

# BURNS, DAY & PRESNELL, P.A.

ATTORNEYS AT LAW

2626 GLENWOOD AVENUE, SUITE 560  
RALEIGH, NORTH CAROLINA 27608

JAMES M. DAY  
DANIEL C. HIGGINS  
GREG L. HINSHAW  
JULIA YOUNG KIRKPATRICK  
JAMES J. MILLS  
LACY M. PRESNELL III - TEMPORARY LEAVE

F. KENT BURNS - RETIRED

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MAILING ADDRESS:  
POST OFFICE BOX 10867  
RALEIGH, NORTH CAROLINA 27605  
TELEPHONE: (919) 782-1441  
FACSIMILIE: (919) 782-2311  
www.burnsdaylaw.com

## VIA HAND DELIVERY

Ms. Frances Liles, Administrator  
North Carolina Rural Electrification Authority  
120 Penmarc Drive, Suite 104  
Raleigh, North Carolina 27603

RE: *TWCIS (NC) v. Star Telephone Membership Corporation*  
NCREA Docket No. TMC-5, Sub 1

Dear Ms. Liles:

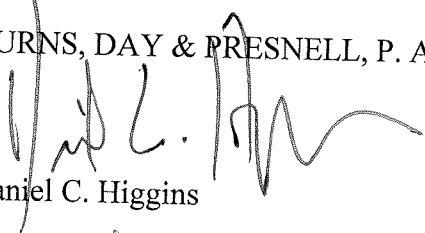
Enclosed find the original and 11 copies of Star TMC's Responses to TWCIS's General Limitations concerning Star's Definitions, Instructions and Data Requests, which I tender for filing on behalf of Star Telephone Membership Corporation in the above-referenced docket.

As always, please let me know if you have any questions regarding any aspect of this filing. Otherwise, please return one filed stamped copy of the enclosure via our courier.

With best regards, we remain

Sincerely yours,

BURNS, DAY & PRESNELL, P. A.

  
Daniel C. Higgins

DCH/krs

Enclosures

cc: Marcus Trathen (via e-mail)

Jo Anne Sanford, Arbitrator (via e-mail)

Star TMC

**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	)	STAR TELEPHONE MEMBERSHIP
Establish Interconnection Agreement with Star	)	CORPORATION'S RESPONSES TO
Telephone Membership Corporation	)	TIME WARNER CABLE
	)	INFORMATION SERVICES (NORTH
AND	)	CAROLINA), LLC'S OBJECTIONS TO
	)	STAR TMC'S FIRST DATA REQUESTS
In the Matter of	)	AND
Petition of Star Telephone Membership	)	REQUEST FOR MODIFICATION OF
Corporation for Suspension or Modification	)	PROCEDURAL SCHEDULE
Pursuant to Section 251(f)(2) of the	)	
Communications Act of 1934. as Amended	)	

**STAR TMC'S RESPONSES TO TWCIS'S GENERAL LIMITATIONS CONCERNING  
STAR'S DEFINITIONS, INSTRUCTIONS AND DATA REQUESTS**

Pursuant to the Procedural Order issued in this docket on May 2, 2013, Star Telephone Membership Corporation ("Star TMC") responds to Time Warner Cable Information Services (North Carolina), LLC's ("TWCIS") objections to practically all of Star TMC's First Data Requests served on May 14, 2013, which Objections were served on May 24, 2013.

As required by the Procedural Order, Star TMC responds to TWCIS's objections on an item-by-item basis.

**STAR TMC'S RESPONSES TO TWCIS'S GENERAL LIMITATIONS**

1. TWCIS (NC) objects to Star's data requests to the extent that they seek to impose an obligation on TWCIS (NC) to respond on behalf of third parties, affiliates, or other entities that are not parties to this docket on the grounds that any such data requests are irrelevant, overly broad, unduly burdensome, oppressive, and do not seek information within the possession or control of TWCIS (NC). In particular, TWCIS (NC) objects to the definition of "TWC" to the extent it includes Time Warner Inc. Time Warner Inc. is a wholly separate company from Time Warner Cable Inc. and is in no way affiliated with TWCIS (NC) or any TWCIS (NC) affiliate. TWCIS (NC)

further objects to the extent that Star seeks information from TWCIS (NC) affiliates. TWCIS (NC) is the entity that prompted Star's petition by requesting that Star comply with its federal obligations under Section 251(b). TWCIS (NC) is the entity that seeks to interconnect and exchange local traffic with Star, and TWCIS (NC) is the entity that would offer retail VoIP services in Star's territory. Accordingly, TWCIS (NC) is the only subsidiary of Time Warner Cable that is relevant to this proceeding.

**STAR TMC'S RESPONSE TO THIS LIMITATION / OBJECTION:** In this "General Limitation" TWCIS objects to producing any information possessed by or relating to any of its corporate affiliates. Subject to the revision noted below concerning Time Warner Inc., this objection cannot stand, as this data request seeks information possessed by TWCIS's corporate affiliates (collectively "TWC" as that term is defined in Star's data requests, and as that definition is amended below) relevant to the Section 251(f)(2) criteria which Star must establish in order to secure any suspension or modification of any obligation to provide one or more of the Section 251(b) arrangements which TWCIS seeks to establish.

Star TMC is not familiar with the corporate structure and relationships of the various subsidiaries and affiliates that comprise the enterprise known as "Time Warner Cable." If the entity Time Warner Inc. is a separate and unrelated entity, not affiliated in any way with TWCIS, then Star gladly modifies the definition of "TWC" set forth in its data requests so as to exclude Time Warner Inc.

TWCIS petitioned the Authority to arbitrate an interconnection agreement with Star TMC. TWCIS seeks an interconnection agreement with Star TMC providing for Section 251(b) arrangements in order to facilitate the efforts of its corporate affiliate, apparently now known as TWC Digital Phone LLC d/b/a "Time Warner Cable," to offer its "Digital Phone" and "Business Class Phone" Voice over Internet Protocol ("VoIP") communications services in parts of Star's service area. The operational arrangements between these corporate affiliates have been acknowledged by TWCIS previously.<sup>1</sup> Thus, TWC Digital Phone LLC (and/or some other TWC

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<sup>1</sup> TWCIS stated the following in its responses to a Star data request in connection with TWCIS's Petition then pending in this docket to terminate Star's rural exemption: "TWC Digital Phone LLC d/b/a Time Warner Cable, a separate legal and functional entity from TWCIS (NC), currently provides voice services in North Carolina and elsewhere using VoIP technology...." (TWCIS Response dated May 24, 2010 to Star TMC's First Data Requests, Request No. 2).

subsidiary or affiliate entities) and TWCIS are corporate affiliates and both would be involved in providing Time Warner Cable's retail VoIP service in Star TMC's service area.

As an example of the direct involvement of TWCIS's corporate affiliates in both this proceeding and the proposed provision of services in Star TMC's service area, Star directs the Arbitrator's attention back to the prior proceedings in this docket relating to TWCIS's then pending Petition to terminate Star TMC's rural exemption under Section 251(f)(1) of the Act. Three witnesses filed testimony "on behalf of TWCIS" in that phase of the proceedings on June 30, 2010, including Julie Laine and Marjorie Fry. According to her prefiled direct testimony, at that time Ms. Laine was "employed by Time Warner Cable Inc. ('TWC') as Group Vice President and Chief Counsel, Regulatory." Ms. Fry stated in her prefiled direct testimony that she was "employed as Regional Director of Digital Phone Operations by Time Warner Cable ('TWC')."

Likewise, in its Responses served on August 12, 2010, to Star's Second Data Requests, TWCIS provided the following response to Star Data Requests 1 and 2:

1. If TWCIS has any employees in North Carolina, then state how many such employees it has? If not, who employs the individuals that conduct the business of TWCIS (NC), LLC?

**RESPONSE:** Subject to TWCIS (NC)'s Objections, TWCIS (NC) responds as follows: TWCIS (NC) does not have any employees in North Carolina. TWCIS (NC) utilizes employees of Time Warner Cable Inc. to conduct the business of TWCIS (NC) in North Carolina pursuant to an intercompany arrangement between the entities.

2. If TWCIS owns any facilities in North Carolina, then please describe all such facilities in detail. If not, please explain whose facilities TWCIS would use to facilitate TWC's offering of Digital Phone VoIP service in Star's service area.

**RESPONSE:** Subject to TWCIS (NC)'s Objections, TWCIS (NC) responds as follows: To the extent that TWCIS (NC) understands the term 'facilities' to mean hybrid fiber coaxial or fiber optic cable plant, TWCIS (NC) does not currently own any such facilities in North Carolina. TWCIS (NC) will utilize leased facilities and/or facilities of its cable affiliate, Time Warner Cable Inc., in order to provide wholesale telecommunications services that will enable TWC Digital Phone LLC to provide interconnected VoIP service in Star's service area.

Thus, while TWCIS depicts itself as an independent entity not appropriately grouped with its

corporate affiliates, it has no employees or facilities. Instead, it uses the employees and facilities of Time Warner Cable Inc. to provide "services that will enable TWC Digital Phone LLC to provide interconnected VoIP service in Star's service area." Under these circumstances, it is clear that the relationship between these affiliated entities, and the involvement of both Time Warner Cable Inc. and TWC Digital Phone LLC b/b/a Time Warner Cable in the proposed provision of service in Star's service area, are such that it is appropriate that TWCIS provide data from TWC responsive to Star's data requests.

TWCIS's objection to producing any data from its corporate affiliates would, if allowed to stand, effectively foreclose Star's efforts to obtain information regarding matters relevant to the issues presented in this docket which are known to TWCIS's affiliates. For example, TWCIS's affiliates involved in the provision of Time Warner Cable's VoIP communications services in North Carolina and elsewhere have information relating to access line losses, take/subscription rates, and other data bearing on the impact of interconnection arrangements on incumbent local exchange carriers in (1) interconnection scenarios involving arrangements for provision for local number portability, and (2) in interconnection scenarios involving no such arrangements. Star has no such experience with such interconnections, and thus it needs data possessed by TWC that directly bears on the three Section 251(f)(2) criteria in play here, to-wit: whether suspension or modification is necessary to "to avoid imposing a requirement on Star TMC that is unduly economically burdensome" (or that would cause a significant adverse economic impact on users of Star's telecommunications services generally), and that would be inconsistent with the public interest, convenience, and necessity. The suggestion that Star can conduct discovery only as to the matters known to TWCIS (NC) is nothing more than a "hide the ball" strategy, as it is TWCIS's affiliates at TWC that would be providing the actual retail service in Star's service area and that will have much of this relevant data.

While this will be dealt with more specifically below in addressing TWCIS's objections to specific Star data requests, Star notes at the outset that it is well established that duties to respond to document and data requests are construed broadly. *Societe Internationale v. Rogers*, 357 U.S. 197, 204 (1958). Indeed, this rule has been broadly construed to impose a duty to respond on a corporation that has actual or inferred control of responsive information. There are several factors to consider if there is "inferred" control, one of which is "any benefit or involvement by the non-party corporation in the transaction." *Uniden America Corp. v. Ericsson, Inc.*, 181 F.R.D. 302 (M.D.N.C.

1998) (affirming motion to compel non-responsive party to obtain documents from non-party corporation). TWCIS's TWC affiliate – especially TWC Digital Phone LLC, d/b/a Time Warner Cable - would certainly benefit from the Section 251(b) interconnection arrangements sought by TWCIS.

In this case, information regarding TWCIS's TWC affiliates is relevant, as TWC and TWCIS seek to jointly provide competing service in those portions of Star's service area where Time Warner Cable offers cable television and broadband services. Given the joint arrangements contemplated by TWCIS and its affiliate, TWCIS should be deemed to have inferred control over responsive information and documentation maintained by TWC affiliates to be involved in the proposed service offerings, as well as those possessing the relevant data requested by Star as to TWC's prosecution of this same business model in other locations. Here, by virtue of TWCIS's effort to implement this joint service offering with its TWC affiliates in Star's service area, it is not as though TWCIS and its affiliates are arms-length unrelated third parties. They are corporate affiliates that would undertake this effort jointly.

Star anticipates that TWCIS will come forward with testimony in this proceeding regarding its projections as to the line and revenue losses Star would suffer in the event of provision of the interconnection arrangements sought by TWCIS, *i.e.*, the economic burden. Star expects that those projections will be based on information provided to TWCIS by TWC based, at least in part, on information as to the extent of TWC's network, the number of homes and businesses passed by TWC facilities, the number of Star's access lines that TWC considers as being competitively "at risk" in scenarios involving either the presence or absence of one or more of the interconnection arrangements requested by TWCIS, much of which can reasonably expect to be informed by TWC's historic experience offering these services in competition with other ILECs in other markets, both in North Carolina and elsewhere.

2. TWCIS (NC) objects to Star's data requests to the extent that a response requires disclosure of material prepared in anticipation of litigation or in preparation for hearings; requires disclosure of the mental impressions, conclusions, opinions, or legal theories of TWCIS (NC) attorneys or other representatives concerning this matter; and/or requires disclosure of communications subject to one or more evidentiary privileges, on the grounds that such information is protected from disclosure by the attorney work product privilege and North Carolina law.

**STAR TMC'S RESPONSE TO THIS LIMITATION / OBJECTION:** Star is not seeking production of any attorney-client privileged communications or work-product information from TWCIS. However, under the attorney-client privilege and the work-product doctrine, underlying pre-existing operative known **facts** upon which TWCIS may rely in this proceeding are not exempted from production simply based upon either the communication of such facts between an attorney and a client, or the incorporation of such facts into work-product materials.

Further, the Arbitrator - not TWCIS - is the appropriate authority to determine whether factual information is or is not exempt from production based on any claim of the attorney-client privilege or the work-product doctrine. Accordingly, to the extent TWCIS withholds any responsive information based on General Objection 2, Star requests that the Arbitrator order TWCIS to provide a privilege log identifying such information in accord with the instructions in Stars data requests with sufficient particularity that Star may respond to any specific TWCIS claim that such information is privileged or otherwise protected from disclosure, and the Arbitrator may make an appropriate determination with regard to any such objection.

3. TWCIS (NC) objects to providing information to the extent that such information has already been provided to, or is already within the possession of, Star, or is readily and equally accessible to Star by publicly available means.

**STAR TMC'S RESPONSE TO THIS LIMITATION / OBJECTION:** Star does not seek to force Time Warner to engage in duplicative efforts, and does not object to obtaining information from any other readily equally accessible, publicly available sources, as long as it can do so without undue difficulty or expense. However, as detailed below, some information which TWCIS objects to producing is well within TWCIS's knowledge, and unknown to and/or not reasonably obtainable by Star, as a practical matter. Accordingly, to the extent that TWCIS withholds any responsive information based on its General Objection 3, Star requests the Arbitrator to order TWCIS to identify any such information with sufficient particularity that Star may respond to any specific TWCIS claim that any response would somehow be duplicative because the requested information or documents are already possessed by Star, or that the requested information is otherwise readily and equally accessible by other publicly available means to Star (including specifically where and how such information is available to Star), and the Arbitrator may make an appropriate determination as to

issues associated with such responsive but withheld information.

4. TWCIS (NC) objects to each Star Data Request to the extent that it calls for documents or material containing proprietary and/or confidential business information, trade secrets, or commercially sensitive information. Without waiving its objections, TWCIS (NC) will produce documents and materials subject to an appropriate negotiated protective agreement pursuant to the Arbitrator's May 2, 2013, Procedural Order.

**STAR TMC'S RESPONSE TO THIS LIMITATION / OBJECTION:** The parties executed a Non-Disclosure and Protective Agreement in connection with prior proceedings in this docket, which is still in force and adequate to address the concerns either party would have with regard to production of proprietary and/or confidential business information, trade secrets, or other commercially sensitive information in connection with the current discovery proceedings.

**STAR TMC'S RESPONSES TO SPECIFIC OBJECTIONS TO ITS DATA REQUESTS**

1. Describe in complete and specific detail all aspects of all arrangements you seek to establish with Star TMC for number portability pursuant to Section 251(b) of the Act.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 2 and 4, which are incorporated herein by reference.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request according to its understanding of the foregoing terms and based on information in its possession in the ordinary course of business.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 2 and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth.

TWCIS seeks an interconnection agreement with Star TMC which provides for a number of the interconnection arrangements described in Section 251(b) of the Act, including number portability. By this request, Star seeks specific information as to all aspects of the arrangements TWCIS seeks to establish with Star TMC for number portability. This is directly relevant to an



issue presented by TWCIS's request for interconnection and Star's Petition for Suspension or Modification of any obligation to provide one or more of the Section 251(b) arrangements as sought by TWCIS, including number portability.

The fact that TWCIS would even object to this request is telling, and neither "General Limitations" 2 or 4 provide any legitimate basis for TWCIS to refuse to provide specific information as the arrangements it seeks to establish with Star TMC for number portability. This objection should be overruled.

Finally, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear, and the Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

2. Describe in complete and specific detail all aspects of all arrangements you seek to establish with Star TMC for reciprocal compensation pursuant to Section 251(b) of the Act.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 2 and 4, which are incorporated herein by reference.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request according to its understanding of the foregoing terms and based on information in its possession in the ordinary course of business.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Star's response to Time Warner's objection to Star Data Request 1 is incorporated herein by reference as if fully set forth.

3. Describe in complete and specific detail all aspects of any other arrangements you seek to establish with Star TMC pursuant to Section 251 (b) of the Act.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 2 and 4, which are incorporated herein by reference.

Notwithstanding and without waiving these objections or its general limitations, TWCIS

(NC) will respond to this request according to its understanding of the foregoing terms and based on information in its possession in the ordinary course of business.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Star's response to Time Warner's objection to Star Data Request 1 is incorporated herein by reference as if fully set forth.

4. If you contend that provision by Star to TWCIS of any of the Section 251(b) interconnection arrangements which TWCIS seeks to establish with Star would not impose requirements on Star that are unduly economically burdensome, then as to each such interconnection arrangement identify all facts and produce all documentation supporting your contentions in that regard.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 2 and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to this request because it is premature. Discovery in this case has just commenced. TWCIS (NC) has not yet had an opportunity to conduct discovery in this case, nor has it had the opportunity to review Star's testimony or any documents or analysis produced by Star.

TWCIS (NC) further objects to this request to the extent it purports to shift the burden of proof in this proceeding. The purpose of this proceeding is to determine whether Star has carried its burden of proof sufficiently to allow Star to continue to refuse to comply with its basic Section 251(b) obligations and, as a result, deny TWCIS (NC)'s rights under Section 251(b), thereby blocking TWCIS (NC)'s efforts to offer consumers in Star's service area a competitive choice of facilities-based voice service providers. Star bears the burden of demonstrating that suspension of each of its Section 251(b) obligations is (i) necessary "to avoid imposing a requirement that is unduly economically burdensome" (or that would cause "a significant adverse economic impact on users of telecommunications services generally") *and* (ii) "consistent with the public interest, convenience, and necessity." 47 U.S.C. § 251(f)(2). Conversely, TWCIS (NC) has no obligation to demonstrate that the Section 251(b) interconnection arrangements which TWCIS (NC) seeks to establish with Star would not be unduly economically burdensome.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information currently in its possession in the ordinary course of business.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 2 and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth.

The Arbitrator should overrule this objection, because this data request is neither premature, inappropriate nor objectionable. Star TMC has the burden of proof with regard to establishing the criteria for suspension or modification set forth in Section 251(f)(2) of the Act. By this data request, Star does not seek to shift the burden of proof in this proceeding to TWCIS. Rather it requests that TWC produce information and documentation it possesses which would support the contention described in this data request. This enquiry concerns a factual matter which is directly relevant to the criteria for suspension or modification.

If TWC possesses any such facts and/or documentation, then they should be produced. If the accurate response from TWC is that it possesses no such facts or documentation then it should so state. Star has the burden of proof, however, it is entitled to seek to obtain any facts or information which Time Warner Cable possesses relevant to this criterion.

Finally, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

5. If you contend that suspension of any obligation of Star to provide any of the Section 251(b) interconnection arrangements requested by TWCIS is not necessary to avoid a significant adverse economic impact on users of Star's telecommunications services, then identify all facts and produce all documentation supporting your contentions in that regard.

**TIME WARNER OBJECTION:**

See objection to Number 4, with regard to adverse economic impact on users of Star's telecommunications services.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Star's response to Time Warner's objection to Star Data Request 4, with regard to adverse economic impact on users of Star TMC's telecommunication service, is incorporated herein by reference as if fully set forth.

6. If you contend that suspension of any obligation of Star to provide any of the Section 251(b) interconnection arrangements requested by TWCIS would not be consistent with the public interest, convenience, and necessity, then identify all facts and produce all documentation supporting your contentions in that regard.

**TIME WARNER OBJECTION:**

See objection to Number 4, with regard to consistency with the public interest, convenience, and necessity.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Star's response to Time Warner's objection to Star Data Request 4, with regard to consistency with the public interest, convenience and necessity, is incorporated herein by reference as if fully set forth.

7. Provide all information and documentation possessed by TWC as to how provision of the interconnection arrangements requested by TWCIS would impact the ability of Star TMC to discharge its responsibilities to provide universal service (as that term is defined in 47 USC § 254(c)) as carrier of last resort service in its service area.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1, 2, and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to this request because it is premature. Discovery in this case has just commenced. TWCIS (NC) has not yet had an opportunity to conduct discovery in this case, nor has it had the opportunity to review Star's testimony or any documents or analysis produced by Star.

TWCIS (NC) further objects to this request to the extent it purports to shift the burden of proof in this proceeding. The purpose of this proceeding is to determine whether Star has carried its burden of proof sufficiently to allow Star to continue to refuse to comply with its basic Section 251(b) obligations and, as a result, deny TWCIS (NC)'s rights under Section 251(b), thereby

blocking TWCIS (NC)'s efforts to offer consumers in Star's service area a competitive choice of facilities-based voice service providers. Star bears the burden of demonstrating that suspension of each of its Section 251(b) obligations is (i) necessary "to avoid imposing a requirement that is unduly economically burdensome" (or that would cause "a significant adverse economic impact on users of telecommunications services generally") *and* (ii) "consistent with the public interest, convenience, and necessity." 47 U.S.C. § 251(f)(2). Conversely, TWCIS (NC) has no obligation to demonstrate that the Section 251(b) interconnection arrangements which TWCIS (NC) seeks to establish with Star would not adversely affect Star's ability to serve as a carrier of last resort.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information currently in its possession in the ordinary course of business.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1, 2, 3, and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth. In addition, Star's Response to TWCIS's objection to Star Data Request 4, with regard to consistency with the public interest, convenience and necessity, is incorporated herein by reference as if fully set forth.

Star TMC is subject to carrier of last resort ("COLR") obligations, meaning that it is obligated to provide service to those requesting service in its service area, without regard to whether serving that customer would be economically viable. One aspect of the public interest criteria under Section 251(f)(2) is the question of the extent to which establishment of the arrangements requested by TWCIS would impact the ability of Star TMC to continue to provide universal service, as that term is defined in 47 USC § 254(c) of the Act.

This data request seeks production of information that directly bears on the continuing provision of universal service by Star in its service area, which is a matter of public interest, directly relevant to the Section 251(f)(2) criteria at issue here. Thus, the Arbitrator should overrule this objection, reject Time Warner Cable's caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

8. Provide maps depicting the location of all existing TWC facilities in Star's service area and fully describe all plans TWC has for installing additional facilities to increase the size

of any of the areas in Star's service area where TWC offers service.

**TIME WARNER OBJECTION:**

Reference is made to general limitation number 1, which is incorporated herein by reference.

TWCIS (NC) objects to this request on the grounds that it seeks information that is oppressive, overly broad, unduly burdensome, and not relevant to the subject matter of this proceeding. TWCIS (NC) further objects to the extent this request seeks to compel TWCIS (NC) to compile maps that it does not maintain in the ordinary course of business or that are not already in its possession.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitation 1, Star's response to that objection/limitation is incorporated herein by reference as if fully set forth.

Production of maps depicting the location of all existing Time Warner Cable facilities in Star's service area, and information as to any TWC plans for installing additional facilities to increase the size of any area where it offers service in Star's service area, are both directly relevant to the Section 251(f)(2) criteria at issue here. Specifically, maps depicting the location all existing facilities and information as to any plans to install additional facilities in the future will be relevant to both ascertaining the extent of the economic burden resulting from provision of one or more of the Section 251(b) interconnection arrangements sought by TWC and the "consistent with the public interest" criterion for suspension or modification.

Further, this information, which relates to the extent to which TWC would offer its VoIP communications services in competition with Star's telecommunication services, would have a direct bearing on the other criterion under Section 251(f)(2), to-wit: whether a suspension or modification is necessary to avoid a significant and adverse impact on users of telecommunication services generally., Star submits that TWC has this information readily at hand, maintains it during the ordinary course of business, and it is directly relevant to the issues presented in this proceeding.

Finally, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule this objection, reject the caveated offer to provide some undefined response as described in its objection, and direct TWCIS to respond fully to this data request.

9. For each exchange in Star's service area where TWC owns or leases facilities, state (a) the number of households and businesses in that exchange currently passed by TWC's facilities, (b) the number of households and businesses in that exchange currently receiving service of any kind from TWC, and (c) the number of households and businesses in that exchange currently subscribing to TWC's broadband service?

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

TWCIS (NC) objects to this request on the ground that it requests data concerning customer subscriptions to Time Warner Cable's video and high-speed data service offerings. Time Warner Cable's video and USD offerings are not relevant to this proceeding. The purpose of this proceeding is to determine whether Star has carried its burden of proof sufficiently to allow Star to continue to refuse to comply with its basic Section 251(b) obligations and, as a result, deny TWCIS (NC)'s rights under Section 251(b), thereby blocking TWCIS (NC)'s efforts to offer consumers in Star's service area a competitive choice of facilities-based voice service providers. Star bears the burden of demonstrating that suspension of each of its Section 251(b) obligations is (i) necessary "to avoid imposing a requirement that is unduly economically burdensome" (or that would cause "a significant adverse economic impact on users of telecommunications services generally") *and* (ii) "consistent with the public interest, convenience, and necessity." 47 U.S.C. § 251(f)(2). The number of video and broadband subscribers served by Time Warner Cable has no bearing on the significant public interest in allowing TWCIS (NC) to exercise its long-withheld Section 251(b) rights, or any purported burdens or economic impact associated with Star's compliance with its Section 251(b) obligations. Therefore, to the extent this request seeks information related to video and high-speed data services, the request is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding and without waiving these objections or its general limitations, TWCIS

(NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to (a), and TWCIS (NC) will further respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to (b) limited to the provision of voice service.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth.

Just as is the case for the information requested in Star's data request 8, this request seeks production of information that is relevant. This request is reasonably calculated to lead to discovery of admissible evidence. Specifically, Star seeks information relevant to the question of whether provision of one or more Section 251(b) interconnection arrangements sought by TWC would either impose a significant adverse economic impact on users of Star's telecommunication services generally, or would impose a requirement that is unduly economically burdensome on Star, and would be inconsistent with the public interest, convenience and necessity.

Star understands that TWC typically offers its "Digital Phone" and "Business Class Phone" VoIP services as part of a bundle that includes other services offered by TWC affiliates. To the extent that such services are available only as part of a bundle, which strategy is not an option for an ILEC with COLR and universal service obligations, such an approach gives TWC marketing leverage. Any realistic assessment of line losses or penetration rates offered in TWCIS's testimony will need to be made in light of information as to the number of residences and businesses in Star's service area where TWC is already offering other services, as those locations will be at an enhanced risk of loss to a TWCIS/TWC bundled service offering that includes a VoIP communications service offered by TWC.

The number of video and/or broadband subscribers served by TWC in Star's service area is relevant to all three of those Section 251(f)(2) criteria, as that information allows for a very focused analysis of projections as to the extent of the economic burden, the extent of the impact on the cost of service to users of Star's telecommunications services in general, as well as the public interest criterion, and this request is reasonably calculated to lead to the discovery of admissible evidence bearing on the statutory criteria for suspension or modification.



Because Star bears the burden of proof for suspension or modification under Section 251(f)(2), it is essential that TWCIS provide the requested information. Otherwise, Star's ability to secure information and develop evidence or testimony regarding the extent of TWC's network in Star's service area, or the number of prospective customers passed by such facilities, is severely handicapped. This information is essential to any effort by Star to evaluate and rebut claims by TWCIS as to the resulting impact of the provision of the requested interconnection arrangements on Star's users generally, the extent of the resulting economic burden on Star, and the public interest criteria. This is relevant data, and for the foregoing reasons, Star respectfully requests that the Arbitrator overrule TWCIS's objections and order TWCIS to respond fully to this data request.

Also, because the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

10. Describe in full and complete detail all retail and wholesale services which TWC would offer to end users in Stars service area if Star was required to provide local number portability to TWCIS. and fully describe your current non-discounted pricing for each such service.

**TIME WARNER OBJECTION:**

Reference is made to general limitation number 1, which is incorporated herein by reference.

Notwithstanding and without waiving these objections or its general limitations. TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitation 1, Star's response to that objection/limitation is incorporated herein by reference as if fully set forth.

This data request is reasonably calculated to lead to the discovery of admissible evidence bearing on the Section 251(f)(2) criteria at issue here, to wit: whether suspension or modification is necessary to "to avoid imposing a requirement on Star TMC that is unduly economically burdensome" (or that would cause a significant adverse economic impact on users

of Star's telecommunications services generally), and would be consistent with the public interest, convenience, and necessity. Limiting the response to only TWCIS, when its affiliates are actually the providers of retail services in Star's service areas, and service would seriously impair Star's efforts to develop evidence bearing on the statutory criteria for suspension or modification. Star adopts by reference its arguments on this point set forth in Star's Response to TWCIS general limitation 1.

Finally, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

11. Produce copies of all agreements TWC or TWCIS is party to with any Telecommunications Carrier. Competing Local Provider, Cable service provider, Information Service provider, or other person or entity, that relates to provision of anyone or more of the following in Star's service area: local exchange service; interconnection; the exchange of Telecommunications traffic; the exchange of Information Service traffic; the exchange of VoIP traffic; reciprocal compensation; local number portability or dialing parity.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to this request on the grounds that the request is irrelevant, oppressive, and overly broad, and to the extent it seeks trade secrets or proprietary and/or highly sensitive commercial and competitive information related to TWCIS (NC)'s or Time Warner Cable's private contractual arrangements with third parties. The purpose of this proceeding is to determine whether Star has carried its burden of proof sufficiently to allow Star to continue to refuse to comply with its basic Section 251(b) obligations and, as a result, deny TWCIS (NC)'s rights under Section 251(b), thereby blocking TWCIS (NC)'s efforts to offer consumers in Star's service area a competitive choice of facilities-based voice service providers. Star bears the burden of demonstrating that suspension of each of its Section 251(b) obligations is (i) necessary "to avoid imposing a requirement that is unduly economically burdensome" (or that would cause "a significant adverse economic impact on users of telecommunications services generally") and (ii) "consistent

with the public interest, convenience, and necessity." 47 U.S.C. § 251(f)(2). The terms of any contract that TWCIS (NC) or an affiliate may have with any third party have no bearing on the significant public interest in allowing TWCIS (NC) to exercise its long-withheld Section 251(b) rights, or any purported burdens or economic impact associated with Star's compliance with its Section 251(b) obligations. In particular, there is no legitimate reason for Star to inquire into the private negotiated terms of the proprietary, commercial relationships between TWCIS (NC) and/or its affiliates with any third party, in particular contracts relating to the delivery of video or high-speed data services. Therefore, the request for TWCIS (NC)'s or its affiliates' third-party, privately negotiated contracts is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding and without waiving these objections or its general limitations, and subject to execution of a protective agreement respecting confidentiality, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business related to the provision of voice service in North Carolina.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth.

Star is entitled to obtain information through data requests that are reasonably calculated to lead to discovery of admissible evidence and which will enable it to present a complete and accurate assessment of the potential impact of the interconnection arrangements TWCIS seeks to establish with Star. All of the information sought by this data request is relevant as it relates specifically to TWCIS/TWC's arrangements for implementing their competitive service offering in Star's service area.

Documents and information relating to TWCIS's agreements with third parties for provision of any service in Star's service area are potentially relevant to issues associated with the Section 251(b) arrangements which TWCIS seeks, and this request is framed with regard to information relating to such arrangements. Under any reasonable application of discovery rules and standards, the requested information is relevant and subject to discovery. As for TWCIS's stated concerns about the confidentiality of the requested documents, these parties have already executed a protective agreement, pursuant to which they have previously produced confidential information. Based on the foregoing, Star respectfully requests that the Arbitrator overrule TWCIS's Objections.

Finally, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

12. As to each North Carolina incumbent local exchange company ("ILEC") with which TWCIS or any other third-party intermediary wholesale service provider acting on behalf of TWC has established local number portability arrangements in order to facilitate TWC's efforts to offer its "Digital Phone" and/or "Business Class Phone" VoIP services:

- (a) Identify each such North Carolina ILEC and state the date on which TWC first provided service under the TWCIS/TWC business model in that ILEC's service area;
- (b) State the number of access lines served by that ILEC as of the date TWC first provided service in that ILEC's service area; and
- (c) State the number of access lines served by TWC in that ILEC's service area as of the dates one, three and five years after the date TWC first provided such service in that area.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

Notwithstanding and without waiving its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business related to the provision of voice service.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

TWCIS's objection here, to the extent it is an objection, illustrates the "hide the ball" approach it is taking as to Star's efforts to obtain data through discovery. Such a strategy would dovetail nicely with a subsequent argument by TWCIS to the effect that Star has not come forward with sufficient evidence to meet its burden of proof.

As between these parties, only TWC has access to data regarding the take rates, penetration levels and other indicators of the success it has enjoyed in securing ILEC customers, both in North Carolina and elsewhere across the country. Star's request for that data is reasonably calculated to lead to admissible evidence bearing upon all three of the Section 251(f)(2) criteria at issue here, those being: whether suspension or modification is necessary to avoid a significant adverse economic impact on users of Star's telecommunication services generally, or to avoid imposing a requirement that is unduly economically burdensome on Star TMC, and whether such would be consistent with the public interest, convenience and necessity.

Star is unclear, given the caveat in Time Warner's objection here, as to what it intends to produce. Star submits that the Arbitrator should overrule this objection and direct TWCIS to produce all responsive data, regardless of whether the data technically concerns the activities of one or more its affiliates. It is uncontested that TWCIS seeks interconnection solely for the purpose of facilitating efforts of its affiliates including, but not limited to TWC Digital Phone, LLC, d/b/a Time Warner Cable, to offer services in Star's service area and data from TWC Digital Phone, LLC will be particularly relevant to the statutory criteria for suspension or modification.

Finally, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

13. As to each ILEC that is a Rural Telephone Company (as that term is defined in 47 USC § 153 (44)) ("RTC") in any State other than North Carolina with which TWCIS or any other third-party intermediary wholesale service provider acting on behalf of TWC has established local number portability arrangements in order to facilitate the efforts of TWC to offer its "Digital Phone" and/or "Business Class Phone" VoIP services:

- (a) State the name and address of each such Rural Telephone Company;
- (b) State the number of access lines served by that Rural Telephone Company as of the date TWC first provided service under the TWCIS/TWC business model in that Rural Telephone Company's service area; and
- (c) State the number of access lines served by or through the TWCIS/TWC

business model in that Rural Telephone Company's service area as of the date one year, two years, three years and five years after the date TWCIS first provided such service in that area.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference. TWCIS (NC) objects to the request on the grounds that the request is irrelevant. The purpose of this proceeding is to determine whether Star has carried its burden of proof sufficiently to allow Star to continue to refuse to comply with its basic Section 251(b) obligations and, as a result, deny TWCIS (NC)'s rights under Section 251(b), thereby blocking TWCIS (NC)'s efforts to offer consumers in Star's service area a competitive choice of facilities-based voice service providers. Star bears the burden of demonstrating that suspension of each of its Section 251(b) obligations is (i) necessary "to avoid imposing a requirement that is unduly economically burdensome" (or that would cause "a significant adverse economic impact on users of telecommunications services generally") *and* (ii) "consistent with the public interest, convenience, and necessity." 47 U.S.C. § 251(0)(2). The number of voice subscribers served by TWCIS (NC)'s affiliates in other states where *other* ILECs operate has no bearing on the significant public interest in allowing TWCIS (NC) to exercise its long-withheld Section 251(b) rights, or any purported burdens or economic impact associated with Star's compliance with its Section 251(b) obligations. Therefore, the request is not reasonably calculated to lead to the discovery of admissible evidence.

TWCIS (NC) further objects on the ground that the data request is oppressive, overly broad, and unduly burdensome. TWCIS (NC)'s affiliates provide interconnected VOIP service in areas served by dozens of ILECs throughout a 29-state footprint. Gathering the data sought therefore would impose enormous burdens on TWCIS (NC). Indeed, gathering the requested data for a single state typically involves many hours of work involving multiple employees who work in different divisions of TWCIS (NC) and its affiliates. Producing the type of granular information about every ILEC area in which an affiliate of TWCIS (NC) offers voice services would increase the burdens of discovery exponentially, and without any reasonable basis.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's response to those objections/limitations are incorporated herein by

reference as if fully set forth.

Star notes at the outset that TWCIS does not dispute the relevance of the requested data. For the same reasons that the data requested by Star in its data request 12 are relevant to the issues presented by Star's Petition for suspension or modification here, this data request also seeks production of data relevant to exactly the same Section 251(f)(2) criteria. Both this request and data request 12 seek information as to TWC's historic experience in terms of penetration and access line subscription data. This is some of the potentially most probative evidence sought by Star's data requests bearing on the statutory criteria for suspension or modification.

Star does not believe that TWC makes decisions on its deployment of their VoIP communications services in a void. It is reasonable to believe that TWCIS/TWC did an analysis to determine whether a business case could be made for undertaking to offer this service in Star's service area. Part of that analysis will be data as to the number of access lines and revenue per access line that they expect to secure in Star's service area. Any such projections will be based on TWC's experience in other markets.

TWCIS's affiliated TWC entities have been engaged in offering "Digital Phone" and "Business Class Phone" VoIP services for some years and, according to TWC filings with various government regulators, it provides these services to several million customers across the country. TWC certainly has documents and information as to the penetration it has secured and the resulting ILEC line losses. TWCIS will no doubt rely on that information in filing testimony on the economic burden issue in this docket. Star is entitled to obtain that information prior to the time it has to file its testimony.

TWCIS has access to this information from its corporate affiliates, such that, at a minimum, TWCIS has the *practical ability* to obtain information from TWC that is responsive to Star's data request - it simply does not want to make the information available to Star at this time. To the extent TWCIS actually has the requested information in its possession, it must produce such information. And, if TWCIS does not actually possess the sought information, it certainly has the actual ability to obtain that information from its TWC affiliates, particularly the entity now known as TWC Digital Phone LLC, TWCIS's acknowledged corporate affiliate and *de facto* partner in the proposed offering of these services in Star's service area. . The purpose of the discovery process is to allow the parties to discover relevant information regarding disputed issues. Because Star cannot get the requested information directly from TWC, and because TWCIS can, it should be compelled to

do so.

Courts in several jurisdictions, including North Carolina, have construed the terms "possession, custody, and control" very broadly for purposes of discovery. *See, e.g., Hardin v. Belmont Textile Machinery Co.*, 2007 W.L. 2300795 (W.D.N.C, August 7, 2007). The *Hardin* decision cites *Uniden America Corp. v. Ericsson, Inc.*, *supra*, as well as *SEC v. Credit Bancorp, Ltd.*, 194 F.R.D. 469 (S.D.N.Y. 2000) for this proposition. The *Hardin* decision suggests that "control" is construed particularly broadly by the courts, and that it is interpreted to mean "control by legal authority or **actual ability**," or "the legal right, authority, or **practical ability to obtain the materials sought on demand**." (emphasis added). *Hardin* at 5 (citing *Uniden* and *Credit Bancorp*).

The factors that are distilled from case law which help to determine when information in the possession of a non-party corporation may be deemed under the control of the litigating corporation for purposes of production in discovery include "(a) commonality of ownership, (b) exchange or intermingling of directors, officers or employees of the two corporations, (c) exchange of documents between the corporations in the ordinary course of business, (d) any benefit or involvement by the non-party corporation in the transaction and (e) involvement of the non-party corporation in the litigation.

*Uniden America Corp. v. Ericsson, Inc.*, 181 F.R.D. 302, 306 (M.D.N.C. 1998).

Star acknowledges that some effort may be required by TWC to assemble this data, however, TWC is the party in possession of the data, and it is unquestionably relevant to more than one of the criteria for suspension or modification under Section 251(f)(2) at issue here and TWCIS should be made to produce the data.

As noted above, TWCIS seeks interconnection solely for the purpose of facilitating the efforts of its affiliates including, TWC Digital Phone, LLC, to offer services in Star's service area. Data from TWC Digital Phone, LLC, which presumably provides the retail service in every state where TWC has deployed this business model, will be particularly relevant to the statutory criteria for suspension or modification. The conversation in this docket will be about whether suspension or modification is necessary to avoid a significant adverse economic impact on users of Star's telecommunication services generally, or whether a suspension or modification is necessary to avoid imposing a requirement on Star that is unduly economically burdensome, and whether a suspension or modification would be consistent with the public interest, convenience and necessity. Any meaningful assessment of those concepts and criteria will be informed by data as to TWC's experiences elsewhere, which should illuminate the extent of the adverse economic impact



that would be inflicted on users of Star's telecommunication services generally, or the extent of the economic burden which would result from the provision of one or more of the requested interconnection arrangements, and the extent to which the suspension or modification would be consistent or inconsistent with the public interest, convenience and necessity. This request, like the data which is the subject of Star data request 12, is reasonably calculated to lead to the admissible evidence bearing on this criteria. As a result, the Arbitrator should over rule these objections, and direct TWCIS to respond fully to this data request.

14. What net access line change do you project for Star after each of one, two, three and five years if TWCIS is permitted to establish number portability arrangements with Star, and state the basis for all such projections in full and complete detail.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 2 and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to this request because it is premature, hypothetical, and speculative. Discovery in this case has just commenced. TWCIS (NC) has not yet had an opportunity to conduct discovery in this case, nor has it had the opportunity to review Star's testimony or any documents or analysis produced by Star. TWCIS (NC) also has not developed testimony or worked with outside experts to conduct the analysis necessary to respond to this request.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business, or if such information is developed in the course of this proceeding, related to the provision of voice service.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 2 and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth.

TWCIS has not actually stated any legitimate basis for any objection to this request. Even if it had, such an objection should be overruled, as this series of data requests (requests 14-16) seek production of specific factual information, to the extent possessed by TWC, directly

relevant to the criteria for suspension or modification under Section 251(f)(2). This request is not premature, hypothetical or speculative. If TWC possesses no information responsive to this request, then it should simply say so. However, if it has made any projections as to expected access lines losses for Star during any of the periods referenced in the data request, if TWCIS is permitted to establish number portability arrangements with Star, then that information is directly relevant to the statutory criteria for suspension or modification. For those reasons the Arbitrator should overrule this objection.

In addition, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear, and the Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

15. What net access line change do your project for Star after each of one, two, three and five years if TWCIS interconnects with Star, but Star is not required to establish number portability arrangements with TWCIS, and state the basis for all such projections in full and complete detail.

**TIME WARNER OBJECTION:**

See objection to Number 14.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Star's response to Time Warner's objection to Star Data Request 14 is incorporated herein by reference, as if fully set forth.

This data request seeks the same information as sought in request 14, except this request concerns any projections TWC may have for a scenario in which Star is not required to establish number portability arrangements with TWCIS. This is factual information which is directly relevant to the criteria for suspension or modification under Section 251(f)(2). For the same reasons, the Arbitrator should overrule this objection and direct TWCIS to respond fully to this data request.

16. State TWC's projections as to the number of end user customers in Star's service area that will receive a VoIP communications service through TWC or a TWC affiliate in the next 5 years, as follows:

- (a) How many of these projected customers are expected to be business customers?
- (b) How many of these projected customers are expected to be residential customers?
- (c) Provide all documents and/or work papers supporting your responses.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1, 2, and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to this request because it is premature, hypothetical, and speculative. Discovery in this case has just commenced. TWCIS (NC) has not yet had an opportunity to conduct discovery in this case, nor has it had the opportunity to review Star's testimony or any documents or analysis produced by Star. TWCIS (NC) also has not developed testimony or worked with outside experts to conduct the analysis necessary to respond to this request.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business, or if such information is developed in the course of this proceeding.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Star's response regarding Time Warner General Limitations 1, 2 and 4, which are incorporated herein by reference as if fully set forth.

Just as with Star's data requests 14 and 15, this data request seeks production of specific factual information, to the extent possessed by TWC, directly relevant to the criteria for suspension or modification under Section 251(f)(2). This response is neither premature, hypothetical, nor speculative. Again here, TWCIS has not actually stated any legitimate basis for objection to this request, but if it had, the objection should be overruled.

The projections which are the subject of this series of data requests directly relate to the various criteria for suspension or modification at issue here. While requests 12 and 13 seek historic data as to TWC's experiences in other markets, which is anecdotal evidence which will inform the analysis here, requests 14-16 seek information as to any projections TWC has made, presumably informed by its historic experience in other markets, as to likely penetration rates in Star's service areas under different scenarios. The Arbitrator should direct TWCIS to fully

respond to this data request.

In addition, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear, and the Arbitrator should reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

17. Please provide the following information:

- (a) Identify any state commission decision of which TWC is aware that selectively suspended an ILEC's duty to provide LNP as to any TWC affiliate or any entity not affiliated with TWC, or arbitrated an interconnection agreement between any parties that did not provide for provision by the ILEC of LNP service.
- (b) State whether TWC would offer its "Digital Phone" and "Business Class Phone" VoIP services in Star's service area if the Authority determined that it was appropriate to suspend any obligation of Star to provide LNP or any other Section 251(b) interconnection arrangement to TWCIS for 1, 2, 3 or more years, and provide the reason(s) for your response.
- (c) If your response to the previous questions is yes, please provide TWC's estimate as to its take rate for its "Digital Phone" and its "Business Class Phone" VoIP services in Star's service area if the NCREA were to suspend any obligation of Star to provide LNP or any other Section 251(b) interconnection arrangement to TWCIS for a period of 1, 2, 3 or 5 years.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1, 2, 3. and 4, which are incorporated herein by reference.

With respect to sub-part (a). TWCIS (NC) objects to this request to the extent it seeks information and documents protected from disclosure by the attorney-client privilege, the work product doctrine, and/or the protection afforded mental impressions, conclusions, opinions or legal theories of one or more attorneys of TWCIS (NC). In essence, Star seeks to require TWCIS (NC) to turn over the results of legal research conducted by counsel to TWCIS (NC), which would breach attorney-client privilege and the work product doctrine. In addition, or in the alternative, TWCIS (NC) objects on the ground that Star seeks to compel TWCIS (NC) to produce information

that is publicly available.

With respect to sub-parts (b) and (c), TWCIS (NC) objects to this request because it is premature, hypothetical, and speculative. Discovery in this case has just commenced. TWCIS (NC) has not yet had an opportunity to conduct discovery in this case, nor has it had the opportunity to review Star's testimony or any documents or analysis produced by Star, and the NCREA has not yet rendered a decision on any of the disputed facts or law in this case. It therefore is impossible for TWCIS (NC) to provide responses with any reasonable degree of accuracy or certainty regarding potential future business decisions that it may make. Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to sub-parts (b) and (c) when and if the answers become known.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1, 2, 3, and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth.

With regard to sub-part (a) of this data request, Star does not seek any information protected from disclosure by the attorney-client privilege or the work product doctrine or any other protected or privileged information. Instead, it requests purely factual information, which is the identity of any state commission decision of which TWC is aware that has selectively suspended any ILEC's duty to provide number portability either as to any TWC affiliate or any entity not affiliated with TWC. Star does not seek any work product or other attorney-client privileged analysis or correspondence relating to any such decisions; instead Star simply seeks purely factual information regarding the identity of other state commission decisions that are directly relevant to issues presented here.

With regard to sub-parts (b) and (c), these requests are neither premature, hypothetical nor speculative. This request seeks information directly relevant to Star's Petition for suspension or modification. Specifically, this information would bear on the potential scenario where the Authority might conclude that it is appropriate to suspend or modify any obligation of Star to provide number portability for some period of time. In such a scenario, TWCIS would interconnect with Star, but Star would not be obligated to provide number portability to TWCIS. These two sub-parts of data request 17 directly relate to such a potential scenario, which is clearly relevant to issues presented here.

In addition, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear, and the Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

18. State whether TWC's "Digital Phone" and "Business Class Phone" VoIP services would be offered in Star's service area on a stand-alone or a la carte basis, or would they only be offered in a bundle with other services and, if offered in Star's service area on a stand alone or a la carte basis so, what the stand-alone price would be for all such services?

**TIME WARNER OBJECTION:**

Notwithstanding and without waiving these or its general objections, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** It is not clear to Star what TWCIS refers to when it commences its objection by stating that it is not "waiving these or its general objections..." Star has previously responded to TWCIS's general objections, however it does not know what "these objections" are that TWCIS refers to in this statement. In any event, no objection has been stated here by TWCIS and the information requested in this data request is clearly relevant to the issues presented here, and there is no legitimate basis for objection.

In addition, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

19. On a municipality-by-municipality basis, if available, otherwise on the smallest geographical basis available, provide the take rate for services offered by TWC as to business and residential premises passed by TWC facilities in:

- (a) Those areas of North Carolina served by independent ILECs (for purposes of these data requests, the term "independent ILECs" means those ILECs which are not former Regional Bell Operating Companies).

(b) Those areas of Virginia, South Carolina, and Tennessee served by independent ILECs.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

TWCIS (NC) objects to this request to the extent that it requests data concerning the take rates of Time Warner Cable's video and high-speed data service offerings.

Time Warner Cable's video and HSD offerings are not relevant to this proceeding. The purpose of this proceeding is to determine whether Star has carried its burden of proof sufficiently to allow Star to continue to refuse to comply with its basic Section 251(b) obligations and, as a result, deny TWCIS (NC)'s rights under Section 251(b), thereby blocking TWCIS (NC)'s efforts to offer consumers in Star's service area a competitive choice of facilities-based voice service providers. Star bears the burden of demonstrating that suspension of each of its Section 251(b) obligations is (i) necessary "to avoid imposing a requirement that is unduly economically burdensome" (or that would cause "a significant adverse economic impact on users of telecommunications services generally") *and* (ii) "consistent with the public interest, convenience, and necessity." 47 U.S.C. § 251(f)(2). The number of video and broadband subscribers served by Time Warner Cable has no bearing on the significant public interest in allowing TWCIS (NC) to exercise its long-withheld Section 251(b) rights, or any purported burdens or economic impact associated with Star's compliance with its Section 251(b) obligations. Therefore, to the extent this request seeks information relating to video and high-speed data services, the request is not reasonably calculated to lead to the discovery of admissible evidence.

Likewise, TWCIS (NC)'s and its affiliates' take rates in other states where *other* ILECs operate are irrelevant to this proceeding. TWCIS (NC) therefore objects on the ground that the data request is oppressive, overly broad, and unduly burdensome. Gathering the data sought would impose enormous burdens on TWCIS (NC). Indeed, gathering the requested data for a single state typically involves many hours of work involving multiple employees who work in different divisions of TWCIS (NC) and its affiliates. Producing the type of granular information about every ILEC area in three other states in which an affiliate of TWCIS (NC) offers voice services would increase the burdens of discovery exponentially, and without any reasonable

basis.

Notwithstanding and without waiving these objections or its general limitations. TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to the provision of voice service in North Carolina.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth.

Star incorporates by reference its response to TWCIS's objection to Star data request 9. For the same reasons as set forth there, data as to the take rates for all TWC services offered in Star's service area are relevant to the Section 251(f)(2) suspension or modification criteria. Star understands that TWC typically offers its "Digital Phone" and "Business Class Phone" VoIP services as part of a bundle that includes other services offered by TWC affiliates. To the extent that such services are available only as part of a bundle, which strategy is not an option for an ILEC with COLR and universal service obligations, such an approach gives TWC marketing leverage. Any realistic assessment of line losses or penetration rates offered in TWCIS's testimony will need to be made in light of information as to the role such bundles play in securing penetration as to TWCIS/TWC bundled service offerings that includes a VoIP communications service offered by TWC.

In addition, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

20. Please describe the socio-economic demographic of TWC's current and target customers in the areas served by TWC in North Carolina, and provide copies of all studies, work papers, surveys and other information possessed by TWC (including your partners, affiliates, parents, subsidiaries, etc.) that describe the social and economic profile of Time Warner's customers and target customer base.



**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

TWCIS (NC) objects to this request because the phrase "'socio-economic demographic of TWCIS (NC)'s (or any affiliate's) current and target customers" is vague, indefinite, uncertain, and/or ambiguous. In particular, the terms "socio-economic demographic" and "target customers" are undefined and are subject to several reasonable possible meanings. As a result, this request is oppressive, overly broad, and unduly burdensome.

TWCIS (NC) further objects to the request on the grounds that the request is irrelevant and unduly burdensome. This proceeding concerns only whether Star has carried its burden of proof sufficiently to allow Star to continue to refuse to comply with its basic Section 251(b) obligations and, as a result, deny TWCIS (NC)'s rights under Section 251(b), thereby blocking TWCIS (NC)'s efforts to offer consumers in Star's service area a competitive choice of facilities-based voice service providers. Therefore, the request is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to the provision of voice service.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth.

Star believes that Time Warner Cable is sufficiently sophisticated that it is able to interpret the terms "socio-economic demographic" and "target customers," given the nature and extent of its operations, its extensive marketing efforts and its long and successful business history. This data request is not vague, and it is neither oppressive, overly broad, nor unduly burdensome.

Further the request is not irrelevant, as it seeks information which directly bears on at least two of the Section 251(f)(2) criteria at issue here to-wit: whether suspension or modification is necessary to avoid imposing a requirement that would cause a significant adverse economic impact on users of Star's telecommunications services generally, and whether a

suspension or modification would be consistent with the public interest, convenience, and necessity.

TWC only offers its VoIP communication services in those locations where it has cable television facilities. It makes business decisions as to where it will deploy cable television facilities based on whatever business criteria or standards it applies. Time Warner Cable is subject to no carrier of last resort or other mandatory service obligations of which Star is aware. The consequences of the establishment of one or more of the Section 251(b) interconnection arrangements requested by TWCIS will have a bearing on the extent of the adverse economic impact on users of Star's telecommunication services generally, and also will have a bearing on the extent to which establishment of those arrangements is consistent with the public interest, convenience and necessity. Those are two of the criteria for suspension or modification under Section 251(f)(2). This information as to the customers which TWC targets bears on both of those criteria, it is relevant to those criteria and this request is reasonably calculated to lead to the discovery of admissible evidence as to one or more of those criteria. As a result, the objection should be over ruled.

Finally, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear, and the Arbitrator should also reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

21. With regard to customers subscribing to TWC's "Digital Phone" or "Business Class Phone" VoIP services, please provide:

- (a) The percentage of such customers that did not port their ILEC telephone number to TWC from the Rural Telephone Company serving them when they became a TWC customer and the percentage of such customers that did port their ILEC telephone to TWC.
- (b) The total number of such non-porting customers and the percentage of such non-porting customers to total TWC digital VoIP service customers per Rural Telephone Company, per year, for TWC nationally.
- (c) The percentage of such customers that did not port their ILEC telephone number to TWC from an ILEC that is not a Rural Telephone Company serving them when they became a TWC customer and the percentage of such

customers that did port their ILEC telephone number to TWC.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to the request on the grounds that it is vague.

TWCIS (NC) also objects to the data request, because it is oppressive, overly broad, and unduly burdensome to the extent it seeks information on a nationwide basis. TWCIS (NC)'s affiliates provide interconnected VOIP service in areas served by dozens of ILECs throughout a 29-state footprint. Gathering the data sought therefore would impose enormous burdens on TWCIS (NC). Indeed, gathering the requested data for a single state typically involves many hours of work involving multiple employees who work in different divisions of TWCIS (NC) and its affiliates. Producing the type of granular information about every ILEC area in which an affiliate of TWCIS (NC) offers voice services would increase the burdens of discovery exponentially, and without any reasonable basis.

Notwithstanding and without waiving these objections or its general limitations. TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to the provision of voice service in North Carolina.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's response to those objections/limitations are incorporated herein by reference as if fully set forth.

With regard to TWCIS's claim that this request is vague, Star TMC must disagree. This request sets forth three questions relating to customers subscribing to TWCIS's "Digital Phone" or "Business Class Phone" VoIP services. There is nothing vague about the three subparts to this data request.

This data request seeks information relevant to the statutory criteria for suspension or modification and it is reasonably calculated to lead to discovery of admissible evidence bearing on the potential scenario where the Authority might conclude it appropriate to not require Star to provide number portability to TWCIS for some period of time in connection with any other

interconnection arrangements established with TWCIS.

In this docket, one of the scenarios which the Authority may contemplate is one where Star interconnects with TWCIS but any obligation of Star to provide number portability is suspended or modified for some period of time. In order to evaluate such a scenario in the context of the criteria for suspension or modification set out in Section 251(f)(2), Star needs data as to TWC's experience regarding number porting, and the percentage of customers that do or do not port their numbers when they become TWC digital VoIP communications service customers.

Star can appreciate that there is some potential burden to TWC in parsing its data in this regard. However, allowing TWC to limit the data it provides to just the State of North Carolina means that Star would be severely limited, if not completely deprived of any access to data regarding penetration rates in a non-porting scenario in an area served by a small ILEC. As a result, and given the direct relevance of the requested data to this issue, Star submits that it is entitled to discover the requested data from a broader universe than simply from the State of North Carolina.

Finally, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear, and the Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

22. Please provide the total number of retail VoIP communications services customers TWC has within the State of North Carolina, the percentage of those retail customers which have retained and are using their prior telephone number and the percentage of customers which have been provided and are using new telephone numbers provided directly or indirectly to them by TWC. For the customers which have been provided and are using new telephone numbers provided directly or indirectly by TWC, what percentage of these customers transferred service from an existing incumbent local exchange carrier and what percentage are telephone service customers or new lines which have been provided a telephone number for the first time?

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

Notwithstanding and without waiving these objections or its general limitations. TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to the provision of voice service in North Carolina.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

It is not clear to Star to what TWCIS refers when it commences its objection by stating that it is not "waiving these or its general objections..." Star has previously responded to TWCIS's general objections; however, it does not know what "these objections" are that TWCIS refers to in this statement. In any event, no objection has been stated by TWCIS here. The information requested in this data request is clearly relevant to the issues presented here, and there is no legitimate basis for objection.

In addition, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule this objection, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

23. What percentage of TWC's customers in North Carolina pays the full, non-discounted retail rate for: TWC's "Digital Phone" VoIP service, "Business Class Phone" VoIP service, cable television service, and high-speed Internet service?

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to the request on the grounds that it is vague and seeks information that is oppressive, overly broad, unduly burdensome, and not relevant to the subject matter of this proceeding. The purpose of this proceeding is to determine whether Star has carried its burden of proof sufficiently to allow Star to continue to refuse to comply with its basic Section 251(b) obligations and, as a result, deny TWCIS (NC)'s rights under Section 251(b), thereby blocking TWCIS (NC)'s efforts to offer consumers in Star's service area a competitive

choice of facilities-based voice service providers. Star bears the burden of demonstrating that suspension of each of its Section 251(b) obligations is (i) necessary "to avoid imposing a requirement that is unduly economically burdensome" (or that would cause "a significant adverse economic impact on users of telecommunications services generally") *and* (ii) "consistent with the public interest, convenience, and necessity." 47 U.S.C. § 251(f)(2). The percentage of customers of TWCIS (NC) and its affiliates that pay "non-discounted retail rate[s]" for voice, video, and data services has no bearing on the significant public interest in allowing TWCIS (NC) to exercise its long-withheld Section 251(b) rights, or any purported burdens or economic impact associated with Star's compliance with its Section 251(b) obligations.

In addition, TWCIS (NC) objects to this request to the extent that it requests data concerning customer subscriptions to Time Warner Cable's video and high-speed data service offerings. Time Warner Cable's video and USD offerings are not relevant to this proceeding. Information unrelated to the provision of voice services within Star's territory is wholly irrelevant to this proceeding. Therefore, to the extent this request seeks information relating to video and high-speed data services, the request is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to the provision of voice service.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

The stated request seeks production of information relevant to several of the statutory criteria for suspension or modification in play here, to wit: whether suspension or modification is necessary to "to avoid imposing a requirement on Star TMC that is unduly economically burdensome" (or that would cause a significant adverse economic impact on users of Star's telecommunications services generally), and would be consistent with the public interest, convenience, and necessity.

Star understands that TWC typically offers its "Digital Phone" and "Business Class Phone" VoIP services as part of a bundle that includes other services offered by TWC affiliates. To the

extent that such services are available only as part of a bundle, which strategy is not an option for an ILEC with COLR and universal service obligations, such an approach gives TWC marketing leverage. Any realistic assessment of line losses or penetration rates offered in TWCIS's testimony will need to be made in light of information where TWC is already offering other services, and what the extent to which TWC's customers are paying a non-discounted price for the various parts such bundles, including the other components.

The requested data certainly is relevant to the impact on users of Star's telecommunications services generally. It is also relate to the analysis of the public interest here. In the scenario presented here, where TWC would only offer its VoIP services in the most populous areas of Star's service areas, Section 251(f)(2) requires assessment of the impact of provision of the requested interconnection arrangements on those Star customers to which TWC will not offer service cannot be overlooked. At a minimum, TWCIS should be required to provide data as to take rates of Time Warner Cable's video and high-speed data service offerings in North Carolina.

The nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear, and the Arbitrator should overrule the objection as to this data request, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond to this data request with the requested information at least as to North Carolina.

24. Please describe in full and complete detail all incentives and promotional offers that TWC currently makes or has previously made available in areas of North Carolina in which TWC has an interconnection agreement ("ICA") with an ILEC to incent customers to choose TWC as their communications service provider and switch their service to TWC, during the 12 months following implementation of that ICA.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to this request because the phrase "incentives and promotional offers ... to incent customers to choose TWC as their communications service provider and switch their service to TWC" is vague, indefinite, uncertain, and/or ambiguous. In particular, the terms ""incentives"" and "to incent customers" are undefined and are subject to several reasonable

possible meanings. As a result, this request is oppressive, overly broad, and unduly burdensome.

TWCIS (NC) also objects to the request on the grounds that the request is irrelevant to the subject matter of this proceeding. The purpose of this proceeding is to determine whether Star has carried its burden of proof sufficiently to allow Star to continue to refuse to comply with its basic Section 251(b) obligations and, as a result, deny TWCIS (NC)'s rights under Section 251(b), thereby blocking TWCIS (NC)'s efforts to offer consumers in Star's service area a competitive choice of facilities-based voice service providers. Promotional offers that TWCIS (NC) may have offered in the service areas *of other* ILECs are wholly irrelevant to this proceeding. Therefore, this request is not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding and without waiving these objections or its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to the provision of voice service.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

With regard to the claim of vagueness, Star believes that TWC is sufficiently sophisticated to be able to interpret the terms "incentives and promotional offers ... to incent customers to choose TWC as their communication service provider and switch their service to TWC", given the nature and extent of its operations and its experience in marketing its services to the consuming public. Time Warner Cable has a long and successful business history and Star's request for this information is framed with reasonable particularity and is not vague.

With regard to TWCIS's claim that the requested data is irrelevant, the promotional offers that TWC has made to incent customers to leave an ILEC and subscribe to TWC's VoIP services are relevant to the Section 251(f)(2) criteria at issue here, specifically including the impact on users of Star's telecommunication services generally, and the public interest; both the larger public interest and the specific public interest in Star's continuing ability to be able to provide universal service as defined in the Act throughout its service area. The promotional offers that Time Warner Cable has made in the service areas of other ILECs will give the Authority some visibility to the means by which the provision of the requested interconnection arrangements could reasonably be expected to be marketed in Star's service area. This



information is relevant to the Section 251(f)(2) criteria.

Finally, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule any objection as to this data request, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

25. Please describe in full and complete detail all criteria TWC uses to determine whether to extend cable television service and VoIP communications services into areas in North Carolina not presently served by TWC?

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to this request because the term "criteria" is vague, indefinite, uncertain, and/or ambiguous. TWCIS (NC) also objects to the request on the grounds that the request is irrelevant to the subject matter of this proceeding.

Notwithstanding and without waiving these objections or its general limitations. TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to current promotions related to the provision of voice service.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

With regard to TWC's claim of vagueness, Star believes that Time Warner Cable is sufficiently sophisticated and experienced in this facet of its business to be able to interpret the term "criteria" in the context used in this data request, given the nature and extent of its operations and the decisions it routinely makes with regard to whether it will extend facilities to a particular area.

In addition, this information is relevant because it bears upon the public interest criteria at issue here. If TWC intends to only offer its service in the most populous portions of the Star service area, where Star's most profitable customers are located and its business customers are concentrated, with no prospect of expanding its facilities and offering service in the more remote

portions of Star's service area, then that information will bear directly on the public interest criteria.

Time Warner Cable certainly has standards or criteria that it applies in deciding whether to extend its facilities and Star simply seeks to discover those so that it might develop information as to whether those criteria could be satisfied such that TWC will extend facilities to the more rural portions of Star's service area. The information requested is relevant, and these objections are not well founded.

In addition, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear. The Arbitrator should overrule the objections to this data request, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

26. What percentage of persons or entities requesting "Digital Phone" or "Business Class Phone" VoIP service from TWC are denied service by TWC?

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1, which is incorporated herein by reference.

TWCIS (NC) further objects to this request because the phrase "denied service" is vague, indefinite, uncertain, and/or ambiguous. TWCIS (NC) also objects to the request on the grounds that the request is irrelevant to the subject matter of this proceeding.

Notwithstanding and without waiving these objections or its general limitations. TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to the provision of voice service.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitation 1, Star's response to that objection/limitation is incorporated herein by reference as if fully set forth.

Star's response to TWC's objection to data request 25 is incorporated here by reference. Information sought by this data request likewise bears on the public interest criteria at issue here. As noted above, TWC is not subject to carrier of last report obligations, and it is free to deny service to the public in a fashion that an ILEC cannot.

In addition, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear, and the Arbitrator should overrule any objection as to this data request, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

27. Please provide TWC's most recently filed Form FCC 477(s) covering the census tracts and Zip codes in Bladen, Duplin, Cumberland, Columbus and Sampson Counties, North Carolina.

**TIME WARNER OBJECTION:**

Notwithstanding and without waiving its general limitations, TWCIS (NC) will respond to this request.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

No objection appears to have been stated here. TWC's most recently filed Form FCC 477(s) for Star's service area are relevant. The Arbitrator should overrule any objection as to this data request, reject any caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

28. Please provide all documents in the possession of TWC or its affiliates or subsidiaries which contain data, studies, analyses and/or reports on the effect of the availability of number portability on the marketing, sale, penetration rates, take rate, and/or market share of TWC's "Digital Phone" and/or "Business Class Phone" VoIP services and similar service offerings, including assessments of consumer preferences and reactions to the availability or non-availability of LNP.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1 and 4, which are incorporated herein by reference.

TWCIS (NC) further objects to this request on the grounds that it is vague, oppressive, and overly broad.

Notwithstanding these objections or its general limitations, TWCIS (NC) will respond to this request to the extent it calls for non-privileged information in its possession in the ordinary course of business with respect to the provision of voice service in North Carolina.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1 and 4, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

For the same reasons cited in addressing the objection to Star's data requests 14, 15 and 17, this objection should be overruled. This data request seeks information as to data, studies, analysis, and/or reports on the effect of the availability of number portability on penetration rates or take rates for the VoIP communication services which TWC seeks to offer in Star's service area. In evaluating the statutory criteria for suspension or modification, this information is relevant to one or more of the scenarios which may be considered by the Authority in this proceeding, *i.e.*, potentially suspending any obligation of Star to provide number portability to TWCIS for some period of time.

In addition, the nature and extent of TWCIS's caveat as to how it proposes to respond to this request is unclear, and the Arbitrator should overrule any objection as to this data request, reject the caveated offer to provide some response as described in its objection, and direct TWCIS to respond fully to this data request.

29. Please provide copies of any and all terms of use or customer service agreements that may or will apply to customers intended to be served by TWC with either TWC's "Digital Phone," "Business Class Phone" or other VoIP services within Star TMC's service area.

**TIME WARNER OBJECTION:**

Notwithstanding and without waiving its general limitations, TWCIS (NC) will respond to this request.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

30. Please state in full and complete detail the basis on which you denied, in your Response to Petition of Star Telephone Membership Corporation Pursuant to 47 USC § 251(0(2) filed on May 7, 2013. the factual matters alleged in paragraphs 16, 18, 20, 23 of Star TMC's Petition.

**TIME WARNER OBJECTION:**

Notwithstanding and without waiving its general limitations, TWCIS (NC) will respond to this request.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

31. Please provide copies of all documents which you rely on to support any of your responses to any of Star's data requests, and all documents identified in your responses to Star's data requests.

**TIME WARNER OBJECTION:**

Reference is made to general limitation numbers 1, 2, 3, and 4, which are incorporated herein by reference.

Notwithstanding and without waiving its general limitations, TWCIS (NC) will respond to this request.

**STAR TMC'S RESPONSE TO THIS OBJECTION:** Given TWCIS's citation to its general limitations 1, 2, 3, and 4, Star's responses to those objections/limitations are incorporated herein by reference as if fully set forth.

**MOTION FOR MODIFICATION OF CURRENT PROCEDURAL SCHEDULE**

TWCIS has objected in some form or fashion (either directly or by reference to its general limitations/objections) to 28 of the 31 data requests comprising Star TMC's First Data Requests. The time required for consideration of TWCIS's objections, Star's responses, and the rendering of decisions on those objections will necessarily delay the date when TWCIS actually produces the data and information requested by Star beyond the date when such would have

otherwise been due, which is next Tuesday, June 4, 2013. Due to the impact of this resultant delay in securing the requested data, information and documents on Star's ability to prepare and file its direct testimony, Star requests that the Arbitrator revise the procedural schedule in this docket to delay the date for Star's filing of its direct testimony by one day for each day that TWCIS's service of a complete response to Star's First Data Requests is delayed (and to make corresponding adjustments in the remainder of the current procedural schedule) until some future date after June 4, 2013. Otherwise, TWC will have thwarted Star's ability to conduct meaningful discovery and make productive use of relevant data and information in attempting to meet its burden of proof as to the Section 251(f)(2) suspension criteria. This delay constitutes good cause for the requested modification of the current procedural schedule.

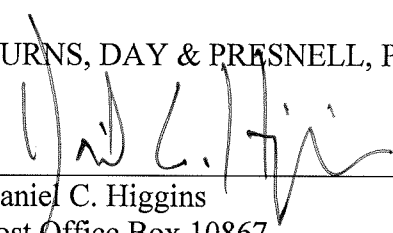
### **CONCLUSION**

For the foregoing reasons, the Arbitrator should overrule the TWCIS objections addressed above, and direct TWCIS to respond fully to those Star TMC data requests. In addition, for the practical reasons set forth in Star's Motion for Modification of Current Procedural Schedule, the Arbitrator should revise the current procedural schedule in this docket as requested in that Motion.

Respectfully submitted, this the 31<sup>st</sup> day of May, 2013.

By:

BURNS, DAY & PRESNELL, P.A.

  
Daniel C. Higgins  
Post Office Box 10867  
Raleigh, NC 27605  
Tel: (919) 782-1441  
E-mail: dhiggins@bdppa.com

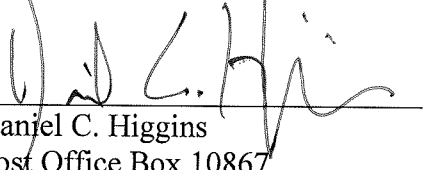
**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing document was served this day by e-mailing same to counsel for TWCIS.

This the 31<sup>st</sup> day of May, 2013.

BURNS, DAY & PRESNELL, P.A.

By:

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