

**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 § 252(b) of the)
Communications Act of 1934, as Amended, to)
Establish Interconnection Agreement with Star)
Telephone Membership Corporation)

**PETITION FOR PARTIAL RECONSIDERATION OF
ORDER ISSUED APRIL 2, 2013**

Time Warner Cable Information Services (North Carolina), LLC (“TWCIS (NC)”) hereby submits this Petition for Partial Reconsideration of the Order issued April 2, 2013 in the above-captioned proceeding (“Order”). The Order permits Star TMC (“Star”) “to offer evidence in an effort to meet its burden of proof” under Section 251(f)(2) of the Communications Act of 1934, as amended (the “Act”), but directs the Arbitrator to delay arbitration of an interconnection agreement between TWCIS (NC) and Star unless and until the Authority denies Star’s petition for suspension or modification of its Section 251(b) obligations.¹ TWCIS (NC) respectfully submits that the latter determination is contrary to law, as it (i) disregards the Authority’s statutory obligation to arbitrate an interconnection agreement within the statutory timeframe set by Congress, and thus (ii) denies TWCIS (NC)’s well-settled rights to interconnect and exchange local traffic with Star during the pendency of the Section 251(f)(2) proceeding. *See* 47 U.S.C. §§ 252(b)(4)(C), 251(b). As a result, the Authority’s decision withholds the benefits of facilities-based voice competition to North Carolina consumers in Star’s territory—benefits already

¹ *See* Order at 4.

withheld for more than seven years. TWCIS (NC) therefore urges the Authority grant reconsideration and, consistent with the procedure followed in other states, move forward with the arbitration in parallel with the adjudication of Star's Section 251(f)(2) petition.

ARGUMENT

Delaying the arbitration of an interconnection agreement violates federal law. In particular, the Authority has a federal statutory obligation (i) 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, *and* (ii) to conclude such arbitration approximately 135 days after receiving TWCIS (NC)'s petition for arbitration.² The pendency of Star's *separate* Section 251(f)(2) petition does not relieve the Authority of these obligations, temporarily or otherwise. Indeed, nothing in Sections 251(f)(2) or 252 permits delaying the arbitration of an interconnection agreement until a suspension/modification petition is adjudicated. To the contrary, the Federal Communications Commission ("FCC") has made clear that network interconnection and the exchange of local telecommunications traffic under Sections 251(a) and (b) are universal default obligations with which Star is required to comply unless and until it can demonstrate entitlement to suspension or modification of its Section 251(b) obligations.³ Star thus is required to interconnect and exchange local traffic with TWCIS (NC) *today*,⁴ and, by the same token, the Authority is obligated to arbitrate an

² 47 U.S.C. §§ 252(b)(4)(C), (b)(1).

³ See *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 (2011) ("CRC Declaratory Ruling").

⁴ See, e.g., 47 C.F.R. § 51.715 ("Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport (continued . . .)

interconnection agreement between the parties in keeping with the procedures set forth in Section 252.

Moreover, Section 252—not Section 251(f)(2)—governs the process for arbitrating interconnection agreements. Although Section 251(f)(2) empowers the Authority to suspend an incumbent local exchange carrier's ("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 LEC),⁵ that provision does not provide any basis for suspending *arbitration proceedings* commenced under Section 252(b). The statutory language thus makes clear that a state commission has no authority to delay a Section 252 arbitration proceeding.

The extensive litigation surrounding certain threshold legal questions in this proceeding that prevented the completion of arbitration in 2006 does not justify continuing to delay the arbitration. Quite the opposite, the long and protracted nature of this proceeding—which has spanned *more than seven years*—warrants a renewed sense of urgency, not further delay. Although TWCIS (NC) disagrees with the Authority's decision to move forward with the adjudication of Star's petition, the Authority should not allow that petition, which will be adjudicated under a different statutory provision and is subject to a different legal standard, to prejudice the interconnection rights that TWCIS (NC) has waited so long to exercise. Delaying arbitration until the conclusion of the Section 251(f)(2) proceeding would do just that, as the hearing in that case is not scheduled to occur until October of this year, meaning that a final decision is unlikely until early 2014. And given the discovery disputes and resulting delays

and termination of Non-Access Telecommunications Traffic *immediately* under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.”).

⁵ See 47 U.S.C. § 251(f)(2).

experienced in the prior rural exemption proceeding, TWCIS (NC) has serious concerns that final resolution of Star's Section 251(f)(2) petition may not occur until even later.

Deferring arbitration and the ensuing enforcement of TWCIS (NC)'s interconnection rights also is at odds with the nature of the suspension proceeding under Section 251(f)(2), as the statute presumes that existing interconnection duties are in place before any suspension may be considered, in contrast to the rural exemption provision in Section 251(f)(1), which prevents enforcement of Section 251(c) duties unless and until a state commission affirmatively lifts the exemption.⁶ Thus, contrary to the FCC's recent declaratory ruling, the Order effectively converts Section 251(f)(2) into a *de facto* rural exemption.

TWCIS (NC) therefore urges the Authority to follow the procedural path set by the Maine commission, which opened a separate docketed proceeding to examine the Section 251(f)(2) issues, and conducted that proceeding in parallel with the parties' arbitration of an interconnection agreement.⁷ Such a procedure would be the most efficient path, as it would provide a timetable for the resolution of TWCIS (NC)'s long pending petition for arbitration, while also disposing of Star's suspension/modification petition in a manner consistent with the statutory deadline set in Section 251(f)(2). Most importantly, parallel arbitration and suspension/modification proceedings would respect the rights of both parties by recognizing that, notwithstanding Star's pending petition, Star is obligated to enter into an interconnection

⁶ Compare 47 U.S.C. § 251(f)(2) with 47 U.S.C. § 251(f)(1); see also *CRC Declaratory Ruling* ¶ 14 (clarifying 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) and (b)"—the only provisions at issue in TWCIS (NC)'s arbitration petition).

⁷ See Maine Public Utilities Commission Docket Nos. 2012-133 *et al.* (arbitration), 2012-218 *et al.* (suspension/modification).

agreement with TWCIS (NC) pursuant to the statutory obligations set forth in Sections 251(b) and 252.

CONCLUSION

For the foregoing reasons, TWCIS (NC) respectfully requests that the Authority reconsider its decision to delay the arbitration in the above-referenced proceeding and instead direct the Arbitrator to commence arbitration of an interconnection agreement between the parties in parallel with the adjudication of Star's Section 251(f)(2) petition.

Dated: May 3, 2013

Respectfully submitted,

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

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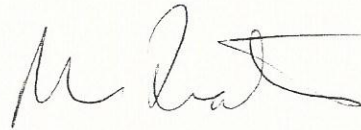
Of Counsel

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 **Petition for Partial Reconsideration of Order Issued April 2, 2013** via electronic mail to Daniel Higgins at dhiggins@bdppa.com.

This 3rd day of May, 2013.

By:



Marcus W. Trathen