. In *Starpower*, the Virginia Commission expressly declined to resolve the petitions before it. The FCC recognized that the Commission failed to act and under those "unique circumstances" decided to assume the jurisdiction of the state commission.²⁵ The NCREA in this case has not stated that it will not act on TWCIS's pending arbitration petition, but instead has decided to wait to move forward with interconnection proceedings until the parties complete hearings on Star's Section 251(f)(2) petition.

TWC also cites to *In the matter of the Petition of WorldCom, Inc.* for its argument that the NCREA has failed to act.²⁶ WorldCom filed a petition with the Virginia Commission seeking arbitration of the terms of an interconnection agreement with Verizon. The Virginia Commission expressly failed to act by issuing an order refusing to arbitrate the terms of the parties' interconnection agreement pursuant to the Act. The Virginia Commission encouraged

²⁴ *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 15 FCC Rcd 11277, ¶17 (2000).

²⁵ *Id.*

²⁶ *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 6224 ¶15 (2001).

the parties to seek relief from the FCC in lieu of the state commission. The FCC recognized that the state commission expressly refused to apply federal law. The parties did not dispute that the Virginia Commission failed to carry out its Section 252 responsibility. WorldCom is another case in which there is a clear failure to act, as well as a request by the state commission seeking the FCC's preemption.

The NCREA has not failed to act and has not sought FCC intervention. The NCREA has energetically moved the matter between Star and TWCIS along. The case has, however, taken on a life of its own. The NCREA has consistently discharged its duty during the progression of the case through dismissal, appeal to federal court, and remand back to the NCREA. Time Warner's Petition for Preemption should therefore be denied.

2. The NCREA's ruling does not conflict with the CRC Declaratory Ruling.

The CRC Declaratory Ruling recognizes that "the [Telecommunications] Act does not contain an exemption from the duty to interconnect under Section 251(a), and as the Commission has previously recognized, 'the only statutory avenue for relief from the Section 251(b) requirements' is for a rural incumbent LEC to request suspension or modification of those requirements under the procedure established by section 251(f)(2)."²⁷ The CRC Declaratory Ruling notes specifically that carriers might obtain relief from the Section 251(b) obligations pursuant to Section 251(f)(2).

The CRC Declaratory Ruling does not prohibit the NCREA from ordering the parties to proceed with resolving the Section 251(f)(2) petition before arbitrating an interconnection agreement. Contrary to the assertions of TWC, the NCREA has not decided to block or prevent TWCIS and Star from entering into an interconnection agreement. The NCREA has instead set

²⁷ CRC Declaratory Ruling n. 79, 26 F.C.C.R. 8259.

forth a procedural schedule that will logically allow the 251(f)(2) petition to be decided and then allow the parties to arbitrate an interconnection agreement.

The NCREA properly ordered that a determination be made on whether to suspend or modify any obligation of Star TMC to establish the interconnection arrangements requested by TWCIS before arbitrating TWCIS's request for establishment of an interconnection agreement with Star TMC providing for those arrangements. By taking the approach ordered by the NCREA, determining whether to suspend or modify Star's obligation to provide any of the interconnection arrangements sought by TWCIS will provide clarity in the proceeding to determine what interconnection arrangements are to be provided by Star.

II. NCREA'S ACTIONS ARE JUSTIFIED BY SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT

1. Section 251(f)(2) Authorizes the NCREA to suspend the arbitration proceedings.

Star TMC filed a Petition for suspension or modification pursuant to Section 251(f)(2) of the Telecommunications Act. Section 251(f)(2) provides as follows:

The State Commission shall act upon the Petition filed in this paragraph within 180 days after receiving such Petition. **Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.** (emphasis added)

It is clear that the substance of what TWC seeks through an interconnection agreement will be the subject of what is considered in the 251(f)(2) proceeding. Star is asserting that it is subject to one or more suspensions or exemptions in terms of its duty not to prohibit the resale of its telecommunications services, the duty to provide number portability, the duty to provide dialing parity, the duty to afford access to rights of way and the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications. TWC is seeking those arrangements in its interconnection agreement with Star. TWC is seeking to

simultaneously litigate the question of whether Star is exempt from those duties while negotiating an agreement that provides for those arrangements. This approach is inappropriate and inefficient. The NCREA's measured approach is sufficient and permissible pursuant to Section 251(f)(2). TWC's Petition for Preemption should be denied.

2. Section 252 does not prohibit the NCREA from resolving Star's Petition for Suspension or Modification before resolving TWC's demand for arbitration of an interconnection agreement.

NCREA's decision to determine whether Star is subject to any Section 251(b) modifications or suspensions is procedurally sound and in line with the requirements of 47 USC §252. Pursuant to 47 USC §252(c)(1), "in resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall - - (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the commission pursuant to Section 251." Section 252 outlines the necessity of ensuring that the requirements of Section 251 are met in resolving issues surrounding an interconnection agreement. It follows directly, therefore, that Section 251(b) suspensions and/or modifications should be resolved before an arbitration of an interconnection agreement can be resolved. The NCREA has acted appropriately and has not acted in a manner contrary to the Telecommunications Act. TWC's Petition for Preemption should be denied.

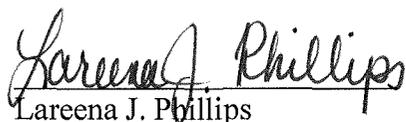
CONCLUSION

Preempting the NCREA's jurisdiction at this late stage, in addition to being unwarranted, would be wasteful and inefficient. The NCREA has not failed or refused to act. The NCREA's stepped approach to consider Star's pending Section 251(f)(2) request before arbitrating an interconnection agreement is procedurally permissible and does not demonstrate a failure to act

that warrants FCC preemption. The FCC should, therefore, deny Time Warner's Petition for Preemption.

Respectfully submitted this 6th day of September, 2013.

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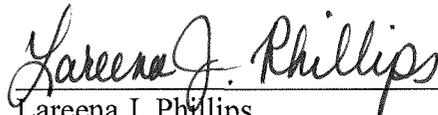
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following by electronic mail and depositing it in the United States mail, postage prepaid addressed as follows:

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This the 6th day of September, 2013.


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**APPENDIX OF STATE COMMISSION DOCUMENTS CITED IN NCREA'S
COMMENTS TO TIME WARNER CABLE INC.'S PETITION FOR PREEMPTION**

Exhibit	Description
1	Order, Docket No. TMC-5, Sub 1 (N.C. Rural Elec. Auth. Apr. 2, 2013)
2	Petition of Time Warner Cable Information Services (North Carolina), LLC for Arbitration with Star Telephone Membership Corporation and Conditional Petition for Termination of Rural Exemption (filed March 14, 2006)
3	Motion to Star Telephone Membership Corporation to Dismiss Time Warner Cable Information Services (North Carolina) LLC's Petition for Arbitration (filed April 10, 2006)
4	Order Consolidating and Dismissing Proceedings, Docket Nos. TMC-1, Sub 1 (N.C. Rural Elec. Auth. July 19, 2006)
5	Letter from Marcus W. Trathen, Counsel to TWC, to T. Scott Poole, Administrator, NCREA (filed Dec. 17, 2007)
6	Order Denying Request for Reconsideration, Docket No. TMC-1, Sub 1 (N.C. Rural Elec. Auth. March 24, 2008)
7	Order, Docket No. TMC-5, Sub 1 (N.C. Rural Elec. Auth. Jan. 27, 2010)
8	Final Decision, Docket No. TMC-5, Sub 1 (N.C. Rural Elec. Auth. Jan. 31, 2012)
9	Non-Confidential Petition of Star Telephone Membership Corporation Pursuant to 47 U.S.C. §251(f)(2), Docket No. TMC-5, Sub 1 (filed Feb. 29, 2012)
10	Time Warner Cable Information Services (North Carolina), LLC Motion to Dismiss Petition for Suspension or Modification, Docket No. TMC-5, Sub 1 (filed March 23, 2012)

Exhibit 1

NORTH CAROLINA
RURAL ELECTRIFICATION AUTHORITY
RALEIGH
DOCKET NO. TMC 5, Sub 1

BEFORE THE NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY

In the Matter of
Petition of Time Warner Cable Information
Services (North Carolina), LLC for Arbitration
Pursuant to Section 252(b) of the Communications
Act of 1934, as Amended, to Establish an
Interconnection Agreement with
Star Telephone Membership Corporation.

AND

Petition of Time Warner Cable Information
Services (North Carolina), LLC to Terminate
Star Telephone Membership
Corporation's Rural Telephone Company
Exemption Pursuant to Section 251(f)(1) of the
Communications Act of 1934, as Amended.

ORDER

**BY THE NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY
("Authority"):**

PROCEDURAL HISTORY

1. On October 5, 2005, Time Warner Cable Information Services (North Carolina) (hereinafter "TWCIS") sent a letter requesting that Star TMC (hereinafter "Star"), enter into negotiations for an interconnection agreement.
2. On March 14, 2006, after Star refused to negotiate concerning an interconnection agreement, TWCIS petitioned the North Carolina Rural Electrification Authority (hereinafter the "Authority") to arbitrate an interconnection agreement between TWCIS and Star.
3. Before the arbitration could move forward, Star sought dismissal of the proceeding on the ground that TWCIS was not a telecommunications carrier and therefore was not eligible for interconnection under the Act.
4. On July 19, 2006, the Authority issued an Order in which it agreed with Star and dismissed the proceeding.

5. After TWCIS's request to reconsider the petition was dismissed, TWCIS appealed to the United States Court for the Eastern District of North Carolina. On September 23, 2009 the Court remanded the proceedings back to the Authority for reconsideration.

6. On January 27, 2010 the Authority ordered that the case proceed in two phases: the first would consider whether Star's rural exemption under 47 USC §251(f)(1) should be terminated and the second (in the event the exemption would be terminated) would arbitrate any remaining open issues necessary for the parties to enter into an interconnection agreement.

7. On May 26, 2011, the FCC issued a Declaratory Ruling clarifying that local exchange carriers are obligated to fulfill all of the duties set forth in 47 USC §251(a) and (b) of the Act, including the duty to interconnect and exchange traffic, regardless of their rural exemption.

8. On October 21, 2011, the Arbitrator issued a Recommended Order to terminate the rural exemption phase of the proceeding.

9. On January 31, 2012, the Authority accepted and adopted the Recommended Order Terminating Phase I of the Proceeding without modification as the Final Decision of the Authority. The Order adopted by the Authority stated that Phase I of the Proceeding was terminated and that the parties should proceed to Phase II, arbitration of an interconnection agreement.

10. On February 24, 2012, the Authority proposed a procedural schedule to commence arbitration.

11. On February 29, 2012, prior to beginning the Phase II arbitration, Star filed a petition pursuant to 47 USC §251(f)(2) seeking suspension or modification of all requirements of 47 USC §251(b) and (c) implicated by the request for interconnection arrangements from TWCIS.

12. TWCIS is not seeking interconnection with Star under 47 USC §251(c) of the Act, therefore Star's Petition only implicates the obligations set forth under 47 USC §251(b).

13. On March 23, 2012, TWCIS filed a Motion to Dismiss Star's Petition.

14. On March 28, 2012, the Authority issued an Order consolidating TWCIS's Petition for Arbitration with Star's 47 USC §251(f)(2) Petition and TWCIS's Motion before proceeding to Phase II of the Arbitration. That Order further stated that "The hearing/arbitration officer shall submit a recommended decision to the Authority as to Star's Petition, TWCIS's Motion to Dismiss, and any response filed and as to whether to proceed to Phase II. The Authority will then allow the parties to file exceptions to that recommendation and will provide a time for oral argument before the Authority."

15. On April 23, 2012 Star filed a Response to TWCIS's Motion and TWCIS filed a Reply to Star's Response on May 7, 2012.

16. On August 23, 2012, an oral argument was held which was heard by Arbitrator Jo Anne Sanford.
17. On October 25, 2012, Arbitrator Sanford issued a Recommended Order "Granting TWCIS (NC)'s Motion to Dismiss".
18. On October 31, 2012, the Authority issued an Order outlining the procedural schedule for objections and comments on the Recommended Decision filed on October 25, 2012.
19. The Order also called for the Authority to schedule an oral argument before rendering a final decision.
20. On November 26, 2012, the parties submitted Objections and Comments to the October 25, 2012 Recommended Order.
21. On December 21, 2012, the parties submitted Responses to Objections and Comments.
22. On January 10, 2013, TWCIS submitted a Reply to Star's Response. Star requested an extension on the deadline to submit their reply which was granted through January 14, 2013.
23. On January 14, 2013, Star submitted a Reply to the Response filed by TWCIS.
24. On February 13, 2013, the parties presented oral arguments to the Authority.

DECISION

On February 13, 2013, the above-referenced matter came before the North Carolina Rural Electrification Authority for consideration. Authority members in attendance were L. Calvin Duncan – Chairman; Joseph G. Justice – Vice-Chairman; Edith C. Cox; and Buddy G. Creed. Prior to the discussions on the filings, Authority member J. Ronnie Alderman, who is also a board member of Star Telephone Membership Corporation, made a motion to recuse himself. After deliberating the motion, the Authority approved Authority member Alderman's motion and Mr. Alderman withdrew from the proceeding. The remaining members of the Authority considered and discussed all filings by the parties and arguments presented by counsel regarding the above captioned matter.

IT IS THEREFORE ORDERED as follows:

1. For the purposes of stating a claim upon which relief may be granted under 47 USC §251(f)(2), the Authority finds that in its petition, Star has sufficiently plead the elements necessary to request suspension or modification pursuant to 47 USC §251(f)(2).
2. The allegations in Star's petition are sufficient to entitle Star to an opportunity to offer evidence in an effort to meet its burden of proof under 47 USC §251(f)(2).

3. Pursuant to the power vested in the Authority by N.C. Gen. Stat. § 117-2(12), the Authority directs that the Arbitrator determine if any of the obligations of 47 USC §251(b) should be suspended or modified, for any duration, as to Star.
4. Such hearing/arbitration shall be conducted in two (2) phases. First, the Arbitrator shall determine whether a suspension or modification of any of Star's 47 USC §251(b) obligations is necessary to avoid a significant adverse economic impact on users of Star's telecommunications services; or if the suspension is necessary to avoid imposing requirements on Star that are unduly economically burdensome; and, is consistent with the public interest, convenience, and necessity. After the initial determination on that issue, the Arbitrator shall submit a recommended decision to the Authority. The Authority will then allow the parties to file exceptions to that recommendation and will provide a time for oral argument to the Authority. After the exceptions are filed and oral argument is held, the Authority will make a final determination regarding whether suspension or modification of any of Star's 47 USC §251(b) obligations is necessary.
5. If the Authority determines that suspension or modification of any of Star's 47 USC §251(b) obligations is necessary, the Authority shall suspend or modify one or more of the obligations of 47 USC §251(b) to the extent that, and for such duration as, the Authority determines that suspension or modification is necessary to avoid a significant adverse economic impact on users of Star's telecommunications services or would impose requirements on Star TMC that are unduly economically burdensome and would be inconsistent with the public interest, convenience, and necessity.
6. Should the Authority determine that Star's 47 USC §251(b) obligations should not be suspended or modified, the parties shall proceed to Phase II. If they are unable to agree to the terms and conditions of an interconnection agreement, a Petition will be filed with the Authority requesting arbitration for the disputed issues. The Arbitrator will conduct an arbitration regarding an interconnection agreement between TWCIS (NC) and Star and shall submit a recommended decision to the Authority. The Authority will then allow the parties to file comments or objections to the recommended decision and will provide a time for oral argument before the Authority. After the comments or objections are filed and oral argument is held, the Authority will make a final determination regarding the interconnection agreement.

**IT IS SO ORDERED,
ISSUED BY THE ORDER OF THE AUTHORITY.**

This the 2nd day of April, 2013.

The North Carolina Rural
Electrification Authority

Frances Liles
Administrator

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing ORDER has been served to all addresses listed below via electronic mail and by U.S. Mail this the 2nd day of April, 2013.

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This the 2nd day of April, 2013.

The North Carolina Rural
Electrification Authority

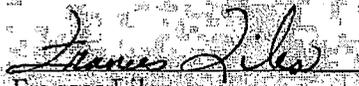

Frances Liles

Exhibit 2

**BEFORE THE
NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY**

DOCKET NO. _____

In the Matter of)
Petition of Time Warner Cable Information Services)
(North Carolina), LLC for Arbitration)
Pursuant to Section 252(b) of the Communications Act)
of 1934, as Amended, to Establish an Interconnection)
Agreement with Star Telephone Membership Corporation)

PETITION FOR ARBITRATION

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Dated: March 14, 2006

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BEFORE THE
NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY

DOCKET NO. _____

In the Matter of)
Petition of Time Warner Cable Information Services)
(North Carolina), LLC for Arbitration)
Pursuant to Section 252(b) of the Communications Act)
of 1934, as Amended, to Establish an Interconnection)
Agreement with Star Telephone Membership Corporation)

PETITION FOR ARBITRATION

Time Warner Cable Information Services (North Carolina), LLC ("TWCIS (NC)"), through its attorneys, hereby petitions the North Carolina Rural Electrification Authority ("Authority") for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Star Telephone Membership Corporation ("Star") pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act"),^{1/} and the Authority's *Arbitration Policies Resolution*.^{2/}

INTRODUCTION AND OVERVIEW

Star operates in a rural area of North Carolina that has not benefited from telecommunications competition given the limited number of potential subscribers and the rural surroundings. Consistent with the intent of the federal Act and state policies, TWCIS (NC) is

^{1/} 47 U.S.C. §§ 151, *et seq.* (1996) ("Act").

^{2/} *Resolution on Arbitration Policies for Telecommunications Interconnection Agreements* (May 16, 2005) ("*Arbitration Policies Resolution*").

certified to offer local and long distance telecommunications services in North Carolina,^{3/} and has sought to offer competitive telecommunications service in Star's territory so that customers of TWCIS (NC)'s affiliate, Time Warner Cable, located in Star's territory will be able to receive competitive voice services, including Voice-over-Internet Protocol ("VoIP") services. Making these services available will advance the goal of ensuring that all North Carolina consumers have the benefits of competition, not just those living in metropolitan areas.

To that end, TWCIS (NC) has sought interconnection and other necessary arrangements from Star to ensure that each Party's customers can complete and receive calls. In order to offer competitive service in Star's territory, TWCIS (NC) has sought to exercise its rights under Section 251 of the Act to seek interconnection pursuant to Section 251(a) of the Act and the establishment of number portability and reciprocal compensation arrangements pursuant to Section 251(b) of the Act.^{4/} These are rights afforded to all telecommunications carriers and all local exchange carriers.

Star, however, has rebuffed TWCIS (NC)'s attempts to obtain even these limited interconnection rights. By so doing and failing to offer any lawful justification for its continued refusal to negotiate with TWCIS (NC), Star has failed to comply with its obligations under the Act. TWCIS (NC) is entitled to obtain interconnection and other arrangements under Sections 251(a) and 251(b) of the Act, and has presented Star with a proposed interconnection agreement to facilitate the establishment of the Parties' interconnection relationship. TWCIS (NC)'s

^{3/} North Carolina Utilities Commission ("NCUC") Docket Nos. P-1262, Sub 0 and Sub 1, *Application of Time Warner Cable Information Services for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller; Application of Time Warner Cable Information Services for a Certificate of Public Convenience and Necessity to Provide Competing Local Exchange and Exchange Access Services in the State of North Carolina*, Order Granting Certificates (July 24, 2003).

^{4/} 47 U.S.C. §§ 251(a), (b).

proposed agreement is consistent with the Act, and Star has provided no reason why that agreement should not be adopted by the Authority as the operating document between the Parties.

Further, Star has been unwilling to extend to TWCIS (NC) the same benefits and privileges Star has extended to other carriers operating in its area. TWCIS (NC) simply seeks the similar type of arrangement Star has provided to other carriers via interconnection agreements that have been reviewed and approved by the Authority. Star has not explained why it intends to treat TWCIS (NC) differently than it treats other similarly situated carriers providing services in Star's territory.

Star's actions effectively foreclose TWCIS (NC)'s ability to introduce competitive communications services in Star's territory and deny TWCIS (NC) its rights under Section 251 of the Act. Accordingly, TWCIS (NC) is compelled to seek the Authority's assistance pursuant to Section 252 to resolve this matter in a fair and equitable manner consistent with the standards set forth in Sections 251 and 252 of the Act, and the Authority's *Arbitration Policies Resolution*.

APPLICABLE LEGAL STANDARD

The Act establishes distinct obligations for telecommunications carriers, local exchange carriers ("LECs"), and incumbent local exchange carriers ("ILECs"). An entity that falls within all three categories must comply with each of that category's obligations as set forth in Section 251 of the Act. Specifically, *all telecommunications carriers* have a duty to interconnect directly or indirectly with other telecommunications carriers under Section 251(a) of the Act.⁵¹ In addition, *all local exchange carriers* have a duty to provide resale, number portability, dialing

⁵¹ 47 U.S.C. § 251(a).

parity, access to rights-of-way, and arrangements for the transport and termination of traffic.^{6/} Finally, *all ILECs* have a duty to provide direct interconnection and unbundled network elements upon request in accordance with Section 251(c) of the Act.^{7/} ILECs qualifying as rural telephone companies, however, are exempt from the obligations of Section 251(c) until certain conditions are met.^{8/} The Act provides that only the obligations of Section 251(c) are subject to the so-called “rural exemption”—rural ILECs, including Telephone Membership Corporations (“TMCs”), are still required to comply with the requirements of Section 251(a) and Section 251(b).^{9/}

The negotiation and arbitration process is not limited to Section 251(c) obligations.^{10/} A Section 251(a) request for interconnection or a Section 251(b) request for the establishment of an arrangement for the transport and termination of traffic is subject to arbitration under Section 252. This is consistent with Section 252(a), which permits any party to a negotiation under Section 252 to petition a state commission for arbitration.^{11/} Section 252(a)(1) addresses voluntary negotiations, and permits parties to enter into an interconnection agreement without

^{6/} 47 U.S.C. § 251(b).

^{7/} 47 U.S.C. § 251(c).

^{8/} 47 U.S.C. § 251(f)(1).

^{9/} 47 U.S.C. § 251(f)(1).

^{10/} See, e.g., *Level 3 Communications LLC Interconnection Arbitration Application*, Case No. PU-2065-02-465, Order, 2002 N.D. PUC LEXIS 35, *2-*5 (Nov. 20, 2002) (finding the arbitration provisions of Section 252 are available for all Section 251 interconnections, including interconnections under Section 251(a)); *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc. Pursuant to 47 U.S.C. Section 252*, Docket No. UT-023043, Third Supplemental Order Confirming Jurisdiction, 2002 Wash. UTC LEXIS 418, *5-*7 (Oct. 25, 2002) (noting that Section 252(b)(1) provides jurisdiction to arbitrate a request for interconnection brought pursuant to Section 251(a)).

^{11/} 47 U.S.C. § 252(a).

regard to Section 251(b) or (c).^{12/} If voluntary negotiations are not successful, either party may initiate a Section 252(b) arbitration.^{13/}

Section 252(a)(1) simply refers to requests for interconnection, services, or elements pursuant to Section 251.^{14/} It does not specify Section 251(a), (b), or (c). Further, once it receives a petition for arbitration, a state commission's review is not limited to Section 251(c). Rather, it must resolve the outstanding issues consistent with the entirety of Section 251.^{15/} Thus, any request for negotiation pursuant to Section 251 that does not result in a negotiated agreement may be resolved through arbitration.

OUTLINE OF THE PETITION

In accordance with Section 252(b)(2) of the Act, TWCIS (NC) provides "all relevant documentation concerning - (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties."^{16/} All relevant documents are affixed as Attachments 1 through 6. In accordance with Section 252, the remainder of the Petition will detail the unresolved issues identified by the Parties during negotiations, and TWCIS (NC)'s and Star's positions on each issue.^{17/}

FACTUAL BACKGROUND

On October 5, 2005, TWCIS (NC) submitted a bona fide request to Star requesting negotiation of an interconnection agreement to govern the exchange of traffic between the two

^{12/} 47 U.S.C. § 252(a)(1).

^{13/} 47 U.S.C. § 252(b).

^{14/} 47 U.S.C. § 252(a)(1).

^{15/} 47 U.S.C. § 252(c).

^{16/} 47 U.S.C. § 252(b)(2)(A).

^{17/} 47 U.S.C. § 252(b)(2).

companies.^{18/} Star responded to TWCIS (NC)'s request by simply stating that, pursuant to North Carolina statutes, TWCIS (NC)'s certification as a competitive local exchange carrier did not apply to the geographic area served by Star and Star has no obligation to interconnect with TWCIS (NC) under North Carolina statutes.^{19/} In hopes of clarifying its initial request, TWCIS (NC) sent Star another letter on November 21, 2005, explaining that federal law, specifically Section 251 of the federal Act, governed TWCIS (NC)'s request and that TWCIS (NC) merely sought the type of interconnection arrangement Star already had provided to several other telecommunications carriers providing services in Star's territory.^{20/} In response, Star reiterated its refusal to enter into interconnection agreement negotiations with TWCIS (NC), claiming that TWCIS (NC) must demonstrate that it is a telecommunications carrier eligible for interconnection under Section 251 of the federal Act.^{21/}

In a final effort to reach a mutually beneficial negotiated agreement, on January 31, 2006, TWCIS (NC) sent Star a draft interconnection agreement in hopes that the Parties could use it as a starting point for discussions and negotiations.^{22/} The draft interconnection agreement provided to Star is substantially similar to agreements TWCIS (NC) currently is negotiating with other TMCs under the jurisdiction of the Authority. In response to TWCIS (NC)'s draft agreement, Star again rejected any attempt to reach a mutually beneficial interconnection

^{18/} Letter from Maribeth Bailey, TWCIS (NC), to Lyman M. Horne, Star (Oct. 5, 2005) (Attachment 1).

^{19/} Letter from Lyman M. Horne, Star, to Maribeth Bailey, TWCIS (NC) (Oct. 25, 2005) ("Star October 25 Letter") (Attachment 2).

^{20/} Letter from Marcus W. Trathen, Counsel for TWCIS (NC), to Lyman M. Horne, Star (Nov. 21, 2005) (Attachment 3).

^{21/} Letter from Lyman Horne, Star, to Marcus W. Trathen, Counsel for TWCIS (NC) (Dec. 13, 2005) ("Star December 13 Letter") (Attachment 4).

^{22/} Letter from Maribeth Bailey, TWCIS (NC), to Lyman M. Horne, Star, and accompanying attachments (Jan. 31, 2006) ("TWCIS (NC) Proposed Interconnection Agreement") (Attachment 5).

arrangement with TWCIS (NC) and simply referred TWCIS (NC) to its December 2005 letter.^{23/}

In hopes of avoiding the instant arbitration, TWCIS (NC) filed a request for mediation with the Authority on February 22, 2006.^{24/} Star did not respond to TWCIS (NC)'s mediation request, and the Parties have been unable to reach a negotiated agreement as contemplated by Section 252 of the Act. Thus, in accordance with its rights under Section 252, which permits either party to negotiations to petition a state commission to "arbitrate any open issues" unresolved by voluntary negotiations,^{25/} TWCIS (NC) hereby files this Petition for Arbitration ("Petition").

ISSUES FOR ARBITRATION

I. TWCIS (NC) IS ENTITLED TO OBTAIN INTERCONNECTION AND OTHER ARRANGEMENTS FROM STAR

A. Sections 251(a) and 251(b) Require Star To Interconnect and Enter Into Other Arrangements With TWCIS (NC)

Issue Presented

Whether Star is required to interconnect and enter into other arrangements with TWCIS (NC) under Sections 251(a) and 251(b) of the Act.

TWCIS (NC) Position

Star is required to comply with the duty to interconnect imposed by Section 251(a) of the Act as well as the obligations to provide resale, number portability, dialing parity, access to rights-of-way, and arrangements for the transport and termination of traffic under Section 251(b)

^{23/} Letter from J. Lans Chase, Consultant to Star, to Maribeth Bailey, TWCIS (NC) (Feb. 8, 2006) ("Star February 8 Letter") (Attachment 6).

^{24/} Letter from Marcus W. Trathen and Cherie R. Kiser, Counsel for TWCIS (NC), to T. Scott Poole, Administrator (Feb. 22, 2006).

^{25/} 47 U.S.C. § 252(b)(1). Pursuant to that provision, either party may petition the state commission for arbitration during the period from the 135th day to the 160th day (inclusive) after the date on which the incumbent carrier received the request for negotiation. *See id.*

of the Act.^{26/} An ILEC's Section 251(a) and Section 251(b) obligations are in addition to the obligations set forth in Section 251(c) of the Act.^{27/}

Specifically, Section 251(a) of the Act imposes the duty on each telecommunications carrier "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."^{28/} Under the rules and regulations adopted by the Federal Communications Commission ("FCC"), "interconnection" is defined as "the linking of two networks for the mutual exchange of traffic."^{29/} The term interconnection, however, does not include the transport and termination of traffic.^{30/} Instead, the duty to provide the transport and termination of traffic is contained in Section 251(b) as explained below.

The FCC has determined that telecommunications carriers may interconnect under Section 251(a) or Section 251(c)(2).^{31/} Accordingly, the FCC's rules describe the respective interconnection duties under Section 251(a) and Section 251(c). For example, Rule 51.100 sets forth the interconnection duty that is applicable to all telecommunications carriers and replicates the requirements set forth in Section 251(a) of the Act.^{32/} In contrast, Rule 51.305 defines the interconnection duties specifically applicable to ILECs when interconnection under Section 251(c) is triggered.^{33/} TWCIS (NC) merely seeks its rights to interconnect under Section 251(a),

^{26/} 47 U.S.C. §§ 251(a), (b).

^{27/} *Implementation of the Local Competition Provisions in the Telecommunications Act 1996: Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 1241 (1996) ("*Local Competition Order*") (intervening history omitted); *aff'd* by *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

^{28/} 47 U.S.C. § 251(a).

^{29/} 47 C.F.R. § 51.5.

^{30/} 47 C.F.R. § 51.5.

^{31/} *Local Competition Order* ¶ 995.

^{32/} 47 C.F.R. § 51.100.

^{33/} 47 C.F.R. 51.305.

consistent with the FCC's conclusion that telecommunications carriers "should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economical choices."^{34/}

In addition to the duty to interconnect enumerated in Section 251(a) of the Act, Section 251(b) of the Act provides that *all* local exchange carriers have the duty to provide resale, number portability, dialing parity, access to rights-of-way, and arrangements for the transport and termination of traffic.^{35/} Section 251(b)(5) imposes an independent duty on all local exchange carriers to establish arrangements for the transport and termination of traffic.^{36/} The FCC has affirmed that all local exchange carriers "are subject to section 251(a)'s duty to interconnect and section 251(b)(5)'s duty to establish arrangements for the transport and termination of traffic."^{37/}

Indeed, the FCC's rules require ILECs to provide interim transport and termination arrangements after receiving a request for an agreement to implement the provisions of Section 251(b).^{38/} Upon such a request, an ILEC must, without unreasonable delay, establish an interim arrangement for the transport and termination of traffic until a final agreement is reached between the ILEC and the requesting carrier. The FCC determined that the requirement to

^{34/} *Developing a Unified Inter-carrier Compensation Regime*, 20 FCC Rcd 15030, ¶ 128 (2005).

^{35/} 47 U.S.C. § 251(b).

^{36/} *Local Competition Order* ¶ 176 (rejecting arguments that defining interconnection as the physical linking of two networks would mean ILECs do not have the duty to route and terminate traffic because that duty applies to all local exchange carriers "and is clearly expressed in section 251(b)(5)").

^{37/} *Total Telecommunications Services, Inc. and Atlas Telephone Company v. AT&T Corporation*, 16 FCC Rcd 5726, ¶ 26 (2001) (subsequent history omitted).

^{38/} 47 C.F.R. § 51.715.

establish interim arrangements would “permit parties without existing interconnection agreements to enter the market expeditiously.”^{39/}

Star has cited Section 62-110(f3) of North Carolina General Statutes in support of its position that it is not required to interconnect with TWCIS (NC).^{40/} That provision, however, offers no such protection for Star, and, even if Star’s reading of the statute were correct, which it is not, it would be preempted by federal law.

G.S. § 62-110(f3) provides: “The provisions of subsection (f1) of this section shall not be applicable to areas served by telephone membership corporations formed and existing under Article 4 of Chapter 117 of the General Statutes and exempt from regulation as public utilities, pursuant to G.S. 62-3(23)d. and G.S. 117-35.” Subsection (f1) of Section 62-110 allows the NCUC to grant certificates for local competition in the territories served by incumbent local exchange companies. Therefore, Section 62-110(f3) merely makes clear that the NCUC does not have the authority to allow competition in areas served by TMCs—a notion that is plain given that the NCUC is without jurisdiction to regulate TMCs. Nothing in G.S. § 62-110(f3) in any way alters or diminishes the Authority’s jurisdiction over TMCs or its obligation under federal law to facilitate interconnection between competitors and TMCs, to resolve disputes between these entities, and, in appropriate circumstances, to waive the protections otherwise afforded rural telephone companies from the obligations specified in Section 251(c) of the Act.

Even if G.S. § 62-110(f3) could somehow be read to limit the Authority’s power to permit competition in the geographic areas served by the TMCs, such a reading would be preempted under federal law. Under Section 253 of the Act, a state may not “prohibit or have

^{39/} *Local Competition Order* ¶ 1065.

^{40/} Star October 25 Letter; N.C.G.S. § 62-110(f3).

the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications service.”^{41/} On numerous occasions the FCC has held that efforts to shield rural carriers from competition by limiting the areas in which a competitor can provide service “is in direct conflict with section 253(a), which is designed to prevent such restrictions on entry.”^{42/} When preempting other restrictive state statutes, the FCC has stated that it “would expect to apply a similar analysis” to North Carolina’s statutes restricting competition.^{43/} For this reason, the NCUC’s Public Staff^{44/} found that the North Carolina statutes cited by Star would “almost certainly violate section 253 of the federal Act and would be preempted by the FCC if challenged.”^{45/} Accordingly, Star cannot use Section 62-110(f3) to avoid the interconnection requirements of the federal Act.

Nor can Star rely on the rural exemption set forth in Section 251(f)(1) of the Act to evade its Sections 251(a) and 251(b) obligations.^{46/} The obligations in Sections 251(a) and 251(b) apply to all telecommunications carriers and local exchange carriers without regard to whether a

^{41/} 47 U.S.C. § 253(a).

^{42/} *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, ¶ 107 (1997); see also *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, 12 FCC Rcd 15639 (1997).

^{43/} *AVR, L.P. d/b/a Hyperion of Tennessee, L. P. Petition for Preemption of Tennessee Code Annotated § 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion’s Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Areas*, 14 FCC Rcd 11064, ¶ 23 (1999).

^{44/} The Public Staff reviews, investigates, and makes recommendations to the NCUC with respect to the standards, regulations, practices, or services of carriers. N.C.G.S. § 62-15(d)(2), (8).

^{45/} *Telephone Competition Summary of Proceedings*, Report to the Joint Legislative Utility Review Committee Pursuant to Chapter 27 of the 1995 Session Laws, at 41 (Oct. 1999).

^{46/} 47 U.S.C. § 251(f)(1). Concurrent with this Petition, TWCIS (NC) is filing a Motion to Terminate the Section 251(f)(1) Exemption.

carrier is entitled to the rural exemption under Section 251(f)(1).^{47/} Consistent with the plain language of the statute, the FCC has explicitly stated that “[r]ural LECs are not exempt from Section 251(a) or (b) requirements under Section 251(f)” because “Section 251(f)(1) . . . offers an exemption only from the requirements of Section 251(c).”^{48/} Indeed, the FCC found that “[b]ecause Sections 251(b) and 251(c) are separate statutory mandates, the requirements of Section 251(b) apply to a rural LEC even if Section 251(f)(1) exempts such LECs from a concurrent Section 251(c) requirement. To interpret Section 251(f)(1) otherwise would undercut Section 251(b).”^{49/} Courts similarly have rejected arguments that the interconnection requirements of Section 251(a) are superseded by the more specific obligations under Section 251(c): “[i]f Congress had intended § 251(c)(2) to provide the sole governing means for the exchange of local traffic, it seems inconceivable that the drafters would have simultaneously incorporated a rural exemption functioning as a significant barrier to the advent of competition.”^{50/}

Accordingly, Star is required to interconnect with TWCIS (NC) under Section 251(a) of the Act and provide certain arrangements to TWCIS (NC) under Section 251(b) of the Act. Star has offered no lawful justification for its refusal to negotiate an agreement with TWCIS (NC) reflecting Star’s Section 251(a) and Section 251(b) obligations.

^{47/} *Telephone Number Portability*, 12 FCC Rcd 7236, ¶ 117 (1997) (“*Number Portability Order*”).

^{48/} *Number Portability Order* at n.401, ¶ 117; see also *Stephens v. Public Utilities Comm’n of Ohio*, 806 N.E.2d 527, 530 (Ohio 2004) (finding that Section 251(f)(1) “provides no exemption from the competitive obligations of Section 251(a), which compels traffic exchange and technical compatibility, and it provides no exemption from the competitive duties of Section 251(b), involving resale by competitors, local number portability, dialing parity, access to rights of way, reciprocal compensation, etc.”).

^{49/} *Number Portability Order* ¶ 119.

^{50/} *Atlas Tel. Co. v. Oklahoma Corp. Comm’n*, 400 F.3d 1256, 1265-66 (10th Cir. 2005).

Star Position

Star has stated that it has no obligation to interconnect with TWCIS (NC) or provide number portability, dialing parity, and arrangements for the transport and termination of traffic because it is exempt from competition under Section 62-110(f3) of the Act.^{51/}

B. TWCIS (NC) Is A Telecommunications Carrier With Rights Under Section 251 of the Act

Issue Presented

Whether TWCIS (NC) is a telecommunications carrier with rights under Section 251 of the Act.

TWCIS (NC) Position

TWCIS (NC) has been certified as a provider of local and long distance telecommunications services in North Carolina.^{52/} Despite TWCIS (NC)'s status as a telecommunications carrier in North Carolina, Star contends that TWCIS (NC) must demonstrate that it is a telecommunications carrier that is entitled to Section 251 rights.^{53/} TWCIS (NC)'s authorization to provide local and long distance telecommunications services in the State of North Carolina is the only "demonstration" TWCIS (NC) is required to make.

Star, relying on Section 62-110(f3) of North Carolina General Statutes, further claims that TWCIS (NC) is not authorized to provide service in Star's territory and thus Star has no

^{51/} Star October 25 Letter.

^{52/} NCUC Docket Nos. P-1262, Sub 0 and Sub 1, *Application of Time Warner Cable Information Services for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller; Application of Time Warner Cable Information Services for a Certificate of Public Convenience and Necessity to Provide Competing Local Exchange and Exchange Access Services in the State of North Carolina, Order Granting Certificates (July 24, 2003).*

^{53/} Star December 21 Letter at 2.

requirement to interconnect with TWCIS (NC).^{54/} As explained above, this provision of North Carolina law in no way restricts the Authority's jurisdiction with respect to permitting competition in the geographic areas served by the TMCs and, even if it could be read to impose such a restriction, this reading is preempted by federal law. Therefore, Star cannot rely on Section 62-110(f3) to claim TWCIS (NC) is not entitled to interconnection.

Star's position also is undercut by its own conduct with respect to other carriers, since Star has entered into interconnection agreements with other telecommunications carriers—none of which have obtained the authorization Star claims that TWCIS (NC) requires.^{55/} In addition, Star has entered into a traffic exchange agreement with Madison River Communications, who, as the agreement states, is “authorized by the North Carolina Utilities Commission to provide telecommunications services within its certified area in the State of North Carolina.”^{56/} In contrast to its position with respect to TWCIS (NC), there is no indication that Star required Madison River Communications to first obtain certification from “an authoritative body” other than the NCUC.

Star's arguments also are inconsistent with the Authority's *Arbitration Policies Resolution*, which appears to contemplate that telephone membership corporations like Star will be entering into interconnection agreements with other telecommunications carriers.^{57/} There are no certification requirements contained in the *Arbitration Policies Resolution*, and North

^{54/} Star December 21 Letter at 1.

^{55/} Star has entered into, and the Authority has approved, interconnection agreements with NEXTEL South Corp. (approved March 2005), U.S. Cellular Corp. (approved May 2005), New Cingular (approved May 2005), ALLTEL (approved September 2005), and Madison River (approved September 2005).

^{56/} Traffic Exchange Agreement between Star Telephone Membership Corporation and Madison River Communications at 1 (dated August 1, 2005) (approved by the Authority on Sept. 26, 2005).

^{57/} See generally *Arbitration Policies Resolution*.

Carolina statutes and regulations do not require certification for telecommunications carriers from any entity other than the NCUC. Finally, although TWCIS (NC) is certificated in North Carolina, TWCIS (NC)'s interconnection rights under Section 251(a) do not turn on whether TWCIS (NC) is certificated. Rather, TWCIS (NC)'s right to interconnect under Section 251(a) is established by TWCIS (NC)'s status as a "telecommunications carrier" providing "telecommunications services."^{58/}

Star Position

Star contends that TWCIS (NC) must demonstrate that it is a telecommunications carrier that is entitled to Section 251 rights.^{59/} Star further claims that TWCIS (NC) is not authorized to provide service in Star's territory and "must obtain certification from an authoritative body having jurisdiction to govern the TMCs" before Star is required to negotiate an interconnection agreement with TWCIS (NC).^{60/}

II. STAR IS OBLIGATED TO NEGOTIATE IN GOOD FAITH

Issue Presented

Whether Star's continued refusal to negotiate in good faith violates the FCC's rules.

TWCIS (NC) Position

Under federal law, both Star and TWCIS (NC) are required to negotiate in good faith to reach the terms of an interconnection agreement.^{61/} Star's outright refusal to negotiate with TWCIS (NC) violates the FCC's regulations imposing a duty to negotiate in good faith on all

^{58/} 47 U.S.C. § 251(a).

^{59/} Star December 21 Letter at 2.

^{60/} Star December 21 Letter at 1.

^{61/} 47 C.F.R. § 51.301. The FCC has determined that "state commissions have authority, under section 252(b)(5), to consider allegations that a party has failed to negotiate in good faith." 47 U.S.C. § 252(b)(5); *Local Competition Order* ¶ 143.

ILECs and other carriers requesting agreements under Section 251(b) or Section 251(c). The FCC's rules require both ILECs and competing carriers to negotiate in good faith the terms and conditions of agreements to fulfill the duties established by Section 251(b) and Section 251(c) of the Act. Specifically, the FCC's rules state that:

- (a) An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251(b) and (c) of the Act....
- (b) A requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.
- (c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:...

 - (4) Conditioning negotiation on a requesting telecommunications carrier first obtaining state certification;...
 - (6) Intentionally obstructing or delaying negotiations or resolutions of disputes.^{62/}

Under the Act and the FCC's implementing regulation cited above, "local exchange carriers ("LECs"), like the [rural telephone companies], have a duty to interconnect with competitors and negotiate agreements in good faith."^{63/} The FCC has found that, "[e]ven where there is no specific duty to negotiate in good faith, certain principles or standards of conduct have been held to apply."^{64/} Star's continued refusal to negotiate with TWCIS (NC) is contrary to law.

The FCC's rulings conflict with Star's position that TWCIS (NC) must obtain certification prior to entering into negotiations. The FCC has found it consistent with the purposes underlying the Act to impose the duty to negotiate in good faith on wireless providers

^{62/} 47 C.F.R. §§ 51.301(a), (b), (c).

^{63/} *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256, 1260 (10th Cir. 2005) (citing 47 U.S.C. § 251(a)(1), (c)(1)).

^{64/} *Local Competition Order* ¶ 150.

who are not subject to either Section 251(b) (applying only to local exchange carriers) or Section 251(c) (applying only to ILECs).^{65/} By conditioning negotiation on TWCIS (NC) first obtaining state certification to prove it is a "telecommunications carrier," Star has violated the duty to negotiate in good faith pursuant to the FCC's regulations.

Star Position

Star has refused to negotiate with TWCIS (NC) despite its obligations to do so under the FCC's rules. Star claims that it is not required to negotiate an interconnection agreement with TWCIS (NC) because TWCIS (NC) is not certified in Star's territory.^{66/}

III. STAR'S REFUSAL TO ENTER INTO AN INTERCONNECTION AGREEMENT WITH TWCIS (NC) IS DISCRIMINATORY

Issue Presented

Whether Star's refusal to enter into an interconnection agreement with TWCIS (NC) is discriminatory when Star has entered into interconnection agreements with other carriers.

TWCIS (NC) Position

As discussed above, Star has entered into interconnection agreements and/or traffic exchange agreements with other carriers.^{67/} Refusal to enter into the similar type of agreement with TWCIS constitutes discrimination in violation of federal and North Carolina law.^{68/}

^{65/} *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 FCC Red 4855, ¶ 16 (2005).

^{66/} Star October 25 Letter.

^{67/} Star has entered into, and the Authority has approved, interconnection agreements with NEXTEL South Corp. (approved March 2005), U.S. Cellular Corp. (approved May 2005), New Cingular (approved May 2005), ALLTEL (approved September 2005), and Madison River (approved September 2005).

^{68/} N.C.G.S. § 62-2(a)(4) ("It is hereby declared to be the policy of the State of North Carolina. . . [t]o provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages. . .").

The Act is premised on notions of equality and nondiscrimination. Section 252(i) of the Act requires ILECs to “make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”^{69/} Congress specifically adopted Section 252(i) as the primary tool for preventing discrimination.^{70/} For this reason, the FCC’s rules require ILECs to “make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety.”^{71/} An ILEC may not limit the availability of an agreement to a requesting carrier based upon the class of subscriber served by the requesting carrier or upon the services provided by the requesting carrier in comparison to the original party to the agreement.^{72/}

As a common carrier, Star also is subject to Sections 201 and 202 of the Act.^{73/} Section 201 of the Act requires common carriers to “furnish” communications services “upon a reasonable request therefor,” and thus, “carriers who are requested to provide service should make all reasonable efforts to do so” or be put on notice that “they will be acting at their own peril, should the question of the legitimacy of their refusal to meet common carrier obligations be decided against them.”^{74/} Similarly, Section 202(a) of the Act prohibits carriers from making any unjust or unreasonable discrimination in charges or giving any person an undue or

^{69/} 47 U.S.C. § 252(i).

^{70/} *Local Competition Order* ¶¶ 1296, 1315.

^{71/} 47 C.F.R. § 51.809(a).

^{72/} 47 C.F.R. § 51.809(a).

^{73/} *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, 20 FCC Red. 10245, ¶ 40 (2005) (stating that “incumbent LECs, as common carriers, are subject to sections 201 and 202 of the Act”).

^{74/} 47 U.S.C. § 201(a); *Hawaiian Telephone Company Petition for Interconnection and the Provision of Communications Service*, 78 F.C.C.2d 1062, ¶ 9 (1980).

unreasonable prejudice or disadvantage.^{75/} Star's discriminatory treatment of TWCIS (NC) also violates these provisions of the Act.

Star Position

Star has refused to negotiate an agreement with TWCIS (NC), and has offered no justification for treating TWCIS (NC) differently than it has other carriers with which Star has entered into interconnection agreements.

IV. TWCIS (NC)'S PROPOSED INTERCONNECTION AGREEMENT MEETS THE REQUIREMENTS OF SECTION 252(e) OF THE ACT AND SHOULD BE ADOPTED

Issue Presented

Whether TWCIS (NC)'s Proposed Interconnection Agreement meets the requirements of Section 252(e) and should be adopted as the governing agreement between the Parties.

TWCIS (NC) Position

Section 252(e) of the Act sets forth the standards state commissions must rely on in approving an interconnection agreement adopted either via negotiation or arbitration.^{76/} The items the state commission must take into consideration include: (1) whether the agreement discriminates against a telecommunications carrier not a party to the agreement; (2) whether the implementation of the agreement is consistent with the public interest, convenience, and necessity; and (3) whether the agreement meets the requirements of Section 251 and the pricing standards set forth in Section 252(d).^{77/}

^{75/} 47 U.S.C. § 202(a).

^{76/} 47 U.S.C. § 252(e).

^{77/} 47 U.S.C. § 252(e)(2)(A), (B).

TWCIS (NC)'s Proposed Interconnection Agreement meets all of the statutory requirements.^{78/} The agreement does not discriminate against a telecommunications carrier not a party to the agreement. In fact, TWCIS (NC)'s Proposed Interconnection Agreement is nearly identical to the interconnection agreements TWCIS (NC) currently is negotiating with other telephone membership corporations under the jurisdiction of the Authority. Further, implementation of TWCIS (NC)'s Proposed Interconnection Agreement is consistent with the public interest, convenience, and necessity. By interconnecting with Star, TWCIS (NC) will be able to bring a competitive alternative to the North Carolina consumers located in Star's territory. Indeed, the North Carolina legislature has favored "regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service."^{79/}

TWCIS (NC)'s Proposed Interconnection Agreement also meets the requirements of Section 251 and the pricing standards set forth in Section 252(d). Consistent with Section 251(a), TWCIS (NC)'s Proposed Interconnection Agreement sets forth how the Parties will interconnect their networks for the mutual exchange of traffic.^{80/} In accordance with Section 251(b), TWCIS (NC)'s Proposed Interconnection Agreement includes provisions regarding the

^{78/} See generally TWCIS (NC) Proposed Interconnection Agreement.

^{79/} N.C. Gen Stat. § 62-2(b); see also NCUC Docket No. P-100, Sub 152, *Competitive Access to Commercial and Residential Developments*, Order Concerning Competitive Access to Developments (2004) (citing a "public purpose enunciated in both federal and state law of promoting competition in telecommunications services").

^{80/} See, e.g., TWCIS (NC) Proposed Interconnection Agreement, Section 4.1.

Parties' obligations to provide number portability^{81/} and arrangements for the transport and termination of traffic.^{82/} Specifically, TWCIS (NC) has proposed a bill-and-keep arrangement for the transport and termination of traffic subject to reciprocal compensation under the Act.^{83/} This is consistent with the Act, which states that "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)" meet the requirements under Section 252(d) that the rates and terms for reciprocal compensation be just and reasonable.^{84/} Accordingly, TWCIS (NC)'s Proposed Interconnection Agreement should be adopted.

Star Position

Star has not responded to TWCIS (NC)'s Proposed Interconnection Agreement other than to refer TWCIS (NC) to Star's early correspondence indicating that Star did not have an obligation to negotiate with TWCIS (NC).^{85/}

^{81/} See, e.g., TWCIS (NC) Proposed Interconnection Agreement, Sections 4.7, 4.8, 4.9.

^{82/} See, e.g., TWCIS (NC) Proposed Interconnection Agreement, Sections 4.2, 4.3, 4.4.

^{83/} TWCIS (NC) Proposed Interconnection Agreement, Section 4.4.

^{84/} 47 U.S.C. § 252(d)(A), (B)(i).

^{85/} Star February 8 Letter at 1; see also Star December 13 Letter at 1.

CONCLUSION

For the foregoing reasons, TWCIS (NC) respectfully requests that the Authority arbitrate the outstanding issues identified herein and adopt TWCIS (NC)'s Proposed Interconnection Agreement attached hereto.

Respectfully submitted,

**TIME WARNER CABLE INFORMATION
SERVICES (NORTH CAROLINA), LLC**



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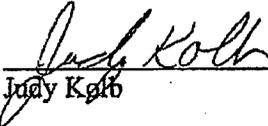
Dated: March 14, 2006

CERTIFICATE OF SERVICE

I, Judy Kolb, certify that on this 14th day of March 2006, I served an original and ten copies, via hand delivery, of Time Warner Cable Information Services (North Carolina), LLC's Petition for Arbitration on Administrator T. Scott Poole of the North Carolina Rural Electrification Authority and one (1) copy on each of the following:

J. Lans Chase
Manager – Regulatory & Policy
John Staurulakis, Inc.
Brookside Court, Suite 135
4625 Alexander Drive
Alpharetta, GA 30022
Via Electronic Mail and Overnight Delivery

Lyman Horne
Executive Vice President and General Manager
Star Telephone Membership Corporation
P.O. Box 3900
3900 N. US Hwy 421
Clinton, NC 28329
Via Electronic Mail and Overnight Delivery



Judy Kolb

Time Warner Cable Information Services (North Carolina), LLC

LIST OF ATTACHMENTS

NO.	BRIEF DESCRIPTION
1.	TWCIS (NC) Negotiation Request (Oct. 5, 2005)
2.	Star October 25 Letter
3.	TWCIS (NC) November 21 Letter
4.	Star December 13 Letter
5.	TWCIS (NC) January 31 Letter and TWCIS (NC) Proposed Interconnection Agreement
6.	Star February 8 Letter

Attachment 1

Tel 203-328-4825
Fax 203-351-2276
maribeth.bailey@twcable.com

Law Department



VIA OVERNIGHT MAIL

October 5, 2005

Lyman M. Horne
Executive Vice President & General Manager
Star Telephone Membership Corp.
P.O. Box 3900
3900 N US Hwy 421
Clinton, NC 28329

Dear Mr. Horne:

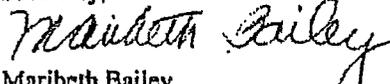
I am writing on behalf of Time Warner Cable Information Services (North Carolina), LLC ("TWCIS (NC)"). TWCIS (NC) has been certificated as a local and long distance provider of competitive telecommunications services by the North Carolina Utilities Commission.

This letter serves as a bona fide request on behalf of TWCIS (NC) to enter into discussion for an arrangement with your company for interconnection and the exchange of telephone traffic. Specifically, TWCIS (NC) intends to offer competitive telecommunications services in Star Telephone Membership Corp.'s service territory and seeks the following rights under Sections 251(a), (b) and (c) of the Communications Act: interconnection, number portability, dialing parity, access to rights of way, reciprocal compensation, and collocation.

I would appreciate it if you would give me a call or respond in writing to discuss this request further. It is TWCIS (NC)'s objective to complete negotiations within one hundred sixty (160) days of your receipt of this letter—i.e., within the timeframe set forth in Section 252(b)(1) of the Communications Act. If I have not heard from you by *Thursday, October 20, 2005*, TWCIS (NC) will assume that Star Telephone Membership Corp.'s silence constitutes a rejection of this proposal and will proceed accordingly.

Please do not hesitate to contact me should you have any questions.

Sincerely,


Maribeth Bailey
Director, Interconnection Policy

Attachment 2



STAR TELEPHONE MEMBERSHIP CORPORATION

P. O. BOX 348, CLINTON, NORTH CAROLINA 28329

Lyman M. Home
Executive Vice President and General Manager

Writer's Direct Dial Number
910-564-7827

October 25, 2005

VIA CERTIFIED MAIL

Maribeth Bailey
Time Warner Cable Information
Services (North Carolina), LLC
290 Harbor Drive
Stamford, CT 06902

Re: TWCIS (NC) Request for an Interconnection Agreement

Dear Ms. Bailey:

This letter is in response to your letter dated October 5, 2005 requesting that Star Telephone Membership Corporation ("Star") enter into discussions with Time Warner Cable Information Services (North Carolina), LLC ("TWCIS (NC)") for an arrangement for interconnection.

Your letter states that TWCIS (NC) has been certificated as a Competitive Local Provider ("CLP") by the North Carolina Utilities Commission ("NCUC"). While North Carolina G.S. §62-110 governs the issuance of certificates for CLPs by the NCUC, subsection (f) states that such certification provisions do not apply to areas served by Telephone Membership Corporations ("TMCs"). In addition, please be advised that the NCUC does not regulate TMCs in the state. For the reasons indicated above, the certificate obtained by TWCIS (NC) is not applicable to Star.

Sincerely,

Lyman M. Home
Executive Vice President & General Manager
Star Telephone Membership Corporation

Attachment 3

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.

ATTORNEYS AT LAW

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W.H. HOLDERNESS (1904-1965)
L.P. McLENDON (1890-1968)
KENNETH M. BRIM (1898-1974)
C.T. LEONARD, JR. (1828-1883)
CLAUDE C. PIERCE (1813-1888)
THORNTON H. BROOKS (1918-1988)
G. NEIL DANIELS (1911-1997)
HUBERT HUMPHREY (1928-2003)

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**WASHINGTON OFFICE
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WASHINGTON, D.C. 20004**

WRITER'S DIRECT DIAL

November 21, 2005

Lyman M. Horne
Executive Vice President & General Manager
Star Telephone Membership Corporation
Post Office Box 348
Clinton, North Carolina 28329

Re: *Time Warner Cable Information Services (North Carolina), LLC
Interconnection Request*

Dear Mr. Horne:

I am writing on behalf of Time Warner Cable Information Services (North Carolina), LLC ("TWCIS") in response to your letter dated October 25, 2005. In your letter, you raise issues relating to TWCIS's certificate to provide telecommunications services in the State of North Carolina. Specifically, you contend that TWCIS's certificate does not authorize it to provide telecommunications services in Star Telephone's territory.

While you are correct that the certificate issued to TWCIS by the North Carolina Utilities Commission ("Utilities Commission") does not authorize TWCIS to provide telecommunications services in Star Telephone's territory, neither does it prohibit it. As you point out, the Utilities Commission has not been granted jurisdiction over telephone membership corporations. Accordingly, the Utilities Commission does not have the authority to either allow or disallow local telephone competition in telephone

membership corporation territory. TWCIS's Utilities Commission certificate is simply not relevant to its ability to provide telephone service in Star Telephone's territory.

Instead, TWCIS's rights with respect to Star Telephone, and Star Telephone's corresponding obligations with respect to TWCIS, are controlled by federal law.

Under Sections 251(a) and (b) of the Federal Communications Act, 47 U.S.C. § 251(a) and (b), every local exchange carrier—including telephone membership corporations—have certain duties regarding interconnection, resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. These duties apply directly to Star Telephone, without reservation or qualification. They are not dependent on a requesting party's state law certification or any other statutory conditions.

Incumbent local exchange companies have additional duties under Section 251(c) regarding interconnection and unbundling. Star Telephone, as a member of the exchange carrier association and as a provider of telephone exchange services, is an "incumbent local exchange company" within the meaning of the Communications Act. See 47 U.S.C. § 252(h)(1). However, as a rural telephone company, Star Telephone is exempt from the obligations under Section 251(c) until (i) receipt of a bona fide request for interconnection (see TWCIS's letter to Star Telephone dated October 5, 2005) and (ii) the relevant state commission determines that such request "is not unduly economically burdensome, is technically feasible, and is consistent with section 254." See 47 U.S.C. § 251(f). In this case, the relevant "state commission" that would make such a determination would appear to be the North Carolina Rural Electrification Authority ("NC REA"), the state agency with jurisdiction over telephone membership corporations. It is my understanding that, although Star Telephone is in receipt of a bona fide request for interconnection, the NC REA has not yet made a determination under Section 251(f).

TWCIS does not believe that its request for interconnection with Star Telephone is governed by Section 251(c) of the Federal Act. TWCIS is simply seeking a few, very basic interconnection rights so that it may offer competitive telephone service in Star Telephone's area. We believe that Star Telephone has an affirmative obligation to negotiate a suitable arrangement for such interconnection under Sections 251(a) and (b). In any case, we also believe that the limited arrangements that TWCIS seeks will not result in any undue burden or hardship on Star Telephone.

As you are undoubtedly aware, several North Carolina telephone membership corporations have successfully negotiated interconnection agreements with wireless carriers. We believe that the interconnection rights TWCIS seeks are comparable with those sought by the wireless companies and could easily be accommodated by your company.

I would appreciate the courtesy of a response clarifying Star Telephone's position as to its willingness to enter into interconnection negotiations. TWCIS had previously understood that Star Telephone was willing to enter into such negotiations. Your letter of

Lyman M. Horne
November 21, 2005
Page 3

October 25, 2005, however, calls this understanding into doubt, so any clarification of Star Telephone's position would be greatly appreciated.

I look forward to discussing any aspects of an interconnection agreement/business relationship between the parties as soon as possible. If you should have any questions in connection with this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Trathen", with a long horizontal line extending from the end of the signature.

Marcus W. Trathen

MWT/jek

cc: Lans Chase (via facsimile)
Julie Patterson
Maribeth Bailey

Attachment 4



STAR TELEPHONE MEMBERSHIP CORPORATION

P. O. BOX 348, CLINTON, NORTH CAROLINA 28329

Lyman M. Home
Executive Vice President and General Manager

Writer's Direct Dial Number
910-564-7827

December 13, 2005

Marcus W. Trathen
Brooks, Pierce, McLendon,
Humphrey & Leonard, L.L.P.
Attorneys at Law
P.O. Box 1800
Raleigh, N.C. 27602

*Re: Time Warner Cable Information Services (North Carolina), LLC
Interconnection Request*

Dear Mr. Trathen:

Star Telephone Membership Corporation ("Star") is in receipt of your letter dated November 21, 2005, and provides the following response. Star is a Telephone Membership Corporation ("TMC") pursuant to North Carolina General Statutes § 117-30, and is not subject to the jurisdiction of the North Carolina Utilities Commission ("NCUC").

As TWCIS has acknowledged, the NCUC has not been granted jurisdiction over TMCs in North Carolina. The NCUC certificate obtained by TWCIS is, therefore, not relevant to TWCIS' ability to provide telephone service in Star's territory. TWCIS must obtain certification from an authoritative body having jurisdiction to govern the TMCs.

Indeed, TWCIS has recognized the significance of certification to the public interest in the jurisdiction in which a carrier will be providing service, and has demonstrated this through petitioning the NCUC for certification to provide services in non-TMC areas. In fact, the NCUC recognized in its proceeding granting certification to TWCIS that "[o]ne of the most compelling arguments that TWC has made is that it is in the public interest that a facilities-based carrier targeting the residential market should be certified." While that proceeding does not govern TWCIS' provision of local service in Star's service area, it is demonstrative of the importance of obtaining certification to provide local service from the appropriate governing body.

In the event that TWCIS maintains that its "rights with respect to Star Telephone's corresponding obligations with respect to TWCIS, are controlled by federal law,"

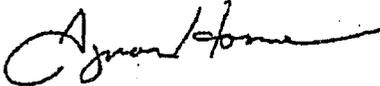
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TWCIS must then demonstrate that it is a telecommunications carrier eligible to obtain interconnection under Section 251 of the Telecommunications Act of 1934, as amended. Section 251 prescribes carriers' obligations for providing interconnection services to competitors. At minimum, that section is applicable only to the extent that the requesting carrier is a telecommunications carrier. TWCIS must, therefore, demonstrate that it is a telecommunications carrier authorized to provide service in Star's service area.

Furthermore, Star requests clarification of the scope of TWCIS's request for interconnection under Section 251. In its second letter dated November 21, 2005, TWCIS states that it "does not believe that its request for interconnection with Star Telephone is governed by Section 251(c) of the Federal Act." However, in its first letter of October 5, 2005, requesting interconnection, TWCIS states that it "seeks the following rights under Sections 251(a), (b), and (c) of the Communications Act . . . , and collocation."

For the reasons stated herein, Star does not believe that it is under any obligation to proceed with discussions until TWCIS has demonstrated that it is a telecommunications carrier for purposes of Section 251, under which it is requesting interconnection, and until it clarifies the scope of its interconnection request.

Sincerely,



Lyman Horne,
EVP & General Manager

Xc: Lans Chase, JSI ←

Attachment 5

Et 200-328-4825
Tel 203-328-4825
maribeth.bailey@twcable.com



VIA OVERNIGHT MAIL

January 31, 2006

Lyman M. Horne
Executive Vice President & General Manager
Star Telephone Membership Corp.
P.O. Box 3900
3900 N US Hwy 421
Clinton, NC 28329

Dear Mr. Horne:

This is a follow-up to my letter of October 25, 2005 on behalf of Time Warner Cable Information Services (North Carolina), LLC ("TWCIS (NC)") requesting the initiation of negotiation of an interconnection agreement with Star Telephone Membership Corp. pursuant to Section 251 of the Telecommunications Act of 1996. TWCIS (NC) is looking forward to reaching a mutually beneficial arrangement with Star Telephone Membership Corp. In an effort to assist the parties with reaching a negotiated agreement within the statutory window, please find enclosed a draft template agreement for discussion purposes. Kindly provide us with your e-mail address and we will forward you an electronic copy for your convenience.

We would like schedule a time for early next week to discuss the draft agreement. Please contact me at (203) 328-4825 upon receipt of this letter to establish a mutually acceptable time. If there are specific revisions you would like the parties to discuss during our call, please feel free to revise this agreement in track changes mode and return to me.

TWCIS (NC) is looking forward to working with Star Telephone Membership Corp. in North Carolina.

Sincerely,

Maribeth Bailey
Maribeth Bailey
Director, Interconnection Policy

Attachment

**INTERCONNECTION AND RECIPROCAL COMPENSATION
AGREEMENT**

BETWEEN

INSERT LEC LEGAL ENTITY

AND

**TIME WARNER CABLE INFORMATION SERVICES (NORTH
CAROLINA), LLC**

I. Article I

1. INTRODUCTION

This Interconnection and Reciprocal Compensation Agreement (the "Agreement"), entered into this ___ day of _____, 2005 ("Effective Date"), by and between Time Warner Cable Information Services (North Carolina) ("TWCIS (NC)") and LEC NAME INSERT ("LEC Acronym") to establish the rates, terms, and conditions for local interconnection (referred to as the "service"). LEC and TWCIS (NC) may also be referred to herein as a "Party" or collectively as the "Parties".

2. RECITALS

WHEREAS, the Parties wish to interconnect their local exchange networks for the purposes of transmission and termination of calls, so that customers of each can receive calls that originate on the other's network and place calls that terminate on the other's network, and for TWCIS (NC)'s use in the provision of exchange access ("Local Interconnection"); and

WHEREAS, the Parties acknowledge that additional arrangements may be required in the future related to resale, purchase of unbundled network elements, ancillary services and functions, and additional features ("Network Elements"); and

WHEREAS, the Parties intend the rates, terms, and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Communications Act of 1934, as amended (the "Act"), the Rules and Regulations of the Federal Communications Commission ("FCC"), and the orders, rules and regulations of the North Carolina Rural Electrification Authority (the "Authority" or the "Commission"); and

WHEREAS, the Parties wish to replace any and all prior agreements related to the same issues, whether written or oral.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, TWCIS (NC) and LEC hereby mutually agree as follows:

II. Article II

1. DEFINED TERMS

Terms defined in this Section shall have the meanings as set forth herein. Other terms used but not defined herein will have the meanings ascribed to them in the Act or in the Rules and Regulations of the FCC or the Commission. The Parties acknowledge that other terms appear in this Agreement, which are not defined or ascribed as stated above. The Parties agree that any such terms shall be construed in accordance with their customary usage in the telecommunications industry as of the Effective Date of this Agreement.

- 1.1. "Act" means the Communications Act of 1934, as amended". As Described in the Act" means as described in or required by the Act, as may be interpreted from time to time by the FCC, the Commission, North Carolina state courts, or federal courts.
- 1.2. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.
- 1.3. "Automated Message Accounting (AMA)" is the structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document, published by Telcordia as GR-1100-CORE, which defines the industry standard for message recording.
- 1.5. "Automatic Number Identification (ANI)" is a feature that identifies and displays the number of a telephone line that originates a call.
- 1.6. "Central Office Switches" are switching facilities within the public switched telecommunications network, including, but not limited to:
 - 1.6.1. "End Office Switches" ("EOs") are switches from which end user Telephone Exchange Services are directly connected and offered.
 - 1.6.2. "Tandem Switches" are switches that are used to connect and switch trunk circuits between and among Central Office Switches.
 - 1.6.3. "Remote Switches" are switches that are away from their host or control office. All or most of the central control equipment for the remote switch is located at the host or control office.
- 1.7. "Commission" means the North Carolina Rural Electrification Authority.
- 1.8. "Customer" means any business, residential or governmental customer of services provided by a Party. More specific meanings of either of such terms are dependent upon the context in which they appear in the Agreement and the provisions of the Act.
- 1.9. "Dedicated Transport" or "Direct Traffic" provides a local interoffice transmission path between LEC and/or TWCIS (NC) central offices.
- 1.10. "EMI" (Exchange Message Interface System) is the Industry standard for exchanging telecommunications message information for billable, non-billable, sample settlement and study records. The EMI is published by ATIS (Alliance for Telecommunications Industry Solutions).

- 1.11. "ESP/ISP Traffic" is as described in the Act, the rules and regulations of the FCC, and relevant court decisions.
- 1.12. "Extended Area Service (EAS)" is the calling area extending beyond the Local Exchange Calling Area in which the North Carolina Utility Commission, in the public interest, ordered or approved LEC filed plans to provide flat rate calling between exchanges. The terms EAS and EAS exchanges subject to EAS arrangements are as set forth in the tariffs of the LECs that were ordered to implement this service. The EAS calling areas subject to this Agreement are as set forth in the tariff of LEC.
- 1.13. "Incumbent Local Exchange Carrier (ILEC)" is as defined in the Act.
- 1.14. "Interconnection" has the meaning given the term in the Act and refers to the physical connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of Telecommunications Traffic.
- 1.15. "Interexchange Carrier (IXC)" means a provider of interexchange Telecommunications Services.
- 1.16. "Indirect Traffic" means traffic that is originated by one Party and terminated to the other Party in which a third party Telecommunications Carrier provides the intermediary transiting service. Indirect traffic does not require a physical direct trunk group between the Parties.
- 1.17. "IntraLATA Toll Traffic" describes traffic outside the Local Calling Area.
- 1.18. "Local Exchange Calling Area" or "Local Calling Area" means the geographic area that encompasses the group of customers served by one or more NPA-NXXs in a Rate Center. Calls that both originate and terminate in the Local Calling Area are considered Local Traffic.
- 1.19. "Local Exchange Carrier" or "LEC" is any company certified by its Commission to provide local exchange telecommunications service. The generic term LEC includes references to ILEC (Incumbent Local Exchange Carrier), CLEC (Competitive Local Exchange Carrier), and CLP (Certified Local Provider). The term LEC includes both Parties to this Agreement.
- 1.20. "Local Traffic" means traffic that is originated and terminated between an end user of LEC and an end user of TWCIS (NC) that originates or terminates within the local area and EAS of LEC and that originates or terminates within the local area and EAS of TWCIS (NC). Local Traffic does not include Commercial Mobile Radio Services traffic (e.g., paging, cellular, PCS.), 900/976 calling, ESP/ISP Traffic, or Internet Protocol ("IP") based voice or fax telephony.
- 1.21. "Parties" means, jointly, LEC and TWCIS (NC), and no other entity, affiliate, subsidiary, or assign. "Party" means either LEC or TWCIS (NC), and no other entity, affiliate, subsidiary or assign.

- 1.22. "Point of Interconnection" ("POI") is the point that establishes the technical interface, the test point, and the operational responsibility hand-off between TWCIS (NC) and LEC for the local interconnection of their networks. The POI for direct interconnection is established at any technically feasible point at the boundary of LEC's network.
- 1.23. "Transit Traffic" means Local or non-Local traffic that originated on one Party's network, transited through another Party's network, and terminated to a third party Telecommunications Carrier's network or that is originated on a third party Telecommunications Carrier's network, transited through a Party's network, and terminated to the other Party's network.
- 1.24. "Bill-and-Keep" as described by the Act is an arrangement under which the Parties waive the mutual recovery of costs associated with the transport and termination of traffic subject to Reciprocal Compensation.
- 1.25. "Reciprocal Compensation" is an arrangement for recovering, in accordance with Section 251(b)(5) of the Act, applicable FCC rules and regulations, and relevant court decisions, the costs incurred for the transport and termination of traffic originating on one Party's network and terminating on the other Party's network. For purposes of this Agreement, the Parties agree that Bill-and-Keep shall be the method of Reciprocal Compensation used by the Parties.

2. INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument or other third party offering, guide or practice, statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of a rule or tariff as amended and supplemented from time-to-time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

3. SCOPE OF THIS AGREEMENT

This Agreement, including the attached Addendum, specifies the rights and obligations of each Party with respect to the establishment, purchase, and sale of Local, EAS, ESP/ISP, and intraLATA toll Interconnection. InterLATA, interState, and international interconnection are subject to the applicable [INSERT] tariffs. Certain terms used in this Agreement shall have the meanings defined in Section 1 hereof, or as otherwise elsewhere defined throughout this Agreement. Other terms used but not defined herein will have the meanings ascribed to them in the Act, in the FCC's rules and regulations, and in the Rural Electrification Authority rules and

regulations. This Agreement sets forth the general terms and conditions governing the Agreement between the Parties. The attached Addendum sets forth, among other things, descriptions of the services, pricing, technical and business requirements, and physical and network security requirements. Other addenda may be added as services exchanged are modified or added.

4. SERVICE AGREEMENT

4.1 General

- 4.1.1 This Agreement is intended to establish the methodology for the exchange of traffic and compensation for local, extended area service (EAS) and intrastate intraLATA Message Toll Service traffic between LEC and TWCIS (NC). This Agreement covers the [INSERT], NC LATA (LATA [INSERT#]).
- 4.1.2 The Parties agree to connect their networks for the exchange of Local Traffic, Extended Area Service Traffic, ESP/ISP Traffic, intraLATA Toll Service Traffic, and other traffic subject to Reciprocal Compensation. The Parties further agree to allow the delivery of this traffic to be terminated on the network of the other Party so that end users of either Party have the ability to reach end users of the other Party without the use of any access code or substantial delay in the processing of the call.
- 4.1.3 The Parties agree to exchange all traffic through a direct trunk connection. The "Point of Interconnection" shall be defined as the point at which LEC's facilities connect with the facilities of TWCIS (NC) on LEC's network. LEC is responsible for all the costs associated with carrying, originating, and terminating traffic to the POI. Likewise, TWCIS (NC) is responsible for carrying traffic to and from the Meet Point, including any transport, transiting, or switching charges assessed by a transiting carrier. Neither Party shall have any obligation to bear any charges, expenses or other costs assessed in connection with transporting, transiting, or switching traffic on the other Party's side of the POI.
- 4.1.4 Common Channel Signal/Signaling System 7 (CCS/SS7) shall be used to transmit signaling information in accordance with commonly accepted industry standards for interconnecting trunks. Use of a third-party provider of CCS/SS7 trunks for connecting TWCIS (NC) to the LEC SS7 system is permitted. Such connections will also meet commonly accepted industry standards.
- 4.1.5 To the extent technically feasible, the carrier responsible for originating the traffic shall in delivering its traffic, transmit signaling information in accordance with commonly accepted industry standards giving the terminating carrier information that is sufficient to identify, measure, and appropriately render an accurate and timely bill to the originating carrier for services provided in terminating the traffic. Such signaling information shall be rendered as part of the CCS/SS7 call record in generally accepted industry format and shall include, but not necessarily

be limited to, originating telephone number, terminating telephone number, originating end office, terminating end office, Carrier Identification Code (CIC), and or Jurisdictional Identification Parameter (JIP) as technically feasible, and any other available information to help facilitate a timely and accurate billing.

4.1.5.1 If the originating Party passes signaling information on ninety percent (90%) or more of its calls, the receiving Party shall bill the originating Party the applicable rate for each minute of traffic for which signaling information is passed. For any remaining (up to 10%) calls without signaling information, the receiving Party shall bill the originating Party for such traffic at the rate applicable to each minute of traffic, in direct proportion to the minutes of use of calls passed with signaling information.

4.1.6 If TWCIS (NC) utilizes a switch outside the LEC's territory and LEC chooses to purchase dedicated or common (shared) transport from TWCIS (NC) for transport and termination of LEC originated traffic, LEC will pay TWCIS (NC) no more than the airline miles between the V & H coordinates of the POI within LEC's serving area boundary where TWCIS (NC) receives the LEC originated traffic and the V & H coordinates of the LEC Exchange rate center area that the TWCIS (NC) terminating NPA/NXX is associated within the same LATA. For these situations, LEC will compensate TWCIS (NC) at dedicated transport rates specified in Attachment I herein and based upon the functions provided by TWCIS (NC) as defined in this Attachment I.

4.1.7 The transmission facility that connects LEC's network and TWCIS (NC)'s network, and which meets at the POI, is defined as the "Interconnection Facility." The Interconnection Facility may be a shared facility used by both Parties to originate and terminate traffic. Notwithstanding any other provision to the contrary, the Interconnection Facility will be a direct trunking facility between the Parties. LEC will bear all costs for direct trunking facilities on its side of the POI and TWCIS (NC) will bear all costs of direct trunking facilities on its side of the POI.

4.1.8 In the event that TWCIS (NC) elects to offer service within LEC's serving area using a switch located outside LEC's serving area, TWCIS (NC) agrees to provide the interconnection facility for both Parties' traffic outside LEC's contiguous serving area in which TWCIS (NC) offers service, at no charge to LEC. LEC will not compensate TWCIS (NC) for the shared interconnection facility beyond LEC's contiguous serving area in which TWCIS (NC) offers service.

4.2 Exchange of Traffic and Compensation

4.2.1 The Parties agree to the exchange of traffic and mutual compensation for Local Traffic, EAS Traffic, ESP/ISP Traffic, other traffic subject to Reciprocal

Compensation, and intrastate IntraLATA Toll Traffic that will be exchanged via the jointly provided intraLATA network of LEC and TWCIS (NC).

4.2.2 The Parties agree that if the cost of terminating billable traffic by either Party does not exceed \$50 per month including all applicable taxes and governmental fees, the billing Party shall not submit an invoice for payment to the billed Party nor shall the billed Party be under any obligation to pay a recurring monthly invoice that is less than \$50.

4.2.3 In addition to the NXX codes identified in Attachment I herein, each Party shall, at its own expense, ensure that its systems and switching equipment are updated to recognize the other Party's NXX codes as identified in the Local Exchange Routing Guide ("LERG").

4.3 IntraLATA Toll Traffic

4.3.1 "IntraLATA Traffic" means: (1) any traffic originating in any exchange in the [INSERT] LATAs and terminated by LEC to the LEC exchanges in the same [INSERT] LATAs; and (2) any traffic originating in any exchange in the [INSERT] LATAs and terminated by TWCIS (NC) to the TWCIS (NC) exchanges in the same [INSERT] LATAs.

4.3.2 TWCIS (NC) and LEC agree to compensate each other for the termination of IntraLATA Toll Traffic between their respective exchanges as set forth in the rates listed in Attachment I.

4.4 Local, EAS, ESP/ISP, and Other Traffic Subject to Reciprocal Compensation

4.4.1 TWCIS (NC) and LEC agree to exchange Local, EAS, ESP/ISP, and other traffic subject to Reciprocal Compensation on a Bill-and-Keep basis.

4.4.2 Intentionally Left Blank.

4.4.3 LEC and TWCIS (NC) agree that traffic bound for Information Services Providers, including but not limited to Enhanced Service Providers and Internet Service Providers (collectively "ESP/ISP traffic"), shall not be Local Traffic as defined in this Agreement for purposes of Reciprocal Compensation. Accordingly, the Parties agree that, for now, ESP/ISP traffic will not be included in determining reciprocal compensation for Local Traffic between LEC and TWCIS (NC). The Parties further agree that when a governing body with jurisdiction issues a final, non-appealable order establishing rules or a process by which all affected carriers shall treat ESP/ISP traffic for purposes of inter-carrier compensation, then the Parties shall amend this Agreement to conform with such method, rules or process, and will apply such rules or process to the termination of ESP/ISP prospectively, and only on a going-forward basis, beginning on the effective date of any amendment entered into pursuant to Section 6.2 of this

Agreement. Until such time, each Party will terminate the ESP/ISP traffic of the other Party in the same manner as Local Traffic over the facilities established pursuant to this Agreement on a Bill-and-Keep basis.

4.5 Toll Free Services

- 4.5.1 For toll free services, the Party originating such traffic will bill the Party offering the toll free service. Each Party shall provide to the other Party, in a timely manner, billing records in standard EMI format. The compensation for termination of such traffic, the charges for which will include usage, query and record provisioning, are set out in Attachment I hereof. The records for these types of calls will be processed through the Centralized Message Distribution System ("CMDS") process through each Party's Host.

4.6 Transit Traffic Service

- 4.6.1. The Parties shall compensate each other for Transit Traffic Service as follows:

4.6.1.1 TWCIS (NC) shall pay LEC a Transit Traffic Service charge as set forth in Attachment I to this Agreement. TWCIS (NC) will pay LEC a Transit Traffic Service charge for such traffic if it originates from TWCIS (NC) or terminates to TWCIS (NC) from a third party LEC.

4.6.1.2 LEC shall pay TWCIS (NC) a Transit Traffic Service charge as set forth in Attachment I to this Agreement. LEC will pay TWCIS (NC) a Transit Traffic Service charge for such traffic if it originates from LEC or terminates to LEC from a third party LEC.

- 4.6.2 Each Party acknowledges that the transiting Party does not have any responsibility to pay any charges for termination of any Transit Traffic originating from a non-Party's network.

4.7 Interim Number Portability (INP)

4.7.1 LEC shall provide INP in accordance with requirements of the Act and FCC rules and regulations. INP shall be provided with minimum impairment of functionality, quality, reliability and convenience to subscribers of TWCIS (NC) services until such time as Local Number Portability (LNP) service is offered in the LEC rate center, in which case INP will be discontinued. Beginning on the date LNP is available in an area, INP orders will no longer be processed, and the Parties will work together to convert the existing INP lines to LNP.

- 4.7.1.1 Interim Number Portability (INP) shall be provided to the extent technical capabilities allow, by a LEC directed Remote Call Forwarding (RCF). In the event RCF is a purchased feature of the TWCIS (NC) Customer, there is no relationship between RCF and INP. Once LNP is

available in LEC's serving area, RCF will be provided only as a retail service offering by LEC.

4.7.1.2 RCF is an INP method to provide subscribers with service-provider portability by redirecting calls within the telephone network. When RCF is used to provide interim number portability, calls to the ported number will first route to the LEC switch to which the ported number was previously assigned. The LEC switch will then forward the call to a number associated with the TWCIS (NC) designated switch to which the number is ported. TWCIS (NC) may order any additional paths to handle multiple simultaneous calls to the same ported telephone number.

4.7.1.3 The trunking requirements will be agreed upon by LEC and TWCIS (NC) based upon application of sound engineering principles. These trunking options may include SS7 signaling, in-band signaling, and may be one-way or two-way. The trunks used may be the same as those used for exchange of other Local Traffic and IntraLATA Toll Traffic between LEC and TWCIS (NC).

4.7.1.4 Local Exchange Routing Guide (LERG) Reassignment. Portability for an entire NXX shall be provided by utilizing reassignment of the block to TWCIS (NC) through the LERG. Updates to translations in the LEC switching office from which the telephone number is ported will be made by LEC prior to the date on which LERG changes become effective, in order to redirect calls to the TWCIS (NC) switch via route indexing.

4.7.1.4.1 Where SS7 is available, LEC shall exchange with TWCIS (NC), SS7 TCAP messages as required for the implementation CLASS or other features available in the LEC network, if technically feasible.

4.7.1.4. Upon notification that TWCIS (NC) will be initiating INP, LEC shall disclose to TWCIS (NC) any technical or capacity limitations that would prevent use of the requested INP in the affected switching office. LEC and TWCIS (NC) shall cooperate in the process of porting numbers to minimize subscriber out-of-service time, including promptly updating switch translations, where necessary, after notification that physical cut-over has been completed (or initiated), as TWCIS (NC) may designate.

4.8 Transition from INP to LNP

Existing INP Arrangements. As LEC provisions LNP, there will be a maximum of a one hundred twenty (120) day transition from INP to LNP. At that time, the TWCIS (NC) will be required to fully implement LNP according to industry standards. Once LNP is available in an area, all new portability will be LNP and INP will no longer be offered.

4.9 Local Number Portability (LNP)

4.9.1 Upon implementation of LNP, both Parties agree to conform and provide such LNP pursuant to FCC regulations. To the extent consistent with the FCC as amended from time to time, the requirements for LNP shall include the following:

4.9.2 Each Party's Customers must be able to change local service providers and retain the same telephone number(s) within the serving wire center utilizing the portability method in effect within the porting MSA, as offered by the porting carrier, and within the area of portability as defined by the FCC or state commission having jurisdiction over this Agreement.

4.9.3 The LNP network architecture shall not subject Parties to any degradation of service in any relevant measure, including transmission quality, switching and transport costs, increased call set-up time and post-dial delay.

4.9.3 Parties agree that when an NXX is defined as portable, it shall also be defined as portable in all LNP capable offices which have direct trunks to the given switch.

4.9.5 Not all NXXs in each CO may be available for porting.

4.9.6 Coordination of service order work outside normal business hours (9:00AM to 4:00PM) Eastern Time shall be at requesting Party's expense. Premium rates will apply for service order work performed outside normal business hours, weekends, and holidays.

4.10 Directory Listings and Directory Distribution

To the extent required, TWCIS (NC) will negotiate a separate agreement for directory listings and directory distribution, except as set forth below, with LEC's vendor for directory publications.

4.10.1 Listings.

TWCIS (NC) agrees to supply LEC on a regularly scheduled basis, and in a mutually agreed upon format (e.g. Ordering and Billing Forum developed), all listing information for TWCIS (NC)'s subscribers who wish to be listed in any LEC published directory for the relevant operating area. Listing information will consist of names, addresses (including city, state and zip code) and telephone numbers. Nothing in this Agreement shall require LEC to publish a directory where it would not otherwise do so. Listing inclusion in a given directory will be in accordance with LEC's solely determined directory configuration, scope, and schedules, and listings will be treated in the same manner as LEC's listings.

4.10.2 Confidentiality and Liability.

4.10.2.1 LEC will accord TWCIS (NC) directory listing information the same level of confidentiality that LEC accords its own directory listing information.

4.10.2.2 TWCIS (NC) will adhere to all practices, standards, and ethical requirements of LEC with regard to listings, and, by providing LEC with listing information, warrants to LEC that TWCIS (NC) has the right to place such listings on behalf of its Customers. TWCIS (NC) agrees that it will undertake commercially practicable and reasonable steps to attempt to ensure that any business or person to be listed is authorized and has the right to provide the product or service offered, and to use any personal or corporate name, trade name, or language used in the listing. TWCIS (NC) shall be solely responsible for knowing and adhering to state laws or rulings regarding listing information and for supplying LEC with applicable listing information. In addition, TWCIS (NC) agrees to release, defend, hold harmless and indemnify LEC from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of LEC's listing of the information provided by TWCIS (NC) hereunder, except to the extent that such claim, loss, damage or liability is attributable to the gross negligence or willful misconduct of LEC, its employees, representatives, agents or contractors.

4.10.3 Distribution.

Upon directory publication, LEC will arrange for the initial distribution of the directory to service subscribers in the directory coverage area at no charge. TWCIS (NC) will supply LEC in a timely manner with all required subscriber mailing and physical location information including non-listed and non-published subscriber mailing information, to enable LEC to perform its distribution responsibilities.

5. NETWORK CHANGES

LEC shall provide notice of network changes and upgrades in accordance with Sections 51.325 through 51.335 of Title 47 of the Code of Federal Regulations. LEC may discontinue any interconnection arrangement or Telecommunications Service provided or required hereunder due to network changes or upgrades after providing TWCIS (NC) notice as required by this Section. LEC agrees to cooperate with TWCIS (NC) and/or the appropriate regulatory body in any transition resulting from such discontinuation of service and to minimize the impact to customers, which may result from such discontinuance of service

6. REGULATORY APPROVALS

- 6.1. This Agreement, and any amendment or modification hereof, will be submitted to the Commission for approval in accordance with Section 252 of the Act within thirty (30) days after obtaining the last required Agreement signature. The Parties shall use their best efforts to obtain approval of this Agreement. In the event the Commission rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.
- 6.2. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the texts of the Act and the rules and regulations

promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event of any amendment of the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or in which the court, FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, "Amended Rules"), either Party may, by providing written notice to the other Party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.

- 6.3. Notwithstanding any other provision of this Agreement to the contrary Section 6.2 hereof shall control. Any rates, terms or conditions thus developed or modified shall be substituted in place of those previously in effect and shall be deemed to have been effective under this Agreement as of the effective date of the Amendment entered into by the Parties under Section 6.2 Should the Parties be unable to reach agreement with respect to the applicability of such order or the resulting appropriate modifications to this Agreement, either Party may invoke the Dispute Resolution provisions of this Agreement, it being the intent of the Parties that this Agreement shall be brought into conformity with the then current obligations under the Act as determined by the amended rules. Nothing in this Agreement shall be deemed or construed to prohibit LEC from charging rates to TWCIS (NC) under this Agreement if such rates are cost-based rates adopted by LEC following approval of such rates by the Commission in a generic cost proceeding.

7. TERM AND TERMINATION

- 7.1. This Agreement shall be deemed effective upon the Effective Date first stated above, and continue for a period of two (2) years, and thereafter shall automatically renew for successive six (6) month terms, unless earlier terminated in accordance with this Section. Either Party may terminate this Agreement by providing written notice of termination to the other Party at least sixty (60) days in advance of any renewal date. This Agreement shall become binding upon execution by the Parties. No order or request for services under this Agreement shall be processed before the Effective Date, except as otherwise agreed to in writing by the Parties. No order or request for services under this Agreement shall be processed before TWCIS (NC) has established a customer account with LEC and has completed the Implementation Plan described in this Agreement.
- 7.2. In the event of either Party's material breach of any of the terms or conditions hereof, including the failure to make any undisputed payment when due, the non-defaulting Party may immediately terminate this Agreement in whole or in part provided that the non-defaulting Party so advises the defaulting Party in writing of the event of the alleged default and the defaulting Party does not remedy the alleged default within sixty (60) days after written notice thereof. The non-defaulting Party shall be entitled to pursue all available legal and equitable remedies for such breach.

- 7.3. LEC may terminate this Agreement upon ten (10) days notice if TWCIS (NC) is not exchanging traffic with LEC or has not submitted orders pursuant to this Agreement within one hundred eighty (180) days of the Effective Date. In addition, LEC reserves the right to terminate this Agreement immediately upon notice from the TWCIS (NC) that it has ceased doing business in North Carolina. In addition to written notice from TWCIS (NC), LEC may utilize any publicly available information in concluding that TWCIS (NC) is no longer doing business in this state, and immediately terminate this Agreement upon written notification to TWCIS (NC).
- 7.4. Termination of this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect to any act or omission prior to termination or from any obligation which is expressly stated herein to survive termination.
- 7.5. Notwithstanding the above, should LEC sell or trade substantially all the assets in an exchange or group of exchanges that LEC uses to provide Telecommunications Services, then LEC may terminate this Agreement in whole or in part as to that particular exchange or group of exchanges upon sixty (60) days' prior written notice.

8. POST EXPIRATION INTERIM SERVICE ARRANGEMENTS

In the event that this Agreement is terminated under the terms of Section 7.1 hereof and the Parties have not executed a successor agreement at the time of expiration, provided the Parties are actually in arbitration or mediation before the Commission or FCC under § 252 of the Act or the Parties have a written agreement to continue negotiations, it is the intent of the Parties to provide in this Section for post-expiration interim service arrangements between the Parties so that service to their respective end users will not be interrupted should a new agreement not be consummated prior to the end date. Therefore, except in the case of termination as a result of the events under Sections 5.2, 5.3, 5.4, and 5.5 hereof, the terms and conditions of this Agreement shall continue uninterrupted after the termination of this Agreement at the written request of either Party until either (i) the Parties execute a successor Agreement, or (ii) the issuance of an arbitration order, whether a final non-appealable order or not, by the Authority or FCC, regarding the rights and responsibilities between the Parties.

9. CHARGES AND PAYMENT

- 9.1. Subject to the terms of this Agreement, payment is due within thirty (30) days of receiving an invoice. For invoices not paid when due, late payment charges will be assessed. If the payment due date is a Saturday, Sunday or a designated bank holiday, payment shall be made the next business day.
- 9.1.1. If an invoice is not paid within sixty (60) days after the bill date, LEC may suspend processing new orders and cancel any pending orders.

- 9.1.2. If the account remains delinquent ninety (90) days after the bill date, LEC may terminate all services under this Agreement.
- 9.2. Billed amounts for which written, itemized disputes or claims have been filed are not due for payment until such disputes or claims have been resolved in accordance with the provisions governing dispute resolution of this Agreement. Billing disputes between the Parties entered into prior to the Effective Date of this Agreement or delinquent amounts owed by either Party prior to the Effective Date of this Agreement will be forgiven and the balance brought to \$0.00.
- 9.3. The Parties will assess late payment charges equal to the lesser of the highest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment date to and including the date the customer actually makes the payment, or 0.000329 percent per day, compounded daily for the number of days from the payment due date to and including the date that the customer actually makes the payment, until the amount due is paid in full.
- 9.4. The Parties agree that the billing Party shall collect, remit and report according to State law and industry standards all applicable taxes and governmental fees from the end users. The Parties further agree that all applicable taxes and governmental fees from the end users will be treated in accordance with North Carolina State law.

10. AUDITS AND EXAMINATIONS

- 10.1. Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the other Party involved. Subject to each Party's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, either Party, at its own expense, may audit the other Party's books, records and other documents directly related to billing and invoicing once in any twelve (12) month period for the purpose of evaluating the accuracy of the other Party's billing and invoicing. As used herein "Audit" shall mean a comprehensive review of bills for services performed under this Agreement; "Examination" shall mean an inquiry into a specific element of or process related to bills for services performed under this Agreement. Either Party (the "Requesting Party") may perform one (1) Audit per twelve (12) month period commencing with the Effective Date, with the assistance of the other Party, which will not be unreasonably withheld. The Audit period will include no more than the preceding twenty-four (24) month period as of the date of the Audit request. The Requesting Party may perform Examinations, as it deems necessary, with the assistance of the other Party, which will not be unreasonably withheld.
- 10.2. Upon thirty (30) days' written notice by the Requesting Party to Audited Party, Requesting Party shall have the right through its authorized representative to make an Audit, during normal business hours, of any records, accounts and processes which contain information bearing upon the billing and invoicing of the services provided under this Agreement. Within the above-described thirty (30) day period, the Parties shall reasonably agree upon the scope of the Audit or Examination, the documents and

processes to be reviewed, and the time, place and manner in which the Audit or Examination shall be performed. Audited Party agrees to provide Audit or Examination support, including appropriate access to and use of Audited Party's facilities (e.g.: conference rooms, telephones, copying machines).

- 10.3. Each Party shall bear its own expenses in connection with the conduct of the Audit or Examination. The reasonable cost of special data extraction required by the Requesting Party to conduct the Audit or Examination will be paid for by the Requesting Party. For purposes of this Section, a "Special Data Extraction" shall mean the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to Requesting Party's specifications and at Requesting Party's expense, Requesting Party shall specify at the time of request whether the program is to be retained by Audited Party for reuse for any subsequent Audit or Examination.
- 10.4. Adjustments based on the Audit findings may be applied to the twenty-four (24) month period included in the Audit. Adjustments, credits or payments shall be made and any corrective action shall commence within thirty (30) days from receipt of requesting Party's receipt of the final Audit report to compensate for any errors or omissions which are disclosed by such Audit or Examination and are agreed to by the Parties.
- 10.5. Neither such right to examine and audit nor the right to receive an adjustment shall be affected by any statement to the contrary appearing on checks or otherwise, unless such statement expressly waiving such right appears in writing, is signed by the authorized representative of the Party having such right and is delivered to the other Party in a manner sanctioned by this Agreement.
- 10.6. This Section shall survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of this Agreement.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. Any intellectual property that originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel.
- 11.2. LEC hereby conveys no licenses to use any Intellectual Property Rights and makes no warranties, express or implied, concerning TWCIS (NC)'s (or any Third Parties') rights with respect to such Intellectual Property Rights and contract rights, including whether such rights will be violated by the Interconnection provided for herein.

12. LIMITATION OF LIABILITY

Except as otherwise set forth in this Agreement, neither Party shall be responsible to the other for any indirect, special, consequential or punitive damages, including (without limitation) damages for loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted, or done hereunder (collectively "Consequential Damages"), whether arising in contract or tort, provided that the foregoing shall not limit a Party's obligation under Section 11 hereof to indemnify, defend, and hold the other Party harmless against amounts payable to third parties. Notwithstanding the foregoing, in no event shall LEC's liability to TWCIS (NC) for a service outage exceed an amount equal to the proportionate charge for the service(s) provided for the period during which the service was affected.

13. INDEMNIFICATION

- 13.1. Each Party agrees to indemnify and hold harmless the other Party from and against claims by third parties for damage to tangible personal or real property and/or personal injuries to the extent caused by the negligence or willful misconduct or omission of the indemnifying Party.
- 13.2. TWCIS (NC) shall indemnify and hold harmless LEC from all claims by TWCIS (NC)'s subscribers.
- 13.3. LEC shall indemnify and hold harmless TWCIS (NC) from all claims by LEC's subscribers.
- 13.4. The indemnifying Party under this Section agrees to defend any suit brought against the other Party either individually or jointly with the indemnified Party for any such loss, injury, liability, claim or demand.
- 13.5. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims.
- 13.6. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party of any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to promptly assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.
- 13.7. When the lines or services of other companies and TWCIS (NC)s are used in establishing connections to and/or from points not reached by a Party's lines, neither Party shall be liable for any act or omission of the other companies or carriers.

13.8. In addition to its indemnity obligations hereunder, each Party shall, to the extent allowed by law or Commission Order, provide, in its tariffs and contracts with its subscribers that relate to any Telecommunications Services provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such Party be liable to any subscriber or third party for:

13.8.1. Any loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable subscriber for the service(s) or function(s) that gave rise to such loss, and

13.8.2. Consequential Damages.

14. **REMEDIES**

Except as otherwise provided herein, all rights of termination, cancellation or other remedies prescribed in this Agreement, or otherwise available, are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled in case of any breach or threatened breach by the other Party of any provision of this Agreement, and use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing the provisions of this Agreement.

15. **CONFIDENTIALITY AND PUBLICITY**

15.1. All information which is disclosed by one Party ("Disclosing Party") to the other ("Recipient") in connection with this Agreement, or acquired in the course of performance of this Agreement, shall be deemed confidential and proprietary to the Disclosing Party and subject to this Agreement, such information including but not limited to, orders for services, usage information in any form, and CPNI as that term is defined by the Act and the rules and regulations of the FCC ("Confidential Information").

15.2. In regards to Confidential Information, during the term of this Agreement, and for a period of one (1) year thereafter, Recipient shall

15.2.1. use it only for the purpose of performing under this Agreement,

15.2.2. hold it in confidence and disclose it only to employees or agents who have a need to know it in order to perform under this Agreement, and

15.2.3. safeguard it from unauthorized use or disclosure using no less than the degree of care with which Recipient safeguards its own Confidential Information.

15.3. Recipient shall have no obligation to safeguard Confidential Information

15.3.1. which was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party,

- 15.3.2. which becomes publicly known or available through no breach of this Agreement by Recipient,
- 15.3.3. which is rightfully acquired by Recipient free of restrictions on its Disclosure, or
- 15.3.4. which is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential Information had not been previously disclosed.
- 15.4. Recipient may disclose Confidential Information if required by law, a court, or governmental agency, provided that Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and provided that Recipient undertakes all lawful measures to avoid disclosing such information until Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.
- 15.5. Each Party agrees that in the event of a breach of this Section by Recipient or its representatives, Disclosing Party shall be entitled to equitable relief, including injunctive relief and specific performance. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.
- 15.6. Unless otherwise agreed, neither Party shall publish or use the other Party's logo, trademark, service mark, name, language, pictures, symbols or words from which the other Party's name may reasonably be inferred or implied in any product, service, advertisement, promotion, or any other publicity matter, except that nothing in this paragraph shall prohibit a Party from engaging in valid comparative advertising. This Section 13.6 shall confer no rights on a Party to the service marks, trademarks and trade names owned or used in connection with services by the other Party or its Affiliates, except as expressly permitted by the other Party.
- 15.7. Neither Party shall produce, publish, or distribute any press release nor other publicity referring to the other Party or its Affiliates, or referring to this Agreement, without the prior written approval of the other Party. Each Party shall obtain the other Party's prior approval before discussing this Agreement in any press or media interviews. In no event shall either Party mischaracterize the contents of this Agreement in any public statement or in any representation to a governmental entity or member thereof.
- 15.8. Except as otherwise expressly provided in this Section, nothing herein shall be construed as limiting the rights of either Party with respect to its customer information under any applicable law, including without limitation Section 222 of the Act.

16. DISCLAIMER OF WARRANTIES

EXCEPT AS SPECIFICALLY PROVIDED ELSEWHERE IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO QUALITY, FUNCTIONALITY OR CHARACTERISTICS OF THE SERVICES PROVIDED PURSUANT

TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR STATEMENT MADE BY EITHER PARTY OR ANY OF ITS AGENTS OR EMPLOYEES, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO, ANY SPECIFICATIONS, DESCRIPTIONS OR STATEMENTS PROVIDED OR MADE SHALL BE BINDING UPON EITHER PARTY AS A WARRANTY. ADDITIONALLY, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE ACCURACY OF DATA PROVIDED TO, ACCESSED BY, OR USED BY A THIRD PARTY.

17. ASSIGNMENT AND SUBCONTRACT

17.1. If any Affiliate of either Party succeeds to that portion of the business of such Party that is responsible for, or entitled to, any rights, obligations, duties, or other interests under this Agreement, such Affiliate may succeed to those rights, obligations, duties, and interest of such Party under this Agreement. In the event of any such succession hereunder, the successor shall expressly undertake in writing to the other Party the performance and liability for those obligations and duties as to which it is succeeding a Party to this Agreement. Thereafter, the successor Party shall be deemed TWCIS (NC) or LEC and the original Party shall be relieved of such obligations and duties, except for matters arising out of events occurring prior to the date of such undertaking.

17.2. Except as provided in Section 15.1 hereof, any assignment of this Agreement or of the work to be performed, in whole or in part, or of any other interest of a Party hereunder, without the other Party's written consent, which consent shall not be unreasonably withheld or delayed, shall be void.

17.3. Provision of Ancillary Services by an Affiliate shall not be considered an assignment or transfer. Ancillary Services are services that support but are not required for termination, e.g. 911, DA, OS, Directory and LIDB Service.

18. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

19. RELATIONSHIP OF PARTIES

It is the intention of the Parties that each Party shall be an independent contractor and nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

20. NO THIRD PARTY BENEFICIARIES

The provisions of this Agreement are for the benefit of the Parties hereto and not for any other person, and this Agreement shall not provide any person not a party hereto with any

remedy, claim, liability, reimbursement, right of action, or other right in excess of those existing without reference hereto.

21. NOTICES

- 21.1. Except as otherwise provided herein, all notices or other communication hereunder shall be deemed to have been duly given when made in writing and delivered in person or deposited in the United States mail, certified mail, postage prepaid, return receipt requested and addressed as follows:

If to LEC:

If to TWCIS (NC):

Julie Y. Patterson
Vice President & Chief Counsel
Time Warner Cable
290 Harbor Drive
Stamford, CT 06902

- 21.2. If delivery, other than certified mail, return receipt requested, is used to give notice, a receipt of such delivery shall be obtained and the notice shall be effective when received. If delivery via certified mail, return receipt requested, is used, notice shall be effective when sent. The address to which notices or communications may be given to either Party may be changed by written notice given by such Party to the other pursuant to this Section.

22. WAIVERS

- 22.1. No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Any such waiver for a particular instance shall not constitute a general waiver of the applicable terms, conditions, or requirements of this Agreement.
- 22.2. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.
- 22.3. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

23. SURVIVAL

Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

24. FORCE MAJEURE

Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, strikes, cable cuts, condemnation or exercise of eminent domain rights, work stoppage affecting a supplier or unusually severe weather. No delay or other failure to perform shall be excused pursuant to this Section unless delay or failure and consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. Subject to Section 5 hereof, in the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay.

25. DISPUTE RESOLUTION

- 25.1. No claims shall be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of occurrence that gives rise to the dispute.
- 25.2. The Parties desire to resolve disputes arising from this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- 25.3. At the written request of a Party, each Party will appoint a good faith representative to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures, such as mediation, to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications that are not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted as evidence in the arbitration or lawsuit.

- 25.4. If direct negotiations or mediation do not resolve the dispute within a reasonable amount of time, not to exceed sixty (60) days from the initial written request, the dispute shall be submitted to the Commission. The Commission shall have jurisdiction to decide any dispute between the Parties arising under or otherwise relating to this Agreement. The Parties agree that, prior to submitting any such dispute to the Commission for resolution, each Party will escalate any such dispute to their highest management levels, in a good faith effort to resolve the matter. Should those efforts prove unsuccessful, or should either Party fail upon written request by the other Party to engage in the dispute resolution procedure as required herein, then the other Party may submit the dispute to the Authority for resolution by binding arbitration. Discovery shall be controlled by the Authority and shall be permitted to the extent set out in this Section. Each Party may submit in writing to a Party, and that Party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: (a) interrogatories; (b) demands to produce documents; (c) requests for admission.
- 25.5. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The Parties shall submit a written brief five (5) days before the hearing. The Authority shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The Authority has no authority to order punitive or consequential damages. The times specified in this Section may be extended upon mutual agreement of the Parties or by the Authority upon a showing of good cause. Judgment upon the award rendered by the Authority may be entered in any court having jurisdiction.
- 25.6. The prevailing Party shall have all costs expended under this Section 24 reimbursed by the losing Party, or, in such circumstances where there is no clear and obvious prevailing Party, the costs and expenses shall be paid as allocated by the Commission. A Party seeking discovery shall reimburse the responding Party the costs of production of documents (including search time and reproduction costs).

26. COOPERATION ON FRAUD

The Parties agree that they shall cooperate with one another to investigate, minimize and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.

27. FUTURE SERVICES

It is the intent of the Parties that the terms of this Agreement establish the rates, terms, and conditions for local interconnection between LEC and TWCIS (NC). To the extent that future agreements are necessary for the provision of other services between the Parties, the Parties agree to negotiate the terms and conditions of such services in good faith and as required by the Act, the Rules and Regulations of the FCC, and the Orders and Rules and Regulations of the Authority. The terms and conditions of any such future agreements may be provided by

separate agreement and by amendments and addenda to this Agreement, as provided for in Section 26 hereof.

28. AMENDMENTS AND MODIFICATIONS

No provision of this Agreement shall be deemed waived, amended or modified by either Party unless such a waiver, amendment or modification is in writing, dated, and signed by both Parties.

29. SEVERABILITY

Subject to Section 4.2, if any part of this Agreement is held to be invalid, void or unenforceable for any reason, such invalidity will affect only the portion of this Agreement which is invalid. In all other respects this Agreement will stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

30. HEADINGS NOT CONTROLLING

The headings and numbering of Sections and Parts in this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

31. ENTIRE AGREEMENT

This Agreement, including all Parts and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

32. SUCCESSORS AND ASSIGNS

Subject to the terms of this Agreement, LEC and TWCIS (NC) agree this Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

**TIME WARNER CABLE INFORMATION
SERVICES (NORTH CAROLINA), LLC**

By: _____
Print Name: _____
Title: _____

LEC

By: _____
Print Name: _____
Title: _____

Attachment 3 – PRICING

Local Interconnection		
RATE ELEMENT	RECURRING RATE	NRC
Intercarrier Compensation		
End Office Local Switching - Usage per MOU		N/A
Tandem Switching - per MOU		N/A
Shared (Common) Transport per MOU		N/A
Reciprocal Compensation for all ISP MOU's		
Transit Rate		
Query Rate		
Trunk Charge		
Trunk Activation per DS0		
Entrance Facilities		
DS1		
DS3		
Dedicated Transport		
DS1 Dedicated Transport Termination		
DS1 Dedicated Transport Mileage - per mile		
DS3 Dedicated Transport Termination		
DS3 Dedicated Transport Mileage - per mile		
Multiplexing		
Multiplexing - DS1-DS0		
Multiplexing - DS3-DS1		
Mid-Span Meet Point		
Dedicated DS-1 per month		
Dedicated DS-3 per month		
General Charges		
Service Order (LSR)		
Service Order Cancellation Charge		
Expedited Due Date		
Order Change Charge		
Rates and Charges for LNP Coordinated Hot Cut		
Labor		
Basic Time (normally scheduled hours)		
Overtime (outside normally scheduled hours on scheduled work day)		
Premium Time (outside of schld work day)		

NXX CODES FOR LOCAL TRAFFIC EXCHANGE

LEC

TWCIS (NC)

Attachment 6



Brookside Court, Suite 135
4625 Alexander Drive, Alpharetta, GA 30022
phone: 770-569-2105, fax: 770-410-1608

February 8, 2006

VIA OVERNIGHT MAIL

Maribeth Bailey
Director, Interconnection Policy
Time Warner Cable
290 Harbor Drive
Stamford, CT 06902

Re: *Star TMC and Atlantic TMC*

Maribeth:

This letter is in response to the letters to Star Telephone Membership Corporation ("Star") and Atlantic Telephone Membership Corporation ("Atlantic") from Time Warner Cable Information Services (North Carolina), LLC ("TWCIS") dated January 31, 2006. Star and Atlantic have asked John Staurulakis, Inc. ("JST") to respond to TWCIS on their behalf and that I am copied on all future correspondence regarding this matter.

Please be advised that Star and Atlantic submitted written responses to TWCIS back in December. I have attached copies of the original letters from Star and Atlantic that outline their position in this matter.

Sincerely,

J. Lans Chase
John Staurulakis, Inc.
Manager - Regulatory & Policy

Enclosures

cc: Lyman Home, Star Telephone Membership Corporation
Roger Cox, Atlantic Telephone Membership Corporation

7852 Walker Drive, Suite 200, Greenbelt, MD 20770
phone: 301-459-7570, fax: 301-577-5575
internet: www.jstl.com, e-mail: jstl@jstl.com

Erchelon Building II, Suite 200
9430 Research Boulevard, Austin, TX 78759
phone: 512-338-0473, fax: 512-346-0822

Egondale Corporate Center, Suite 310
1300 Corporate Center Curve, Eagan, MN 55121
phone: 651-452-2660, fax: 651-452-1909

547 South Oakview Lane
Bountiful, UT 84010
phone: 801-294-4576, fax: 801-294-5124

Exhibit 3

RECEIVED

APR 10 2006

NORTH CAROLINA
RURAL ELECTRIFICATION AUTHORITY
RALEIGH

REA

BEFORE THE NORTH CAROLINA RURAL ELECTRIFICATION
AUTHORITY

DOCKET NO. TMC-5, SUB 1

Petition of Time Warner Cable Information Services (North Carolina), LLC to Terminate Star Telephone Membership Corporation's Rural Telephone Company Exemption Pursuant to Section 251 (f)(1) of the Communications Act of 1934, as Amended)
)
)
)
)
)

MOTION OF STAR TELEPHONE MEMBERSHIP CORPORATION TO DISMISS TIME WARNER CABLE INFORMATION SERVICES (NORTH CAROLINA), LLC'S PETITION FOR ARBITRATION

Star Telephone Membership Corporation ("Star") is a North Carolina telephone membership corporation ("TMC") organized and existing under Section 117-30 of the North Carolina General Statutes,¹ and Star hereby moves to dismiss Time Warner Cable Information Services (North Carolina), LLC ("TWCIS")'s Petition for Arbitration.

Background

TWCIS requested interconnection with Star in a letter dated October 5, 2005.² Prior to entering into negotiations with TWCIS for an interconnection agreement pursuant to sections 251 and 252 of the Communications Act of 1934, as amended ("the Telecom Act"), Star sought to clarify TWCIS' interconnection request so that Star could ascertain its duties and obligations under the Telecom Act.

¹ N.C. Gen. Stat. § 117-30.

² See Letter from Maribeth Bailey, Time Warner Cable Information Services (NC), LLC ("TWCIS"), to Lyman M. Horne, Star Telephone Membership Corporation ("Star") (October 5, 2005) ("TWCIS' Initial Request Letter").

In TWCIS' initial request for interconnection, it stated that it was "certificated as a local and long distance provider of competitive telecommunications services by the North Carolina Utilities Commission" ("NCUC") and that it was seeking, among other things, such rights under section 251(c) as collocation.³ Thereafter, Star communicated to TWCIS that, while it may be certificated by the NCUC, such certification is not applicable for the provision of competitive telecommunications services in Star's telephone membership service area pursuant to the North Carolina General Statutes ("N.C. Gen. Stat.").⁴

Subsequently, TWCIS responded with an indication that it was requesting interconnection, not pursuant to its state certification, but pursuant to federal law.⁵ It also stated that it did not believe that its request for interconnection was governed by section 251(c), even though it had specifically requested section 251(c) components in its initial request for interconnection.⁶

Under section 251, TWCIS must be a "telecommunications carrier" in order to be entitled to interconnection. Based on TWCIS' inconsistent statements regarding its status as a telecommunications carrier eligible to provide service in Star's service area, and the extent to which its interconnection request was governed by section 251(c), Star determined that, without further clarification from TWCIS, Star did not have a duty to enter into negotiations with TWCIS.⁷

³ *Id.*

⁴ See Letter from Lyman M. Horne, Star, to Maribeth Bailey, TWCIS (Oct. 25, 2005) ("Star's October Letter"); see also N.C. Gen. Stat. § 62-110 (f).

⁵ See Letter from Marcus W. Trathen of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., on behalf of TWCIS, to Lyman M. Horne, Star (Nov. 21, 2005) ("TWCIS' November Letter").

⁶ See *id.*; TWCIS' Initial Request Letters.

⁷ See Letter from Lyman Horne, Star, to Marcus W. Trathen, of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P on behalf of TWCIS (Dec. 13, 2005) (Star's December Letters").

Motion to Dismiss for Lack of Jurisdiction

Star is an incumbent local exchange carrier ("ILEC") providing local exchange telecommunications services within its respective designated TMC service area pursuant to the laws of the State of North Carolina and subject to the jurisdiction of the North Carolina Rural Electrification Authority ("NCREA").⁸ It is undisputed that Star is a "rural telephone company" as that term is defined in the Telecom Act.⁹

Star respectfully requests that the NCREA dismiss TWCIS' Petition for Arbitration. Star contends that TWCIS has not properly invoked the NCREA's jurisdiction in filing its Petition for Arbitration pursuant to section 252(b) of the Telecom Act. Section 252(b) of the Telecom Act governs agreements arrived at through compulsory arbitration.

Pursuant to the provisions of sections 251 and 252 of the Telecom Act, there are two avenues for matters to reach arbitration. First, section 251(c) requires incumbent local exchange carriers to negotiate the terms and conditions of section 251(b) (1) – (5), as well as of section 251(c), in accordance with the provisions of section 252, including section 252's compulsory arbitration provisions.¹⁰ Second, section 252(b) allows a party to file for arbitration to address unresolved issues arising during *voluntarily* negotiations pursuant to section 252(a).¹¹

Star is not subject to compulsory arbitration pursuant to section 252 until a requesting telecommunications carrier has provided a bona fide request and until Star's

⁸ See *id.*

⁹ 47 U.S.C. § 153(37).

¹⁰ See 47 U.S.C. §§ 251(c) and 252(b).

¹¹ See 47 U.S.C. § 252 (a).

rural exemption is terminated.¹² The Texas Public Utility Commission acknowledged this in its Order No. 1 Granting Motion to Dismiss filed by Brazos Telecommunications, Inc. ("BTI") against Sprint Communications Company L.P. That Commission stated, "[o]nly in the event that BTI's rural exemption is terminated does BTI have an obligation to negotiate, and/or arbitrate, an interconnection agreement with Sprint pursuant to FTA § 251 and 252."¹³

In addition, Star is not subject to arbitration arising from voluntary negotiations pursuant to section 252 (a) until it has agreed to voluntarily negotiate "with the requesting telecommunications carrier or carriers without regard to the standards set forth in [section 251 (b) or (c)]," as allowed, but certainly not required, by section 252.¹⁴ To date, Star has not agreed to conduct such voluntary negotiations. Furthermore, TWCIS' is not a telecommunications carrier for purposes of requesting interconnection pursuant to section 252(a).

TWICS is a provider of "facilities-based local Internet Protocol (IP) voice service."¹⁵ TWCIS' service uses IP for one or more segments of the call. The technology used by TWCIS breaks down voice transmissions into digital packets and transmits the packets over the Internet for at least some portion of the transit necessary to complete the call. Those packets are then reconstructed back into voice transmissions at

¹² See 47 U.S.C. § 251(f); see, e.g., *Petition of Sprint Communications Company L.P. for Compulsory Arbitration Under the FTA to Establish Terms and Conditions for Interconnection Terms with Brazos Telecommunications, Inc.* (Brazos Motion to Dismiss).

¹³ See Brazos Motion to Dismiss, § III.

¹⁴ See 47 U.S.C. § 252 (a) (stating that "an incumbent local exchange carrier *may* negotiate" (emphasis added)).

¹⁵ See *Application of Time Warner Cable Information Services for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller; Application of Time Warner Cable Information services for Certificate of Public Convenience and necessity to Provide Competing Local Exchange and Exchange Access Services in the State of north Carolina*, Order Granting Certificates, Docket Nos. P-1262, Sub 0 and Sub 1 (Jul. 24, 2003).

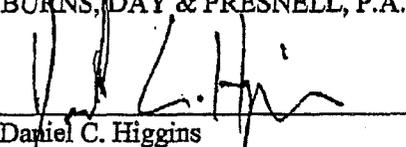
the end of the transit.¹⁶ The FCC has not determined IP-Enabled Services to be 'telecommunications service,' as that term is defined in the Telecom Act.¹⁷ To date, the FCC has not declared any IP-Enabled Services as subject to section 251. Indeed, with respect to Vonage's DigitalVoice IP-Enabled Service, the FCC declined to "decide . . . the appropriate federal regulations, if any, that will govern this service in the future."¹⁸

Accordingly, Star respectfully requests the NCREA to find that TWICS has not established the proper jurisdiction for the NCREA to address its Petition for Arbitration at this time because (1) Star is not subject to arbitration in accordance with section 251(c) unless and until its rural exemption is terminated; and (2) TWCIS is not a telecommunications carrier eligible to request voluntary negotiations pursuant to section 252(a) from which compulsory arbitration under section 252(b) could arise. Based on the foregoing, Star respectfully requests that the NCREA dismiss TWICS' Petition for Arbitration for lack of jurisdiction.

Respectfully submitted, this the 10th day of April, 2006.

BURNS, DAY & PRESNELL, P.A.

By:


Daniel C. Higgins
P.O. Box 10867
Raleigh, NC 27605
Tel: (919) 782-1441

¹⁶ See generally, *id.*

¹⁷ See 47 U.S.C. § 153(46). See also *IP-Enabled Services Order*, ¶ 24; *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, fn 46 (rel. Nov. 12, 2004) ("*Vonage Order*").

¹⁸ See *Vonage Order*, fn 46.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served on all parties of record by depositing same, postage prepaid, in the U.S. Mail this the 10th day of April, 2006.

BURNS, DAY & PRESNELL, P.A.

By:

Daniel C. Higgins
Post Office Box 10867
Raleigh, NC 27605

Exhibit 4

3. On 14 March 2006, Time Warner Cable Information Services (North Carolina), LLC filed a Petition for Arbitration with Randolph Telephone Membership Corporation and a Conditional Petition for Termination of Rural Exemption and Request for Consolidation with Petition for Arbitration.

4. On 14 March 2006, Time Warner Cable Information Services (North Carolina), LLC filed a Petition for Arbitration with Star Telephone Membership Corporation and a Conditional Petition for Termination of Rural Exemption and Request for Consolidation with Petition for Arbitration.

5. On 10 April 2006, Atlantic Telephone Membership Corporation filed the following:

- a) Motion to Dismiss Time Warner Cable Information Services (North Carolina), LLC's Petition for Arbitration
- b) Response to Time Warner Cable Information Services (North Carolina), LLC's Petition for Arbitration
- c) Response to Time Warner Cable Information Services (North Carolina), LLC's Conditional Petition for Termination of Rural Exemption and Request for Consolidation with Petition for Arbitration

6. On 10 April 2006, Randolph Telephone Membership Corporation filed the following:

- a) Motion to Dismiss Time Warner Cable Information Services (North Carolina), LLC's Conditional Petition for Termination of Rural Exemption and Time Warner Cable Information Services (North Carolina), LLC's Petition for Arbitration
- b) Response to Time Warner Cable Information Services (North Carolina), LLC's Petition for Arbitration
- c) Response to Time Warner Cable Information Services (North Carolina), LLC's Conditional Petition for Termination of Randolph's Rural Telephone Company Exemption

7. On 10 April 2006, Star Telephone Membership Corporation filed the following:

- a) Motion to Dismiss Time Warner Cable Information Services (North Carolina), LLC's Petition for Arbitration
- b) Response to Time Warner Cable Information Services (North Carolina), LLC's Petition for Arbitration
- c) Response to Time Warner Cable Information Services (North Carolina), LLC's Conditional Petition for Termination of Rural Exemption and Request for Consolidation with Petition for Arbitration

8. On 01 May 2006, Time Warner Cable Information Services (North Carolina), LLC's filed the following:

- a) Opposition to Atlantic Telephone Membership Corporation's Motion to Dismiss
- b) Opposition to Randolph Telephone Membership Corporation's Motion to Dismiss
- c) Opposition to Star Telephone Membership Corporation's Motion to Dismiss

9. On 04 May 2006, Time Warner Cable Information Services (North Carolina), LLC's filed attachments to its Opposition to Motion to Dismiss filed on 01 May 2006.

10. On 16 May 2006, Atlantic Telephone Membership Corporation filed a Response to Time Warner Cable Information Services (North Carolina), LLC's Opposition to Motion to Dismiss.

11. On 16 May 2006, Randolph Telephone Membership Corporation filed a Response to Time Warner Cable Information Services (North Carolina), LLC's Opposition to Motion to Dismiss.

12. On 16 May 2006, Star Telephone Membership Corporation filed a Response to Time Warner Cable Information Services (North Carolina), LLC's Opposition to Motion to Dismiss.

13. On 18 May 2006, Randolph Telephone Membership Corporation submitted a letter dated 30 June 2005 from Marcus Trathen to the North Carolina Utilities Commission Public Staff regarding a Response to Time Warner Cable Information Services (North Carolina), LLC. That letter was omitted from Randolph Membership Corporation's 16 May 2006 filing.

14. On 22 May 2006, Time Warner Cable Information Services (North Carolina), LLC filed a response to Atlantic, Randolph and Star Telephone Membership Corporations' 16 May 2006 filings.

DISCUSSION

On 22 May 2006, the above referenced filings came before the North Carolina Rural Electrification Authority (Authority) for consideration. Authority members in attendance were L. Calvin Duncan, Chairman, Joseph G. Justice, Vice-Chairman, J. Ronnie Alderman, Edith C. Cox, and Buddy G. Creed. Prior to discussion of the filings, Authority member J. Ronnie Alderman, who is also a Board Member of Star Telephone Membership Corporation, requested to be recused from all further discussion and votes specific to the above noted dockets due to a potential conflict of interest. After discussing the request, the Authority accepted the recusal, and Board Member Alderman was excused from the meeting. The remaining members of the Authority then discussed all filings of all parties before it regarding the above-captioned matters. Pursuant to those discussions, the Authority enters the following ORDER:

This Order consolidates and dismisses the petitions of Time Warner Cable Information Services (North Carolina), LLC, for arbitration pursuant to section 252(b) of the Communications Act of 1934, as amended, to establish interconnection agreements with Atlantic Telephone Membership Corporation, Randolph Telephone Membership Corporation, and Star Telephone Membership Corporation in dockets TMC-1, Sub 1, TMC-3, Sub 1 and TMC-5, Sub 1.

The Authority finds that Time Warner Cable Information Services (North Carolina), LLC ("TWCIS"), is not a telecommunications carrier and, therefore, is not permitted to seek interconnection rights pursuant to section 251 of the Communications Act of 1934, as amended ("Act").¹ As it is not a telecommunications carrier, TWCIS is also not permitted to compel arbitration pursuant to section 252 of the Act.²

FINDINGS OF FACT

1. Atlantic Telephone Membership Corporation, Randolph Telephone Membership Corporation and Star Telephone Membership Corporation (collectively hereinafter "the TMCs") are all rural telephone companies, as that term is defined in Section 153 (37) of the Act.³
2. The Authority is the State Commission, as that term is defined in section 153 (41) of the Act, with regard to the TMCs.⁴
3. Section 251 of the Act establishes interconnection obligations and duties for all telecommunications carriers with respect to other telecommunications carriers.⁵

¹ 47 U.S.C. § 251.

² 47 U.S.C. § 252.

³ 47 U.S.C. § 153 (37).

⁴ 47 U.S.C. § 153 (41).

⁵ 47 U.S.C. § 251.

4. Section 251(a) states, specifically, that all telecommunications carriers have the general duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."⁶

5. The Act defines a telecommunications carrier as "any provider of telecommunications services" ⁷ A provider is offering telecommunications service if it is "offering telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."⁸

6. The term "telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received."⁹

7. TWCIS offers Voice-over-Internet-Protocol (VoIP) services.

8. The FCC has not determined that VoIP services are telecommunication services as that term is defined pursuant to the Act.

9. TWCIS has not demonstrated in this proceeding that it is a telecommunications carrier, as that term is defined pursuant to the Act.

Based on the foregoing, the Authority makes the following:

CONCLUSIONS OF LAW:

1. A carrier must be a telecommunications carrier, as defined pursuant to the Act, to obtain interconnection and possess arbitration rights pursuant to sections 251 and 252 of the Act.

⁶ 47 U.S.C. § 251 (a).

⁷ 47 U.S.C. § 153 (44).

⁸ 47 U.S.C. § 153 (46).

⁹ 47 U.S.C. § 153 (43).

2. TWCIS is not a "telecommunications carrier" as that term is defined in section 153(44) of the Act.

3. Because TWICS is not a "telecommunications carrier," TWCIS is not legally entitled to demand interconnection with the TMCs.

NOW, THEREFORE, based on the foregoing and having considered all filings provided by all parties in the above-referenced dockets, and after due deliberation, the Authority rules as follows:

1. Pursuant to 47 U.S.C. § 252(g) the Authority consolidates Dockets TMC-1, Sub 1; TMC-3, Sub 1; and TMC-5, Sub 1;

2. Pursuant to 47 U.S.C. § 252(g) the Authority consolidates TWICS' Petition for Arbitration and Conditional Petition for Termination of Rural Exemption as to each of the TMCs in each of the consolidated dockets;

3. The Authority determines that TWCIS is not a telecommunications carrier;

4. Based on the determination that TWCIS is not a telecommunication carrier, the Authority grants the Motions to Dismiss TWICS' Petitions for Arbitration filed by Atlantic Telephone Membership Corporation, Randolph Telephone Membership Corporation, and Star Telephone Membership Corporation, and

5. The Authority does not reach a decision on the Conditional Petitions for Termination of Rural Exemption filed by TWCIS as it is unnecessary to do so in light of the Authority's determination that TWCIS is not a telecommunications carrier.

ISSUED BY ORDER OF THE AUTHORITY.

This the 19th day of July, 2006.

NORTH CAROLINA
RURAL ELECTRIFICATION AUTHORITY



T. Scott Poole, Administrator

(SEAL)

Exhibit 5

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December 17, 2007

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VIA HAND DELIVERY

Mr. T. Scott Poole
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North Carolina Rural Electrification Authority
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Raleigh, NC 27699-4321

RECEIVED

DEC 17 2007

REA

Re: Request of Time Warner Cable Information Services (North Carolina), LLC
for Arbitration of Interconnection Agreements with Atlantic, Randolph, and
Star Telephone Membership Corporations

Docket Nos. TMC-1, Sub 1; TMC-3, Sub 1; TMC-5, Sub 1

Dear Administrator Poole:

I am writing this letter on behalf of Time Warner Cable Information Services (North Carolina), LLC ("TWCIS (NC)"), to afford the Authority the opportunity to correct certain errors of law made in its order dated July 19, 2006, titled "Order Consolidating Proceeding and Dismissing Proceedings" (the "Order"), in the above-referenced dockets.

In its Order, the Authority dismissed the companion proceedings brought by TWCIS (NC) seeking interconnection rights with respect to Atlantic, Randolph, and Star Telephone Membership Corporations. The basis of this Order was the Authority's conclusion that TWCIS (NC) was not a "telecommunications carrier" within the meaning of the federal Communications Act (the "Act") and, therefore, was not entitled to interconnection. This conclusion is flatly inconsistent with a subsequent decision of the Federal Communications Commission ("FCC"), the entity with primary jurisdiction to interpret and apply the

interconnection provisions of federal law. See Memorandum Opinion and Order, *Time Warner Cable Request for Declaratory Ruling*, WC Docket No. 06-55 (March 1, 2007) (copy enclosed). Accordingly, TWCIS (NC) wishes, by this letter, to inform the Authority of this FCC decision so that the Authority may correct its Order.

The issues at stake are important and substantial. The Order has prevented TWCIS (NC) from exercising its right, granted under federal law, to interconnect with the TMCs in question and has had the effect of denying customers in the service areas of these TMCs the benefits of telecommunications competition. More to the point, the Order has prevented Time Warner Cable from being able to offer telephone services to its existing cable television customers.

Because the Order was based on an error of law which has now been directly addressed by the FCC, TWCIS (NC) respectfully requests that Authority reconsider its earlier conclusion and resume proceedings consistent with the decision of the FCC.

Background

As described in the Petitions submitted by TWCIS (NC) in these dockets, Time Warner Cable ("TWC") currently provides in North Carolina and elsewhere VoIP-based telephone services. This is a service by which cable subscribers can make telephone calls and receive related telephone functionality and services using Internet protocol technology. VoIP service providers such as TWC must purchase telecommunications services from regulated telecommunications carriers like TWCIS (NC) in order to originate and terminate calls on the public switched telephone network, access 911 services, and obtain numbering resources.

TWCIS (NC) seeks to facilitate this new offering of competitive local voice services by providing such telecommunications services to TWC on a wholesale basis. TWCIS (NC) would offer its network facilities and equipment indiscriminately to all service providers within the same class as TWC, thereby making TWCIS (NC)'s telecommunications services effectively available to all members of the public within the relevant service territory.

This service cannot become available to rural subscribers in Atlantic's, Randolph's, and Star's territories unless TWCIS (NC) interconnects its network and facilities with these companies pursuant to the interconnection provisions of the Act. In October 2005, TWCIS (NC) separately requested negotiation of interconnection agreements with Atlantic, Randolph, and Star, but they refused to negotiate. Accordingly, in March 2006, TWCIS (NC) filed separate petitions with the Authority seeking the arbitration of interconnection agreements as provided under the Act.

On July 19, 2006, the NCREA issued its Order dismissing the arbitration proceedings. The Order held:

[TWCIS (NC)] is not a telecommunications carrier and, therefore, is not permitted to seek interconnection rights pursuant to section 251 of the Communications Act of 1934, as amended ("Act"). As it is not a telecommunications carrier, TWCIS is also not permitted to compel arbitration pursuant to section 252 of the Act.

Order at 5. In its findings of fact, the Authority found that "TWCIS offers [VoIP] services" and that the "FCC has not determined that VoIP services are telecommunication services as that term is defined pursuant to the Act." *Id.* at 6. Therefore, a basis of the Order was the Authority's finding that VoIP service had not been determined to be a telecommunications service for which interconnection rights applied. Other than this finding, the Authority did not articulate the reasons for its conclusion that TWCIS (NC) was not a telecommunications carrier under the Act.

The FCC's Order

On March 1, 2007, at the request of TWC, the FCC issued an order—a copy of which is enclosed with this letter—which effectively overrules the legal conclusions and basis of the Authority's Order. *See* Memorandum Opinion and Order, *Time Warner Cable Request for Declaratory Ruling*, WC Docket No. 06-55 (March 1, 2007).

The FCC proceeding was initiated by TWC in reaction to adverse orders of the South Carolina and Nebraska public service commissions, who concluded—just like the Authority—that TWC's wholesale telecommunications provider was not a "telecommunications carrier" entitled to interconnection rights. TWC explained that it sought to provide competitive telephone service using VoIP technology utilizing telecommunication services purchased on a wholesale basis from certain telecommunications carriers such as Sprint and MCI. Just as TWCIS (NC) proposes to do here, Sprint and MCI sought to interconnect with various incumbent telephone companies for the purpose of providing transport, E911 network, and other telecommunications inputs necessary to TWC's service.

The South Carolina and Nebraska public service commissions rejected Sprint's and MCI's interconnection requests on the grounds that the proposed service did not meet the definition of "telecommunications service" under the Act and that, therefore, the carriers were not "telecommunications carriers" with respect to those services.

The FCC rejected this conclusion, holding:

[W]e clarify that telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services.... [A] contrary decision would impede the important development of wholesale telecommunications and facilities-based VoIP competition, as well as broadband deployment policies developed and implemented by the Commission over the last decade, by limiting the ability of wholesale carriers to offer service.

Memorandum Opinion and Order, ¶ 8. The FCC also went on to conclude that "the statutory classification of the end-user service, and the classification of VoIP specifically, is not dispositive of the wholesale carrier's rights under section 251." *Id.*, ¶ 9.

These conclusions are directly controlling here. The services TWCIS (NC) seeks to provide are identical to the services in issue in the FCC proceeding—indeed, they must be because TWCIS (NC) is proposing to serve the function for TWC that Sprint and MCI were performing for TWC in the South Carolina and Nebraska cases considered by the FCC. Therefore, the FCC's conclusion that MCI and Sprint's wholesale functions were "telecommunications" functions entitling those carriers to interconnection rights applies equally to TWCIS (NC).

Similarly, the FCC's conclusion that Sprint's and MCI's provision of wholesale services to a VoIP provider (*i.e.*, TWC) did not impact Sprint's and MCI's entitlement to interconnection rights is of direct relevance here. The Authority expressly relied on the fact that the FCC had not yet determined that VoIP services were "telecommunications" services under the Act in determining that TWCIS (NC) was not a telecommunications carrier entitled to interconnection rights. Under the FCC's declaratory ruling, however, the classification (or lack of classification) of VoIP services is simply not relevant to TWCIS (NC)'s interconnection rights, and, therefore, the Authority erred in placing determinative reliance on the uncertain regulatory status of TWC's VoIP offering.

The FCC's conclusion that wholesale telecommunications providers such as TWCIS (NC) are "telecommunications carriers" for purposes of the Act and are entitled to interconnect and exchange traffic with incumbent telephone companies when providing services to other service providers, including VoIP service providers, applies directly to TWCIS (NC)'s petitions before the Authority. As the federal authority with primary jurisdiction to interpret and apply the interconnection provisions of federal law, the FCC's decision is owed deference by the Authority. *E.g.*, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 & n.6 (1999); *Pacific Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114, 1126-27 (9th Cir. 2003); *Southwestern Bell Tel. Co. v. Connection Communications Corp.*, 225 F.3d 942, 946-47 (8th Cir. 2000).

The South Carolina and Nebraska orders were cited by and heavily relied upon by the TMCs in their pleadings urging dismissal. *See, e.g.*, Randolph TMC Response (May 16, 2006), at 8 (referencing South Carolina and Nebraska PUCs' determinations "under the same basic circumstances" that TWCIS (NC) should not be a telecommunications carrier); Randolph TMC Response (April 10, 2006), at 7-8 (citing South Carolina and Nebraska orders for proposition that entities providing "wholesale services" to other carriers are not telecommunications carriers); Randolph TMC Motion to Dismiss, at 4-5 (attaching copy of South Carolina PUC decision); Atlantic TMC Response to TWCIS (NC)'s Petition for Arbitration, at 16 (citing South Carolina PUC decision for conclusion that TWCIS (NC) was not a telecommunications carrier). Given that the PUC orders were effectively overruled by the FCC, the TMCs' reliance on them is no longer valid and can no longer stand as a basis for the Order.

Likewise, the TMCs' reliance on the notion that the FCC has never found VoIP services to be "telecommunications services" subject to section 251 cannot support the Authority's dismissal in light of the March 1, 2007 FCC order. *See, e.g.*, Randolph TMC Response (May, 16, 2006), at 5-6; Star TMC Response (April 10, 2006), at 14; Star TMC Motion to Dismiss, at 5; Atlantic TMC Response (April 10, 2006), at 14; Atlantic TMC Motion to Dismiss, at 5. Contrary to the arguments of the TMCs and the Order of the Authority, the FCC decision

Mr. T. Scott Poole
NC Rural Electrification Authority
December 17, 2007
Page 5

clarifies that the classification of services as VoIP services is not determinative of TWCIS (NC)'s rights under section 251 and, therefore, does not abrogate TWCIS (NC)'s right to interconnection with the TMCs.

Conclusion

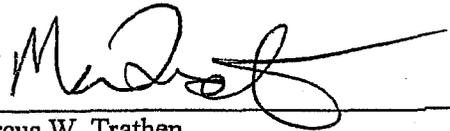
For the reasons set forth above, TWCIS (NC) respectfully requests that the Authority reconsider its July 19, 2006 Order dismissing TWCIS (NC)'s petitions for arbitration and that it proceed forthwith to resolve the merits of these petitions.

If any questions should arise in connection with this request, please contact the undersigned.

Respectfully submitted,

**TIME WARNER CABLE
INFORMATION SERVICES
(NORTH CAROLINA), LLC**

By: _____


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Enclosure
cc: Dan Higgins, Esq.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Time Warner Cable Request for Declaratory)	
Ruling that Competitive Local Exchange Carriers)	WC Docket No. 06-55
May Obtain Interconnection Under Section 251 of)	
the Communications Act of 1934, as Amended, to)	
Provide Wholesale Telecommunications Services)	
to VoIP Providers)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 1, 2007

Released: March 1, 2007

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants a petition for declaratory ruling filed by Time Warner Cable (TWC) asking the Commission to declare that wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent local exchange carriers (LECs) when providing services to other service providers, including voice over Internet Protocol (VoIP) service providers pursuant to sections 251(a) and (b) of the Communications Act of 1934, as amended (the Act).¹ As explained below, we reaffirm that wholesale providers of telecommunications services are telecommunications carriers for the purposes of sections 251(a) and (b) of the Act, and are entitled to the rights of telecommunications carriers under that provision. We conclude that state commission decisions denying wholesale telecommunications service providers the right to interconnect with incumbent LECs pursuant to sections 251(a) and (b) of the Act are inconsistent with the Act and Commission precedent and would frustrate the development of competition and broadband deployment.

II. BACKGROUND

A. TWC's Petition

2. On March 1, 2006, TWC filed a petition for declaratory ruling requesting that the Commission affirm that "requesting wholesale telecommunications carriers are entitled to obtain interconnection with incumbent LECs to provide wholesale telecommunications services to other service providers" (including

¹ Petition of Time Warner Cable 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, WC Docket No. 06-55 (filed Mar. 1, 2006) (Petition); 47 U.S.C. § 251; Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act or the Act).

VoIP-based providers).² In its Petition, TWC states that in 2003 it began to deploy a facilities-based competitive telephone service using VoIP technology, which enables it to offer a combined package of video, high-speed data, and voice services.³ TWC purchases wholesale telecommunications services from certain telecommunications carriers, including MCI WorldCom Network Services Inc. (MCI)⁴ and Sprint Communications Company, L.P. (Sprint), to connect TWC's VoIP service customers with the public switched telephone network (PSTN).⁵ MCI and Sprint provide transport for the origination and termination on the PSTN through their interconnection agreements with incumbent LECs. In addition, MCI and Sprint provide TWC with connectivity to the incumbent's E911 network and other necessary components as a wholesale service.⁶

3. TWC claims that MCI has been unable to provide wholesale telecommunications services to TWC in certain areas in South Carolina and that Sprint has been unable to provide wholesale telecommunications services to TWC in certain areas in Nebraska because, unlike certain other state commissions, the South Carolina Public Service Commission (South Carolina Commission) and the Nebraska Public Service Commission (Nebraska Commission) have determined that rural incumbent LECs are not obligated to enter into interconnection agreements with competitive service providers (like MCI and Sprint) to the extent that such competitors operate as wholesale service providers.⁷ TWC argues that the

² Petition at 11. The Petition was placed on public notice on March 6, 2006 with comments due by March 27, 2006, and reply comments due by April 11, 2006. *Pleading Cycle Established for Comments on Time Warner Cable's Petition for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Public Notice, 21 FCC Rod 2276 (Wireline Comp. Bur. 2006). Upon Motions for Extension, the comment cycle was extended by two weeks, to April 10, 2006 for comments and April 25, 2006 for reply comments. *Wireline Competition Bureau Grants Request for Extension of Time to File Comments on Time Warner Cable's Petition for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection to Provide Wholesale Telecommunications Service to VoIP Providers*, WC Docket 06-55, Public Notice, 21 FCC Rod 2978 (Wireline Comp. Bur. 2006). Contemporaneously with its filing of the Petition, TWC filed a Petition for Preemption requesting that the Commission preempt the South Carolina Commission's denial of TWC's application for a Certification of Public Convenience and Necessity in areas where rural LECs provide service. That preemption petition remains pending, and we do not address it here. *Petition of Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act of 1934, as Amended*, WC Docket No. 06-54 (filed Mar. 1, 2006).

³ Petition at 2-3.

⁴ As a result of the merger between MCI and Verizon, TWC's contractual arrangements with MCI have been assigned to Verizon Business. *Id.* at 4 n.5

⁵ *Id.* at 4.

⁶ *Id.*

⁷ See *Petition of MCI/metro Access Transmission Services LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Docket No. 2005-67-C, Order Ruling on Arbitration, Order No. 2005-544 (Oct. 7, 2005) (*South Carolina Commission RLEC Arbitration Order*); *Sprint Communications Company L.P., Overland Park, Kansas, Petition for arbitration under the Telecommunications Act, of certain issues associated issues with the proposed interconnection agreement between Sprint and Southeast Nebraska Telephone Company, Falls City*, Application No. C-3429, Findings and Conclusions (Sept. 13, 2005) (*Nebraska Commission Arbitration Order*) appeal filed, *Sprint Communications Company L.P. v. Nebraska Public Service Commission*, No. 4:05CV3260 (D. Neb. Oct. (continued....))

South Carolina and Nebraska Commissions misinterpreted the statute when they decided, among other things, that competitive LECs providing wholesale telecommunications services to other service providers, in this case VoIP-based providers, are not "telecommunications carriers" for the purposes of section 251 of the Act, and, therefore, are not entitled to interconnect with incumbent LECs.

4. TWC asks the Commission to grant a declaratory ruling reaffirming that telecommunications carriers are entitled to obtain interconnection with incumbent LECs to provide wholesale telecommunications services to other service providers. The Petition also requests that the Commission clarify that interconnection rights under section 251 of the Act are not based on the identity of the wholesale carrier's customer.

B. State Commission Decisions

5. *South Carolina*. On October 8, 2004, MCI initiated interconnection negotiations pursuant to section 252(a) of the Act with four rural incumbent LECs operating in South Carolina. These rural incumbent LECs claimed that they were not required to accept traffic from a third-party provider that purchases wholesale telecommunications services from MCI.⁸ On March 17, 2005, MCI filed a petition with the South Carolina Commission seeking arbitration of the unresolved issues between MCI and the rural incumbent LECs.⁹ In arbitrating this dispute, the South Carolina Commission agreed with the rural incumbent LECs that the arbitrated interconnection agreement should be limited to the traffic generated by the rural incumbent LECs' customers and MCI's direct end-user customers on their respective networks.¹⁰ The South Carolina Commission determined that MCI is not entitled to seek interconnection with the rural incumbent LECs with respect to the wholesale services MCI proposed to provide to TWC because such wholesale service does not meet the definition of "telecommunications service" under the Act and, therefore, MCI is not a "telecommunications carrier" with respect to those services.¹¹ The South Carolina Commission also found that section 251(b) obligations "relate to parallel obligations between two competing telecommunications carriers" and that MCI's intent to act as an "intermediary for a facilities-

(Continued from previous page)

11, 2005). As explained below, this aspect of the state decisions regarding wholesale services is not specific to wholesale carriers that serve VoIP service providers.

⁸ Petition at 4-5. See also *South Carolina Commission RLEC Arbitration Order*. The four rural incumbent LECs with which MCI sought interconnection agreements were Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company. The South Carolina Commission referred to the four rural LECs collectively as "the RLECs" throughout its order. The South Carolina Commission addressed similar issues and made similar findings in the *South Carolina Commission Horry Arbitration Order. Petition of MCI Metro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order Ruling on Arbitration, Docket No. 2005-188-C (South Carolina PSC Jan. 11, 2006) (*South Carolina Horry Arbitration Order*).

⁹ *South Carolina Commission RLEC Arbitration Order* at 2.

¹⁰ *South Carolina Commission RLEC Arbitration Order* at 7. See also *South Carolina Commission Horry Arbitration Order* at 6. In addition, the South Carolina Commission denied TWC's request to intervene in the arbitration.

¹¹ See *South Carolina Commission RLEC Arbitration Order* at 11.

based VoIP service provider" is a type of non-parallel relationship not contemplated or provided for under the Act.¹²

6. *Nebraska*. On December 16, 2004, Sprint commenced interconnection negotiations with Southeast Nebraska Telephone Company (SENTCO), a rural incumbent LEC, pursuant to section 252(a) of the Act.¹³ In its September 13, 2005 arbitration decision, the Nebraska Commission determined that Sprint is not a "telecommunications carrier" under the *NARUC I* and *Virgin Islands* test for common carriage because the relationship between Sprint and TWC is an "individually negotiated and tailored, private business arrangement" that is an untariffed offering to a sole user of this service,¹⁴ and, therefore, Sprint cannot assert any rights under sections 251 and 252 of the Act. In addition, the Nebraska Commission held that because TWC operates the switch that "directly serves the called party," Sprint was not entitled to exercise rights under section 251(b).¹⁵

7. *Other State Proceedings*. TWC asserts that, in contrast to the South Carolina and Nebraska decisions, public utility commissions in Illinois, Iowa, New York and Ohio have recognized that wholesale service providers, such as Sprint and MCI, are telecommunications carriers with rights under section 251 of the Act.¹⁶ In addition, TWC and other commenters point to other state commissions that have before them pending proceedings on this same issue.¹⁷

¹² *Id.* at 9.

¹³ See *Nebraska Commission Arbitration Order*.

¹⁴ *Id.* at 7-9 (citing *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) (*NARUC I*), *cert. denied*, 425 U.S. 992 (1976); *Virgin Islands Tel. Co. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999)).

¹⁵ *Id.* at 7-8.

¹⁶ Petition at 8-9 (citing *Cambridge Telephone Company, et al. Petitions for Declaratory Relief and/or Suspensions for Modification Relating to Certain Duties under §§ 251(b) and (c) of the Federal Telecommunications Act*, Case Nos. 050259, *et al.*, Order (Illinois Commerce Commission Aug. 23, 2005), *appeal pending Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Case No. 3:06-CV-00073, GPMDGW, Complaint for Declaratory and Other Relief (S.D. Ill. filed Aug. 16, 2006); *Arbitration of Sprint Communications Co. v. Ace Communications Group, et al.*, Docket No. ARB-05-02, Order on Rehearing (Iowa Utilities Board Nov. 28, 2005); *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Inter-carrier Agreement with Independent Companies*, Case 05-C-0170, Order Resolving Arbitration Issues (New York Public Service Commission May 24, 2005), *on appeal Berkshire Telephone Corp. v. Sprint Communications Co. L.P.*, Civ. Action No. 05-CV-6502 (CJS)(MWP)(W.D.N.Y. filed Sept. 26, 2005); *Application and Petition in Accordance with Section II.A.2.B of the Local Service Guidelines Filed by: The Champaign Telephone Co., Telephone Services Co., the Germantown Independent Telephone Co., and Doylestown Telephone Co.*, Case Nos. 04-1494-TP-UNC, *et al.*, Finding and Order (Public Utility Commission of Ohio Jan. 26, 2005), *reh'g denied in pertinent part*, Order on Rehearing (Public Utilities Commission of Ohio Apr. 13, 2005)).

¹⁷ See Petition at 9. See, e.g., Letter from Cherie R. Kiser, Counsel for IDT Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-55, Appendix (filed Sept. 25, 2006) (providing an updated overview of pending state and court proceedings in Illinois, Iowa, New York, North Carolina and Texas).

III. DISCUSSION

8. The Bureau grants TWC's request to the extent described below. Because the Act does not differentiate between retail and wholesale services when defining "telecommunications carrier" or "telecommunications service," we clarify that telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services.¹⁸ The Bureau finds that a contrary decision would impede the important development of wholesale telecommunications and facilities-based VoIP competition, as well as broadband deployment policies developed and implemented by the Commission over the last decade, by limiting the ability of wholesale carriers to offer service.

A. "Telecommunications Service" Can Be Either a Wholesale or Retail Service

9. Consistent with Commission precedent, we find that the Act does not differentiate between the provision of telecommunications services on a wholesale or retail basis for the purposes of sections 251(a) and (b), and we confirm that providers of wholesale telecommunications services enjoy the same rights as any "telecommunications carrier" under those provisions of the Act.¹⁹ We further conclude that the statutory classification of the end-user service, and the classification of VoIP specifically, is not dispositive of the wholesale carrier's rights under section 251.

10. The Act defines "telecommunications" to mean "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."²⁰ The Act defines "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."²¹ Finally, any provider of telecommunications services is a "telecommunications carrier" by definition under the Act.²²

11. It is clear under the Commission's precedent that the definition of "telecommunications services" is not limited to retail services, but also includes wholesale services when offered on a common carrier basis. The South Carolina Commission's contrary interpretation – that services provided on a

¹⁸ Because neither of the primary state commission proceedings underlying the Petition relied on or even interpreted section 251(c) of the Act, we do not read the Petition to seek clarification on the ability to interconnect pursuant to that provision. As such, we only address the issues raised in the Petition as they apply to sections 251(a) and (b) of the Act.

¹⁹ To resolve the confusion over the meaning of "wholesale," we affirm the longstanding Commission usage of a wholesale transaction of a service or product as an input to a further sale to an end user, in contrast to a retail transaction for the customer's own personal use or consumption. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237, 19423, para. 13 (1999) ("Black's Law Dictionary defines retail as '[a] sale for final consumption in contrast to a sale for further sale or processing (i.e., wholesale) . . . to the ultimate consumer.'" (quoting Black's Law Dictionary 1315 (6th ed. 1990))).

²⁰ 47 U.S.C. § 153(43).

²¹ 47 U.S.C. § 153(46).

²² 47 U.S.C. § 153(44).

wholesale basis to carriers or other providers are not telecommunications services because they are not offered "directly to the public"²³ has been expressly rejected by the Commission in the past, as we explain below.²⁴

12. The definition of "telecommunications services" in the Act does not specify whether those services are "retail" or "wholesale," but merely specifies that "telecommunications" be offered for a fee "directly to the public, or to such classes of users as to be effectively available directly to the public."²⁵ In *NARUC II*, the D.C. Circuit stated that "[t]his does not mean that the particular services offered must practically be available to the entire public; a specialized carrier whose service is of possible use to only a fraction of the population may nonetheless be a common carrier if he holds himself out to serve indifferently all potential users."²⁶ Thus, the question at issue in this proceeding is whether the relevant wholesale telecommunications "services" are offered "directly to the public, or to such classes of users as to be effectively available directly to the public." Indeed, the definition of "telecommunications services" long has been held to include both retail and wholesale services under Commission precedent. In the *Non-Accounting Safeguards Order*, the Commission concluded that wholesale services are included in the definition of "telecommunications service."²⁷ To reach this result, the Commission determined that the term "wholesale" in section 251(c)(4) "implicitly recognizes that some telecommunications services are wholesale services."²⁸ The *Non-Accounting Safeguards Order* went on to find that the legislative history of the Act also supports this determination, as it "indicates that the definition of telecommunications services is intended to clarify that telecommunications services are common carrier services, which include wholesale services to other carriers" and that "the term 'telecommunications service' was not intended to create a retail/wholesale distinction."²⁹ The Commission affirmed these conclusions in the *Non-Accounting Safeguards Reconsideration Order* where it found "no basis in the statute, legislative history, or FCC precedent for finding the reference to 'the public' in the statutory definition to be intended to exclude

²³ *South Carolina Commission Arbitration Order* at 7 (stating that "[t]he carrier directly serving the end user customer is the only carrier entitled to request interconnection for the exchange of traffic under Section 251(b) of the Act."), 11 (concluding that "MCI is not entitled to seek interconnection with the RLECs with respect to the service MCI proposed to provide indirectly to TWCIS' end user customers.").

²⁴ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22033, para. 264 (1996) (subsequent history omitted) (*Non-Accounting Safeguards Order*); see also *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, Second Order on Reconsideration, 12 FCC Rcd 8653, 8670-71, para. 33 (1997) (*Non-Accounting Safeguards Reconsideration Order*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9177-8, para. 785 (1997) (*Universal Service Order*) (subsequent history omitted).

²⁵ 47 U.S.C. § 153(46).

²⁶ *National Ass'n of Regulatory Utility Com'rs v. FCC*, 533 F.2d 601, 608 (C.A.D.C. 1976) (*NARUC II*).

²⁷ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22033, para. 264.

²⁸ *Id.* See also 47 U.S.C. § 251(c)(4) (requiring incumbent LECs "to offer for resale at *wholesale* rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers") (emphasis added).

²⁹ *Id.* at 22032-33, 22033-34, paras. 263, 265.

wholesale telecommunications services.³⁰ Further, in the *Universal Service Order*, the Commission determined that, while “telecommunications services” are intended to encompass only telecommunications provided on a common carrier basis, “common carrier services include services offered to other carriers, such as exchange access service, which is offered on a common carrier basis, but is offered primarily to other carriers.”³¹ In *Virgin Islands*, the D.C. Circuit stressed that the Commission did not rely on a wholesale-retail distinction, stating that “the focus of its analysis is on whether AT&T-SSI offered its services indiscriminately in a way that made it a common carrier . . . and the fact that AT&T-SSI could be characterized as a wholesaler was never dispositive.”³²

13. We further find that our decision today is consistent with and will advance the Commission’s goals in promoting facilities-based competition as well as broadband deployment. Apart from encouraging competition for wholesale services in their own right,³³ ensuring the protections of section 251 interconnection is a critical component for the growth of facilities-based local competition.³⁴ Moreover, as the Commission has recognized most recently in the *VoIP 911 Order*, VoIP is often accessed over broadband facilities, and there is a nexus between the availability of VoIP services and the goals of section 706 of the Act.³⁵ Furthermore, as the Petition and some commenters note, in that order the Commission expressly contemplated that VoIP providers would obtain access to and interconnection with the PSTN through competitive carriers.³⁶ Therefore, we also rely on section 706 as a basis for our determination today that affirming the rights of wholesale carriers to interconnect for the purpose of exchanging traffic with VoIP providers will spur the development of broadband infrastructure.³⁷ We further conclude that such wholesale competition and its facilitation of the introduction of new technology holds particular

³⁰ *Non-Accounting Safeguards Reconsideration*, 12 FCC Rcd at 8670-71, para. 33.

³¹ *Universal Service Order*, 12 FCC Rcd at 9177-8, para. 785.

³² *Virgin Islands Tel. Co. v. FCC*, 198 F.3d 921, 930 (D.C. Cir. 1999) (*Virgin Islands*).

³³ As explained above, *see supra* para. 1, we affirm today the rights of *all* wholesale carriers to interconnect when providing service to other providers, and therefore we reject the notion that we must dismiss the Petition in part with respect to the Nebraska Commission’s decision because the *Nebraska Commission Arbitration Order* did not discuss Sprint’s provision of service to VoIP providers. *See* Letter from Thomas J. Moorman and Paul M. Schudel, Counsel to SENTCO, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-55 (filed Feb. 12, 2007).

³⁴ *E.g.*, Advance-Newhouse Comments at 3 (facilities-based residential competition); Verizon Comments at 3 (wholesale service and local competition).

³⁵ *IP-Enabled Services*, WC Docket No. 04-36; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10264, para. 31 (2005) (*VoIP 911 Order*) (citing 47 U.S.C. §157 nt.). Section 706 directs the Commission (and state commissions with jurisdiction over telecommunications services) to encourage the deployment of advanced telecommunications capability to all Americans by using measures that “promote competition in the local telecommunications market” and removing “barriers to infrastructure investment.” *Id.*

³⁶ *See* Petition at 21 (citing *VoIP 911 Order*, 20 FCC Rcd at 10267, para.38); *see also, e.g.*, VON Coalition Comments at 3.

³⁷ Verizon Comments at 6 (“Simply put, just as the availability of VoIP drives both providers to deploy and end-user customers to purchase broadband services, state commission decisions that effectively prevent consumers from using their broadband connection for VoIP telephony discourage the deployment and use of broadband.”).

promise for consumers in rural areas.³⁸

14. In making this clarification, we emphasize that the rights of telecommunications carriers to section 251 interconnection are limited to those carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis.³⁹ We do not address or express any opinion on any state commission's evidentiary assessment of the facts before it in an arbitration or other proceeding regarding whether a carrier offers a telecommunications service. However, we make clear that the rights of telecommunications carriers under sections 251 (a) and (b) apply regardless of whether the telecommunications services are wholesale or retail, and a state decision to the contrary is inconsistent with the Act and Commission precedent.⁴⁰

B. The Section 251 (a) and (b) Rights of a Wholesale Telecommunications Carrier Do Not Depend on the Regulatory Classification of the Retail Service Offered to the End User

15. As explained above, a provider of wholesale telecommunications service is a telecommunications carrier and is entitled to interconnection under section 251 of the Act. The regulatory classification of the service provided to the ultimate end user has no bearing on the wholesale provider's rights as a telecommunications carrier to interconnect under section 251. As such, we clarify that the statutory classification of a third-party provider's VoIP service as an information service or a telecommunications service is irrelevant to the issue of whether a wholesale provider of telecommunications may seek interconnection under section 251(a) and (b). Thus, we need not, and do not, reach here the

³⁸ E.g., GCI Reply Comments at 4 ("offerings like those of TWC are especially valuable to rural consumers"); Sprint Nextel Comments at 4 n.6 ("Wholesale carrier services are particularly important to smaller cable operators, which often serve low density areas and lack the resources, scale or desire to enter the telephony market alone."); VON Coalition Comments at 3. See also, Letter from Vonya B. McCann, Vice President – Government Affairs, Sprint Nextel, to Marlene H. Dortch, FCC, WC Docket No. 06-55 at 2 (filed Jan. 30, 2007) ("These services enable even small cable providers to expand their service offerings – faster and at lower cost – and thus promote investment in areas previously under-served and lacking choices for consumers.").

³⁹ For example, under the Commission's existing rules, "[a] telecommunications carrier that has interconnected or gained access under section[] 251(a) . . . of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well." 47 C.F.R. § 51.100(b) (emphasis added). Thus, the fact that a telecommunications carrier is also providing a non-telecommunications service is not dispositive of its rights.

⁴⁰ See *South Carolina Commission RLEC Arbitration Order* at 14 (limiting the definition of end user to subscriber of telephone exchange service); *Nebraska Commission Arbitration Order* at 9, paras. 25-26 (reasoning that the exclusion of exchange access in the Commission's reciprocal compensation rules indicates that TWC's offering of exchange access is not offered to the general public). Although the Nebraska Commission's order expressly raised the issue of Sprint's entitlement to reciprocal compensation pursuant to section 251(b)(5), commenters contend that the Nebraska Commission's decision properly is interpreted to affect section 251(a) and (b) rights more broadly. See AT&T Comments at 1-2. We do not address commenters' requests for classification of other specific service offerings or traffic arrangements. See, e.g., *Neutral Tandem Comments* (seeking a declaration of section 251 rights to provide tandem switching and transit services).

issues raised in the *IP-Enabled Services* docket, including the statutory classification of VoIP services.⁴¹ We thus reject the arguments that the regulatory status of VoIP is the underlying issue in this matter or that Commission action on this Petition will prejudice issues raised in the *IP-Enabled Services* docket.⁴² We also make clear that we do not address any entitlement of a retail service provider to serve end users through such a wholesale arrangement, nor, contrary to the views of some commenters, do we read the Petition to seek such rights.⁴³ Rather, in issuing this decision, we reiterate that we only find that a carrier is entitled to interconnect with another carrier pursuant to sections 251(a) and (b) in order to provide wholesale telecommunications service.

16. Finally, we emphasize that our ruling today is limited 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. To address concerns by commenters

⁴¹ In the *IP-Enabled Services NPRM*, the Commission sought comment on whether VoIP should be classified as a telecommunications service or an information service. See *IP-Enabled Services NPRM*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP-Enabled Services NPRM*).

⁴² HTC/PBT Comments at 3 (referring to the ongoing *IP-Enabled Services* proceeding, “[t]his Commission should not fall prey to pressure from parties to issue piecemeal orders.”); ITTA et al. Comments at 8 (“[t]he Commission should accordingly declare either that TWC is a telecommunications carrier itself, or is subject to the same intercarrier compensation, universal service and other requirements imposed on similarly situated carriers”); JSI Comments at 7 (“While the treatment of interconnected VoIP service providers remains unclear, Time Warner seeks to have the Commission make declarations that would greatly favor VoIP service providers by granting them certain rights without attendant obligations.”); Pennsylvania Commission Comments at 5 (suggesting that the Commission “consider resolving complex policy matters in more generic proceeding such as the *IP-Enabled Services* and Intercarrier Compensation rulemakings, as opposed to limited decisions in case-specific pleadings”); Qwest Comments; NTCA Reply Comments at 4-5; SDTA Comments at 4; TCA Comments at 5-7; WTA Comments at 3. See also, Letter from Joshua Seidemann, Independent Telephone and Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-55, Attach at 6 (filed Dec. 14, 2006) (*ITTA Ex Parte*); Letter from Keith Oliver, Vice President -- Finance, Home Telephone Company, on behalf of South Carolina Telephone Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-55, Attach. at 8 (filed Jan. 30, 2007) (*SCTC Ex Parte*).

⁴³ See, e.g., JSI Comments at 12 (“Time Warner is seeking to claim specific rights without accepting attendant obligations.”); ITTA Comments at 12 (“In other words, entities that seek the benefits of carrier-type interconnection, including for example, the right to obtain numbering resources and number portability, should be subject to the same obligations as the traditional carriers with whom they compete.”); Western Alliance at 3, 6 (“TWC is not entitled to any CLEC rights under Section 251 and 252 as long as it elects to reject its former CLEC status and characterize itself instead as a non-regulated information service provider.”). Furthermore, and contrary to the position put forth in the *South Carolina Commission Arbitration Order* and the assertions of some commenters, we do not read the Act or have any policy reason to impose a requirement that telecommunications carriers seeking to interconnect must have obligations or business models parallel to those of the party receiving the interconnection request. See *South Carolina Commission Arbitration Order* at 9 (stating that “obligations imposed by Section 251(b) . . . relate to parallel obligations between two competing telecommunications carriers”); SCTC Comments at 8 (arguing that “the obligations imposed by Section 251(b) . . . relate to parallel obligations between two competing telecommunications carriers within a common local calling area.”). See also Letter from Gerard J. Duffy, Counsel for Western Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-55 at 6 (filed Feb. 6, 2007) (stating that the “Sprint-Time Warner Model Unfairly Tilts Competitive Playing Field” and that Time Warner is not subject to the Title II and consumer protection standards of incumbent LECS).

about which parties are eligible to assert these rights,⁴⁴ we make clear that the scope of our declaratory ruling is limited to wholesale carriers that are acting as telecommunications carrier for purposes of their interconnection request. In affirming the rights of wholesale carriers, we also make clear that today's decision in no way diminishes the ongoing obligations of these wholesalers as telecommunications carriers, including compliance with any technical requirements imposed by this Commission or a state commission.⁴⁵

In addition, we agree that it is most consistent with Commission policy that where a LEC wins back a customer from a VoIP provider, the number should be ported to the LEC that wins the customer at the customer's request,⁴⁶ and therefore we make such a requirement an explicit condition to the section 251 rights provided herein.⁴⁷ Other concerns about porting will be addressed in the *IP-Enabled Services* proceeding.⁴⁸

C. Other Issues Raised by Commenters

17. Certain commenters ask us to reach other issues, including the application of section 251(b)(5)⁴⁹ and the classification of VoIP services.⁵⁰ We do not find it appropriate or necessary here to resolve the complex issues surrounding the interpretation of Title II more generally or the subsections of section 251 more specifically that the Commission is currently addressing elsewhere on more

⁴⁴ See, e.g., JSI Comments at 4 ("MCI's role as an intermediary is to be largely hands-off and remote."); SCTC Comments at 11-14 (asserting that "MCI merely proposed to act as an intermediary – a 'connection' – between two facilities-based carriers – the RLEC and Time Warner," and that "Time Warner is seeking . . . to make an 'end run' around the important federal state proceedings and powers"); Western Alliance at 3 ("What TWC is asking herein is for MCI and Sprint to be authorized to use the Section 252 procedures and to negotiate Section 251(b) and/or Section 252(c) interconnection agreements in TWC's behalf . . ."). Although the Petition does refer in passing to MCI and Sprint acting "on behalf of" TWC, the focus of the Petition and even the underlying state commission decisions concern the rights of those carriers as wholesale telecommunications service providers, and we therefore do not reach the question of the rights of an agent of a VoIP service provider. See Petition at 12, 23; South Dakota Comments at 6. See also, Black's Law Dictionary (8th ed. 2004) (defining agent as "[o]ne authorized to act for or in place of another" or "representative").

⁴⁵ See, e.g., SCTC *Ex Parte*, Attach. at 9 (asserting that each wholesale provider should be "technically responsible for the traffic it delivers to an ILEC.").

⁴⁶ See, e.g., *id.*, Attach. at 10 (seeking protection for "consumers that want to port numbers away from 3rd party service providers who do not have these porting responsibilities."); JSI Comments at 12-14 ("Time Warner is seeking to create a one-way approach to porting and the Commission should reject the Petition."). Because our number portability rules apply to all local exchange carriers, customers effectively are able to port numbers to VoIP providers today by virtue of their relationship with a wholesale local exchange carrier. 47 C.F.R. § 52.23.

⁴⁷ We note that Verizon already makes such a commitment under its agreements with Time Warner Cable. See Verizon Reply Comments at 11-12.

⁴⁸ See *IP-Enabled Services NPRM*, 19 FCC Rcd at 4911-12, para. 73.

⁴⁹ See, e.g., Neutral Tandem Comments at 1, 5, 7 (seeking Commission protection against incumbent LEC and state restrictions on resale and tandem competition, and for the establishment of the right of third-party providers to be defined as "users" under interconnection agreements).

⁵⁰ See, e.g., Qwest Comments at 6 ("The Nebraska position is obviously dependent on how the Commission ultimately classifies VoIP service.").

comprehensive records.⁵¹ For example, the question concerning the proper statutory classification of VoIP remains pending in the *IP-Enabled Services* docket.⁵² Moreover, in this declaratory ruling proceeding we do not find it appropriate to revisit any state commission's evidentiary assessment of whether an entity demonstrated that it held itself out to the public sufficiently to be deemed a common carrier under well-established case law. In the particular wholesale/retail provider relationship described by Time Warner in the instant petition, the wholesale telecommunications carriers have assumed responsibility for compensating the incumbent LEC for the termination of traffic under a section 251 arrangement between those two parties. We make such an arrangement an explicit condition to the section 251 rights provided herein.⁵³ We do not, however, prejudge the Commission's determination of what compensation is appropriate, or any other issues pending in the *Intercarrier Compensation* docket.

D. Procedural Issues

18. *Jurisdiction.* We reject SENTCO's contention that the Commission lacks jurisdiction over TWC's Petition because it is a request for preemption of state decisions on issues assigned by statute specifically to states for review.⁵⁴ TWC filed its petition as a request for declaratory ruling requesting clarification of the interpretation of the 1996 Act pursuant to section 1.2 of the Commission's rules.⁵⁵ As such, the Commission's authority over particular state decisions is not at issue here. And in any event, the Act establishes – and courts have confirmed – the primacy of federal authority with regard to several of the local competition provisions in the 1996 Act. First, section 201(b) authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the Act.”⁵⁶ As the Supreme Court has noted, this provision “*explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies” – including issues addressed by section 251.⁵⁷ Second, except in limited cases, the Commission's authority with regard to the issues of local competition

⁵¹ See, e.g., *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd. 4685 (2005).

⁵² *IP-Enabled Services*, 20 FCC Rcd at 10245. Similarly, we disagree with the assertions that it is necessary to complete the proceedings pending in the IP-enabled services, intercarrier compensation, and universal service dockets in order to take action on or instead of taking action on this Petition. See, e.g., NTCA Reply Comments at 5-6.

⁵³ See, e.g., Verizon Comments at 2 (stating that one of the wholesale services it provides to Time Warner Cable is “administration, payment, and collection of intercarrier compensation”); Sprint Nextel Comments at 5 (offering to provide for its wholesale customers “intercarrier compensation, including exchange access and reciprocal compensation”).

⁵⁴ SENTCO Comments at 8.

⁵⁵ 47 C.F.R. § 1.2.

⁵⁶ 47 U.S.C. § 201(b).

⁵⁷ *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, WC Docket No. 03-251, Memorandum Opinion and Order and Notice of Inquiry, 20 FCC Rcd 6830, 6841, para. 22 (2005) (*BellSouth DSL Order*) (quoting *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 380 (1999) (emphasis in original)).

specified in section 251 supersede state jurisdiction over these matters.⁵⁸ In the Supreme Court's words, "the question . . . is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has."⁵⁹ In clarifying existing statutory requirements under the Act as interpreted by the Commission, however, the Commission's decision may affect state decisions if state commissions have differing interpretations of the statute.

19. *Notice.* We disagree with the assertion that the Petition should be dismissed because TWC did not serve the Petition on the Nebraska Commission.⁶⁰ We do not read the Petition for Declaratory Ruling as a request for preemption of a particular order that would trigger this requirement. In its Petition, TWC requests that the Commission make a statement clarifying the conflicting interpretations among the states concerning wholesale carriers' rights under sections 251(a) and (b). Although TWC specifically describes the decisions of the Nebraska Commission and South Carolina Commission in its argument, this Petition for Declaratory Ruling does not request state preemption and we do not make any determination about whether to preempt any specific state decisions. As such, there is no notice requirement at issue.

IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, pursuant to sections 1, 3, 4, 201-205, 251, and 252 of the Communications Act, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, and 252, and authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the petition for declaratory ruling filed by Time Warner Cable in WC Docket No. 06-55 IS GRANTED to the extent described by this Order.

⁵⁸ The Act, for example, expressly assigns to the states the authority to arbitrate interconnection disputes between carriers and incumbent LECs and, subject to the general framework set forth by the Commission, to establish appropriate rates for competitive carriers' use of unbundled network elements. See generally 47 U.S.C. § 252.

⁵⁹ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 379 n.6 (1999). See also *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946-47 (8th Cir. 2000) ("The new regime for regulating competition in this industry is federal in nature . . . and while Congress has chosen to retain a significant role for the state commissions, the scope of that role is measured by federal, not state law."); *Pacific Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114, 1127 (9th Cir. 2003) ("[T]he Act limited state commissions' authority to regulate local telecommunications competition.") (emphasis in original); *MCI Telecom Corp. v. Illinois Bell*, 222 F.3d 323, 342-43 (7th Cir. 2000) (stating, "with the 1996 Telecommunications Act . . . Congress did take over some aspects of the telecommunications industry," and "Congress, exercising its authority to regulate commerce has precluded all other regulation except on its terms"). Moreover, as the D.C. Circuit has held, the Commission is entitled to Chevron deference when applying the definition of "telecommunications carrier" in the context of a wholesale service provider. *Virgin Islands*, 198 F.3d at 926 (citing *Chevron U.S.A. Inc. v. Natural Resources Council, Inc.*, 467 U.S. 837, 843 (1984)).

⁶⁰ Nebraska Commission Comments at 7-8. The Nebraska Commission argues that the Petition effectively seeks to preempt state or local regulatory authority. As such, pursuant to Note 1 in section 1.1206(a) of the Commission's rules, the Nebraska Commission asserts that TWC is required to serve the original petition on the state "the actions of which are specifically cited as a basis for requesting preemption." 47 C.F.R. § 1.1206(a) NOTE 1 TO PARAGRAPH.

21. IT IS FURTHER ORDERED, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

LIST OF COMMENTERS

WC Docket No. 06-55

<u>Commenter</u>	<u>Abbreviation</u>
Advance-Newhouse Communications	Advance-Newhouse
Alpheus Communications, L.P. PAETEC Communications, Inc. U.S. Telepacific Corp. D/B/A Telepacific Communications	Alpheus <i>et al.</i>
AT&T Inc.	AT&T
Bridgecom International, Inc. Broadview Networks, Inc. CTC Communications Corp. NuVox Communications Xspedius Communications LLC COMPTEL	Bridgecom <i>et al.</i>
Broadwing Communications, LLC Fibertech Networks, LLC Integra Telecom, Inc. Lightyear Communications, Inc. McLeodUSA Telecommunications Services, Inc. Mpower Communications Corp. Norlight Telecommunications, Inc. Pac-West Telecomm, Inc.	Broadwing <i>et al.</i>
Comcast Corporation	Comcast
Global Crossing North America, Inc.	Global Crossing
Home Telephone Company, Inc. BPT, Inc.	HTC/BPT
Independent Telephone and Telecommunications Alliance National Exchange Carrier Association, Inc. National Telecommunications Cooperative Association The Organization for the Promotion and Advancement of Small Telecommunications Companies	ITTA <i>et al.</i>
Iowa RLEC Group	Iowa RLEC
Iowa Utilities Board	IUB
John Staurulakis, Inc.	JSI
Level 3 Communications, LLC	Level 3
National Cable & Telecommunications Association	NCTA
Nebraska Public Service Commission	Nebraska Commission
Neutral Tandem, Inc.	Neutral Tandem
Pennsylvania Public Utility Commission	Pennsylvania Commission
Pine Tree Networks	PTN
Qwest Communications International Inc.	Qwest
South Carolina Cable Television Association	SCCTA
South Carolina Telephone Coalition	SCTC

South Dakota Telecommunications Association Townes Telecommunications, Inc. ITS Telecommunications Systems, Inc. Public Service Telephone Company Smart City Telecom South Slope Cooperative Telephone Co., Inc. Yadkin Valley Telephone Membership Corporation	SDTA <i>et al.</i>
Southeast Nebraska Telephone Company The Independent Telephone Companies	SENTCO
Sprint Nextel Corporation	Sprint Nextel
TCA, Inc.	TCA
Time Warner Cable	TWC
Verizon	Verizon
Voice On The Net (VON) Coalition	VON
Western Telecommunications Alliance	WTA

LIST OF REPLY COMMENTERS

WC Docket No. 06-55

<u>Commenter</u>	<u>Abbreviation</u>
Advance-Newhouse Communications	Advance-Newhouse
Berkeley Cable TV and PBT Cable Services	Berkeley and PBT
Bridgecom International, Inc. Broadview Networks, Inc. CTC Communications Corp. NuVox Communications Xspedius Communications LLC COMPTEL	Bridgecom <i>et al.</i>
Broadwing Communications, LLC Fibertech Networks, LLC Integra Telecom, Inc. Lightyear Communications, Inc. McLeodUSA Telecommunications Services, Inc. Mpower Communications Corp. Norlight Telecommunications, Inc. Pac-West Telecomm, Inc.	Broadwing <i>et al.</i>
Earthlink, Inc.	Earthlink
General Communication, Inc.	GCI
Home Telephone Company, Inc. and PBT, Inc.	HTC/PBT
John Staurulakis, Inc.	JSI
Level 3 Communications, LLC	Level 3
Midcontinent Communications	Midcontinent
National Cable & Telecommunications Association	NCTA
National Telecommunications Cooperative Association	NTCA

Nebraska Public Service Commission	Nebraska Commission
Neutral Tandem, Inc.	Neutral Tandem
Rock Hill Telephone Company d/b/a Comporium Lancaster Telephone Company d/b/a Comporium Communications Fort Mill Telephone Company d/b/a Comporium Communications	Comporium
South Carolina Cable Television Association	SCCTA
South Carolina Telephone Coalition	SCTC
Southeast Nebraska Telephone Company The Independent Telephone Companies	SENTCO
Southern Communications Service, Inc. d/b/a SouthernLINC Wireless	SouthernLINC Wireless
Sprint Nextel Corporation	Sprint Nextel
Time Warner Cable	TWC
T-Mobile USA, Inc.	T-Mobile
United States Telecom Association	USTA
Verizon	Verizon

Exhibit 6

NORTH CAROLINA
RURAL ELECTRIFICATION AUTHORITY
RALEIGH

COPY

BEFORE THE NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY

In the Matter of

Petition of Time Warner Cable Information Services (North Carolina), LLC for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish Interconnection Agreements with Atlantic, Randolph And Star Telephone Membership Corporations))) Docket No. TMC 1, Sub 1) Docket No. TMC 3, Sub 1) Docket No. TMC 5, Sub 1)))
AND)))
Petition of Time Warner Cable Information Services (North Carolina), LLC to Terminate Atlantic, Randolph and Star Telephone Membership Corporations' Rural Telephone Company Exemption Pursuant to Section 251(f)(1) of the Communications Act of 1934, as Amended))) Docket No. TMC 1, Sub 1) Docket No. TMC 3, Sub 1) Docket No. TMC 5, Sub 1)

ORDER DENYING REQUEST FOR RECONSIDERATION

BACKGROUND

1. On July 19, 2006, the North Carolina Rural Electrification Authority (Authority) issued an Order consolidating and dismissing Time Warner Cable Information Services' (North Carolina), hereinafter referred to as TWCIS (NC) petitions in the above-referenced dockets.
2. On December 17, 2007, the Authority received a letter from TWCIS requesting the Authority to reconsider its July 19, 2006, Order dismissing TWCIS (NC)'s petitions.
3. On January 28, 2008, Atlantic, Randolph and Star Telephone Membership Corporations filed a response to TWCIS (NC)'s letter of December 17, 2007.
4. On March 10, 2008, TWCIS (NC) filed a reply to the response filed by Atlantic, Randolph and Star Telephone Membership Corporations.

DISCUSSION

1. TWCIS (NC)'s letter of December-17, 2007, was filed as a request for the Authority to reconsider its July 19, 2006, Order in the above-referenced dockets. It is unclear from TWCIS (NC)'s letter under what procedural basis this request was filed.
2. Arbitrations like the ones filed under the above-referenced dockets are governed by the Telecommunications Act of 1996, 47 USCS § 252, et seq. The Telecommunications Act does not include reconsideration as a remedy for aggrieved parties. Further, a request for reconsideration is not necessary for review of the Authority's decision. 47 USCS § 252(e)(6) provides:

In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section.
3. To the extent that TWCIS (NC) contends that its request was filed pursuant to Rule 59 of the Rules of Civil Procedure regarding new trials and amendments of judgments, the request was untimely filed. Rule 59 provides that any motion filed pursuant to Rule 59 must be filed not later than 10 days after entry of the judgment. The judgment in question was entered on July 19, 2006. The request for reconsideration was filed December 17, 2007, more than 10 days after entry of judgment.
4. To the extent that TWCIS (NC) contends that its request was filed pursuant to Rule 60 of the Rules of Civil Procedure regarding relief from judgment or order, the letter was again untimely filed. Rule 60 provides that any motion filed pursuant to Rule 60 shall be made within a reasonable time. The order in question was entered on July 19, 2006. The request for reconsideration was filed on December 17, 2007. TWCIS (NC) bases its request for reconsideration upon a Federal Communications Commission (FCC) Order filed on March 1, 2007.
5. The request for reconsideration was filed 17 months after the order in question was entered and some 9 months after the FCC Order upon which TWCIS (NC) bases its request for reconsideration. As such, the Authority finds that the request for reconsideration was not filed within a reasonable time.

CONCLUSION

1. Based on the foregoing discussion, the Authority finds that it is unnecessary to rule on TWCIS (NC)'s request for reconsideration as such request is not provided for in the Telecommunications Act of 1996.
-

2. The Authority further finds that to the extent that TWCIS (NC)'s request for reconsideration was contended to have been filed pursuant to either Rule 59 or 60 of the Rules of Civil Procedure that such filing was untimely as to both Rules.

NOW, THEREFORE, based on the foregoing, and having considered all filings provided by all parties in the above-referenced dockets, and after due deliberation, the Authority rules as follows:

TWCIS (NC)'s request for reconsideration of the Authority's July 19, 2006, Order dismissing TWCIS (NC)'s petitions in the above-referenced dockets is denied.

ISSUED BY ORDER OF THE AUTHORITY.

This the 24 day of March, 2008.

NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY

By: T. Scott Poole
T. Scott Poole
Administrator

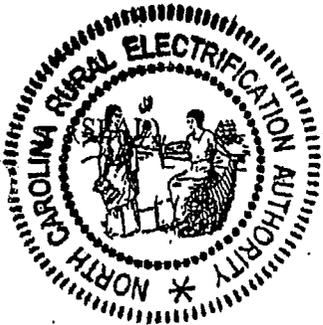


Exhibit 7

**NORTH CAROLINA
RURAL ELECTRIFICATION AUTHORITY
RALEIGH**

DOCKET NO. TMC 5, Sub 1

BEFORE THE NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY

In the Matter of
Petition of Time Warner Cable Information
Services (North Carolina), LLC for Arbitration
Pursuant to Section 252(b) of the Communications
Act of 1934, as Amended, to Establish an
Interconnection Agreement with
Star Telephone Membership Corporation

AND

Petition of Time Warner Cable Information
Services (North Carolina), LLC to Terminate
Star Telephone Membership
Corporation's Rural Telephone Company
Exemption Pursuant to Section 251(f)(1) of the
Communications Act of 1934, as Amended

ORDER

PROCEDURAL HISTORY

1. In October 2005, Time Warner Cable Information Services (North Carolina) (hereinafter "TWCIS (NC)") submitted written requests for interconnection to Atlantic Telephone Membership Corporation, (hereinafter "Atlantic TMC") Randolph Telephone Membership Corporation (hereinafter "Randolph TMC") and Star Telephone Membership Corporation (hereinafter "Star TMC") (together "the TMCs"). TWCIS (NC) did not copy the Authority with those written requests.
2. On March 14, 2006, TWCIS (NC) filed Petitions with the Authority for Arbitration with the TMCs and Conditional Petitions for Termination of Rural Exemption and Requests for Consolidation with Petition for Arbitration. These Petitions were docketed as follows: the Petitions involving Atlantic TMC were Docket No. TMC-1, Sub 1, the Petitions involving Randolph TMC were Docket No. TMC-3, Sub 1, and the Petitions involving Star TMC were Docket No. TMC-5, Sub 1.
3. On April 10, 2006, the TMCs filed Motions to Dismiss TWCIS (NC)'s Petitions for Arbitration, Responses to TWCIS (NC)'s Petitions for Arbitration and Responses to TWCIS (NC)'s Conditional Petitions for

Termination of Rural Exemption and Request for Consolidation with Petition for Arbitration. Randolph Telephone Membership Corporation also filed a Motion to Dismiss TWCIS (NC)'s Conditional Petition for Termination of Rural Exemption.

4. On May 1 and 4, 2006, TWCIS (NC) filed Opposition to the TMCs' Motions to Dismiss with attachments. On May 16, 2006, the TMCs filed Responses to TWCIS (NC)'s Opposition to the Motions to Dismiss. On May 22, 2006, TWCIS (NC) filed responses to the TMCs' May 16, 2006 filings.
5. On July 19, 2006, the Authority issued an Order consolidating and dismissing TWCIS (NC)'s petitions in the Dockets TMC-1, Sub 1; TMC-3, Sub 1; and TMC-5, Sub 1. On December 17, 2007, the Authority received a letter from TWCIS (NC) requesting the Authority to reconsider its July 19, 2006 Order dismissing TWCIS (NC)'s petitions. On January 28, 2008, the TMCs filed responses to TWCIS (NC)'s letter of December 17, 2007. On March 10, 2008, TWCIS (NC) filed a reply to the responses filed by the TMCs. On March 24, 2008, the Authority issued an Order denying TWCIS (NC)'s request for reconsideration.
6. On May 2, 2008, TWCIS (NC) appealed both the July 19, 2006, and the March 24, 2008, orders to the United States District Court for the Eastern District of North Carolina, Western Division.
7. On September 11, 2009, the Honorable James C. Dever, III heard oral argument on pending motions including each party's motions for summary judgment.
8. On September 23, 2009, Judge Dever issued an Order vacating the July 19, 2006, and the March 24, 2008, orders issued by the Authority. Judge Dever's order remanded the case to the Authority for further proceedings consistent with his order. (*TWCIS (NC) v. Duncan, et al.*, EDNC File No. 5:08-CV-202(D))
9. On December 7, 2009, the Authority issued an Order Requesting Comments requesting the parties to file comments regarding the procedural posture of the dockets as well as what issues should be addressed on remand.
10. On January 6, 2010, the parties filed their comments.
11. On January 22, 2009, TWCIS (NC) filed Reply Comments.

DISCUSSION

1. Atlantic Telephone Membership Corporation (hereinafter "Atlantic TMC") stated in its Comments filed on January 6, 2010, that it had negotiated an Interconnection Agreement with Sprint Communications Company, LP (hereinafter "Sprint") that was approved by the Authority on June 5, 2009. Atlantic stated that TWCIS (NC) had elected to adopt the Sprint-Atlantic TMC Interconnection Agreement. Therefore, no further proceedings as to it are necessary in the above-referenced dockets.
2. Pursuant to the Authority's Order of December 7, 2009, TWCIS (NC) filed comments on January 6, 2010. TWICS (NC) stated that on January 4, 2010, it filed an Agreement of Adoption between TWCIS (NC) and Atlantic TMC with the Authority for approval. TWCIS (NC) stated that in light of Atlantic TMC's entry into the Agreement of Adoption permitting TWCIS (NC) to interconnect and exchange traffic with Atlantic TMC pursuant to the terms of the Sprint Interconnection agreement, TWICS (NC) will consent to the dismissal of Atlantic TMC from this proceeding as of the approval by the Authority of the Interconnection Agreement referenced in the Agreement of Adoption.
3. TWCIS (NC) also requested that the Authority immediately set these proceedings for arbitration because with the Authority's dispositive orders vacated, TWCIS (NC)'s Arbitration Petitions and Conditional Petitions remain pending.
4. Star Telephone Membership Corporation (hereinafter "Star TMC") filed comments on January 6, 2010. In its comments, Star TMC requested that the Authority hold further proceedings in abeyance pending a final ruling by the Authority in Docket TMC-5, Sub-2 in which Star TMC is a party.
5. Star TMC further stated that if the Authority moves forward on the TWCIS (NC) request, the Authority should issue an order in Docket TMC-5, Sub 1 that is effectively identical to the Authority's May 20, 2009, Order issued in Docket No. TMC-5, Sub 2.
6. TWCIS (NC)'s Reply Comments contended that termination of the TMCs' Rural Exemption was not necessary to proceed with TWCIS (NC)'s Arbitration Petitions. However, TWCIS (NC) stated that if the Authority decided it must determine if the TMCs' rural exemption should be terminated, then TWCIS (NC) requested the proceeding be consolidated. TWCIS (NC) also requested that the Authority not hold its petition with respect to Star TMC in abeyance.

DECISION

On January 25, 2010, the above-referenced filings came before the Authority for consideration. Authority members in attendance were L. Calvin Duncan, Chairman,

Joseph G. Justice, Vice-Chairman, Edith C. Cox, Buddy G. Creed, and J. Ronnie Alderman. J. Ronnie Alderman recused himself from deciding on the proceeding in which Star TMC was a party, Docket No. TMC-5, Sub 1.

1. Because Atlantic TMC and TWCIS (NC) have entered an Agreement of Adoption that adopted an Interconnection Agreement between Atlantic TMC and Sprint Communication Company L.P. pursuant to Section 252(i) of the Communications Act of 1934, as amended (47 U.S.C. § 25(i)), the Authority issued an Order in Docket No. TMC-1, Sub 1 Dismissing Atlantic from further proceedings and dismissed TWCIS (NC)'s Petition to Establish an Interconnection Agreement and Petition to Terminate Atlantic TMC's Exemption pursuant to Section 251(f)(1) of the Communications Act of 1934, as amended.
2. The Authority denies Star TMC's request to hold the proceedings as to it in abeyance pending a final decision in Docket No. TMC-5, Sub 1.
3. In the interest of fairness as the evidence in the record will be different for each TMC and may involve information confidential to each TMC, proceedings between TWCIS (NC) and Star, Docket No. TMC-5, Sub 1, will proceed separately from the proceedings between TWCIS (NC) and Randolph TMC, Docket No. TMC-3, Sub 1.
4. TWCIS (NC)'s Petition for Arbitration and Conditional Petition to lift Star TMC's rural exemption are deemed a bona fide request for interconnection and notice to the Authority of TWCIS (NC)'s request for interconnection.
5. Because TWCIS (NC) has made a bona fide request for interconnection, the Telecommunications Act at 47 U.S.C. § 251(f)(1)(B) directs the Authority as the State Commission to conduct an inquiry to determine if Star's rural exemption should be terminated.
6. Pursuant to N.C. Gen. Stat. §§ 117-2(12) and 117-30, the Authority has the power "[t]o do all other acts and things which may be necessary to aid the rural communities in North Carolina to secure" telephone service.
7. 47 U.S.C. § 252(g) provides that proceedings under 47 U.S.C. §§ 251 and 252 can be consolidated to "reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this Act."
8. The Authority finds that TWCIS (NC)'s Petition for Arbitration and Conditional Petition to have Star TMC's rural exemption terminated should be consolidated.
9. Pursuant to the power vested in the Authority by N.C. Gen. Stat. § 117-2(12), the Authority directs that a hearing examiner/ arbitration officer shall be appointed upon mutual consent of the parties to conduct a hearing and arbitration, first, to

determine if Star TMC's rural exemption should be terminated and, second, if the rural exemption is terminated to conduct the arbitration proceeding requested in TWCIS (NC)'s Petition for Arbitration.

10. The hearing/arbitration shall be conducted pursuant to the Authority's Resolution on Arbitration Policies for Telecommunications Interconnection Agreements dated March 2005, a copy of which is attached and incorporated by reference as if contained herein. Pursuant to that Resolution, a list of potential arbitrators is attached. As stated in the attached Resolution, the parties have 15 days from the date of this order to select a hearing/arbitration officer.
11. Such hearing/arbitration shall be conducted in two (2) phases. The first phase shall be a determination of whether Star TMC's rural exemption should be terminated. After the initial determination on that issue, the hearing/arbitration officer shall submit a recommended decision to the Authority. The Authority will then allow the parties to file exceptions to that recommendation and will provide a time for oral argument to the Authority. After the exceptions are filed and oral argument is held, the Authority will make a final determination regarding Star's rural exemption.
12. Should the Authority determine that Star TMC's rural exemption should not be terminated no further proceeding will be necessary regarding the Petition for Arbitration.
13. Should the Authority determine that Star TMC's rural exemption is terminated, the second phase of the hearing/arbitration will commence. During the second phase, the hearing/arbitration officer will conduct an arbitration regarding an Interconnection Agreement between TWCIS (NC) and Star TMC. The hearing/arbitration officer shall submit a recommended decision to the Authority. The Authority will then allow the parties to file comments or objections to the recommended decision and will provide a time for oral argument before the Authority. After the comments or objections are filed and oral argument is held, the Authority will make a final determination regarding the Petition for Arbitration.

IT IS SO ORDERED.

This the 27th day of January, 2010.

NORTH CAROLINA RURAL
ELECTRIFICATION AUTHORITY



T. Scott Poole
Administrator

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served to all addressees listed below by depositing same, postage prepaid, in the U.S. Mail this the 27th day of January, 2010.

Marcus Trathen
Brooks, Pierce, McLendon, Humphrey & Leonard
Attorney for Time Warner Cable Information Services (NC)
P.O. Box 1800
Raleigh, NC 27602

Dan Higgins
Burns, Day & Presnell
Attorney for Atlantic Telephone Membership Corporation
P.O. Box 10867
Raleigh, NC 27605

This 27th day of January, 2010.

The North Carolina Rural
Electrification Authority



T. Scott Poole
Administrator

NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY

RESOLUTION ON ARBITRATION POLICIES
FOR TELECOMMUNICATIONS
INTERCONNECTION AGREEMENTS

WHEREAS, Section 252 of the 1976 Telecommunications Act (the "Act") requires incumbent local exchange carriers ("ILECs") to negotiate and enter into agreements with requesting telecommunication carriers for interconnection services or network elements pursuant to Section 251 of the Act, and

WHEREAS, certain providers of commercial mobile radio service ("CMRS providers") have agreed to submit interconnection disputes between CMRS providers and ILECs to the North Carolina Rural Electrification Authority ("NCREA") for resolution; and

WHEREAS, any party negotiating an interconnection agreement under Section 252 of the Act may petition a state commission, including the NCREA, to arbitrate any open issues between the parties or may contractually agree for the NCREA to arbitrate any such open issues, and

WHEREAS, the NCREA is authorized to arbitrate interconnection agreements between North Carolina telephone cooperatives and other telecommunication carriers; and

WHEREAS, members of the NCREA have determined that it is in the best interest of the public to develop a formal process for arbitrating such interconnection agreements,

NOW, THEREFORE, BE IT RESOLVED, that the NCREA hereby adopts a formal arbitration policy for interconnection agreements (the "Arbitration Policy") as follows:

1. Petition and Response. In the event the NCREA is requested to arbitrate an interconnection agreement pursuant to Section 252(b)(1) of the Act or pursuant to a valid contractual agreement between a North Carolina telephone cooperative (or other telecommunication carrier) and the petitioning party shall provide the NCREA with the information required under Section 252(b)(1) of the Act. The non-petitioning party shall have the opportunity to respond in accordance with Section 252(b)(3) of the Act.

2. Selection and Payment of Arbitrator. Following the NCREA's receipt of the petition for arbitration and the response, if any, of the non-petitioning party, the NCREA will send each party a list of approved arbitrators. The parties shall have fifteen (15) days to study the list of arbitrators, strike names to which they object, number the remaining names in the order of preference and return the list to the NCREA. The NCREA, or its designee, will then compare the indicated preferences and, if possible, select a mutually agreed upon arbitrator. In the event the parties do not designate a mutually agreed upon arbitrator, then the NCREA may submit additional lists to the parties for consideration. If the parties do not agree on an arbitrator from the supplemental list, the parties may submit the name of a mutually acceptable arbitrator to

the NCREA or, if no agreement is reached between the parties, the NCREA may appoint an arbitrator of its choosing.

Parties seeking arbitration will be held accountable for financial obligations, each being responsible for an equal portion of the arbitrator fee, regardless of the outcome of the recommendation submitted to the Arbitrator. This fee shall be paid directly to the arbitrator.

3. Preliminary Hearing. At the request of any party, or at the discretion of the arbitrator, the arbitrator may schedule a preliminary hearing with the parties or the representatives. The preliminary hearing may be conducted by telephone, at the arbitrator's discretion. During the preliminary hearing, the parties and the arbitrator may discuss the future conduct of the case, including clarification of issues to be resolved, a schedule for the hearing, and any other preliminary matters.

4. Exchange of Information. At the request of any party, or at the discretion of the arbitrator, the arbitrator may direct the production of documents and other information and (ii) the identification of any witnesses to be called at the arbitration hearing. Consistent with the requirements of Section 25219(c)(4) of the Act, the arbitrator may require the parties to provide such information as may be necessary to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request, then the arbitrator may proceed on the basis of the best information available from whatever source derived.

5. Arbitration Hearing. At the request of either party, or at the discretion of the arbitrator, the arbitrator may require the parties to attend a formal arbitration hearing. The arbitrator is authorized to resolve any disputes concerning the exchange of information. The arbitrator shall set the date, time, and place for the arbitration hearing. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practical hearing date and adhere to the established hearing schedule. The arbitrator shall send a notice of hearing to the parties at least thirty (30) calendar days in advance of the hearing date, unless otherwise agreed by the parties. Any party may be represented by counsel. At least five (5) business days prior to the arbitration hearing, the parties shall exchange copies of all exhibits each party intends to submit at the hearing.

The arbitrator shall limit consideration of any petition for arbitration to the issues set forth in the petition, and in the response, if any. The arbitrator shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required, and shall conclude the resolution of any unresolved issues not later than nine (9) months following the date on which the request for arbitration was originally received by the NCREA.

6. Conduct of Arbitration Proceedings. The petitioning party shall present evidence to support its petition. The non-petitioning party shall then present evidence in response. Witnesses for each party, if any, shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair

opportunity to present its case. The arbitrator shall entertain motions, including motions that dispose of all or part of any open issue or that may expedite the proceedings.

The parties may offer such evidence as is relevant and material to the petition filed with the NCREA. The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered. The arbitrator may request offers of proof and may reject evidence deemed by the arbitrator to be cumulative, unreliable, or unnecessary.

7. Recommended Decision The arbitrator shall make a decision on the open issues for arbitration that contains findings of fact and conclusions of law, as applicable, and forward this recommended decision to the NCREA. The arbitrator shall decide the issues in controversy based upon a preponderance of the evidence. The petitioning party shall have the burden of proof.

8. Final Decision by NCREA The decision of the arbitrator shall be considered a recommendation and the NCREA shall make the final decision in any arbitration hearing and may order additional written or oral testimony from the parties. The NCREA retains the authority to accept the recommended decision from the arbitrator as its final decision, amend the recommended decision, or reject the recommended decision and render its own independent decision.

The NCREA shall limit consideration of any petition for arbitration to the issues set forth in the petition, and in the response, if any. The NCREA shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required, and shall conclude the resolution of any unresolved issues no later than nine (9) months following the date on which the request for arbitration was originally received by the NCREA.

IN WITNESS WHEREOF, the undersigned hereby certifies the members of the NCREA Board adopted this resolution on the 14th day of May, 2015.

NORTH CAROLINA RURAL
ELECTRIFICATION AUTHORITY

By: T. Scott Poole
T. Scott Poole
Chk. Administrator

(SEAL)

NCREA ARBITRATOR LIST
As of May 19, 2009

STEVEN T. ACETO

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Phone: 704-251-9079

Member of American Arbitration Association, has attended numerous mediation and arbitration seminars, ERISA, construction law, franchise law.

THOMAS J. ASHCRAFT

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Former U.S. Attorney; practice areas are civil litigation in federal and state courts, federal criminal law, employment law, mediation and arbitration; panel member of the American Arbitration Association.

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Appointed arbitrator for 30th Judicial District in 1988; trained by Dispute Management, Inc.

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Arbitrator; on Panel of Arbitrators for American Arbitration Association; involved in mediating and arbitrating cases involving personal injury and contract disputes; certified Mediator under NC Alert; Disputes Mandatory Med for Mecklenburg County

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N.C. Superior Court Judge 1977-1995; Arbitrator, conducted over 100 Superior Court mediated settlement conferences

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Attorney, partner – Moore, Diedrick, Whitaker & Carlisle and successor firms, 1978-1999

Attorney, sole practitioner, practice limited to mediation and arbitration, 2000 to present.

Mediation/arbitration practice, 2000 to present; approximately 800 mediations and/or arbitrations conducted including: U.S. District Court, North Carolina District and Superior Courts, North Carolina Court of Appeals, North Carolina Industrial Commission and North Carolina Office of Administrative Hearings

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Represented individuals, corporations, municipalities and schools in personal injury actions, and industry and businesses in liability lawsuits; majority of his practice involves representation of individuals, businesses and several insurance companies in a wide variety of personal and commercial insurance; coverage in over fifty jury trials and in fifteen eastern N.C. counties.

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Service as regular arbitrator in the 26th Judicial District Court mandatory arbitration program; majority of work in area of personal injury and insurance law.

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Arbitrator on American Arbitration Panel since August 1978; Experience - personal injury, contracts, product liability, malpractice, real estate, commercial transaction, tax suits, libel, insurance employment & corporate law.

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Arbitrator since 1978; mediated over 50 cases since 1992 and participated as advocate in 10 more; trained mediators with Dispute management, Inc and The Private Adjudication Center.

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Conducted numerous arbitrations and mediations by appointment of the American Arbitration Assoc; cases ranged from construction disputes to patent and royalty litigation and mediations of claims for personal injury and property damage against insurers.

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Has arbitrated approximately 100 cases including personal injury, commercial, magistrate appeals, etc.

J. SAM JOHNSON, JR.

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Arbitrator for AAA; practiced law since 1964 primarily in civil litigation; represents plaintiffs and defendants in mediation and arbitration for over 20 years.

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Partner, McCotter, Ashton & Smith, PA 2000-present; partner, McCotter, McAfee and Ashton, PLLC 1998-2002; Attorney, Self-employed, 1995-97; U.S. Magistrate Judge, United States Courts, EDNC 1978-95

General practice with emphasis on civil litigation, arbitration and mediation; served as a U.S. Magistrate Judge with full range of duties, including trial experience, jury and non-jury, in federal civil litigation.

HULLIHEN W. MOORE

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Former Judge of the Virginia State Corporation Commission

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Arbitration of over 15 fee disputes for Mecklenburg County, Bar Fee Arbitration Committee; Experience: contracts, products liability, real estate, commercial transactions, employment and corporate law.

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Former Judge of N.C. Court of Appeals; 30 years experience as arbitrator for American Arbitration Association; Certified Superior Court Mediator; Practice with firm over 40 years primarily in field of civil litigation.

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Member of National Panel of Arbitrators - American Arbitration Association; negotiated more than 700 commercial leases and acquisition agreements; mediated over 20 cases in Superior Court-ordered mediation.

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Certified Arbitrator, Wake County (Raleigh) 2004

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Counsel to the firm in areas of energy, utility and telecommunications law with emphasis on electric utility regulation, litigation and arbitration; member of the Energy Panel, American Arbitration Association; served more than twenty years as the senior executive for all legal, regulatory, governmental affairs and corporate communications activities for a major electric utility.

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Former Senior Attorney for Sprint Corporation (now Sprint-Nextel)

Exhibit 8

Pursuant to those discussions, the Authority enters the following ORDER:

Pursuant to the Authority's Resolution on Arbitration Policies for Telecommunications Interconnection Agreements, the Authority hereby accepts and adopts the Recommended Order Terminating Phase I of Proceeding without modification as the Final Decision of the Authority. A copy of the Recommended Order is attached to this Final Decision and incorporated by reference as if contained herein.

IT IS SO ORDERED.

ISSUED BY THE ORDER OF THE AUTHORITY.

This the 31st day of January, 2012.

The North Carolina Rural
Electrification Authority



Frances Liles
Administrator

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served to all addressees listed below by electronic mail and by depositing same, postage prepaid, in the U.S. Mail this the 31st day of January, 2012.

Marcus W. Trathen
Brooks, Pierce, McLendon, Humphrey & Leonard
Attorney for Time Warner Cable Information Services (NC)
P.O. Box 1800
Raleigh, NC 27602

Daniel C. Higgins
Burns, Day & Presnell
Attorney for Star Telephone Membership Corporation
P.O. Box 10867
Raleigh, NC 27605

This 31st day of January, 2012.

The North Carolina Rural
Electrification Authority


Angela Harrison

Exhibit 9

NORTH CAROLINA
RURAL ELECTRIFICATION AUTHORITY
RALEIGH

Docket No. TMC-5, Sub 1

In the Matter of
Petition of Time Warner Cable Information Services (North Carolina), LLC for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish Interconnection Agreement with Star Telephone Membership Corporation)
AND)
Petition of Time Warner Cable Information Services (North Carolina), LLC to Terminate Star Telephone Membership Corporation's Rural Telephone Company Exemption Pursuant to Section 251(D)(1) of the Communications Act of 1934, as Amended)

NON-CONFIDENTIAL
PETITION OF STAR TELEPHONE
MEMBERSHIP CORPORATION
PURSUANT TO 47 U.S.C. § 251(D)(2)

Star Telephone Membership Corporation petitions the Authority pursuant to 47 U.S.C. § 251(D)(2), for suspension or modification of the application to its telephone exchange service facilities of all requirements of Section 251(b) and (c) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), implicated by the request for interconnection arrangements from Time Warner Cable Information Services (North Carolina), LLC.

In support of its Petition, Star Telephone Membership Corporation shows the Authority as follows:

PARTIES

1. Star Telephone Membership Corporation ("Star TMC") is a North Carolina telephone membership corporation organized and existing pursuant to Article 4 of Chapter 117

of the North Carolina General Statutes.² Star TMC provides local exchange telecommunications and exchange access services in its service territory pursuant to the laws of the State of North Carolina and subject to the jurisdiction of the North Carolina Rural Electrification Authority ("Authority"). Star TMC is an incumbent local exchange carrier ("ILEC") as that term is defined in Section 251(h) of the Act. Star TMC is also a rural telephone company as that term is defined in Section 153(37) of the Act.

2. Star TMC is designated by the Authority as an Eligible Telecommunications Carrier ("ETC") pursuant to 47 U.S.C. § 214(e), and as such is obligated to provide to subscribers in its service territory the elements of universal telephone service established in Section 254 of the Act. Star TMC is thus the "carrier of last resort" for telecommunications services in its service territory.

3. Star TMC offers service through its telephone exchange service facilities in ten rural exchanges spread over parts of five counties in Southeastern North Carolina. Star TMC exists today because in the 1950's no investor-owned telephone company could build a business case for installing facilities and offering service in the areas that became Star TMC's service territory, because of the remoteness and the corresponding lack of potential customer density in those areas. Star TMC's service territory covers 1,458 square miles (an area of land larger than the State of Rhode Island) and includes only one incorporated area (the Town of Harrells, which has a population of approximately 200 residents). Even today, Star TMC serves less than [REDACTED] customers per route mile of cable and Star TMC believes it is the most rural of the rural telephone companies in North Carolina. As of December 31, 2011, Star TMC served [REDACTED] access lines.

¹ 47 U.S.C. §§ 151, *et seq.*

4. Time Warner Cable Information Services (North Carolina), LLC ("TWCIS") is a Delaware limited liability company, certificated by the North Carolina Utilities Commission ("NCUC") as a competing local provider offering local exchange and/or exchange access in parts of North Carolina.²

BACKGROUND

5. By letter dated October 5, 2005, which TWCIS describes as its "bona fide" request for interconnection, TWCIS informed Star TMC that it "seeks the following rights under Sections 251(a), (b) and (c) of the Communications Act: interconnection, number portability, dialing parity, access to rights of way, reciprocal compensation, and collocation."³ TWCIS later described itself as seeking interconnection pursuant to Section 251(a) and various interconnection arrangements pursuant to Section 251(b).

6. In March 2006, TWCIS petitioned the Authority to terminate Star TMC's rural exemption pursuant to Section 251(f)(1) of the Act, and to arbitrate an interconnection agreement between TWCIS and Star TMC pursuant to Section 252.

7. In April 2006, Star TMC filed a Motion to Dismiss TWCIS's Petitions, which Motion was opposed by TWCIS. The Authority granted the Motion to Dismiss as to TWCIS's Petition for Arbitration in July 2006. A year and a half later, in December 2007, TWCIS moved for reconsideration of the Authority's Order dismissing that Petition. In March 2008, the Authority denied TWCIS's request for reconsideration. TWCIS later appealed the Authority's rulings and in September 2009 the U.S. District Court for the Eastern District of North Carolina remanded the matter to the Authority for further consideration. *Time Warner Cable Information*

² N.C. Gen. Stat. § 117-30.

³ Pursuant to N.C. Gen. Stat. §62-110(13) the NCUC is not able to authorize TWCIS or any other competing local provider to offer such service in a telephone membership corporation's service area.

Services (North Carolina), LLC v. Duncan et al., 656 F. Supp. 2d 565 (E.D.N.C. 2009).

8. Subsequent to that remand, by Order issued January 27, 2010, the Authority directed that an arbitrator be appointed and that this docket would proceed in two phases, as follows:

11. Such hearing/arbitration shall be conducted in two phases. The first phase shall be a determination of whether Star TMC's rural exemption should be terminated. After the initial determination of that issue, the hearing/arbitration officer shall submit a recommended decision to the Authority. The Authority will then allow the parties to file exceptions to that recommendation and will provide a time for oral argument to the Authority. After the exceptions are filed and oral argument is held, the Authority will make a final determination regarding Star's rural exemption.

12. Should the Authority determine that Star TMC's rural exemption should not be terminated no further proceeding will be necessary regarding the Petition for Arbitration.

(Order p. 5).

9. The parties thereafter designated, and the Authority approved the appointment of Jo Anne Sanford to serve as Arbitrator in this docket:

10. By Order issued January 31, 2012, the Authority terminated Phase I of this proceeding, as recommended by the Arbitrator, pursuant to the Declaratory Ruling issued by the FCC in *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*, 26 FCC Record 8259, FCC 11-83 WC Docket No. 10-143 (2011) ("the CRC Declaratory Ruling").

SUSPENSION OR MODIFICATION UNDER SECTION 251(f)(2).

11. TWCIS seeks interconnection with Star TMC in order to facilitate the efforts of TWCIS's affiliate, TWC Digital Phone, LLC d/b/a Time Warner Cable, to offer its "Digital Home Phone" and "Business Class Phone" service to residences and businesses located in those

areas of Star TMC's service territory where Time Warner Cable has deployed cable television facilities.

12. The issue before the Authority in this docket up until January 31, 2012, was whether Star TMC's rural exemption should be terminated as provided for in Section 251(f)(1). That issue was resolved by the Authority's Order issued on that date, which was based on the CRC Declaratory Ruling.

13. In the CRC Declaratory Ruling, the FCC recognized that a rural telephone company retains its right to petition for relief from Section 251(b) and (c) obligations pursuant to Section 251(f)(2) of the Act. See 26 FCC Record at 8267, n. 49.

14. Section 251(f)(2) of the Act provides as follows:

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--

(A) is necessary--

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

Star TMC serves fewer than 2 percent of the Nation's subscriber lines, and thus it is

eligible to petition the Authority for suspension or modification under Section 251(f)(2) of the Act.

15. In including Section 251(f) in the Act, Congress recognized that the duties generally imposed on ILECs by Section 251(b) and (c) could be inappropriate for some smaller ILECs because of either significant adverse economic impact on users, undue economic burden on the carrier, or issues of technical feasibility. In recognition of such potential situations, Congress provided that a rural telephone company such as Star TMC would be exempt from many of the duties imposed by Section 251 until a state commission makes certain requisite findings. See Section 251(f)(1)(B). In addition, Section 251 further provides that the duties imposed on rural telephone companies can be modified or suspended entirely. See Section 251(f)(2). Congress recognized that while the imposition of certain duties might not be unduly burdensome for larger ILECs, they could under some circumstances be unduly burdensome for smaller rural ILECs, such as Star TMC.

16. Star TMC's economic health, its ability to continue to meet its universal service obligations, and its continued ability to provide excellent service at reasonable rates, are continually challenged by competition from other telecommunications providers, which presently consist largely of inter-modal providers such as commercial mobile radio service providers offering wireless service, and nomadic Voice over Internet Protocol ("VoIP") service providers (such as Vonage, MagicJack, etc.). Star TMC has [REDACTED] access lines since 2002.

When such competition selectively serves customers with a lower cost to serve (regardless of whether this is done as an intentional business strategy or as a consequence of the topography of the competitor, or both), the adverse impact on a rural telephone company's ability

to continue to provide universal service at reasonable and comparable rates causes harm to the public interest. Star TMC submits that the evidence to be adduced as to this Petition will demonstrate that the introduction of Time Warner Cable's "Digital Home Phone" and "Business Class Phone" service, which would be facilitated by the interconnection arrangements requested by TWCIS, would cause an undue economic burden as well as dramatic and irreparable harm to both Star TMC and the public interest in universal service.

The extent of the undue economic burden that would result from requiring provision of interconnection arrangements requested by TWCIS must be evaluated in the context of Star TMC's circumstances. In addition to access line losses and declining access revenues, recent regulatory developments further imperil Star TMC's ability to cover its operational costs. Specifically, the *In re Connect America Fund*, 2011 WL 5844975, released on November 18, 2011 ("CAF Order"),⁴ the FCC undertook to reform existing federal support mechanisms for universal service. In addition, the FCC also decreed that the default reciprocal compensation arrangement for intraMTA CRMS-ILEC traffic would be "bill and keep" effective as of July 1, 2012. Star TMC's current and preliminary estimate of the consequence of just these two changes is that its revenues will [REDACTED] per year.

GROUND FOR SUSPENSION OR MODIFICATION OF ANY REQUIREMENT TO PROVIDE 251(b) OR (c) ARRANGEMENTS TO TWCIS.

17. Star TMC alleges that establishment of arrangements for number portability pursuant to Section 251(b)(2), dialing parity pursuant to Section 251(b)(3), access to rights of way pursuant to Section 251(b)(4) and/or reciprocal compensation pursuant to Section 251(b)(5),

⁴ In the Matter of Connect America Fund, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011). The CAF Order was amended by an Errata Order issued December 9, 2011, and an Order on Reconsideration released December 23, 2011.

in order to facilitate the offering of Time Warner Cable's "Digital Home Phone" and "Business Class Phone" service in Star TMC's service area would, individually and collectively, impose a significant adverse economic impact on users of Star TMC's telecommunications services generally, would impose requirements on Star TMC that are unduly economically burdensome and would be inconsistent with the public interest, convenience and necessity.

18. The majority of Star TMC's customers are residential. Most of Star TMC's business customers are located in peripheral areas outside municipal areas served by CenturyLink, f/k/a Embarq. These relatively more populous areas of Star TMC's service territory are (1) the fringe areas closest to the towns in the region and (2) comprise the relatively limited footprint where Time Warner Cable has chosen to install cable television facilities.

In terms of adverse economic impact on users of Star TMC's telecommunications services generally and the public interest, and in terms of imposing a requirement on Star TMC that is unduly economically burdensome, this means that as a consequence of the various interconnection arrangements sought by TWCIS, Star TMC would be at an increased risk of losing its largest and most profitable customers (its business customers), because those customers are not evenly distributed over Star TMC's entire service territory, but are concentrated in the areas where Time Warner Cable has facilities. This reality only serves to elevate the risk of severe economic losses to Star TMC that would result from establishment of the interconnection arrangements for number portability, dialing parity, access to rights of way and/or reciprocal compensation which TWCIS seeks to establish.

In terms of the public interest, convenience and necessity, if Star TMC is required to provide the interconnection arrangements requested by TWCIS, then Star TMC would bear the economic losses resulting from Time Warner Cable being allowed to selectively offer service

only to those customers adjacent to Time Warner Cable's facilities, while leaving Star TMC to provide service to the harder to serve customers located in the sparsely populated majority of Star TMC's service area. As customers and revenues are lost, Star TMC's ability to bear the costs of continuing to offer advanced services to 100% of its customers, especially DSL service, will be put at increased risk. This is not an illusory problem or concern, as the risk to rural ILECs of "cream-skimming"⁵ has been recognized by the FCC.⁶ As noted above, the FCC recently undertook to redefine universal service to require provision of broadband internet access. ILECs will thus be required to have reliable, predictable and sufficient financial resources to upgrade facilities to comply with a revised definition of universal service. Loss of substantial revenues as a consequence of the interconnection requested by TWCIS would impair Star TMC's ability to perform its universal service obligations in its entire service area, which includes all those rural areas outside the locations where Time Warner Cable has facilities. These areas where Time Warner Cable does not have facilities are the most rural portions of Star TMC's service territory, meaning that Star TMC's costs to serve are highest in those areas where Time Warner Cable has no facilities and would not offer service.

19. In terms of the public interest, convenience and necessity, this proceeding will also determine whether all of Star TMC's customers continue to enjoy access to the advanced telecommunications services at reasonable prices that they have come to expect. Star TMC serves very rural territory, which includes only one incorporated area. TWCIS, in conjunction

⁵ "Cream skimming" refers to the practice of targeting only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area." *Banister, Virginia and Highland Cellular Framework: The FCC Establishes a Framework for Eligible Telecommunications Carrier Designation in Rural Study Areas*, 57 Fed. Comm. L.J. 511, 531 (2004-2005).

⁶ In the Matter of Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier, CC Docket 96-45, Memorandum Opinion and Order (January 22, 2004) ("Virginia Cellular Order"), Note 18; ¶32; Note 102. See also, In the Matter of Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications, Memorandum Opinion and Order (April 12, 2004), Note 28; ¶26.

with Time Warner Cable, seeks to provide competitive service only to the easiest-to-serve customers, who are located where Time Warner Cable has existing cable television facilities. Star TMC is a small company with a limited service territory and a limited customer base. In recent years Star TMC has struggled to maintain profitability and it is a serious and ongoing challenge to do so while continuing to deploy the equipment necessary to keep its customers connected with the latest telecommunications services and to keep rates affordable. Being a smaller ILEC, Star TMC does not have the economies of scale enjoyed by larger incumbents and every access line lost has a direct impact on Star TMC's financial well-being and ultimate survival.

20. Time Warner Cable does not offer cable television service in the most rural and insular areas of Star TMC's service territory. By limiting its cable television services to the more densely populated areas of Star TMC's service territory, Time Warner Cable would only compete for the customers that are easiest (and most profitable) to serve, as the cost of providing service directly correlates to customer density and customer access to a provider's existing facilities.

21. This is not the first time the Authority has addressed the question of the extent of the economic impact and burden that provision of interconnection arrangements would impose on Star TMC if another carrier was to interconnect with it to facilitate Time Warner Cable's offering of its "Digital Home Phone" and "Business Class Phone" products in Star TMC's service territory. For the same reason that TWCIS filed its Petitions in this docket (to facilitate Time Warner Cable's effort to offer its "Digital Home Phone" and "Business Class Phone" services to residences and businesses located in Star TMC's service area), in February 2009 Sprint Communications Company L.P. also petitioned the Authority to terminate Star TMC's

rural exemption and to arbitrate an interconnection agreement between Sprint and Star TMC. See *Sprint Communications Company L.P. v. Star TMC*, Docket TMC-5, Sub 2 ("Sprint v. Star TMC"). Because that docket commenced at a time when TWCIS's appeal of the Authority's dismissal was pending, proceedings in *Sprint v. Star TMC* moved forward prior to such proceedings in the instant docket.

22. By Order issued May 20, 2009, in *Sprint v. Star TMC*, the Authority established bifurcated proceedings to address the issues raised by Sprint's Petition. Just as it later did in this docket, the Authority ordered that the first phase of that proceeding would be confined to determining whether Star TMC's Section 251(f)(1) rural exemption should be terminated as requested by Sprint. The Authority ruled there that if it determined Star TMC's rural exemption should be terminated as to Sprint's request for interconnection, then the second phase of that proceeding would resolve by arbitration any open issues necessary for formation of an interconnection agreement between Sprint and Star TMC.

23. The Authority thereafter approved appointment of Hullihen Moore, a retired judge of the Virginia Corporation Commission experienced in utility matters, as arbitrator in *Sprint v. Star TMC*. Judge Moore thereafter conducted two separate hearings over the course of twelve months, and required numerous filings of supplemental information and data by Star TMC in that docket. On April 13, 2011, Judge Moore issued a Recommended Decision in that docket. In his Recommended Decision, after conducting an extensive analysis of the evidence as to economic burden to Star TMC and the detriments to the goals of universal service, Judge Moore ruled that Sprint had not meet its burden of establishing that its requested interconnection would not impose an undue economic burden on Star TMC, which was one of the criteria required under Section 251(f)(1) for termination of Star TMC's rural exemption.

24. The Recommended Decision in *Sprint v. Star TMC* reflects a finding that the effects of the interconnection arrangements sought by Sprint there (which are effectively the same as what is sought by TWCIS here) will dramatically reduce the revenues, net income and return on investment of Star TMC, to the detriment of its ability to continue to make the investments and expenditures necessary to provide the quality service it currently provides and to maintain the benefits of universal service in its service territory. This evidences the fact that requiring the interconnection arrangements sought in order to facilitate Time Warner Cable's offering of its services in Star TMC's service territory would impose an economic burden on Star TMC and be inconsistent with the public interest. This finding also supports a finding here that the interconnection sought by TWCIS would cause "a significant adverse economic impact on users of telecommunications services generally." See Section 251(f)(2)(A)(i). The detrimental effects on Star TMC recognized in that Recommended Decision would cause a significant adverse economic effect on Star TMC's customers, who will face higher rates for services, thereby increasing the market price for services, and customers in the more remote portions of Star TMC's service territory would be at risk for even higher costs, service reductions or loss of service.

25. Based on the finding that Sprint did not establish that its proposed interconnection would not impose an undue economic burden on Star TMC, and other evidence to be adduced at the hearing on this Petition, Star TMC requests that the Authority suspend or modify the application to Star TMC of any requirement to provide the requested interconnection arrangements specified in Section 251(b) or (c) of the Act.

26. Section 251(f)(2) authorizes the Authority to suspend or modify the application of the requirements of Section 251(b) and (c) to Star TMC. Star TMC submits that the Authority should grant this Petition, as such suspension or modification is necessary to avoid a significant

adverse economic impact on users of its telecommunications services generally; to avoid imposing a requirement on Star TMC that is unduly economically burdensome; and that such suspension is consistent with the public interest, convenience, and necessity. Star TMC requests that the Authority exercise its power under Section 251(f)(2) because the facts and circumstances relevant to TWCIS's request for interconnection arrangements with Star TMC satisfy the significant adverse economic impact, the economic burden and the public interest criteria set forth in Section 251(f)(2).

27. In the CRC Declaratory Ruling the FCC left to the Authority the decision as to whether to protect the customers of a rural carrier such as Star TMC from this harm by acting pursuant to Section 251(f)(2). Significantly, three of the FCC Commissioners filed separate Statements in the CRC Declaratory Ruling, all clearly recognizing that a state commission has the right to exercise its jurisdiction as to a Petition such as the one filed herein by Star TMC.⁷

28. This Petition is entirely consistent with the FCC's findings in the CRC Declaratory Ruling. In that ruling, the FCC made clear that a state commission such as the Authority has primary jurisdiction and responsibility to resolve any petition under Section 251(f)(2): "We recognize that the state commissions have the responsibility in the first instance for determining whether, and the extent to which, the provisions in section 251(f) apply in a

⁷ See Statements of Chairman Julius Genachowski ("Congress gave the state commissions primary responsibility for determining when a carrier should be exempt from specific interconnection obligations, and today's ruling does not alter that authority," p. 19); Commissioner Michael J. Copps ("The narrow legal question before us requires this result but good policy outcome pulls us in another direction. I'm concerned about the unintended consequences of today's decision on consumers in Maine who rely on these rural phone companies for service. I believe the Maine PUC is best equipped to balance the interests of Maine consumers and carrier responsibilities," p. 20); and Commissioner Mignon L. Clyburn ("Congress clearly contemplated a role for state regulators in determining whether local competition serves the public interest and universal service goals pursuant to Section 251(f) with respect to areas served by rural local exchange carriers. Moreover, I believe the findings that the Maine PUC already made are germane to the issues raised in the Time Warner Petition. As such, I would have preferred more acknowledgment in the Declaratory Ruling of the tension this decision is creating in Maine, as a result of our findings. Nonetheless, to the extent that the rural local exchange carriers and the Maine PUC believe that the PUC's conclusions remain applicable, Section 251(f)(2) provides an avenue for relief from the Section 251(b) interconnection obligations," p. 21).

particular context."⁸ Further, under the Act, it is the state commission that has the authority to suspend or modify the requirements of section 251(b) in appropriate circumstances."⁹

29. Suspension or modification under Section 251(f)(2) is to be consistent with the public interest, convenience and necessity. The paramount public interest concern at stake in any proceeding under Section 251(f)(2) is the protection of universal service, which is synonymous with the public interest. As shown by Section 254 of the Act, one aspect of the public interest analysis under Section 251 is ensuring the preservation of a carrier of last resort in rural service areas and that quality telecommunications and informational services are available to all areas, including rural, insular, or high cost areas, at reasonable comparable rates.

30. Star TMC submits that based on the facts and circumstances described hereinabove, and the evidence to be adduced at the hearing on this Petition, that the Section 251(b) interconnection arrangements sought by TWCIS here would not be consistent with, and would be significantly harmful to, universal service goals and would be inconsistent with the public interest. Thus, granting the requested suspension or modification "is consistent with the public interest, convenience and necessity."¹⁰

31. As shown by the evidence adduced in the first phase proceedings in *Sprint v. Star TMC*, the interconnection arrangements requested by TWCIS of Star TMC for the purpose of facilitating Time Warner Cable's offering of its "Digital Home Phone" and "Business Class Phone" services in Star TMC's service territory will have a significant adverse economic impact on users of Star TMC's telecommunications services and/or would impose a requirement that is unduly economically burdensome on Star TMC, and such suspension would be consistent with the public interest, convenience and necessity. Based on the foregoing, Star TMC requests that

⁸ CRC Declaratory Ruling #3, 26 F.C.C.R. 8260.

⁹ CRC Declaratory Ruling #23, 26 F.C.C.R. 8272.

the Authority suspend or modify the application of Section 251(b) requirements. Star TMC's telephone exchange service facilities, until such time as Star TMC is relieved of its carrier of last resort obligations in its service territory, or when carrier of last resort obligations are imposed on TWCIS for the entirety of Star TMC's service territory, or until such time as TWCIS meets the requirements for designation as an eligible telecommunications carrier in Star TMC's entire service area - before being permitted to provide service in any portion of that area - as provided for in Section 253(D) of the Act.

32. Pending the Authority's final ruling on Star TMC's foregoing Petition, Star TMC also requests that the Authority, as provided for by Section 251(D)(2)(B), "suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers."

WHEREFORE, Star TMC moves the Authority:

1. To establish a procedural schedule for conducting any discovery relating to Star TMC's Section 251(D)(2) Petition and schedule a hearing with regard to that Petition, prior to moving forward with the "second phase of the hearing/arbitration" as referenced in the Authority's Order of January 27, 2010;

2. Pending a final ruling by the Authority on Star TMC's foregoing Petition, to "suspend enforcement of the requirement or requirements to which the petition applies with respect to" Star TMC, as provided for in Section 251(D)(2)(B);

3. To suspend or modify the application to Star TMC of any requirements of 47 USC § 251(b) and (c) implicated by TWCIS's request for interconnection with Star TMC, until such time as Star TMC is relieved of carrier of last resort obligations in its service territory, or when

carrier of last resort obligations are imposed on TWCIS for the entirety of Star TMC's service territory or until such time as TWCIS meets all requirements for designation as an eligible telecommunications carrier in Star TMC's entire service area - before being permitted to provide service in any portion of that area - as provided for in Section 253(f) of the Act; and

4. To provide such other and further relief as is just, proper and consistent with the request for suspension or modification set forth herein.

Respectfully submitted, this the 29th day of February, 2012:

BURNS, DAY & PRESNELL, P.A.

By:


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E-mail: dhiggins@bdppa.com
Attorneys for Star Telephone Membership Corporation

CERTIFICATE OF SERVICE

It is hereby certified that a true and exact copy of the foregoing Petition of Star Telephone Membership Corporation was served this day by e-mailing same to counsel for Time Warner Cable Information Services (North Carolina), LLC.

This the 29th day of February, 2012.

BURNS, DAY & PRESNELL, P.A.

By:



Daniel C. Higgins
Post Office Box 10867
Raleigh, NC 27605
Tel: (919) 782-1441

Exhibit 10

plead facts sufficient to support the essential elements of a claim under Section 251(f)(2) of the Act, TWCIS (NC) respectfully urges the NCREA to dismiss the Petition and direct the Arbitrator to move swiftly to arbitrate an interconnection agreement between the parties in keeping with the statutory deadline set forth in Section 252(b)(4)(C) of the Act.

INTRODUCTION

By its Petition, Star is seeking, in essence, a “rural exemption” from facilities-based competition even though the statute on which it relies, 47 U.S.C. § 251(f)(2), authorizes nothing of the sort. Having failed to demonstrate that the rural exemption provided in 47 U.S.C. § 251(f)(1) authorizes it to refuse to arbitrate Section 251(a) and (b) arrangements with TWCIS (NC), Star now seeks—for a second time—to insulate itself from competition based on its status as a rural carrier. Yet, Star’s second bite at the “rural exemption” apple is no more authorized under federal law than its first.

Contrary to Star’s suggestion that Section 251(f)(2) empowers the NCREA to grant a wholesale exemption from “the various interconnection arrangements sought by TWCIS (NC),”¹ the statute authorizes only limited relief from particular duties set forth in Sections 251(b) and (c), and only where Star can satisfy its burden of proof. Here, however, TWCIS (NC) has only sought interconnection under Section 251(a) and (b), so for *each* obligation under Section 251(b) that Star seeks to suspend, it must show that suspension is *necessary* to avoid a specified harm, and *consistent* with the public interest, convenience, and necessity.²

The Petition does not even allege that any particular “requirement” of Section 251(b) *itself* (as opposed to competitive entry more generally) would result in harm cognizable under Section 251(f)(2) or that suspension would serve the public interest. Moreover, Star’s Petition

¹ Petition at 8.

² 47 U.S.C. § 251(f)(2).

fails to identify competent evidence that could support such an allegation. Similarly, Star's request that the pending arbitration be held in abeyance while its Section 251(f)(2) is being considered is not justified under the law. Section 251(f)(2) does not authorize the suspension of an arbitration proceeding and, in any event, should the NCREA elect to move forward with the Petition at all, the Section 251(f)(2) proceeding and the arbitration must proceed on separate tracks.

PROCEDURAL BACKGROUND

Star's request to suspend its Section 251(b) obligations pursuant to Section 252(f)(2) comes as the parties are on the cusp of arbitrating an interconnection agreement initially requested by TWCIS (NC) more than six years ago. The protracted proceedings between TWCIS (NC) and Star began on October 5, 2005 when TWCIS (NC) requested that Star enter into negotiations for an interconnection agreement. After Star refused to negotiate, and following the waiting period specified in Section 252(b)(1),³ TWCIS (NC) filed a petition with the NCREA on March 14, 2006 to arbitrate the terms of an interconnection agreement between the parties.⁴

Before the initial arbitration could move forward, however, Star sought dismissal of the proceeding on the ground that TWCIS (NC) supposedly was not a telecommunications carrier and therefore not eligible for interconnection under the Act.⁵ Over TWCIS (NC)'s objection, the

³ 47 U.S.C. § 252(b)(1).

⁴ Petition of Time Warner Cable Info. Servs. (N.C.), LLC for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as Amended, to Establish Interconnection Agreements with Atlantic, Randolph and Star Tel. Membership Corps. (filed March 14, 2006).

⁵ Motion of Star Telephone Membership Corp. to Dismiss Time Warner Cable Info. Servs. (N.C.), LLC's Petition for Arbitration (filed April 10, 2006).

NCREA agreed with Star and dismissed the proceeding.⁶ TWCIS (NC) subsequently requested reconsideration of the dismissal based on the findings of the *TWC Declaratory Ruling*, in which the Federal Communications Commission (“FCC”) held that “wholesale providers of telecommunications services are telecommunications carriers for purposes of sections 251(a) and (b) of the Act,”⁷ and that such wholesale carriers have the right “to interconnect for the purpose of exchanging traffic with VoIP providers.”⁸ The NCREA nevertheless declined to reconsider its dismissal in March 2008.⁹ On appeal before the U.S. District Court for the Eastern District of North Carolina, the court agreed that TWCIS (NC) qualified as a telecommunications carrier under the Act and thus remanded the proceedings back to NCREA for reconsideration on September 23, 2009—more than *four years* after TWCIS (NC) first sought to negotiate an interconnection agreement with Star.¹⁰

⁶ *Petition of Time Warner Cable Info. Servs. (N.C.), LLC for Arbitration Pursuant to § 252(b) of the Commc'ns Act of 1934, as Amended, to Establish Interconnection Agreements with Atlantic, Randolph and Star Tel. Membership Corps.*, Order Consolidating and Dismissing Proceedings, Docket Nos. TMC-1, Sub 1; TMC-3, Sub 1; TMC-5, Sub 1, at 6-7 (N.C. Rural Elec. Auth. July 19, 2006).

⁷ *In re Time Warner Cable, Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under § 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 ¶ 1 (WCB 2007); see Letter Request from Marcus W. Trathen, Counsel to TWCIS (NC), to T. Scott Poole, Administrator of NCREA (filed Dec. 17, 2007).

⁸ *TWC Declaratory Ruling* ¶ 13.

⁹ The NCREA determined that TWCIS (NC)'s request for reconsideration sought relief not contemplated by the Telecommunications Act of 1996 and was untimely filed under the North Carolina Rules of Civil Procedure, to the extent the request was filed pursuant to Rules 59 or 60. See Order Denying Request for Reconsideration, Docket No. TMC-5, Sub 1 (N.C. Rural Elec. Auth. March 24, 2008).

¹⁰ *Time Warner Cable Information Services (North Carolina), LLC v. Duncan*, 656 F. Supp. 2d 565, 576 (E.D.N.C. 2009) (finding a lack of “substantial evidence in the administrative record to support the NCREA’s finding that TWCIS (NC) is not a telecommunications carrier”).

With the parties back at square one, the NCREA in December 2009 requested comments on the proceeding's procedural posture and the issues to be addressed on remand.¹¹ Following submission of comments by both parties, the NCREA issued an order on January 27, 2010 directing that the case proceed in two phases: the first would consider whether Star's rural exemption under Section 251(f)(1) should be terminated, and the second (in the event the exemption was terminated) would arbitrate any remaining open issues necessary for the parties to enter into an interconnection agreement.¹² By order dated April 30, 2010, the mutually selected Arbitrator established the procedural schedule for the first phase of the proceeding.¹³ Pursuant to that schedule, the parties submitted pre-filed testimony and engaged in mutual discovery.

On May 26, 2011, the FCC issued the *CRC Declaratory Ruling*, clarifying that local exchange carriers ("LECs") "are obligated to fulfill all of the duties set forth in sections 251(a) and (b) of the Act, including the duty to interconnect and exchange traffic."¹⁴ The FCC further concluded that "a rural carrier's exemption under section 251(f)(1) offers an exemption only from the requirements of section 251(c) and does not impact its obligations under sections 251(a) or (b)."¹⁵ TWCIS (NC) promptly informed the Arbitrator of this controlling precedent, filing a

¹¹ Order Requesting Comments, Docket No. TMC-5, Sub 1 (N.C. Rural Elec. Auth. Dec. 7, 2009).

¹² Order Bifurcating Arbitration Proceedings, Docket No. TMC-5, Sub 1, at 5 (N.C. Rural Elec. Auth. Jan. 27, 2010).

¹³ Order Establishing Procedural Schedule, Docket No. TMC-5, Sub 1 (Arbitrator Jo Anne Sanford Apr. 30, 2010).

¹⁴ *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended; A National Broadband Plan for Our Future; Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling, 26 FCC Rcd 8259 ¶ 2 (2011) ("CRC Declaratory Ruling").

¹⁵ *Id.* ¶ 14.

motion on June 6, 2011 seeking to terminate the rural exemption phase of the proceeding in conformity with the FCC's decision.¹⁶ After briefing by both parties, the Arbitrator issued the Recommended Order to terminate the rural exemption phase of the proceeding.¹⁷ Without objection from Star, the NCREA adopted the Arbitrator's Recommended Order as its Final Decision on January 31, 2012.¹⁸ In the weeks following release of the Final Decision, consistent with the directive in the Recommended Order, TWCIS (NC) sought to obtain Star's consent to a proposed procedural schedule for arbitrating an interconnection agreement. When the parties were unable to reach agreement, TWCIS (NC) proposed a procedural schedule on February 24, 2012 to commence arbitration.¹⁹ On February 29, 2012, Star filed its Petition requesting an indefinite suspension or modification "of all requirements of Section[s] 251(b) and (c) ... implicated by the request for interconnection arrangements" from TWCIS (NC).²⁰

Pursuant to federal law, the NCREA has a duty to arbitrate an interconnection agreement within nine months after an initial request for interconnection—or approximately 135 days from the filing of the arbitration petition.²¹ Given the suspension of the arbitration proceeding during Phase I of the proceeding (and the prior federal court appeal), Section 252 requires that the NCREA "conclude the resolution of any unresolved issues" by June 15, 2012.

¹⁶ See Motion to Terminate Phase I of Proceeding in Conformance with Intervening and Controlling Decision of the Federal Communications Commission, Docket No. TMC 5, Sub 1 (filed June 6, 2011) ("Motion to Terminate").

¹⁷ Recommended Order Terminating Phase I of Proceeding, Docket No. TMC-5, Sub 1 (rel. Oct. 21, 2011) ("Recommended Order").

¹⁸ Final Decision, Docket No. TMC 5, Sub 1 (rel. Jan. 31, 2012) ("Final Decision").

¹⁹ TWCIS (NC) submitted its proposed schedule to the Arbitrator via electronic mail on February 24, 2012, indicating that the parties could not reach agreement on a joint schedule.

²⁰ Petition at 1. TWCIS (NC) has sought to negotiate an interconnection agreement pursuant to Sections 251(a) and (b) alone. Accordingly, TWCIS (NC)'s interconnection request does not implicate Section 251(c) and any suspension of such duties would have no bearing on the pending arbitration proceeding.

²¹ 47 U.S.C. §§ 252(b)(4)(C) and (b)(1).

LEGAL STANDARD

Star's Petition is subject to dismissal where it fails to state a claim that is cognizable under applicable law.²² Under accepted principles of judicial pleading, "[t]o prevent a Rule 12(b)(6) dismissal, a party must ... 'state enough to satisfy the substantive elements of at least some legally recognized claim.'"²³ The NCREA is "not required ... 'to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.'"²⁴ A complaint therefore should be dismissed if it is clearly without merit when "there is no law to support the claim[,] ... an absence of facts sufficient to make a good claim, or the disclosure of facts which will necessarily defeat the claim."²⁵ In short, TWCIS (NC) is entitled to dismissal if Star's Petition is legally insufficient.²⁶

ARGUMENT

I. STAR'S PETITION SHOULD BE DISMISSED FOR FAILURE TO STATE A PLAUSIBLE CLAIM UNDER SECTION 251(f)(2)

Star's Petition is subject to dismissal because it fails to state a colorable claim for relief. Unlike the rural exemption provision set forth in Section 251(f)(1), Section 251(f)(2) presumes the universal applicability of the duties in Section 251(b) and permits temporary suspensions of

²² It is appropriate that the NCREA look to the North Carolina Rules of Civil Procedure for guidance with respect to applicable pleading standards. Rule 12(b)(6) of the North Carolina Rules of Civil Procedure applies in analogous circumstances in civil court actions and reflects the notion, equally applicable to administrative proceedings, that a litigant should not be permitted to proceed when it has not articulated a cognizable claim under the law. At a minimum the NCREA must apply procedural due process standards to dispositive motions. *See Duncan*, 656 F. Supp. 2d at 574-76 (discussing the procedural standards required of the NCREA when considering the dispositive motions filed by Atlantic, Randolph, and Star TMC earlier in this proceeding).

²³ *Strickland v. Hendrick*, 194 N.C. App. 1, 20, 669 S.E.2d 61, 73 (N.C. Ct. App. 2008) (quoting *Hewes v. Johnston*, 61 N.C. App. 603, 301 S.E.2d 120, 121 (N.C. Ct. App. 1983)).

²⁴ *Id.*

²⁵ *Robertson v. Boyd*, 88 N.C. App. 437, 441, 363 S.E.2d 672, 675 (1988) (citing *Forbis v. Honeycutt*, 301 N.C. 699, 701, 273 S.E.2d 240, 241 (1981)).

²⁶ *Forbis*, 301 N.C. at 701, 273 S.E.2d at 241 ("The test on a 12(b)(6) motion is "whether the pleading is legally sufficient.")

such duties only where they are shown to be unduly economically burdensome (or significantly harmful to consumers or technically infeasible) and where their suspension would be consistent with the public interest.

Section 251(f)(2) provides as follows (in pertinent part):

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--

(A) is necessary--

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

A LEC that petitions for suspension or modification of requirements of Section 251(b) bears the burden of proof that it is entitled to such suspension or modification.²⁷

The rules and precedent of the FCC make clear that network interconnection and the exchange of local telecommunications traffic pursuant to Sections 251(a) and (b) are universal default requirements to which all LECs—including rural LECs like Star—are subject absent an extraordinary showing. For example, the FCC recently issued the *CRC Declaratory Ruling* to “clarify that LECs are obligated to fulfill all of the duties set forth in Sections 251(a) and (b) of

²⁷ 47 C.F.R. § 51.405(b).

the Act.”²⁸ Indeed, as the National Broadband Plan observes, “[b]asic interconnection regulations” have been “a central tenet of telecommunications regulatory policy for over a century.”²⁹ In fact, the FCC places such a heavy presumption in favor of compliance with Section 251(b) requirements that Star is required pursuant to Section 51.715 of the FCC’s rules to fulfill “interim transport and termination” obligations *even in the absence* of a negotiated or arbitrated interconnection agreement.³⁰ Accordingly, a petition under Section 251(f)(2) is required to make a detailed showing of “particular burden or harm related to a[] particular obligation of Section 251(b)” in order “to be both cognizable under Section 251(f)(2) and consistent with the FCC’s construction of the federal Act.”³¹

Star’s Petition seeks blanket protection from “competition” but fails to identify any specific harms flowing from compliance with any of the discreet duties set forth in Section 251(b). Its public interest arguments likewise are untethered from those duties. Star therefore

²⁸ *CRC Declaratory Ruling* ¶ 2.

²⁹ Omnibus Broadband Initiative, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, at 49 (2010).

³⁰ 47 C.F.R. § 51.715 (emphasis supplied).

³¹ *Petition for Suspension or Modification of the Application of Requirements of 47 U.S.C. § 251(b) and (c) pursuant to 47 U.S.C. § 251(f)(2) regarding CRC Communications of Maine, Inc.’s Request et al.*, Recommended Decision, Docket Nos. 2011-294 *et al.*, at 19 (rel. Feb. 10, 2012) (“Maine Recommended Decision”); *see also, e.g., Tennessee Coalition of Rural Telephone Companies and Cooperatives Request for Suspension of Wireline to Wireless Number Portability Obligations Pursuant to § 251(f)(2) of the Communications Act of 1934, as Amended*, Order Denying Amended Petition and Establishing Dates for Implementation of Local Number Portability, No. 03-00633, 2005 Tenn. PUC LEXIS 255, at *32 (Tenn. Reg. Auth. Sept. 6, 2005) (“*Tennessee LNP Order*”) (“Section 251 of the Act ... require[s] more than the anecdotal and general policy statements contained in this record.”); *Petition of Ronan Telephone Company for Suspension of Provisions of the 1996 Telecommunications Act, pursuant to 47 U.S.C. § 251(f)(2) and 253(b)*, No. D99.4.111, 1999 Mont. PUC LEXIS 83, at *30 (Mont. Pub. Serv. Comm’n Nov. 2, 1999) *aff’d*, *Petition of the Ronan Telephone Company for Suspension of Provisions of the 1996 Telecommunications Act, pursuant to 47 U.S.C. § 251(f)(2) and 253(b)*, Order on Reconsideration, Order Denying Petition and Closing Docket, Docket No. D99.4.111 (Mont. Pub. Serv. Comm’n Dec. 27, 1999) (“*Montana Order*”) (“A petitioner asking for an unlimited exemption from the requirements of the Act would have an extremely difficult, if not impossible, burden before this Commission.”).

fails to provide more than “mere[] conclusory, unwarranted deductions of fact, [and] unreasonable inferences.”³² Accordingly, the NCREA should dismiss Star’s Petition for failure to state a claim upon which relief may be granted under the applicable federal standard.

A. Star Fundamentally Misconstrues Section 251(f)(2) and the Relief It Authorizes.

The plain language of Section 251(f)(2) makes clear that merely alluding to competition-related burdens and seeking a blanket exemption from whatever may be included in a request for an interconnection agreement is insufficient to make the required showing. Rather, suspension or modification may be sought only from a particular “requirement or requirements of subsection (b) or (c).”³³ And suspension or modification is justified only “to the extent that” the Commission finds “such suspension or modification”—of the particular requirement or requirements in question—satisfies the appropriate legal standard.³⁴ Accordingly, as discussed in more detail below, Star must, to avoid dismissal, allege how each specific provision of Section 251(b) that purportedly warrants suspension satisfies the relevant legal standard.

Star repeatedly states that its Petition seeks to suspend or modify its Section 251 obligations “as a consequence of the various interconnection arrangements sought by TWCIS.”³⁵ However, Section 251(f)(2) requires the petitioning carrier to plead a claim for suspension or modification of specific Section 251(b) duties; the statute does not authorize a carrier to obtain a

³² *Strickland v. Hendrick*, 194 N.C. App. 1, 20 (N.C. Ct. App. 2008) (citing *Good Hope Hosp., Inc. v. N.C. Dep’t of Health & Human Servs.*, 174 N.C. App. 266, 274, 620 S.E.2d 873, 880 (N.C. Ct. App. 2005)).

³³ 47 U.S.C. § 251(f)(2).

³⁴ *Id.*

³⁵ Petition at 8; *see also id.* at 9 (“as a consequence of the interconnection requested by TWCIS”; *id.* at 12 (“interconnection sought by TWCIS”); *id.* at 13 (“facts and circumstances relevant to TWCIS’s request for interconnection arrangements”); *id.* at 14 (“the Section 251(b) interconnection arrangements sought by TWCIS”); *id.* at 15-16 (“requirements of 47 USC § 251(b) and (c) implicated by TWCIS’s request for interconnection”).

general exemption from negotiating an interconnection agreement, as Section 251(f)(1) allows. Tellingly, Star maintains that findings in a Section 251(f)(1) proceeding somehow warrant relief from Section 251(b), even though the rural exemption applies *only* to the separate duties of Section 251(c). Indeed, Star asserts that, based on the recommended decision issued in *Sprint v. Star*—a preliminary ruling now under review as a result of the *CRC Declaratory Ruling*³⁶—the Authority should treat Section 251(f)(2) as an alternative means of exempting it from all forms of facilities-based competition.³⁷ This and similar assertions, mischaracterize the relevant statutory requirements at issue in this proceeding. Those requirements proceed from the premise that interconnection and the exchange of traffic are universally required, and thus represent the *opposite* of the “rural exemption” provided by Section 251(f)(1).

Consistent with the text of Section 251(f)(2), state commissions have uniformly rejected attempts to convert Section 251(f)(2) into a generalized “rural exemption” from Section 251(b) duties. Indeed, no state commission has ever granted the type of indefinite exemption from all of Section 251(b) pursuant to Section 251(f)(2), as Star appears to seek here. State commissions consistently have rejected rural carriers’ demands for such “blanket exemptions.”³⁸ And in those

³⁶ See *Petition of Sprint Communications Company L.P. For Arbitration of an Interconnection Agreement With Star Telephone Membership Corporation Pursuant to Sections 251(a), (b) and 252 of the Communications Act of 1934, as Amended*, Order, Docket No. TMC-5, Sub-2 (rel. Jan. 31, 2012) (directing Sprint and Star “to file supplemental briefs ... on the effect ... of the [*CRC Declaratory Ruling*]”) (“Sprint Recommended Decision”).

³⁷ See Petition at 10-12 (characterizing the Petition as “not the first time” the Authority has been asked to address the competitive impact of “Time Warner Cable’s offering of its ‘Digital Home Phone’ and ‘Business Class Phone’ products in Star TMC’s service territory”).

³⁸ *Application and Petition of The Western Reserve Telephone Company in Accordance with Section II.A.2.D of the Local Service Guidelines*, Nos. 99-1542-TP-UNC, 00-430-TP-UNC, 2000 Ohio PUC LEXIS 310, at *12 (Pub. Utils. Comm’n of Ohio May 18, 2000) (“The Commission is not inclined to consider granting such a blanket exemption and delay the ability of the petitioners’ customers to gain access to competitive telecommunications services as the petitioners propose.”); see also *Montana Order at *34; Woodhull Community Telephone Company: Petition for suspension of rural carriers of Section*

instances where state commissions have granted any sort of relief pursuant to Section 251(f)(2), they generally have done so only for a brief period of time, in connection with specific requirements, and for the purpose of permitting the requesting rural carrier to undertake certain steps it demonstrated were necessary to facilitate compliance.³⁹ Critically, these state commissions made clear that they were *not* providing protection from competition, but rather sought to enable it.

This Section 251(f)(2) precedent contrasts starkly with rural exemption cases under Section 251(f)(1). As an initial matter, while Section 251(f)(1) provides for a continuing exemption from Section 251(c) obligations, Section 251(f)(2) plainly authorizes only temporary relief, if any. Indeed, as the Montana Public Service Commission held in rejecting a request for relief based on the petitioning carrier's assertion that competition would result in a "death spiral," "[t]he word 'duration' is important, because it implies that any [suspension] granted from the requirements of § 251(b) and (c) should be *finite and limited*, not indefinite."⁴⁰ That commission accordingly determined that "[a] petitioner asking for an unlimited exemption from the requirements of the Act would have an extremely difficult, if not impossible, burden before this Commission."⁴¹

251(b) and (c) of the Federal Telecommunications Act of 1996, No. 96-0146 *et al.*, 1996 Ill. PUC LEXIS 445, at *25, 37 (Ill. Commerce Comm'n Sept. 5, 1996).

³⁹ See, e.g., *Request of Belmont Telephone Company for Approval of Its Plan to Implement IntraLATA Dialing Parity, Pursuant to 47 U.S.C. § 251(b)(3)*, No. 450-TI-101, 1999 Wisc. PUC LEXIS 174 (Pub. Serv. Comm'n of Wis. June 17, 1999) (granting 180-day extension to allow 860-line telephone company more time to plan and implement dialing parity change); *Avista Communications of Idaho, Inc.'s Petition for Temporary Local Number Portability Relief Pursuant to 47 U.S.C. § 251(f)(2)*, No. AVC-T-00-1, 2000 Ida. PUC LEXIS 78 (Idaho Pub. Utils. Comm'n Mar. 23, 2000) (granting short extension to obligation to implement local number portability to allow for installation of new switch).

⁴⁰ See *Montana Order* at *12, *29-30 (emphasis supplied).

⁴¹ *Id.* at *30.

Moreover, in contrast to the decisions of state commissions that relied on the adverse effects of competition for rural LECs in upholding the rural exemption from Section 251(c) obligations pursuant to Section 251(f)(1),⁴² Section 251(f)(2), as explained above, is intended to permit suspension or modification only of discrete obligations that pose particular implementation challenges. Most recently, the Maine Public Utilities Commission (“MPUC”) voted to adopt a Recommended Decision to dismiss the suspension/modification petitions filed by a group of rural LECs, concluding that evidence of competitive harm that may have been sufficient to warrant retaining the rural exemption from complying with “the heightened pro-competitive requirements set forth in Section 251(c)” cannot be sufficient, as a general matter, to satisfy the legal standard of Section 251(f)(2) with respect to the universally applicable Section 251(b) requirements.⁴³ Indeed, the MPUC agreed that the Hearing Examiner appropriately rejected the conclusory assertion “that ruinous competition will be the result [of] an interconnection agreement,” based on the finding that such a claim was “unmoored from any *particular* burden or harm related to any *particular* obligation of Section 251(b).”⁴⁴ In adopting the Maine Recommended Decision, the MPUC therefore determined that the rural LECs’ suspension/modification petitions were “far too generalized to be both cognizable under Section 251(f)(2) and consistent with the FCC’s construction of the federal Act.”⁴⁵

⁴² See, e.g., *Midcontinent Communications/Mo. Valley Communications, Inc. Rural Exemption Investigation; Mo. Valley Communications, Inc. Suspend/Modify Interconnection Requirements Application*, Findings of Fact, Conclusions of Law, and Order, Nos. PU-08-61, PU-08-176, at 30 (Oct. 8, 2008), *aff’d Midcontinent Commc’ns v. North Dakota Pub. Serv. Comm’n*, Case No. 1:09-cv-017, Order Denying Plaintiff’s Motions and Granting Defendant Missouri Valley Communications Motion for Summary Judgment (D. N.D. Apr. 15, 2010).

⁴³ Maine Recommended Decision at 18-19.

⁴⁴ *Id.* at 19 (emphasis supplied).

⁴⁵ *Id.*

B. The Petition Does Not Remotely Justify Relief From Any Particular “Requirement” Under Section 251(b).

Star’s fundamental disregard of the governing statutory standard warrants dismissal of its Petition in this case. Star makes no effort to allege facts in support of the broad suspension it seeks, other than to list the requirements of Section 251(b) and assert, without more, that these obligations “individually and collectively” would cause harm by “facilitat[ing] the offering of Time Warner Cable’s ‘Digital Home Phone’ and Business Class Phone’ service in Star TMC’s service area.”⁴⁶ As discussed below, such bare allegations do not come close to stating a claim capable of surviving dismissal with respect to *any* Section 251(b) obligation.

Number Portability. Section 251(b)(2) requires LECs to provide number portability to competitive carriers so that customers have the ability to keep the same telephone number when changing providers.⁴⁷ The Petition fails to explain why continuing to comply with number portability obligations pursuant to Section 251(b)(2) would impose any economic burden—much less an *undue* economic burden—or why suspension of that requirement would be consistent with the public interest. Other state commissions have refused to grant requests under Section 251(f)(2) when the requesting carrier fails to provide evidence relating to the specific “requirements” at issue.⁴⁸ For example, the Tennessee Regulatory Authority (“TRA”) denied a

⁴⁶ Petition at 8.

⁴⁷ 47 U.S.C. § 251(b)(2) (“The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”). Star’s Petition does not seek suspension or modification of the first requirement under Section 251(b), *see* Petition at 7-8, which requires Star to permit resale of its telecommunications services. *See* 47 U.S.C. § 251(b)(1).

⁴⁸ *See, e.g., Tennessee LNP Order; Cambridge Telephone Company et al. Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under §251(b) and (c) of the Federal Telecommunications Act, pursuant to § 251(f)(2) of that Act*, Order, Nos. 05-0259-0265, 0270, 0275, 0277, 0298, 2005 Ill. PUC LEXIS 379, at *36-37 (deferring consideration of the LECs’ requests for suspension/modification of §§ 251(b)(2) and (5) after considering and dismissing the applicability of § 251(f)(1) to Sprint’s requests under §251(a) and (b), because “the Commission does not

request for suspension of a group of carriers' local number portability obligation, noting their failure to submit detailed cost data and financial impact analyses.⁴⁹ The TRA stated that "Section 251 of the Act and the Authority's instructions to file company-specific data require more than the anecdotal and general policy statements contained in this record."⁵⁰

Moreover, Star concedes that it competes with CMRS carriers, among other entities.⁵¹ Because the FCC's number portability rules extend to intermodal competition between wireline and wireless carriers—and Star thus is required to support number portability irrespective of whether it competes with TWCIS (NC)—the notion that suspending the requirement is "necessary" within the meaning of Section 251(f)(2) is implausible on its face.⁵² Indeed, Star has acknowledged that it possesses the technical capability to port numbers by admitting in discovery that it has fulfilled at least one number portability request from a CMRS carrier.⁵³ A blanket suspension of Section 251(b)(2) would risk undercutting existing competition with

have sufficient information" and instead requiring that the suspensions "be addressed in the newly-initiated arbitration" proceeding).

⁴⁹ *Tennessee LNP Order* at *32; *see also id.* (finding that the Tennessee carriers "did not carry [their] burden to demonstrate that the users of telecommunications services would suffer significant adverse economic impact or that the LNP implementation requirement is unduly economically burdensome" because the costs of LNP implementation could be covered using "extremely reasonable" customer surcharges and "[t]here was no quantifiable showing demonstrating that the LNP surcharges are not just and reasonable or that the assessment of such is not financially viable").

⁵⁰ *Id.*

⁵¹ Petition at 6 (admitting that Star faces competition from other telecommunications providers, which presently consist largely of inter-modal providers such as commercial mobile radio service providers offering wireless service, and nomadic Voice over Internet Protocol ... service providers (such as Vonage, MagicJack, etc.)).

⁵² *See generally Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (first establishing intermodal porting obligations); *see also Telephone Number Portability for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 ¶¶ 50-51 (2007) (requiring small wireline carriers to provide intermodal LNP).

⁵³ *See* Star Response to TWCIS (NC) Data Request No. 29 (filed May 25, 2010).

wireless carriers. Alternatively, if Star seeks suspension only vis-à-vis TWCIS (NC), it has offered no evidence that the public interest would be served by barring facilities-based wireline competition when alternative forms of competition already exist.⁵⁴ To the contrary, it would turn congressional intent on its head to discriminate against TWCIS (NC) (vis-à-vis other competitors) on the ground that it seeks to invoke basic interconnection rights necessary to enable facilities-based competition, given that Congress's fundamental goal in the 1996 Act was to promote the development of such facilities-based competition.⁵⁵

Dialing Parity. Section 251(b)(3) requires LECs to provide dialing parity—*i.e.*, functionality that permits a LEC's customers to call a competitive carrier's customers, and visa-versa, without impediment or delay, in addition to providing nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing.⁵⁶ Star does not specify which of these particular obligations it seeks relief from nor does it even allege, much less demonstrate, why its obligation to provide dialing parity pursuant to Section 251(b)(3) imposes any particular burden (beyond the generalized burden of having to compete). Nor does

⁵⁴ In an analogous context, the New Hampshire PUC recently noted that “determining whether a competitor's entry will be for the public good requires the Commission to consider the interests of competition” and concluded that denying competitive entry because it “would negatively affect the RLEC's opportunity to earn a return ... could lead to the absurd result that inept competitors would be provided the opportunity to compete directly with an RLEC ... while adept competitors ... would be barred from competing.” *CLEC Registrations Within RLEC Exchanges*, Order on the Merits, DT 10-183, at 28-29 (N.H. Pub. Utils. Comm'n Oct. 21, 2011). The PUC thus held that “[t]he threat of financial harm cannot serve to deny entry to competitors,” as “[i]t would not promote competition, for example, for a single competitor to be allowed entry but subsequent competitors rejected because their combined presence could have a greater impact on the incumbent.” *Id.* at 29-30.

⁵⁵ See *Verizon Cal. v. FCC*, 555 F.3d 270, 274 (D.C. Cir. 2009) (“*Verizon Cal.*”) (readily accepting the FCC's reading of the 1996 Act “as having the promotion of facilities-based local competition as its fundamental policy”); see also *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 576 (D.C. Cir. 2004) (“After all, the purpose of the [1996] Act ... is to stimulate competition—preferably *genuine, facilities-based competition*”) (emphasis supplied).

⁵⁶ 47 U.S.C. § 251(b)(3) (“The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.”).

it attempt to justify relief from the obligations to provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings—all of which also must be provided pursuant to Section 251(b)(3). In fact, Star does not even mention these additional duties. And again, because Star must provide these functions with respect to the wireless carriers it competes against,⁵⁷ a blanket suspension would risk undermining that competition. In addition, if Star is seeking suspension only vis-à-vis TWCIS (NC), it would make no sense to assert that the same functions provided to competing wireless carriers warrant suspension when requested by TWCIS (NC).

Access to Rights-of-Way. Section 251(b)(4) requires LECs to provide competitive carriers with access to poles and rights-of-way.⁵⁸ Nothing in Star's Petition remotely provides a basis for suspending Star's obligation to provide access to poles, ducts, conduits, and rights-of-way on rates, terms, and conditions that are consistent with Section 224. While it remains unclear in the absence of negotiations between TWCIS (NC) and Star regarding specific interconnection arrangements (and in the absence of arbitration proceedings) whether TWCIS (NC) would need to invoke these rights, the fact remains that Star has failed to allege any facts that would justify any suspension of Section 251(b)(4). Again, the Petition does not come close to justifying either a blanket suspension or any type of TWCIS (NC)-specific suspension.

⁵⁷ See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 ¶ 68 (1996) (rejecting the argument "that the §251(b)(3) dialing parity requirements do not include an obligation to provide dialing parity to CMRS providers" (subsequent history omitted)).

⁵⁸ 47 U.S.C. §251(b)(4) ("The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.")

Reciprocal Compensation. Section 251(b)(5) requires Star to “establish reciprocal compensation arrangements for the transport and termination of telecommunications.”⁵⁹ This provision ensures that both carriers have a mechanism for recovering the costs incurred by them for terminating traffic originated by the other. Star’s Petition fails to supply any grounds for suspending its core duty to provide for reciprocal compensation—it does not allege that this obligation imposes any particular burden, nor does it identify any specific aspect of this requirement from which it is seeking relief.

As the FCC has squarely held, the Act defines “telecommunications” expansively.⁶⁰ The term’s “scope is not limited geographically (‘local,’ ‘intrastate,’ or ‘interstate’) or to particular services (‘telephone exchange service,’ ‘telephone toll service,’ or ‘exchange access’).”⁶¹ As a result, the FCC determined that Section 251(b)(5) encompasses *all* voice traffic, whether local or toll, wireline or wireless.⁶² Given the broad scope of the provision, a blanket exemption from Section 251(b)(5) could be read as an authorization for Star to block any telecommunications traffic originated by any telecommunications carrier—or at a minimum by any customers of TWCIS (NC). To TWCIS (NC)’s knowledge, no state commission has ever endorsed such a

⁵⁹ 47 U.S.C. § 251(b)(5).

⁶⁰ *Id.* § 153(43) (“The term ‘telecommunications’ means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”).

⁶¹ *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 ¶ 8 (2008) (citations omitted); *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.*, FCC 11-161, at ¶¶ 761-62 (rel. Nov. 18, 2011) (“*CAF Order*”).

⁶² See *CAF Order* ¶¶ 761-62.

radical outcome, and the FCC consistently has held that call-blocking is anticompetitive and contrary to the public interest.⁶³

Even if Star's suspension request is read in a narrower fashion, in the context of its recent comprehensive reform of the intercarrier compensation system, the FCC has specifically cautioned state commissions against suspending or modifying Section 251(b)(5) obligations, stating that it would be "highly unlikely" that any such suspension or modification could satisfy the public interest prong of Section 251(f)(2).⁶⁴ In light of that precedent, even if Star's Petition had requested suspension of some specific aspect of its reciprocal compensation obligation, the NCREA could not reasonably find that suspending Section 251(b)(5) is "consistent with the public interest, convenience, and necessity" as required under Section 251(f)(2).

TWCIS (NC) has identified two instances where a state commission has granted any relief under Section 251(f)(2) that implicates Section 251(b)(5), and those limited suspensions are readily distinguishable from the blanket suspensions that Star seeks here. Specifically, two commissions—one of which was the North Carolina Utilities Commission ("NCUC")—granted temporary relief from the requirement to perform TELRIC studies to set reciprocal compensation rates.⁶⁵ But those suspensions were based on the concrete burdens of undertaking cost studies,⁶⁶

⁶³ See *id.* ¶¶ 734, 973-74 (emphasizing the importance of the FCC's longstanding prohibition on call blocking and making clear that the prohibition includes call blocking with respect to VoIP-PSTN traffic); *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling, CC Docket No. 01-92, WC Docket No. 07-135, at ¶¶ 11-12 (WCB rel. Feb. 6, 2012) (reaffirming the principle that blocking telecommunications service traffic violates Sections 201 and 202 of the Act).

⁶⁴ CAF Order ¶ 824.

⁶⁵ See *Petition of Rural Telephone Companies for Modification Pursuant to 47 U.S.C. § 251(f)(2)*, Order Granting Modification Under § 251(f)(2), Docket No. P-100, Sub 159, 2006 NC PUC LEXIS 213 (N.C. Utils. Comm'n March 8, 2006) ("*North Carolina Modification Order*"); *Petition of the Tennessee Rural Independent Coalition for Suspension and Modification Pursuant to 47 U.S.C. § 251(f)(2)*, Order Granting Suspension of Requirement To Utilize TELRIC Methodology in Setting

and, critically, they did *not* interfere with those rural carriers' obligation to negotiate interconnection agreements as a general matter.⁶⁷ Rather the LECs in question remained bound by their obligations pursuant to Sections 251(a) and (b); they simply complied with those obligations without calculating TELRIC rates. In fact, the NCUC granted the suspension in part because reasonable alternatives to TELRIC studies existed.⁶⁸ In so doing, the NCUC implicitly acknowledged the need to ensure the LECs' continued compliance with the remaining obligations of Section 251, even when a limited suspension was found to be appropriate.

By the same token, the Tennessee commission distinguished among different requirements of Section 251(b) based on the impact any suspension or modification would have on consumers and the ability of other voice providers to enter the marketplace. In particular, the TRA granted a limited suspension of carriers' obligations to perform TELRIC studies under Section 251(b)(5) because such suspension "does *not* involve a service provided to consumers at all" or "any requirement to provide a service to an interconnecting carrier."⁶⁹ In sharp contrast,

Transport and Termination Rates, Docket No. 06-00228, 2008 Tenn. PUC LEXIS 112 (Tenn. Reg. Auth. June 30, 2008) ("*Tennessee Suspension Order*").

⁶⁶ See *North Carolina Modification Order* at *8 (summarizing the North Carolina rural LECs arguments that "the imposition of a TELRIC requirement would impose both undue financial burdens, in terms of the direct cost, and operational burdens, in terms of the personnel and resources that would have to be diverted"); *Tennessee Suspension Order* at *22 (noting that the Tennessee rural LECs presented evidence of the "quantifiable costs associated with preparing and defending the TELRIC studies" and "the operational burden which would result from the necessary use of managerial and employee resources to undertake such studies").

⁶⁷ See *North Carolina Modification Order* at *3 (noting the North Carolina's existing interconnection agreements with the CMRS provider parties); *Tennessee Suspension Order* at *37-38 (noting that "[TELRIC] studies are [not] the exclusive avenue for promoting competition" because the Tennessee rural LECs would "continue productive negotiations" toward interconnection arrangements with the CMRS providers and that suspension of the obligation to utilize TELRIC methodology "may in fact promote the expansion of end-user services and technology" by resolving a major dispute between the parties).

⁶⁸ See *North Carolina Modification Order* at *34-35 (granting suspension based on reasons advanced by rural LECs, one of which focused on available alternatives to TELRIC studies).

⁶⁹ *Tennessee Suspension Order* at *27 (emphasis supplied).

the TRA explained that it denied a previous request by the Tennessee LECs to suspend implementation of their obligation to provide local number portability pursuant to Section 251(b)(2),⁷⁰ because granting the request would have “delay[ed] a service from which end users would receive a tangible benefit.”⁷¹ Viewed from the perspective of this case, Star’s Petition plainly seeks to block competitive entry as a general matter and thus deny North Carolina consumers “a tangible benefit.” As a result, TRA’s analysis indicates that any suspension of Star’s Section 251(b) duties is inappropriate.

* * *

In short, the NCREA should dismiss Star’s Petition because it ignores the relevant statutory standard and does not attempt to show that any specific “requirement” results in an undue economic burden, or that its suspension would serve the public interest. Because Star already must comply with Section 251(b) in competing with CMRS carriers, and those bedrock requirements have been found vital to advancing the public interest, Star’s Petition does not—and cannot—justify suspension of any statutory requirement.

C. The Preliminary Findings From the Sprint Rural Exemption Proceeding Are Insufficient As a Matter of Law to Justify Suspension of Any Obligation Under Section 251(b).

Rather than attempting to make the kind of showing required by Section 251(f)(2), Star seeks a shortcut: It wants to bootstrap the Arbitrator’s preliminary findings from Sprint’s rural exemption proceeding involving Star into a basis for suspending its obligations to interconnect with TWCIS (NC) under Section 251(b).⁷² That gambit fails for several different reasons.

⁷⁰ See generally *Tennessee LNP Order*, *supra*.

⁷¹ *Tennessee Suspension Order* at *27.

⁷² See Petition at 12 (requesting suspension/modification “[b]ased on the finding[s]” in the Sprint Recommended Decision).

First, to justify application of the preliminary findings of the Sprint Recommended Decision against TWCIS (NC) in this proceeding, Star bears the burden of demonstrating that those findings should have preclusive effect. It is well settled that the doctrine of issue preclusion (or collateral estoppel) only applies where (i) there is a “final and valid judgment” (ii) “resulting from a prior proceeding in which the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue,” among other factors.⁷³ The Sprint Recommended Decision fails to meet either requirement. As an initial matter, the Sprint Recommended Decision is not a “final and valid judgment,” it is only a recommendation and, as noted above, is currently under review as a result of the FCC’s *CRC Declaratory Ruling*, which casts significant doubt on the validity of its preliminary findings. Moreover, TWCIS (NC) is not a party to Sprint’s rural exemption proceeding and thus has had *no* opportunity—much less a “full and fair opportunity”—to litigate the undue economic burden issue in that proceeding.

Likewise, whereas Sprint had the burden of proof in its rural exemption proceeding with Star, *Star* has the burden of proof under Section 251(f)(2). The divergent allocation of the burden of proof under Sections 251(f)(1) and 251(f)(2) also is critical to the issue of issue preclusion. Under both North Carolina and federal law, an issue determined in an earlier case in which one party has the burden of proof does not have preclusive effect in a subsequent case in which the burden of proof rests with the other party.⁷⁴ That precedent confirms the proposition that Sprint’s failure to demonstrate the *absence* of an undue economic burden does not mean that

⁷³ *McHan v. C.I.R.*, 558 F.3d 326, 331 (4th Cir. 2009) (internal quotation marks omitted); *see also Cobb v. Pozzi*, 363 F.3d 89, 113-14 (2d Cir. 2004); *Wiggins v. Rhode Island*, 326 F. Supp. 2d 297, 307-08 (D.R.I. 2004).

⁷⁴ *See, e.g., McHan*, 558 F.3d at 331-32 (citing the Restatement (Second) of Judgments §28(4), which disallows the use of collateral estoppel when “the party against whom the doctrine is invoked had the burden [of persuasion] in the first proceeding, but the party seeking to invoke the doctrine has the burden in the second proceeding”); *In re Kane*, 254 F.3d 325, 328 (1st Cir. 2001) (same); *Tsoras v. Manchin*, 2010 U.S. Dist. LEXIS 33210 (N.D.W.V. 2010) (same).

Star would in fact suffer an undue economic burden, just as a “not guilty” verdict in a criminal case does not mean that the defendant is actually innocent. Although Star asserts that the findings of the Sprint Recommended Decision should be applied here,⁷⁵ it does not cite any contrary authority that would justify the Authority’s departure from this basic legal principle.

Second, Sprint’s rural exemption proceeding under Section 251(f)(1) and Star’s suspension/modification Petition under Section 251(f)(2) involve distinct statutory obligations. The Section 251(f)(1) proceeding concerns Sprint’s efforts to lift Star’s continuing exemption from complying with the obligations imposed on incumbent LECs under Section 251(c), which are the most onerous obligations contained in Section 251. In stark contrast, the baseline for *all* LECs is that Section 251(b) is fully applicable. As noted above, the FCC has determined that compliance with the obligations of Section 251(b)(5) is so fundamental that its rules provide for interim transport and termination arrangements pending negotiation and/or arbitration of interconnection agreements.⁷⁶ Specifically, Star is required to “provide transport and termination of telecommunications traffic *immediately* under an interim arrangement, pending resolution of negotiation or arbitration” of an interconnection agreement pursuant to Sections 251 and 252.⁷⁷

Third, as explained above, the legal standard under Section 251(f)(2) is not the same as that under Section 251(f)(1). Star has the affirmative obligation to demonstrate that complying with any “requirement or requirements” of Section 251(b) will impose an undue economic burden. Yet the Arbitrator was not required to make any such determination in the Sprint

⁷⁵ See Petition at 11-12.

⁷⁶ 47 C.F.R. § 51.715.

⁷⁷ *Id.* § 51.715(a) (emphasis supplied). The FCC’s rule provides additional guidance regarding the manner in which Star is to comply with its interim transport and termination obligations. *See, e.g., id.* § 51.715(b), (d) (providing for “symmetrical rates” during the interim period and directing state commissions to require carriers to true up their accounts to “allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equaled the rates later established by the state commission”).

Recommended Decision regarding the impact on Star of complying with any duty set forth in Section 251(b). Star strays even farther afield in claiming entitlement to relief under Section 251(f)(2)(A)(i); it argues that the Sprint Recommended Decision “also supports a finding here that the interconnection sought by TWCIS (NC) would cause ‘a significant adverse economic impact on users of telecommunications services generally.’”⁷⁸ It is simply false that the Arbitrator made any “findings” regarding the meaning or application of that prong of the Section 251(f)(2) standard.

Moreover, Star must satisfy its burden of proof with respect to an additional criterion that the Arbitrator did not consider under Section 251(f)(1): whether the suspension of its Section 251(b) obligations would be “consistent with the public interest, convenience, and necessity.”⁷⁹ Even apart from the fact that the parties and the Arbitrator addressed only Section 251(c) obligations in the Sprint rural exemption proceeding, the Sprint Recommended Decision gives no consideration to the pro-competitive *benefits* of Sprint’s planned entry in that proceeding and thus severely limits the significance of those prior findings even in the unlikely event the NCREA were to adopt them. As the FCC has recognized, the public interest weighs decidedly in favor of *applying* Section 251(b) to all LECs, rather than establishing suspensions or exemptions.⁸⁰

The relevant precedent makes clear that enforcing the pro-competitive duties in Section 251(b)—including in particular in rural areas—is consistent with the public interest and that any

⁷⁸ Petition at 12.

⁷⁹ 47 U.S.C. § 251(f)(2)(B).

⁸⁰ See *CAF Order* ¶ 824.

blanket suspension would contravene that interest.⁸¹ The FCC specifically determined that the public interest is strongly advanced by enforcing the rights TWCIS (NC) have invoked in its request to negotiate interconnection agreements implementing Section 251(b). The FCC explained that requiring incumbent LECs to interconnect and exchange traffic “will promote competition and spur investment ... *particularly in rural areas*, by encouraging the deployment of facilities-based voice services.”⁸² As a result, unlike the rural exemption provision, there can be no dispute that the “fundamental policy” of Sections 251(a) and (b) is to open local telecommunications markets and “the promotion of facilities-based local competition.”⁸³ Star ignores the compelling public interest benefits of that fundamental policy.⁸⁴ Those benefits, which have been recognized by Congress and the FCC, are dispositive of the public interest prong under Section 251(f)(2) and warrant dismissal of the Petition.

In light of the key differences between Sections 251(f)(1) and 251(f)(2), it would constitute clear error to suspend any requirement under Section 251(b) based on the Sprint Recommended Decision.⁸⁵ Star cannot rely on the “undue burden” aspects of the preliminary analysis in that case given that no final judgment has been rendered in that case and, in any event, TWCIS (NC) is not a party to that proceeding. In addition, Section 251(f)(2) entails a different burden of proof and authorizes suspension of entirely different statutory requirements

⁸¹ See, e.g., *Montana Order* at *30 (“A petitioner asking for an unlimited exemption from the requirements of the Act would have an extremely difficult, if not impossible, burden before this Commission.”).

⁸² *CRC Declaratory Ruling* ¶ 1 (emphasis supplied).

⁸³ *Verizon Cal.*, 555 F.3d at 274 (D.C. Cir. 2009).

⁸⁴ Petition at 14 (asserting incorrectly that the “paramount public interest concern at stake in any proceeding under Section 251(f)(2) is the protection of universal service, which is synonymous with the public interest”).

⁸⁵ See *GTE South, Inc. v. Morrison*, 199 F.3d 733, 742 (4th Cir. 1999) (applying *de novo* review to NCREA’s interpretations of the Telecommunications Act). *Duncan*, 656 F. Supp. 2d at 574 (same).

(i.e., those duties set forth in Section 251(b), rather than Section 251(c) alone). Nor can Star satisfy the public interest prong under Section 251(f)(2), because the public interest plainly is served by continued enforcement of Section 251(b) requirements, rather than any type of suspension. Accordingly, Star's Petition should be dismissed.

II. THE AUTHORITY IS REQUIRED TO COMPLY WITH FEDERAL STATUTORY DEADLINES FOR COMPLETING ARBITRATION OF AN INTERCONNECTION AGREEMENT BETWEEN TWCIS (NC) AND STAR

A. The NCREA Should Direct the Arbitrator To Adopt an Expedited Procedural Schedule in This Proceeding To Ensure That Arbitration Concludes within 135 Days of Its Final Decision.

Regardless of the disposition of Star's Section 251(f)(2) Petition, the Arbitrator has a statutory duty to proceed with the arbitration proceeding. The NCREA has a federal statutory obligation to arbitrate an interconnection agreement "not later than 9 months after the date" on which Star first received TWCIS (NC)'s request to interconnect and exchange local traffic.⁸⁶ In addition, the Act compels the Authority to conclude arbitration approximately 135 days after receiving TWCIS (NC)'s petition for arbitration.⁸⁷ Due to the unusual procedural posture of this proceeding, discussed above, calculating the applicable deadlines entails more complexity than in most arbitration proceedings. TWCIS (NC) considers the date of the Final Decision directing the Arbitrator to commence arbitration in this case—January 31, 2012—to be the most

⁸⁶ 47 U.S.C. § 252(b)(4)(C).

⁸⁷ See *id.* § 252(b)(1) (requiring that a petition for arbitration be filed "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation"). Nine calendar months equal approximately 270 days, which dictates that, in order to comply with Section 252(b)(4)(C), a state commission is required to complete arbitration of interconnection agreements within 135 days after receiving a petition for arbitration pursuant to Section 252(b)(1). *Id.* §§ 252(b)(4)(C), 252(b)(1).

appropriate date on which to restart the arbitration clock. By this measure, Section 252 requires that the NCREA “conclude the resolution of any unresolved issues” by June 15, 2012.⁸⁸

TWCIS (NC) also believes that this deadline requires the adoption of an expedited arbitration schedule in this matter. TWCIS (NC) already has submitted such a schedule to the Arbitrator. TWCIS (NC)’s proposed schedule represents a reasonable approach to ensure timely completion of this proceeding. Indeed, the proposed schedule is consistent with schedules adopted by the NCUC in analogous proceedings, including the procedural schedule currently being followed in TWCIS (NC)’s arbitration with Pineville Telephone Company.⁸⁹ To the extent that arbitration of an interconnection agreement between TWCIS (NC) and Star is not complete by June 15, 2012, TWCIS (NC) reserves its right to seek preemption of the NCREA pursuant to Section 252(e)(5).⁹⁰

B. Section 251(f)(2) Does Not Authorize Suspension of the Statutory Deadline for Completing Arbitration Proceedings Commenced Under Section 252(b).

Star is incorrect in suggesting that the NCREA may suspend the Section 252 arbitration proceeding prior to addressing its Section 251(f)(2) Petition. Although its Petition is unclear on this point, it appears that Star would have the NCREA adopt a bifurcated process whereby its Section 251(f)(2) Petition would be addressed first, followed by arbitration of an interconnection agreement.⁹¹ Star offers no legal support for its preferred approach, and there is none.

⁸⁸ *Id.* § 252(b)(4)(C).

⁸⁹ See NCUC Docket No. P-1262, Sub 5 (Petition for Arbitration filed Oct. 26, 2011; hearing originally scheduled for March 20, 2012).

⁹⁰ 47 U.S.C. § 252(e)(5).

⁹¹ See Petition at 15 (asserting that the Authority should “establish a procedural schedule for conducting ... discovery ... and schedule a hearing with regard to th[e] Petition, *prior to moving forward with*” the arbitration process (emphasis supplied)).

A bifurcated procedure such as that previously adopted in this proceeding would be inappropriate in light of the findings in the *CRC Declaratory Ruling*. As discussed above, the FCC has now made clear that network interconnection and the exchange of local telecommunications traffic pursuant to Sections 251(a) and (b) are default universal requirements with which Star is required to comply. Unlike Section 251(c) requirements subject to the rural exemption, compliance is the *rule*, not the exception. Thus, there is no preliminary issue or procedural hurdle for TWCIS (NC) to overcome before it has the right to arbitrate an interconnection agreement; as the Recommended Decision adopted by the NCREA acknowledges, “TWCIS (NC) (NC) has satisfied the only statutory prerequisite to invoke compulsory arbitration by making a bona fide request for interconnection.”⁹²

Furthermore, Section 252—not Section 251(f)(2)—establishes the procedures for arbitration proceedings conducted pursuant to that Section. Although Section 251(f)(2) empowers the NCREA to suspend an incumbent LEC’s *obligations* under Sections 251(b) and (c) while it considers a suspension/modification petition (and based on an appropriate showing by the petitioning party),⁹³ it does not provide any basis for suspending *arbitration proceedings* commenced under Section 252(b). The statutory language makes clear that a state commission has no authority to suspend a Section 252 arbitration proceeding, and any attempt to do so would constitute a “failure to act” under Section 252(e)(5), as noted above.

Accordingly, in the event that the NCREA determines that Star’s Petition should move forward at all, that proceeding cannot be used as a basis to further delay arbitration in this proceeding. Rather, the NCREA should open a separate docketed proceeding to examine the Section 251(f)(2) issues, and that case should move forward in parallel with the parties’

⁹² Recommended Decision at 8.

⁹³ 47 U.S.C. § 251(f)(2).

arbitration of an interconnection agreement. In the alternative, the Authority could adopt a procedure similar to that proposed by the Maine Recommended Decision, according to which the NCREA would “open an arbitration proceeding pursuant to Section 252 of the Act” and “address concrete concerns” of the incumbent LEC, if any, through the arbitration process.⁹⁴

Whatever procedural approach the NCREA chooses, it should not grant Star’s request for interim relief of its Section 251(b) obligations—during the pendency of this Motion, the arbitration proceeding, or Star’s Petition. Indeed, Star’s request for a temporary suspension of its obligations fails based on the same flaws that doom its efforts to obtain indefinite suspension of Section 251(b). Star’s mere filing of a defective Petition for suspension plainly cannot be sufficient to warrant the interim suspension it seeks. Notably, Star provides no additional argument or precedent in support of interlocutory relief. Whether or not the traditional injunctive relief standard applies in these circumstances, any type of “good cause” standard by its nature should entail some inquiry into Star’s likelihood of success on its Petition, the threat of irreparable harm, and the public interest implications of the requested relief. Yet Star makes no showing of any kind that would warrant displacement of the core Section 251(b) duties that Congress intended to apply universally.⁹⁵

C. Section 253(f) Also Provides No Legal Basis To Further Delay Star’s Compliance with Sections 251(a) and (b).

Finally, Star again misconstrues the Act when it asserts that Section 253(f) permits the Authority to relieve Star of its duty to comply with Section 251(b) requirements until such time

⁹⁴ Maine Recommended Decision at 20.

⁹⁵ Indeed, given the FCC’s requirement that incumbent LECs begin exchanging telecommunications traffic “without unreasonable delay” even before entering into a formal interconnection agreement, 47 C.F.R. § 51.715(b), TWCIS (NC) believes that Star could not show that an order *barring* the exchange of local traffic would advance the public policy interests at stake (even apart from its failure to supply any argument or authority in support of such an outcome).

as (i) TWCIS (NC) is designated as a carrier of last resort (“COLR”) or eligible telecommunications carrier (“ETC”) throughout Star’s service area, or (ii) Star is relieved of its state COLR duties.⁹⁶ The language of Section 253(f) is clear: a state commission may “require a telecommunications carrier that *seeks to provide* telephone exchange service or exchange access ... to meet the requirements in section 214(e)(1) ... for designation as an [ETC] for that area *before being permitted to provide* such service.”⁹⁷ Contrary to Star’s suggestion, TWCIS (NC) has not requested, nor does it seek, authorization to provide service in this proceeding. Rather, the sole purpose of *this* proceeding is to arbitrate an interconnection agreement between TWCIS (NC), in keeping with TWCIS (NC)’s rights, and Star’s obligations, under Sections 251 and 252.

Star’s reliance on Section 253(f) in this case thus is misplaced and woefully late. To the extent Star believes that TWCIS (NC)’s operating authority should be conditioned on TWCIS (NC)’s status as an ETC, the time for making such an argument passed in 2003, when TWCIS (NC) received its certificate of public convenience and necessity in North Carolina.⁹⁸ In any event, the NCUC would have placed any such limitations on TWCIS (NC)’s operating authority that it believed to be necessary at that time, but it did not do so.

Star’s suggestion that TWCIS (NC) lacks the requisite authority to operate in areas served by Star as a result of under Section 62-110(f3) of the General Statutes of North Carolina,

⁹⁶ Petition at 15.

⁹⁷ 47 U.S.C. § 253(f) (emphasis supplied).

⁹⁸ Application of Time Warner Cable Information Services for a Certificate of Public Convenience and Necessity to Offer Long Distance Telecommunications Service by a Reseller, Order Granting Certificates, Docket No. P-1262, Sub 0,1 (N.C. Utils. Comm’n, May 16, 2003). Pursuant to the certificate issued by the NCUC, TWCIS (NC) holds statewide operating authority to provide intrastate local exchange and exchange access telephone service throughout the State of North Carolina. *See id.*

is equally untenable.⁹⁹ Indeed, the NCUC Public Staff has made clear its position that the interpretation of Section 62-110(f3) proposed by Star “almost certainly violate[s] section 253 [of the Act] and would be preempted by the FCC if challenged,”¹⁰⁰ and FCC precedent confirms the Public Staff’s conclusion.¹⁰¹ Likewise, Star’s apparent belief that Section 251(f)(2), Section 253(f), or some combination thereof, authorizes the NCREA to require TWCIS (NC) to build out its network to every corner of every Star exchange *before* TWCIS (NC) may exercise its rights to basic interconnection and exchange of local traffic is contrary to settled law and would erect an insurmountable barrier to entry.¹⁰²

The FCC has made clear that competitive carriers may be certified as ETCs in rural areas even when they cannot provide service throughout the incumbent’s territory.¹⁰³ In other words, competitors with more limited footprints than the incumbent (which of course is true of virtually all new entrants) are not only *allowed* to compete, they are eligible to receive *federal subsidies* to do so (provided they otherwise are eligible under 47 U.S.C. § 214(e)). The FCC held that “requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where

⁹⁹ N.C. Gen. Stat. § 62-110(f3); *see* Petition at 3 n.3.

¹⁰⁰ *Telephone Competition Summary of Proceedings*, Report to the Joint Legislative Utility Review Committee Pursuant to Chapter 27 of the 1995 Session Laws, at 41 (Oct. 1999).

¹⁰¹ *See, e.g., Silver Star Tel. Co., Inc. Petition for Preemption and Declaratory Ruling*, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15658-60 ¶¶ 42-46 (1997) (Wyo.) *recon. denied*, 13 FCC Rcd 16356, 16356 ¶ 1 (1998); *Pub. Util. Comm’n of Tex., et al., Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3566 ¶ 227 (1997) (Tex.).

¹⁰² *See* Petition at 9 (alleging that interconnection and exchange of traffic with TWCIS (NC) would result in “cream skimming”); *see also id.* at 15 (arguing that TWCIS (NC) should be denied access to rights under Sections 251(a) and (b) until it becomes an ETC or COLR).

¹⁰³ *See Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Pub. Utils. Commission*, Declaratory Ruling, 15 FCC Rcd 15168 ¶¶ 12-13 (2000).

universal service support is essential to the provision of affordable telecommunications service and is available to the incumbent LEC.”¹⁰⁴ The FCC further held that “[s]uch a requirement would deprive consumers in high-cost areas of the benefits of competition by insulating the incumbent LEC from competition.”¹⁰⁵ If a carrier can be a *subsidized* entrant in a rural area without covering the entire territory, there can be no legitimate basis for suspending the Section 251(b) rights of a facilities-based provider that does not seek government funding simply because its network does not overlap completely with the incumbent’s.

CONCLUSION

The Commission should dismiss Star’s Petition because it does not state a cognizable claim under federal law. TWCIS (NC) therefore respectfully urges the NCREA to take immediate steps to commence arbitration of an interconnection agreement between the parties.

¹⁰⁴ *Id.* ¶ 12.

¹⁰⁵ *Id.* (emphasis supplied).

Respectfully submitted,

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Of Counsel

March 23, 2012

CERTIFICATE OF SERVICE

The undersigned, of the law firm Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., hereby certifies that he has served a copy of the foregoing **Motion to Dismiss Petition for Suspension or Modification** via electronic mail to counsel of record.

This 23rd day of March, 2012.

A handwritten signature in cursive script, appearing to read "Marcus W. Trathen", written over a horizontal line.

Marcus W. Trathen