



PUBLIC NOTICE

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PROCEDURES ESTABLISHED FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT BETWEEN TIME WARNER CABLE INFORMATION SERVICES AND STAR TELEPHONE MEMBERSHIP CORPORATION

WC Docket No. 13-204

On November 1, 2013, the Wireline Competition Bureau (Bureau) released an order preempting the jurisdiction of the North Carolina Rural Electrification Authority with respect to the arbitration of an interconnection agreement between Time Warner Cable Inc.'s (TWC's) telecommunications carrier subsidiary, Time Warner Cable Information Services (North Carolina), LLC (TWCIS), and Star Telephone Membership Corporation (Star), an incumbent local exchange carrier (*TWC Preemption Order*).¹ The *TWC Preemption Order* was issued pursuant to section 252(e)(5) of the Communications Act of 1934, as amended (Act).² In this Public Notice, we establish procedures and a pleading schedule for this proceeding, pursuant to authority delegated to the Chief of the Bureau.³

In the *TWC Preemption Order*, the Bureau directed TWCIS to contact the Bureau to schedule a joint pre-filing conference.⁴ The order further directed the parties to refer to the procedures that had been established for the Commission's previous arbitrations.⁵ Finally, the Bureau indicated that it would issue a public notice establishing procedures and a pleading schedule specific to the arbitration proceeding once the pre-filing conference had been held.⁶ An initial joint pre-filing conference was held on November 25, 2013, wherein the parties indicated they were continuing to negotiate and thus limit the number of issues required to be arbitrated. The Bureau directed the parties to provide updates on the status of their discussions.

¹ See *Petition of Time Warner Cable Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the North Carolina Rural Electrification Authority Regarding Arbitration of an Interconnection Agreement with Star Telephone Membership Corporation*, WC Docket No. 13-204, Memorandum Opinion and Order, 28 FCC Rcd 15086 (2013) (*TWC Preemption Order*).

² 47 U.S.C. § 252(e)(5).

³ See *Procedures for Arbitrations Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1934, as amended*, Order, 16 FCC Rcd 6231 (2001) (*Arbitration Procedures Order*); see also 47 C.F.R. §§ 51.805, 51.807. The Commission delegated to the Chief of the Common Carrier Bureau (now the Wireline Competition Bureau) authority to serve as the Arbitrator in section 252(e)(5) arbitration proceedings, with the assistance of the staff of the Wireline Competition and Enforcement Bureaus. As used in this Public Notice, the term "Arbitrator" refers to the Chief of the Wireline Competition Bureau and/or authorized staff of the Wireline Competition and Enforcement Bureaus.

⁴ See *TWC Preemption Order*, 28 FCC Rcd at 15098, para. 26.

⁵ See *id.* at 15098 n.103.

⁶ See *id.* at 15098, para. 26.

A. Commencement of the Arbitration

1. Petition for Arbitration. The parties have indicated that they are continuing to negotiate outstanding issues and that TWC intends to file a Petition for Arbitration on or before January 27, 2014.⁷ For purposes of the Commission's resolution of the issues, the date on which a Petition for Arbitration is filed with the Commission shall be deemed to be the 135th day after which Star received the request to negotiate.⁸ The Petitioner must serve a copy of its Petition on the Respondent not later than the day on which the Commission receives the Petition. A Petition for Arbitration shall include a Request for Arbitration and a Statement of Relevant Authority, as described below. Failure to comply with these requirements may result in dismissal of the Petition for Arbitration.

1.1. The Request for Arbitration shall include:

- a) The name, address, telephone number, fax number, and e-mail address of each party to the negotiations and of each party's designated representative in the proceeding;
- b) A description of the parties' efforts to resolve their differences through negotiation;
- c) A list of every unresolved issue, categorized by subject matter, and the position of each of the parties on each issue (Statement of Unresolved Issues);
- d) A list of the issues that have been resolved by the parties;
- e) The most current version of the interconnection agreement being negotiated by the parties, if any, containing both the agreed upon language and the disputed language each party proposes;
- f) A copy of the interconnection agreement, if any, under which the parties are currently operating;
- g) A copy of all pleadings in the arbitration proceeding before the state commission and any letters, orders, or rulings of the state commission in that proceeding;
- h) A list identifying each person with knowledge upon whom the Petitioner intends to rely to support its position on each of the unresolved issues; and
- i) Copies of all cost models, cost studies, and other studies on which the Petitioner intends to rely to support its position and any documentation underlying those cost models, cost studies, and other studies. Computerized cost models must be submitted in a form that allows the Arbitrator and the parties to alter inputs and determine the effect on cost estimates.

1.2. The Statement of Relevant Authority shall be organized on an issue-by-issue basis, in the same

⁷ Letter from Matthew A. Brill, Counsel to Time Warner Cable Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-204, at 1-2 (filed Dec. 20, 2013).

⁸ Although the Commission is not bound by the deadlines imposed by section 252 upon the state commissions, the Bureau will attempt to release the arbitration award not later than nine months after the date on which Star is deemed to have received the request to negotiate. See *Arbitration Procedures Order*, 16 FCC Rcd at 6233-34, paras. 11-13.

manner as the Statement of Unresolved Issues, and shall:

- a) Identify any proceeding pending before the state commission or this Commission relating to the disputed issues; and
- b) Discuss all federal and state statutory, judicial, and regulatory authority (including contrary authority) relating to the disputed issues.

2. Response. Within 25 days after service of the Petition for Arbitration, Respondent shall file with the Commission and serve on each party to the proceeding a Response, which shall include a Response to the Statement of Unresolved Issues, Respondent's Statement of Additional Unresolved Issues, and a Statement of Relevant Authority.

2.1. The Response to the Statement of Unresolved Issues shall include:

- a) The Respondent's position as to each unresolved issue identified by the Petitioner;
- b) A list identifying each person with knowledge upon whom the Respondent intends to rely to support its position on each of the unresolved issues; and
- c) Copies of all cost models, cost studies, and other studies on which the Respondent intends to rely to support its position and any documentation underlying those cost models, cost studies, and other studies. Computerized cost models must be submitted in a form that allows the Arbitrator and the parties to alter inputs and determine the effect on cost estimates.

2.2. The Respondent's Statement of Additional Unresolved Issues shall list each unresolved issue between the Petitioner and the Respondent for which arbitration is sought that is not identified in the Petitioner's Statement of Unresolved Issues and the position of each of the parties on each of these issues. This portion of the response shall be organized on an issue-by issue basis and shall contain the information specified in 1.1 and 1.2, above.

2.3. The Statement of Relevant Authority shall be organized on an issue-by-issue basis in the same manner as the Response to the Statement of Unresolved Issues and the Respondent's Statement of Additional Unresolved Issues and, to the extent not provided by Petitioner, shall:

- a) Identify any proceeding pending before the state commission or this Commission relating to the disputed issues; and
- b) Discuss all federal and state statutory, judicial, and regulatory authority (including contrary authority) relating to the disputed issues.

3. Reply. The Arbitrator may request that the Petitioner file a reply to any unresolved issues identified by the Respondent and establish a deadline for its submission.

4. Consideration of Issues. The Commission shall limit its consideration to the issues set forth in the Petition and the Response.

B. Status Conferences

1. Initial Status Conference. The parties shall appear for an initial status conference on a date set by

the Arbitrator. At this conference, the parties shall raise any challenges to the appropriateness for arbitration of any issue listed in the Petition for Arbitration or Response. If such challenges are not raised at this conference, they shall be deemed waived. The following matters also may be discussed:

- a) Simplifying or narrowing the issues;
- b) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;
- c) Settlement of some or all of the issues, by agreement of the parties;
- d) Discovery procedures and schedule;
- e) The schedule for the remainder of the case and the dates for any further status conferences; and
- f) Such other matters that may aid in resolving the unresolved issues or issuing an arbitration award.

2. Subsequent Status Conferences. The Arbitrator may hold such other status conferences it deems necessary.

C. Discovery

1. Admissions. Assertions made in the Petition and not specifically denied in the Response shall be deemed admitted for the purposes of this proceeding.

2. Discovery Methods. The parties may obtain discovery through document requests, interrogatories, oral depositions, and requests for admissions. Discovery disputes will be resolved based on the written pleadings, any sworn affidavits attached thereto, and materials, if any, provided for *in camera* inspection, unless the Arbitrator deems that a discovery conference is necessary.

- a) **Discovery Period.** The Arbitrator shall establish a time frame for the commencement and completion of all discovery. All written discovery responses shall be served and all oral depositions shall be completed by the discovery cut-off date established by the Arbitrator.
- b) **Written Responses.** Responses to all written discovery requests shall be submitted to the requesting party no later than fifteen days after the date on which the request was received.
- c) **Document Requests.** The Arbitrator shall establish a deadline for the production of documents requested in the course of discovery.
- d) **Depositions.** The parties shall coordinate the scheduling of oral depositions in advance of taking such depositions. No party shall seek to depose a witness without first providing written notice at least five business days in advance.⁹ Depositions shall be taken at a time and place agreed upon by the parties.
- e) **Objections.** Objections to discovery requests shall be filed within three business days of receipt of the request. The parties shall negotiate diligently and in good faith concerning any discovery dispute prior to the filing of any objection. The objections shall include a statement that

⁹ All references are to calendar days unless otherwise specified.

negotiations were conducted diligently and in good faith. If necessary, the Arbitrator will convene a discovery conference to resolve discovery disputes.

D. Decision Point List

1. Submission of Joint Decision Point List. Prior to the arbitration hearing, the parties shall jointly file a Decision Point List (DPL) in a format approved by the Arbitrator, by the time set by the Arbitrator. An electronic copy of the DPL shall be provided to the Arbitrator. The DPL shall set forth, as to each unresolved issue:

- a) A summary of each party's position;
- b) A listing of all disputed issues of fact;
- c) Relevant admissions or stipulations of fact; and
- d) Each party's proposed contract language.

2. Revision of Joint DPL. The parties shall file an updated DPL at a time established by the Arbitrator, which shall include specific citation to the parties' testimony and other evidentiary submissions relevant to each unresolved issue.

E. Evidentiary Submissions

1. Submissions. Unless the Arbitrator orders to the contrary, the Petitioner and Respondent are required to file and serve the following by the dates established by the Arbitrator:

- a) **Direct Testimony.** Each party shall file and serve on each other party all of the evidence it intends to offer as part of its direct case, in the form of affidavits, with supporting documentation, expert reports and exhibits. The evidence shall be organized on an issue-by-issue basis, in accordance with the DPL. Each expert report shall include a complete statement of all opinions to be expressed by the expert, the basis and reasons for each opinion, and all data or other information considered by the witness in forming those opinions.
- b) **Rebuttal Testimony.** Each party shall file and serve on each other party all of the evidence it intends to offer as rebuttal to the other party's direct testimony, in the form of affidavits, with supporting documentation, expert reports and exhibits. Each expert report shall include a complete statement of all opinions to be expressed by the expert, the basis and reasons for each opinion, and all data or other information considered by the witness in forming those opinions.
- c) **Witness and Exhibit Lists.** Each party shall file and serve on each other party a list of all witnesses the party intends to call and exhibits the party intends to introduce during the hearing. Expert witnesses shall be identified as such.
- d) **Objections.** Each party shall file and serve on each other party objections to any affidavits, exhibits, expert reports, or witnesses proposed by the other party, or file and serve a statement that it has no such objections.

F. Arbitration Hearing

1. Notice Regarding Arbitration Hearing. Any arbitration hearing conducted in these proceedings shall not constitute a hearing within the meaning of section 554 of the Administrative Procedure Act.¹⁰ If the Arbitrator determines that an arbitration hearing is required as to some or all of the issues, the Arbitrator will notify the parties, in writing, regarding: (a) the date, time and place of the hearing; (b) the length of the hearing; (c) the matters as to which the hearing is to relate; (d) the date of any pre-hearing conference; (e) the dates any pre-hearing submissions are to be filed and served; and (f) any other appropriate matters.

2. Allotment of Time for Presentation of Case. Before the arbitration hearing, the Arbitrator may allot to each party a specific time within which the party may present evidence and make argument during the hearing. The parties will be required to present all of their evidence and argument within the time allotted.

3. Conduct of Arbitration Hearing. The arbitration hearing will be conducted by the Arbitrator. The arbitration hearing shall be open to the public, except that all or a portion of the arbitration hearing may be closed to protect a party's confidential information. The parties shall arrange for the stenographic transcription of the arbitration hearing by a court reporter authorized to swear in witnesses. The court reporter shall provide the transcript and exhibits of the hearing to the Arbitrator at the same time the transcript is provided to the parties. Absent an agreement to the contrary, the cost of the transcript shall be shared equally between the parties to the arbitration hearing.

4. Presentation of Oral Testimony; Availability of Witnesses. The parties to the arbitration hearing are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at the arbitration hearing. No party may introduce an exhibit (including expert reports) or call a witness unless the exhibit or witness was identified in that party's pre-hearing submission, except for good cause shown. Each witness presenting direct testimony by affidavit, and all authors of expert reports included in the pre-hearing submissions, shall be available for cross-examination by the other parties to the arbitration hearing. The Arbitrator may order that certain witnesses not attend the arbitration hearing before having testified.

5. Clarifying Questions. The Arbitrator may ask clarifying questions at any point during the arbitration hearing and may direct a party or witness to provide additional information as needed to fully develop the record.

6. Evidence. The Arbitrator may exclude evidence considered to be inadmissible, irrelevant, immaterial or cumulative. The Arbitrator may be guided by the Federal Rules of Evidence in making such determinations; strict conformity to such rules, however, is not required.

G. Post-Hearing Materials

1. Post-Hearing Briefs. Each party shall file and serve, by a date determined by the Arbitrator, a post-hearing brief, which shall explain, as to each issue set forth in the DPL, and with appropriate citations to the record, why the Commission should adopt the position advocated by that party. The Arbitrator may impose page limits with respect to such briefs.

¹⁰ 5 U.S.C. § 554.

H. General Provisions

1. Amendment of Procedures. The Arbitrator may change these procedures by written notice to expedite the proceeding, preserve the resources of the Commission or the parties, promote settlement, or for good cause shown.

2. Format of Pleadings.

- a) The parties' Statements of Unresolved Issues, Statements of Relevant Authority, and all briefs shall contain a Table of Contents and, if applicable, a Table of Authorities.
- b) Assertions in affidavits based upon information and belief are prohibited unless made in good faith and the affiant explains the basis for the belief and why the facts could not reasonably be ascertained.

3. Filing Procedures. By 7:00 p.m. on the day established as the deadline for the filing of any submission pertaining to this proceeding, four copies shall be filed with the Secretary of the Commission, eight copies shall be hand-delivered to the Arbitrator, and one copy shall be served on all other parties to the proceeding (i) by hand, where such parties are located in Washington, D.C., or (ii) by overnight delivery, where such parties are located outside of Washington, D.C. The Arbitrator also may require that copies of submissions be served by e-mail to the service list.

4. Resolution of Unresolved Issues. Petitioner is obligated to inform the Arbitrator in writing as soon as possible of the resolution by the parties of any unresolved issue identified in either party's Statement of Unresolved Issues or the DPL.

5. Failure to Respond. The Arbitrator may require the parties to provide such information as may be necessary to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request, then the Commission may proceed on the basis of the best information available to it from whatever source derived.

6. Ex Parte Status; Confidentiality of Information. These proceedings are restricted for *ex parte* purposes. Therefore, *ex parte* presentations are prohibited. Parties seeking to protect the confidentiality of information produced or exchanged shall follow the procedures set forth in Commission rule 1.731, substituting the phrase "this proceeding" for "formal complaint proceeding."¹¹

For further information regarding this proceeding, contact John Visclosky, Competition Policy Division, Wireline Competition Bureau, at 202-418-0825.

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¹¹ 47 C.F.R. § 1.731.