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

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

REPLY OF TIME WARNER CABLE INFORMATION SERVICES (NORTH CAROLINA), LLC

Steven Teplitz
Terri Natoli
TIME WARNER CABLE INC.
901 F Street, NW, Suite 800
Washington, DC 20004

Marc Lawrence-Apfelbaum
Julie P. Laine
TIME WARNER CABLE INC.
60 Columbus Circle
New York, NY 10023

Matthew A. Brill
Brian W. Murray
Amanda E. Potter
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

Counsel for Time Warner Cable Inc.

March 14, 2014

TABLE OF CONTENTS

TABLE OF CONTENTS i

ARGUMENT 2

ISSUE 1: TERM OF ICA 2
ISSUE 2: AUTOMATIC TERMINATION FOR FAILURE TO MAKE TIMELY PAYMENT 4
ISSUE 3: COMPLIANCE WITH STATE UNIVERSAL SERVICE FUND REQUIREMENTS 6
ISSUE 4: INDIRECT INTERCONNECTION 7
ISSUE 5: ALLOCATION OF TRANSPORT/TRANSIT CHARGES IMPOSED BY A THIRD PARTY 7
ISSUE 6: TIME INTERVAL FOR RETURNING PORTED NUMBERS 7
ISSUE 7: DIRECTORY LISTING OBLIGATIONS 9
ISSUE 8: PROVISION OF DIRECTORIES FOR TWCIS SUBSCRIBERS 10
ISSUE 9: FEES FOR DIRECTORIES AND DIRECTORY DELIVERY 11
ISSUE 10: FEE FOR LOCAL NUMBER PORTABILITY LOCAL SERVICE REQUEST 11

CONCLUSION 12

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

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

REPLY OF TIME WARNER CABLE INFORMATION SERVICES (NORTH CAROLINA), LLC

Pursuant to the Public Notice establishing arbitration procedures in the above-referenced proceeding,[1] and the February 26, 2014 request from the Arbitrator, Time Warner Cable Information Services (North Carolina), LLC ("TWCIS") hereby submits this Reply to address the positions set forth in Star Telephone Membership Corporation's ("Star's") Response to Petition for Arbitration ("Response") and in further support of TWCIS's petition for arbitration ("Petition").[2] In its Response, Star concedes TWCIS's position on a number of issues; the

---

[1] Public Notice, Procedures Established for Arbitration of an Interconnection Agreement Between Time Warner Cable Information Services and Star Telephone Membership Corporation, WC Docket No. 13-204, DA 14-87, at 3 (rel. Jan. 27, 2014).

[2] As a preliminary matter, Star's effort to deny TWCIS's status as a certificated carrier in North Carolina has no merit. *See* Response to Petition for Arbitration, WC Docket No. 13-204, at 1 (filed Feb. 20, 2014) ("Star Response"). TWCIS holds valid and effective certificates of public convenience and necessity from the North Carolina Utilities Commission ("NCUC") to provide local and long distance telecommunications services in the state. *See Order Granting Certificates*, NCUC Docket No. P-1262, Sub 0 & 1 (N.C. Utils. Comm'n July 24, 2003) ("NCUC Order Granting Certificates"). TWCIS's application for authority sought "authorization to provide service in all geographic areas of North Carolina in which service by competing local providers is permitted by law … [including] all areas of North Carolina in which Time Warner Cable provides high-speed data service." *See* TWCIS (NC) Application for a Certificate of Public Convenience and Necessity to Offer Local Exchange and Exchange Access Telecommunications Service as

parties have separately resolved several other issues. As a result, those issues (identified below) are now resolved and do not require further consideration by the Bureau. With respect to the remaining issues, TWCIS submits that Star's positions are unreasonable and unavailing, and that the Bureau therefore should adopt an interconnection agreement ("ICA") consistent with TWCIS's Petition and as further explained below.[3]

ARGUMENT

ISSUE 1: TERM OF ICA

TWCIS has proposed a three-year initial ICA term.[4] Star opposes a three-year term and urges the Bureau to adopt a one-year ICA term in light of Star's petition currently pending before the North Carolina Rural Electrification Authority ("NCREA") to suspend or modify all of its Section 251(b) obligations pursuant to Section 251(f)(2) of the Communications Act of 1934, as amended (the "Act").[5] In particular, Star claims that, "[b]efore the expiration of an ICA with a one-year term, the NCREA will have determined whether to [grant Star's petition]," and that a one-year term is necessary to "facilitate adjustment of the provisions of the successor ICA to accurately reflect any suspension or modification ordered by the NCREA."[6]

Such assertions are a red herring. As reflected in the draft ICA accompanying TWCIS's Petition, the parties already have agreed to language in Section 1.10 of the ICA, as well as other

---

a Competing Local Provider, Docket No. P-1262, Sub 1, at 7-8 (filed May 16, 2003). The NCUC's authorization places no geographical limit on TWCIS's authority. *See* NCUC Order Granting Certificates, App. B. It therefore is TWCIS's position that it holds all necessary statewide authority to provide telecommunications services throughout North Carolina.

3 The ICA submitted with TWCIS's petition is cited herein as "TWCIS-Star Draft ICA."

4 Petition for Arbitration, WC Docket No. 13-204, at 6-7 (filed Jan. 27, 2014) ("TWCIS Petition"); TWCIS-Star Draft ICA, General Terms and Conditions § 1.2.

5 *See* Star Response at 9.

6 *Id.* at 9, 11.

sections that reference Section 1.10, that would give immediate effect to any order suspending or modifying Star's Section 251(b) obligations "unless such order is stayed or otherwise held in abeyance."[7] Section 1.10, which Star proposed and TWCIS accepted (with only minor modification), thus already provides a mechanism to modify the ICA to the extent necessary "to accurately reflect any suspension or modification ordered by the NCREA." As a result, Star offers no rational basis on which to adopt the unduly short term it proposes, and such a short term would serve no legitimate purpose.[8]

Star also fails to respond to the serious concerns raised by TWCIS regarding Star's one-year term proposal. As TWCIS explained in the Petition, implementing an ICA often takes up to six months or more, meaning that, under Star's proposal, the parties would operate under the agreement for only a limited period of time before one party could terminate the ICA and force the other party to initiate another negotiation/arbitration process. The fact that the initial ICA would remain in place until a new agreement becomes effective is irrelevant and does nothing to protect TWCIS's (and the Commission's) interest in avoiding another repetitive, costly, and time-consuming arbitration. TWCIS therefore submits that an initial ICA term of three years is more appropriate, so that the parties will have a meaningful opportunity to put years of

---

[7] TWCIS-Star Draft ICA, General Terms and Conditions § 1.10 ("In the event that ILEC's obligation to furnish any of the Section 251(b) arrangements provided for herein is modified or suspended by the NCREA in the pending proceedings under Section 251(f)(2), then this Agreement shall be deemed modified to conform to the final order of the NCREA modifying or suspending any obligation(s) unless such order is stayed or held in abeyance."); *id.*, General Terms and Conditions §§ 25.1-25.3, Interconnection Attachment § 2.2.4 (referencing Section 1.10).

[8] TWCIS also disputes Star's assertion that the NCREA will complete the pending suspension/modification proceeding before a one-year ICA expires. Contrary to the 180-day statutory deadline established in Section 251(f)(2) for resolving suspension/modification petitions, Star's petition, filed in February 2012, remains pending, as Star has yet even to file opening testimony.

protracted litigation behind them and establish a working relationship before facing the prospect of a further arbitration proceeding.

ISSUE 2: AUTOMATIC TERMINATION FOR FAILURE TO MAKE TIMELY PAYMENT

In the Petition, TWCIS proposed that, in the event one party fails to make timely payment to the other party under the ICA, the billing party may send the billed party a failure-to-pay notice informing it that, if the overdue payment is not received within 45 days, the billing party may invoke the termination procedures under the default section of the ICA.[9] In contrast, Star takes the position that, in the event one party fails to make timely payment under the ICA, the ICA should *automatically* terminate if payment is not received within 45 days of the failure-to-pay notice. In support of its proposal, Star asserts that its preferred approach is consistent with the typical practice in other "commercial contracts," and that "TWCIS seeks to require a duplicative, redundant, and needlessly drawn out process" for exercising the ICA's default provisions.[10]

Star's position is without merit. As an initial matter, an ICA is not a typical "commercial contract" in which parties voluntarily agree to exchange goods or services for an agreed upon consideration. To the contrary, Star has steadfastly avoided entering into an ICA with TWCIS for years, and is participating in this arbitration only as a consequence of the Bureau's preemption of the NCREA's jurisdiction. Similarly, an ICA is not a contract that is intended to be freely terminable. Rather, an ICA provides the mechanism by which carriers fulfill their ongoing Section 251(b) obligations, and is the sole means by which facilities-based competitive LECs may exchange local traffic. As such, an ICA is intended to establish a relatively

---

[9] TWCIS Petition at 8-9; TWCIS-Star Draft ICA, General Terms and Conditions §§ 6.3.1, 6.3.1.3.

[10] Star Response at 13.

permanent, ongoing, and stable relationship between the executing parties. And as a result, it not only is appropriate, but necessary, that an ICA include adequate precautions to prevent the ICA from being deemed terminated based on something as inconsequential as a small missed payment. TWCIS submits that Star's proposal to treat a failure-to-pay notice as a notice of default that would allow a party to automatically terminate the ICA lacks sufficient basis.

TWCIS nevertheless is willing to resolve this issue by providing for the simultaneous issuance of separate failure-to-pay and default notices, so long as the ICA makes clear that only a formal termination notice pursuant to Section 1.6, as opposed to a mere failure-to-pay notice, would have the effect of starting the clock to suspend/terminate the ICA. Accordingly, TWCIS proposes the following compromise language to replace its previous proposal with respect to Section 6.3.1.3 of the ICA:

> If any payment is not made when due, the Billing Party may send a written notice (the "***Failure to Pay Notice***") to the Billed Party that provides the following: …
>
> notice that, prior to the receipt of payment, the Billing Party may at any time invoke the termination procedures under Section 1.6 of this Agreement ~~if payment is not received within forty-five (45) days of the date of this Failure to Pay Notice, that this Agreement will automatically terminate~~.[11]

---

[11] TWCIS-Star Draft ICA, General Terms and Conditions §§ 6.3.1, 6.3.1.3. Consistent with the convention used in the Petition, language proposed by TWCIS to which Star has not agreed appears in blue. Language proposed by Star to which TWCIS does not agree appears in red with a strikethrough.

ISSUE 3: COMPLIANCE WITH STATE UNIVERSAL SERVICE FUND REQUIREMENTS

Star has proposed language that "seeks assurance … that TWCIS will participate in any state universal service fund created in the future to support universal service in North Carolina, should a North Carolina state commission create such a fund."[12] As TWCIS explained in the Petition, such language is unnecessary and inappropriate. As the NCUC has recognized, it would be inappropriate to compel a competitive carrier to participate in some future hypothetical state universal service fund as a condition of exercising its separate rights under Section 251.[13] Moreover, to TWCIS's knowledge, including such a condition in an ICA would be unprecedented.

Star's effort to use the ICA to address TWCIS's compliance with a hypothetical state USF mechanism program would open the door to including extraneous commitments of all kinds in ICAs. For example, TWCIS could just as reasonably seek to impose an analogous condition to confirm Star's compliance with some potential future regulatory obligation unrelated to the duties of Sections 251(a) and (b)—*e.g.*, that Star must comply with any changes in state employment law. There is simply no sound reason to impose ICA conditions that address hypothetical state law obligations, as their applicability should turn on the relevant state statute or regulation, not on anticipatory ICA language.

---

12 Star Response at 15.

13 *See Petition for Arbitration of Time Warner Cable Information Services (North Carolina), LLC, of an Interconnection Agreement with Pineville Telephone Company Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*, Docket No. P-1262, Sub 5, 2012 N.C. PUC LEXIS 845, at *36-37 (N.C. Utils. Comm'n June 1, 2012) (agreeing that "Pineville's proposed [language] concerning contributions by TWCIS (NC) to any future universal service fund is not appropriate for inclusion in the ICA between the parties," because "the ICA … should address only interconnection issues between TWCIS (NC) and Pineville" and "the language proposed by Pineville is outside the scope of the interconnection relationship").

Neither TWCIS nor Star should be forced to accept an open-ended regulatory obligation in the context of an arbitration and outside the context of a proceeding of general applicability in which obligations are imposed even-handedly on all similarly situated parties. Accordingly, the Bureau should reject Star's request for "assurance" of TWCIS's future participation in any state universal service mechanism.

ISSUE 4: INDIRECT INTERCONNECTION

Following Star's submission of its Response, the parties reached a compromise to establish direct interconnection (rather than indirect interconnection) that resolves Issues 4 and 5. TWCIS and Star have now agreed to revised ICA language to resolve Issue 4, which TWCIS will provide to the Arbitrator in an updated draft of the ICA on or before the date of the initial status conference. As a result of the compromise of the parties, Issue 4 is now resolved and need not be addressed by the Bureau in this arbitration.

ISSUE 5: ALLOCATION OF TRANSPORT/TRANSIT CHARGES IMPOSED BY A THIRD PARTY

As noted above, TWCIS and Star have now reached agreement to resolve Issue 5, which obviates the need for further Bureau action on this issue. TWCIS and Star have now agreed to revised ICA language to resolve Issue 5, which TWCIS will provide to the Arbitrator in an updated draft of the ICA on or before the date of the initial status conference. As a result of the compromise of the parties, Issue 5 is now resolved and need not be addressed by the Bureau in this arbitration.

ISSUE 6: TIME INTERVAL FOR RETURNING PORTED NUMBERS

TWCIS has proposed ICA language pursuant to which ported telephone numbers that become vacant would be returned to their respective block holder consistent with standard

industry guidelines.[14] Star opposes TWCIS's proposal, insisting that the parties be required to return vacant ported telephone numbers "within the same time interval that was applicable to the original porting out of the number."[15] Star claims that, because it is required to port telephone numbers to TWCIS within 24 hours of receiving a local number portability ("LNP") local service request ("LSR"), TWCIS should provide "reciprocal treatment" when such ported telephone numbers become vacant.[16]

Star's proposal, and its attempted justification of it, misconstrues both the relevant issue and the process for returning vacant ported telephone numbers. To put it simply, *returning* vacant ported telephone numbers to the carrier holding the associated block of numbers is not the same as *porting* a telephone number to another carrier to facilitate an end user's transfer of service. Star attempts to conflate the two circumstances. In particular, Star asserts that TWCIS's refusal to accept a 24-hour return interval would "impair any potential effort Star might make to regain a customer previously lost to TWCIS."[17] That is incorrect. TWCIS will be bound by the same 24-hour porting interval that applies to Star. As a result, to the extent Star wins back a customer that previously had ported a telephone number to TWCIS, TWCIS will be required to port that telephone number to Star within a 24-hour period.

In contrast, the return of vacant ported telephone numbers largely is out of TWCIS's control. As TWCIS explained in the Petition, it follows the industry standard practice on aging telephone numbers. When a TWCIS subscriber with a ported number disconnects service, TWCIS releases the telephone number to the LNP Administrator, which completes the eventual

---

14 TWCIS Petition at 17-18.

15 TWCIS-Star Draft ICA, Local Number Portability Attachment § 4.2 (quoting language proposed by Star).

16 Star Response at 27-28.

17 *Id.* at 28.

return of the telephone number to the block holder. Star seeks to force TWCIS to adopt non-standard practices so that its numbers are returned within 24 hours of becoming vacant. But there simply is no precedent of which TWCIS is aware for compelling carriers, as Star proposes, to (i) notify the [LNP Administrator] within 24 hours that a number is vacated," and (ii) "advise [the LNP Administrator] that there is no effective release date for the vacated number."[18] Furthermore, even if TWCIS were to agree to follow such an extraordinary procedure, there still is no guarantee that the vacant telephone number would be returned to Star within the 24-hour period. Star concedes as much when it recognizes that ultimate responsibility for returning the vacant telephone number rests with the LNP Administrator.[19]

In TWCIS's experience, the existing industry practice for returning vacant ported telephone numbers works effectively, and TWCIS sees no purpose in deviating from that longstanding practice. Star fails to offer any legitimate reason for adopting untested and onerous requirements that fall outside existing industry norms. TWCIS therefore submits that Star's proposal should be rejected.

ISSUE 7: DIRECTORY LISTING OBLIGATIONS

Star has accepted TWCIS's proposed language in Section 3.1.1.1 of the Ancillary Services Attachment regarding Star's directory listing obligations. Accordingly, Issue 7 is now resolved and need not be addressed by the Bureau in this arbitration.

---

18 *Id.*

19 *Id.* (explaining that the LNP Administrator "releases … vacated number[s] back to the block holder").

ISSUE 8: PROVISION OF DIRECTORIES FOR TWCIS SUBSCRIBERS

As explained in TWCIS's Petition, Issue 8 concerns Star's obligation to provide directories to TWCIS subscribers.[20] Star's Response makes clear, for the first time, that it is willing to comply with its obligation to provide nondiscriminatory access to directories for TWCIS's subscribers. TWCIS therefore is willing to accept Star's proposed language with respect to Section 3.4.1 of the Ancillary Services Attachment with the minor clarifications proposed below, which are intended to make clear that Star's obligation to fulfill TWCIS's request for directories is limited to *subsequent* orders for deliveries, not TWCIS's *initial* order. TWCIS acknowledges that the language proposed in the template ICA it provided to Star was unclear and therefore makes the non-substantive edits proposed below based on TWCIS's understanding of each parties' respective interpretations. Subject to Star's agreement to the language proposed below, the Bureau may consider Issue 8 resolved.

> ILEC has no obligation to provide any additional WP directories above the number of directories forecast by CLEC per Sections 3.2.3.5 and 3.2.3.7, above. While ILEC has no obligation **to fill CLEC's subsequent orders** to provide WP Directories to CLEC or CLEC's End-User Customers ~~**after the annual distribution of newly published directories**~~, ILEC will in good faith attempt to accommodate ~~**CLEC requests for**~~ **such** subsequent directory orders. **Subsequent o**~~**O**~~rders for directories ~~**above the forecast number(s)**~~ will be filled subject to availability of such in excess of ILEC's needs. In the event that ILEC has excess directories, it will

[20] TWCIS Petition at 20-21.

provide the directories in bulk to CLEC and will assess the WP Directory Charge for each directory as referenced in the Pricing Attachment of this Agreement.[21]

ISSUE 9: FEES FOR DIRECTORIES AND DIRECTORY DELIVERY

Star offers a new compromise position with respect to Issue 9 pursuant to which it would charge TWCIS $5 per directory and a $2.50 delivery charge for each directory Star delivers to a TWCIS customer. TWCIS accepts this compromise. Accordingly, Issue 9 is now resolved and need not be addressed by the Bureau in this arbitration.

ISSUE 10: FEE FOR LOCAL NUMBER PORTABILITY LOCAL SERVICE REQUEST

Star has proposed to apply a $25 charge for fulfilling an LSR to port a telephone number. TWCIS opposes any such charge and submits that a $25 fee would grossly exceed the costs associated with processing an LNP LSR.[22] Star has submitted some confidential "cost data" that purports to justify its $25 charge, but TWCIS questions the reliability of Star's self-serving cost estimates. For example, Star did not submit any back-up documentation with its "cost data" that discloses the assumptions on which they are based or otherwise explains the methodology employed. Nor do Star's "cost data" appear to be based on any standard cost-based methodology, and Star does not assert that they are. In addition, Star's "cost data" include a line item for a charge that Star apparently remits to John Staurulakis, Inc. ("JSI") to "implement" each port request, which Star proposes to pass through to TWCIS.[23] Star offers no explanation as to what such "implementation" by JSI would entail or why it incurs such a charge, and

---

21 TWCIS-Star Draft ICA, Ancillary Services Attachment § 3.4.1.

22 TWCIS Petition at 24-27.

23 Star Response at 37.

TWCIS is not aware of any. And even if Star has determined that it is in its business interests to pay such a high fee to JSI, that would not provide sufficient basis for transferring responsibility for such charges to TWCIS.

Ultimately, discovery will be required to explore Star's representations of its costs, and TWCIS intends to request such discovery at the parties' initial status conference with the Arbitrator. TWCIS continues to believe that a $25 fee for processing an LNP LSR is excessive and, as a result, would be unlawful under Sections 251 and 201/202 of the Act and Commission precedent. TWCIS therefore requests that, following discovery and appropriate briefing on this Issue 10, the Bureau prohibit any LNP LSR fee or, to the extent it determines that any fee is appropriate, adopt a fee that is commensurate with Star's reasonable costs, as demonstrated by appropriate cost studies.

CONCLUSION

TWCIS respectfully requests that the Bureau arbitrate an ICA consistent with the foregoing and TWCIS's Petition.

Respectfully submitted,

/s/ Matthew A. Brill

Matthew A. Brill
Brian W. Murray
Amanda E. Potter
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004-1304

Counsel for Time Warner Cable Inc.

Steven Teplitz
Terri Natoli
TIME WARNER CABLE INC.
901 F Street, NW, Suite 800
Washington, DC 20004

Marc Lawrence-Apfelbaum
Julie P. Laine
TIME WARNER CABLE INC.
60 Columbus Circle
New York, NY 10023

March 14, 2014

CERTIFICATE OF SERVICE

I, Alexandra S. Liopiros, hereby certify that on this 14th day of March, 2014, a true and correct copy of the foregoing Petition for Arbitration was served, via overnight delivery, upon the following:

Daniel C. Higgins
Burns, Day & Presnell, P.A.
2626 Glenwood Avenue, Suite 560
Raleigh, NC 27608

/s/ Alexandra S. Liopiros
Alexandra S. Liopiros