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Office of the Secretary

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Re: Arbitration of an Interconnection Agreement Between Time Warner Cable Information Services (North Carolina), LLC and Star Telephone Membership Corporation, WC Docket No. 13-204

Dear Counsel:

I am writing in response to the April 28, 2014 joint filing by Time Warner Cable Information Services (North Carolina), LLC (TWCIS) and Star Telephone Membership Corporation (Star). I appreciate that the parties have reached agreement on Issues 2 and 8 and recognize the effort you have made to resolve those issues.

You state that "Issues 1, 3, 6, and 10 remain unresolved and ripe for arbitration." TWCIS stated a preference to try to resolve these issues through mediation. Star expresses a desire to understand how mediation would be conducted, and seeks to ensure that personnel working on the mediation would not overlap with personnel involved in the arbitration. The Wireline Competition Bureau (WCB) has consulted with the Commission's Enforcement Bureau regarding possible mediation. Below is the process we propose to use in the event that the parties agree to mediation.

The Enforcement Bureau's Market Disputes Resolution Division (MDRD) will make its staff available to conduct an informal mediation. The MDRD has extensive experience conducting mediations and will be able to facilitate a good-faith discussion of the unresolved issues. Staff-supervised informal mediation has proven effective in narrowing the unresolved issues in prior section 252 arbitration proceedings.¹

¹ See, e.g., *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration et al.*, CC Docket Nos. 00-218, 00-249, 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039, 27042-43, para. 2 (2002) (noting that the parties "participated in lengthy staff-

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In mediation, both parties may discuss their respective positions and receive informal, non-binding feedback intended to narrow and/or resolve the remaining issues. Mediation would be conducted by Commission personnel who are not involved, and will not become involved, in any arbitration that may occur in this proceeding (though MDRD staff may consult with WCB staff to gain a better understanding of the underlying dispute).

The mediation process will be deemed to start with the initial contact between a party and an MDRD staff member concerning the parties' dispute. If the parties agree to participate in mediation, they will be asked to submit to the appointed mediators statements explaining the unresolved issues, the parties' respective positions, and the legal and policy arguments supporting these positions. The parties would provide the mediators and opposing counsel with documents that support their respective positions, although such documents would not constitute formal discovery proceedings. If the parties wish to enter into a protective order in order to facilitate the exchange of proprietary information with each other and MDRD staff, they may do so. *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24867-873 (1998) (Appendix C – Standard Protective Order and Declaration).

To encourage good-faith settlement discussions, the parties and Commission staff will treat as confidential all written and oral communications made by anyone during the mediation process, including all communications between or among the parties and Commission staff in preparation for the mediation session, during the mediation session, and in any follow-on settlement discussions after each mediation session.² The parties may use any information learned during the mediation process solely for purposes of exploring a possible settlement of this dispute. The parties may not use or disclose such information in any proceeding before the Commission (including a formal complaint proceeding involving the instant dispute), or any other tribunal, unless compelled by law to do so. Neither we nor the parties will disclose to anyone outside the Commission, or seek disclosure of, any non-public information learned in the mediation process.³ Further, until mediation is concluded, if a party intends to contact anyone in the Commission other than MDRD staff regarding this dispute, including the mediation, that party must provide advance notice of its intention to MDRD staff and the opposing party.

The parties should confer and determine if they are willing to proceed with mediation, as proposed above. Once the parties have reached a decision, please contact John Visclosky. If you agree to mediation, John will identify appropriate MDRD staff for you to contact.

supervised mediation, which resulted in the settlement of a substantial portion of the issues that the parties initially presented”).

² See sections 4(i) and 4(j) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. §§ 154(i), 154(j), sections 571 to 584 of the Administrative Dispute Resolution Act of 1996 (ADR Act), 5 U.S.C. §§ 571-584, and sections 1.18(b), 1.731, and 0.459 of the Commission's rules, 47 C.F.R. §§ 1.18(b), 1.731, 0.459. To the extent that the confidentiality provisions in this letter differ from the confidentiality standards contained in these authorities, the confidentiality provisions here are controlling. *See* 47 C.F.R. § 1.3; 5 U.S.C. § 572(c) (“Alternative means of dispute resolution authorized under [the ADR Act] are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.”).

³ Pre-existing information that is not confidential does not become confidential solely because it is exchanged or mentioned during the mediation process. However, the fact that a party made use of such information during the mediation process is confidential. In addition, to guard against inadvertent disclosure of confidential documents, MDRD staff may propose additional procedures, such as recommending that the parties label each page of any confidential documents disclosed during the mediation as “Confidential - For Settlement Purposes Only.”

We appreciate your efforts thus far and look forward to your response regarding pursuing mediation.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa S. Gelb". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lisa S. Gelb
Deputy Chief, Wireline Competition Bureau