

Communication Workers of America, AFL-CIO (“CWA”), Local 1302 (“Defendant Unions” or “CWA”). In support of this Complaint, Plaintiffs state as follows:

I.
SUMMARY OF CLAIMS

1. SuperMedia brings this class action against the Defendant Class of former bargaining and non-bargaining employees of SuperMedia and its predecessor entities. A dispute has arisen between Plaintiffs and the Defendant Class regarding SuperMedia’s right to enact its recent amendments to retiree health and welfare benefits plans and, more generally, to SuperMedia’s right to modify, amend, or terminate these plans. Therefore, SuperMedia seeks a declaration of its right to modify, amend, and terminate retiree health and welfare benefits. Importantly, all of SuperMedia’s plan documents prevent any claims of vesting and, instead, reserve to SuperMedia the right to modify, amend, or terminate at any time.

II.
PARTIES

2. Plaintiff SuperMedia Inc. is a Delaware corporation with its principal place of business located at 2200 West Airfield Drive, P.O. Box 619810, D/FW Airport, Texas 75261-9810.

3. Plaintiff SuperMedia LLC is a Delaware limited liability company and wholly-owned subsidiary of SuperMedia Inc. with its principal place of business at 2200 W. Airfield Drive, P.O. Box 619810, D/FW Airport, TX 75261-9810.

4. Plaintiff SuperMedia Services Inc. is a Delaware corporation and wholly-owned subsidiary of SuperMedia Inc. with its principal place of business at 2200 W. Airfield Drive, P.O. Box 619810, D/FW Airport, TX 75261-9810.

5. Plaintiff SuperMedia Sales Inc. is a Delaware corporation and wholly-owned subsidiary of SuperMedia Inc. with its principal place of business at 2200 W. Airfield Drive, P.O. Box 619810, D/FW Airport, TX 75261-9810.

6. Plaintiff Idearc Inceptor LTD is a United Kingdom limited liability company and wholly-owned subsidiary of SuperMedia Inc.

7. Plaintiff SuperMedia EBC is the administrator of SuperMedia's retiree health and welfare benefits plans. SuperMedia EBC is a body appointed by SuperMedia Inc. and comprises SuperMedia Inc. employees.

8. Upon information and belief, Defendant Carol Foy is a resident of Maine, a former employee of SuperMedia or its predecessors, and a current participant in SuperMedia's retiree health and welfare benefits plans. She can be served by registered or certified mail, return receipt requested, with a true copy of the summons and copy of the Complaint attached thereto at 8 Harrison Ave., York, Maine 03909.

9. Upon information and belief, Defendant Stanley Russo is a resident of Massachusetts, a former employee of SuperMedia or its predecessors, and a current participant in SuperMedia's retiree health and welfare benefits plans. He can be served by registered or certified mail, return receipt requested, with a true copy of the summons and copy of the Complaint attached thereto at 19 Pine Hill Lane, Marion, MA 02738.

10. Upon information and belief, members of the Defendant Class include approximately 3,685 individuals who reside in 44 states across the country. An estimated 376 members reside in the State of Texas.

11. Upon information and belief, Defendant Communications Workers of America, AFL-CIO, Local 1302, is a labor organization within the meaning of 29 U.S.C. §§ 152(5) and

185(a) and has negotiated a collective bargaining agreement with SuperMedia.¹ Defendant CWA 1302 may be served with process by through registered or certified mail, return receipt requested, with a true copy of the summons and copy of the Complaint attached thereto, at its principal place of business at 1 Market Street, 3rd Floor, Lynn, Massachusetts 01901.

12. Upon information and belief, Defendant Communications Workers of America, AFL-CIO, Local 1301, is a labor organization within the meaning of 29 U.S.C. §§ 152(5) and 185(a) and has negotiated a collective bargaining agreement with SuperMedia.² Defendant CWA 1301 may be served with process by through registered or certified mail, return receipt requested, with a true copy of the summons and copy of the Complaint attached thereto, at its principal place of business at 10 Shuman Road, Marblehead Massachusetts 01945.

III. VENUE

13. Venue is proper in the Northern District of Texas under ERISA § 502(e)(2) [29 U.S.C. § 1132 (e)(2)] and 28 U.S.C. § 1391(b) because: (i) it is a district in which at least one member of the Defendant Class resides; (ii) it is a district in which the plans at issue in this action are administered; (iii) it is the district out of which the benefits for the plans have been paid; (iv) it is a district in which SuperMedia generated and issued notices regarding amendments to the plans; (v) it is a district in which members of the Defendant Class have received notice regarding Plaintiffs' amendments to the plans; and (vi) it is a district in which

¹ Plaintiffs have sued CWA because it is a party to certain collective bargaining agreements that are at issue in this case. By doing so, Plaintiffs do not contend that the CWA is a representative of any individual retiree or the putative class of retirees sued herein.

² Plaintiffs have sued CWA because it is a party to certain collective bargaining agreements that are at issue in this case. By doing so, Plaintiffs do not contend that the CWA is a representative of any individual retiree or the putative class of retirees sued herein.

Plaintiffs have received objections by members of the Defendant Class regarding Plaintiffs' legal right to amend, modify, revoke, or terminate the plans.

IV. JURISDICTION

14. Plaintiffs file this action pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and Federal Rule of Civil Procedure 57.

15. The Court has original jurisdiction over this matter under 28 U.S.C. § 1331(a) as a civil action arising under a federal question and under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; as a civil action arising under ERISA, 29 U.S.C. § 1132; and as a civil action arising under Section 301, 28 U.S.C. § 185(a) & (c).

V. FACTS AND APPLICABLE LEGAL STANDARDS

A. THE HISTORY OF SUPERMEDIA GENERALLY

16. SuperMedia, formerly Idearc Inc. ("Idearc"), is a media solutions company that provides a range of digital and print services, including yellow pages directories, advertising, mobile applications, and search engine resources.

17. By way of background, Verizon Communication Inc. ("Verizon") spun off Idearc on or about November 17, 2006. Prior to the 2006 formation of Idearc, Verizon had acquired or merged with multiple predecessor entities, including GTE Corporation, f/k/a General Telephone & Electronics Corporation, ("GTE"), Bell Atlantic North, Bell Atlantic South, and NYNEX Corporation.

18. In March 2009, Idearc voluntarily filed for Chapter 11 bankruptcy. In January 2010, after it emerged from bankruptcy and reorganization proceedings, Idearc implemented its approved Chapter 11 reorganization plan and changed its name to SuperMedia Inc.

19. Currently, pursuant to various health and welfare benefits plans and various collective bargaining agreements (“CBAs”), SuperMedia provides certain retiree medical and life benefits. Because a dispute exists regarding SuperMedia’s legal right to amend, modify, revoke, or terminate its current retiree health and welfare benefits under these plans, SuperMedia seeks a declaration from this Court that, among other things, it has the legal right to make certain changes under the plans at issue.

B. SUPERMEDIA’S PROVISION OF RETIREE HEALTH AND WELFARE BENEFITS PLANS

20. SuperMedia currently provides retiree health and welfare benefits to eligible retirees of SuperMedia and its predecessor entities through three different benefits plans (“Plans”),³ and, in accordance with ERISA, communicates the key provisions of the Plans, including its retiree health and welfare benefits, to eligible employees and retirees through the following three ERISA Summary Plan Descriptions:

- a. The Retiree Health & Welfare Summary Plan Descriptions: Pre-65 (“Pre-65 SPD”), a true and correct copy of which is attached hereto as Exhibit E;
- b. The Retiree Health & Welfare Summary Plan Descriptions: 65+ Medicaid (“65 Med SPD”), a true and correct copy of which is attached hereto as Exhibit F; and
- c. The Retiree Health & Welfare Summary Plan Descriptions: Mid-Atlantic Plan (“Mid-Atlantic SPD”), a true and correct copy of which is attached hereto as Exhibit G.⁴

³ The Plans include: (i) the SuperMedia Management and Non-Union Hourly Plan for Group Insurance (“Management Plan”), a true and correct copy of which is attached hereto as Exhibit A; (ii) the SuperMedia Plan for Group Insurance for Mid-Atlantic Associates (“Mid-Atlantic Plan”), a true and correct copy of which is attached hereto as Exhibit B; and (iii) the SuperMedia Plan for Group Insurance for New York and New England Associates (“New York Plan”), a true and correct copy of which is attached hereto as Exhibit C. SuperMedia also provides a Medicare Part B reimbursement, pursuant to Internal Revenue Code 401(h), under the SuperMedia Pension Plan for Collectively-Bargained Employees, a true and correct copy of which is attached hereto as Exhibit D.

⁴ These three ERISA Summary Plan Descriptions are hereinafter collectively referred to as the “2008 SPDs”.

21. The 2008 SPDs became effective on January 1, 2008, and they currently apply to all eligible retirees. The Plans and the 2008 SPDs are hereinafter referred to as the “Plan Documents.” The Plan Documents describe various health and welfare benefits, including medical, prescription drug, dental, vision, basic life insurance, and supplemental life insurance.

22. Retirees eligible to receive health and welfare benefits under the Plans include former employees of SuperMedia, Verizon, GTE, Bell Atlantic South, Bell Atlantic North, and NYNEX Corporation. Additionally, certain of these eligible retirees are former bargaining unit members of several unions nationwide. With the exception of the CBAs that apply to former bargaining employees of the unions discussed below,⁵ the CBAs that pertain to most former bargaining employees⁶ do not provide for or even reference retiree health and welfare benefits. *See, e.g., Exhibit K* (no reference to retiree benefits). As a result, the Plan Documents alone govern the provision of retiree health and welfare benefits to most former bargaining unit members.

C. PLAN DOCUMENTS PROVIDE SUPERMEDIA THE RIGHT TO AMENDMENT OR TERMINATE THE PLANS

23. Under the Plan Documents, SuperMedia has the right to amend, modify, revoke, or terminate retiree health and welfare benefits because: (1) no vesting of rights provision regarding retiree benefits exists in the Plan Documents and no meeting of the minds ever occurred between the retirees and SuperMedia that would provide for vesting of retiree benefits; (2) the Plan Documents expressly state that no retiree benefits vest; and (3) the Plan Documents expressly reserve the right to amend, modify, revoke, or terminate the Plans.

⁵ True and correct copies of the CBAs applicable to the three applicable unions are attached hereto as Exhibits H-J, respectively.

⁶ *See, e.g.*, a true and correct copy of the CBA applicable to CWA 13500 attached hereto as Exhibit K.

i. BENEFITS PROVIDED UNDER THE PLAN DOCUMENTS HAVE NEVER VESTED

24. Unlike pension benefits plans, retiree health and welfare benefits do not vest under ERISA and are instead subject to modification and termination. *See, e.g., Inter-Modal Rail Employees Ass'n v. Atchison, Topeka & Santa Fe Ry. Co.*, 520 U.S. 510, 515 (1997) (“unless an employer contractually cedes its freedom, it is generally free under ERISA, for any reason at any time, to adopt, modify, or terminate its welfare plan”); *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) (“Nor does ERISA establish any minimum participation, vesting, or funding requirements for welfare plans as it does for pension plans.”); *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 373 (5th Cir. 2008). Through this distinction between pensions, on the one hand, and health and welfare benefit plans, on the other, Congress intentionally recognized an employer’s inherent need for flexibility in administering health and welfare plans, which, unlike pension plans, are subject to the ever-fluctuating costs of medical care. *Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 935 (5th Cir. 1993) (“Congress has conspicuously chosen to exempt welfare benefit plans from the full breadth of ERISA's extensive requirements . . . The disparate treatment accorded welfare plans is not accidental. . .”); *see Moore v. Metro. Life Ins. Co.*, 856 F.2d 488, 492 (2d Cir. 1988) (“With regard to an employer's right to change medical plans, Congress evidenced its recognition of the need for flexibility in rejecting the automatic vesting of welfare plans. Automatic vesting was rejected because the costs of such plans are subject to fluctuating and unpredictable variables.”). Therefore, health and welfare benefits do not vest unless an employer explicitly agrees to provide contractually vested benefits.

25. Neither SuperMedia nor any of its predecessors has ever intended for the retiree health and welfare benefits provided under the Plans to vest, and no language in any of the Plan

Documents suggests these benefits have vested or will vest in the future.⁷ To the contrary, the current Plan Documents expressly preclude the vesting of any benefits under the Plans. For example, section 7.4 of the Management Plan unequivocally states the following:

7.4 No Vested Rights

To the maximum extent permitted by law, no person shall acquire any right, title, or interest in or to any portion of a Trust, an Insurance Contract, an HMO Contract, or Medicare Plan Contract otherwise than by the actual payment or distribution of such portion under the provisions of the Plan or a Component Benefit, or **acquire any right, title, or interest in or to any benefit referred to or provided for in the Plan or any Component Benefit otherwise than by actual payment of such benefit.**

Exhibit A, at § 7.4 (emphasis added).⁸ As a result, none of the retiree health and welfare benefits provided by SuperMedia have vested.

ii. SUPERMEDIA HAS THE RIGHT TO AMEND, MODIFY, REVOKE, OR TERMINATE THE PLANS ACCORDING TO PLAN DOCUMENTS

26. In 2008, Idearc (now SuperMedia) adopted the Plan Documents that govern its provision of retiree health and welfare benefits and make explicit its right to amend and terminate. Through its 2008 SPDs, SuperMedia communicates to its employees and retirees the terms and provisions of the Plans. In each SPD, SuperMedia continuously and expressly reserves its right to amend and terminate the Plans in clear, unambiguous language. For example, the Pre-65 SPD unequivocally states:

The Company and the Plan Administrator reserve the right to amend, modify, revoke, or terminate these Plans in whole or in part at any time, except to the extent limited by an applicable collective bargaining agreement as to retirees covered by the collective bargaining agreement. **If a plan is terminated,**

⁷ Further, the CBAs for most former unionized employees lack any indication that retiree health and welfare benefits have ever, or will ever, vest. *See, e.g., Exhibit K* (CBA contains no vesting language applicable to retiree benefits).

⁸ *See also, Exhibit B*, at § 7.4 (stating identical language to Exhibit A, at § 7.4); *see also, Exhibit C*, at § 7.4 (stating identical language to Exhibit A, at § 7.4).

you will not have any further rights other than payment of expenses you had incurred before the Plan was terminated.

Exhibit E at 2 (emphasis added).⁹ Like the other 2008 SPDs, the Pre-65 SPD reiterates these rights numerous times throughout the SPD:

[T]he Company and the Plan Administrator reserve the right to amend, modify, revoke, or terminate the benefits [...]

[Circumstances] When Coverages End . . . termination [...]

[T]he Company reserves the right to – at any time and for any reason – change or discontinue the Plan, or increase or decrease contributions under the Plan at its sole discretion [...]

Idearc Media reserves the right to amend, modify, or terminate these plans.

Id. at 4, 23, 35, and non-paginated section.

27. Similarly, the Plans provide for SuperMedia’s unconditional, unilateral right to amend or terminate the Plans at any time. For instance, section 6.1 of the Management Plan provides in pertinent part:

6.1 Amendment or Termination

The Plan was established with the bona fide intention and expectation that it will be continued indefinitely. However, **SuperMedia reserves the right to amend or terminate the Plan** or any Component Benefit **at any time and from time to time and to any extent and in any manner that it deems advisable**, by written resolution of the Board of Directors of SuperMedia (for purposes of this section 6.1, the “Board”). [. . .]

The Board has delegated the authority to amend or terminate the Plan to the Committee, which shall exercise such authority by written instrument. **Any Plan amendment**, except as otherwise specifically provided therein, **shall apply from and after its effective date to all classes of covered individuals**, including current employees, former employees (including retired individuals), their beneficiaries, spouses, and other dependents.

⁹ See also, Exhibit E, at 4 (“the Company and the Plan Administrator reserve the right to amend, modify, revoke, or terminate the benefits”) and 23 (identifying termination of the plan as an event that causes coverages to end); see also, Exhibit G, at 4 (“the Company and the Plan Administrator reserve the right to amend, modify, revoke, or terminate the benefits”) and 23 (identifying termination of the plan as an event that causes coverages to end).

Exhibit A, at § 6.1 (emphasis added).¹⁰

iii. PREDECESSOR PLANS ALSO RESERVE THE RIGHT TO AMEND, MODIFY, REVOKE, OR TERMINATE THE PLANS

28. With the exception of one GTE plan discussed below, earlier plan documents adopted by predecessors of SuperMedia expressly reserve the broad right to unilaterally amend or terminate plan benefits at any time. For example, a 2004 Verizon SPD states, “the Verizon Employee Benefits Committee (VEBC) also reserves the **right to amend, modify, suspend or terminate** the plans at any time, at its discretion, with or without advance notice to participants, subject to any duty to bargain collectively.” *See* the 2004 Verizon Medical Expense Plan for New York and New England Post-1986 Associate Retirees SPD, at 5 (emphasis added), a true and correct copy of which is attached hereto as Exhibit L; *see also*, the 2004 Verizon Managed Care Network and Medical Expense Plan for Mid-Atlantic Post-1989 Associate Retirees SPD, at 5, a true and correct copy of which is attached hereto as Exhibit M; *see also*, the 2006 Verizon Long Term Care Coverage for Management Retirees SPD, at 35, a true and correct copy of which is attached hereto as Exhibit N; and *see also*, the 2001 Verizon New York and New England Survivor Benefits Program for Retirees, at 4, a true and correct copy of which is attached hereto as Exhibit O.

D. SUPERMEDIA AMENDS THE PLANS

29. SuperMedia’s administration and payment of retiree health and welfare benefits has resulted in tremendous expenses and liability for SuperMedia. Due to rising healthcare costs and a trend towards the reduction or elimination of retiree health and welfare benefits among SuperMedia’s competitors, extreme financial pressure on SuperMedia exists to reduce the costs

¹⁰ *See also*, Exhibit B, at § 6.1 (“[T]he Committee expressly reserves the right to amend the Plan”); *see also*, Exhibit C, at § 6.1 (“[T]he Committee expressly reserves the right to amend the Plan”).

associated with retiree benefits. In fact, as of December 2011, SuperMedia carried an unfunded net liability of more than approximately \$315 million for retiree health and welfare benefits under the Plans. As a result of these circumstances, SuperMedia has re-evaluated its retiree health and welfare benefits.

30. Based on its express right to amend or terminate, SuperMedia has amended the benefits to: (i) reduce its liability; (ii) reduce expenses required to operate its business; (iii) increase efficiency, while meeting customer needs; and (iv) provide effectively for the maintenance of its financial stability and the needs of current and former employees. Specifically, on June 25, 2012, by unanimous written consent of the Employee Benefits Committee of the Board of Directors,¹¹ SuperMedia amended each of the three Plans (collectively, the “Amendments”).¹² Generally, the Amendments modify the Plans by reducing or eliminating SuperMedia’s contribution to premium costs (and thereby increasing retiree responsibility for premium costs), modifying co-pay amounts, and/or modifying deductible amounts. The Amendments contain provisions that apply differently to retirees depending on whether they meet the conditions of three groups: (i) the majority of retirees, (ii) GTE retirees subject to specific “Change in Control” provisions, and (iii) retirees who were former members of bargaining unit locals 1301, 1302, and 2213.

i. GROUP I: MAJORITY OF SUPERMEDIA RETIREES

¹¹ A true and correct copy of the Unanimous Written Consent of the Employee Benefits Committee of the Board of Directors is attached hereto as Exhibit P.

¹² The Amendments include: (i) the Amendment to SuperMedia Management and Non-Union Hourly Plan for Group Insurance, a true and correct copy of which is attached hereto as Exhibit Q; (ii) the Amendment to the SuperMedia Plan for Group Insurance for Mid-Atlantic Associates, a true and correct copy of which is attached hereto as Exhibit R; (iii) the Amendment to the SuperMedia Plan for Group Insurance for New York and New England Associates, a true and correct copy of which is attached hereto as Exhibit S; and (iv) the Amendment to the SuperMedia Pension Plan for Collectively-Bargained Employees, a true and correct copy of which is attached hereto as Exhibit T.

31. As detailed above, the Plan Documents and predecessor plan documents provide SuperMedia the unrestricted right to amend, modify, revoke or terminate health and welfare benefits for approximately 3,000 of its retirees, which constitute the majority of SuperMedia's approximately 3,685 retirees. These retirees include former bargaining and non-bargaining employees of SuperMedia, Verizon, Bell Atlantic North, Bell Atlantic South, and NYNEX Corporation.

32. In general, the Amendments applicable to the majority of SuperMedia retirees change the previous provisions of the Plans by: (1) eliminating eligibility of retirees over the age of 65; (2) reducing SuperMedia's contributions towards medical, dental, and vision coverage to 75% of the current amount for retirees under age 65, effective September 1, 2012; (3) eliminating SuperMedia's premium contributions for retirees under age 65 as of January 1, 2014; and (4) eliminating Medicare Part B reimbursements as of September 1, 2012. Exhibits Q-T. However, under the Amendments, SuperMedia continues to provide important benefits to the majority of its eligible retirees, such as eligibility to participate in a number of medical, dental, and vision plans, sponsored by SuperMedia for retirees under 65. *Id.* Thus, the Amendments create an "access-only" plan for retirees under age 65 that continues to facilitate the current Plans without the SuperMedia premium subsidies.

33. Specifically, the Amendments that concern the majority of SuperMedia retirees state in pertinent part:

NOW, THEREFORE, the Plan is hereby amended as follows:

1. Effective September 1, 2012, a new Article VIII is added to the Plan to provide as follows:

Article VIII. Retiree Coverage

(a) Notwithstanding anything contained herein to the contrary, **effective September 1, 2012, an individual shall not be eligible for coverage or benefits under the Plan or under any Component Benefit, other than supplemental life insurance that is paid for by the participant**, if such individual:

- (1) has incurred a termination of employment with the Employer;
- (2) is age 65 or older;
- (3) is not covered by (i) the Collective Bargaining Agreement between Idearc Media North Greenbush, NY – Directory Clerical Unit and International Brotherhood of Electrical Workers, AFL-CIO Local 2213 that became effective on December 7, 2008; (ii) the Collective Bargaining Agreement between Idearc Media and Communications Workers of America, AFL-CIO Local 1301 Directory Sales that became effective on December 7, 2008; or (iii) the Collective Bargaining Agreement between Idearc Media New England Directory Clerical Unit and Communications Workers of America, AFL-CIO Local 1302 that became effective on December 7, 2008 (the “Applicable CBAs”);
- (4) is not entitled to the change in control protection set forth in the amendment entitled “Amendments to the Plan for Group Insurance, the Plan for Bargained Retired Group Insurance, All Other Group Life Insurance and Group Medical Insurance Plans that Provide Benefits to Retired Employees and Summary Plan Descriptions” that was adopted by GTE on May 7, 1999; and
- (5) does not have an individual agreement that provides for coverage or benefits under the Plan.

(c) Notwithstanding anything to the contrary contained herein, the spouse or dependent of an individual who is not eligible for coverage or benefits under the Plan or a Component Benefit pursuant to Article VIII(a) shall be eligible for coverage or benefits under all Component Benefits that such person was participating in as of August 31, 2012, provided that such surviving spouse or dependent is under the age of 65, until the earlier of (i) the date that such surviving spouse or dependent attains age 65 or (ii) January 1, 2014.

2. Effective September 1, 2012, each of the documents that describe the Component Benefits, including but not limited to the applicable Summary Plan Description, the applicable Certificate of Coverage, Summary of Coverage, Insurance Contract, HMO Contract, or Medicare Plan Contract, is hereby amended as follows:

(a) **Effective September 1, 2012, an individual shall not be eligible for coverage or benefits under the Plan or under any Component Benefit (as**

such term is defined in the Plan) (a “Component Benefit”), other than supplemental life insurance that is paid for by the participant, if such individual:

- (1) has incurred a termination of employment with the Employer (as such term is defined in the Plan) (the “Employer”);
- (2) is age 65 or older;
- (3) is not covered by (i) the Collective Bargaining Agreement between Idearc Media North Greenbush, NY – Directory Clerical Unit and International Brotherhood of Electrical Workers, AFL-CIO Local 2213 that became effective on December 7, 2008; (ii) the Collective Bargaining Agreement between Idearc Media and Communications Workers of America, AFL-CIO Local 1301 Directory Sales that became effective on December 7, 2008; or (iii) the Collective Bargaining Agreement between Idearc Media New England Directory Clerical Unit and Communications Workers of America, AFL-CIO Local 1302 that became effective on December 7, 2008 (the “Applicable CBAs”);
- (4) is not entitled to the change in control protection set forth in the amendment entitled “Amendments to the Plan for Group Insurance, the Plan for Bargained Retired Group Insurance, All Other Group Life Insurance and Group Medical Insurance Plans that Provide Benefits to Retired Employees and Summary Plan Descriptions” that was adopted by GTE on May 7, 1999 (an individual who entitled to such change in control protection is hereinafter referred to as a “GTE Retiree”); and
- (5) does not have an individual agreement that provides for coverage or benefits under the Plan.

(b) **Effective September 1, 2012, the amount that SuperMedia Inc. pays for coverage and benefits under each Component Benefit shall be reduced to 75 percent of the amount that SuperMedia Inc. paid for such coverage or benefits immediately before September 1, 2012** (with such amount being adjusted from time to time by SuperMedia Inc. in its discretion) for each individual who:

- (1) has incurred a termination of employment with the Employer;
- (2) is under age 65;
- (3) is not covered by one of the Applicable CBAs; and
- (4) is not a GTE Retiree.

(f) **Effective no later than January 1, 2014, an individual** (other than a GTE Retiree) who (1) has incurred a termination of employment with the Employer and (2) is under age 65 **shall pay 100 percent of the cost of coverage or benefits under each Component Benefit.**

3. The Sponsor reserves the right to amend, modify, suspend, revoke, or terminate the Plan or any Component Benefit, in whole or in part at any time, for any reason, at its discretion. This Agreement shall not create any vested rights in any individual.

Exhibit R at pp. 1-4 (emphasis added); *see also* Exhibit S at pp. 1-4 (identical language); *see also* Exhibit T at pp. 1-4 (identical language). Additionally, pursuant to the terms of the Plans, SuperMedia terminates its Medicare Part B reimbursements, effective September 1, 2012.

ii. GROUP 2: GTE RETIREES

34. Next, specific sections of the Amendments apply to certain retirees of GTE (“GTE Retirees”) who retired prior to 1999 or who were within five years of retirement eligibility by 1999, per the terms of the GTE “Change in Control.” *See* the GTE Retiree Medical Choices SPD at p. 3, a true and correct copy of which is attached hereto as Exhibit U. According to this document, a “change in control” of GTE occurred on May 18, 1999, and a successor is restricted from making certain amendments or discontinuing the retiree benefits, subject to certain reserved rights. *Id.* at 3 (Due to the Change in Control, “GTE or any successor to all or substantially all of GTE’s business assets may not discontinue the Plan or amend or modify benefits under the plan . . .”). Notwithstanding this general prohibition, a successor has the right to modify the costs and administration of the plan: “any successor to GTE may in the ordinary course of business [...] (ii) **change, increase or decrease co-payments, deductibles and other requirements for coverage and benefits;** and/or (iii) **make other changes in**

administration or changes in the Plan’s design and its coverage and benefits.” *Id.*¹³

(emphasis added). Thus, in conformity with the Change in Control provision from the GTE SPD, the Amendments applicable to GTE Retirees modify co-pays, deductibles, and other administrative costs, but continue to provide retirees access to retiree medical benefits. *Compare id., with Exhibits R-T.*

35. Specifically, the Amendments addressing GTE Retirees provide as follows:

NOW, THEREFORE, the Plan is hereby amended as follows:

2. Effective September 1, 2012, each of the documents that describe the Component Benefits, including but not limited to the applicable Summary Plan Description, the applicable Certificate of Coverage, Summary of Coverage, Insurance Contract, HMO Contract, or Medicare Plan Contract, is hereby amended as follows: [...]

(c) **Effective September 1, 2012, the amount that SuperMedia Inc. pays for coverage or benefits under each Component Benefit for a GTE Retiree who (1) is not covered by one of the Applicable CBAs and (2) has incurred a termination of employment with the Employer shall be reduced to 75 percent of the amount that SuperMedia Inc. paid for such coverage or benefits immediately before September 1, 2012** (with such amount being adjusted from time to time by SuperMedia Inc. in its discretion). [...]

(g) **Effective no later than January 1, 2014,** a GTE Retiree who has incurred a termination of employment with the Employer **shall pay 100 percent of the cost** of coverage or benefits under each Component Benefit.

3. The Sponsor reserves the right to amend, modify, suspend, revoke, or terminate the Plan or any Component Benefit, in whole or in part at any time, for any reason, at its discretion. This Agreement shall not create any vested rights in any individual.

Exhibit R at pp. 1-4 (emphasis added); *see also* Exhibit S at pp. 1-4 (identical language); *see also* Exhibit T at pp. 1-4 (identical language).

iii. GROUP 3: CERTAIN COLLECTIVE BARGAINING UNITS

¹³ Of note, the GTE SPD “Change in Control” provision is unique to GTE Retirees and is not included in other Plan Documents. Therefore, this provision does not apply to the majority of retirees, as described herein, or former bargaining members of the Defendant Unions.

36. Finally, SuperMedia enacted Amendments to address the retiree benefits of former employees previously represented by certain unions: (i) Communications Workers of America, AFL-CIO, Local 1301; (ii) Communications Workers of America, AFL-CIO, Local 1302; and the International Brotherhood of Electrical Workers, Local 2213 (collectively, “Group 3 Unions”), upon expiration of the current CBAs. Currently, the Group 3 Unions are parties to CBAs that contain sections pertaining to retiree medical benefits. However, these CBAs expire before the relevant effective dates of the Amendments. Specifically, the CBAs that govern the relationship between SuperMedia and the Group 3 Unions expire on December 31, 2013. *See Exhibit H* at ii (“This Agreement shall continue in full force and effect until 11:59 P.M. on December 31, 2013 at which time it shall terminate.”); *see also Exhibit I* at ii (same termination provision); *see also Exhibit J* at vii (same termination provision).

37. Notably, the CBAs lack any agreement between the parties that retiree medical benefits vest. *See Exhibit H* at 63 (agreement that the CBAs will not provide, suggest, or imply in any way either that retiree medical benefits for current or future retirees will extend beyond the CBA’s term); *see also Exhibit I* at 94 (same agreement); *see also Exhibit J* at 72 (same agreement). Regardless, the sections of the Amendments that apply to the certain collective bargaining units take effect January 1, 2014, and, because the CBAs expire before the relevant Amendment sections takes effect, the CBAs do not apply to, much less govern, SuperMedia’s right to enact the Amendments. Rather, the applicable Plans, which explicitly allow the modifications, govern alone.

38. Like the Amendments applicable to the majority of retirees, the Amendments for these retirees create an access-only plan for eligible retirees under the age of 65, which eliminates SuperMedia’s premium contributions to the Plans, while continuing to provide these

eligible retirees access to medical coverage. Exhibit R at pp. 1-4 (emphasis added); *see also* Exhibit S at pp. 1-4 (identical language); *see also* Exhibit T at pp. 1-4 (identical language).

39. Specifically, the sections of the Amendments that apply to former members of these certain collective bargaining units, upon the expiration of the CBAs, state:

NOW, THEREFORE, the Plan is hereby amended as follows:

1. Effective September 1, 2012, a new Article VIII is added to the Plan to provide as follows:

Article VIII. Retiree Coverage

[...]

(b) Notwithstanding anything to the contrary contained herein, **effective January 1, 2014, an individual (1) who has incurred a termination of employment with the Employer, (2) is age 65 or older and (3) is covered by one of the Applicable CBAs shall not be eligible for coverage or benefits under the Plan or under any Component Benefit**, other than supplemental life insurance that is paid for by the participant.

2. Effective September 1, 2012, each of the documents that describe the Component Benefits, including but not limited to the applicable Summary Plan Description, the applicable Certificate of Coverage, Summary of Coverage, Insurance Contract, HMO Contract, or Medicare Plan Contract, is hereby amended as follows:

[...]

(e) **Effective January 1, 2014**, an individual (other than a GTE Retiree) who is covered by one of the Applicable CBAs **shall not be eligible for coverage or benefits under the Plan** or under any Component Benefit, other than supplemental life insurance that is paid for by the participant, if such individual (1) has incurred a termination of employment with the Employer and (2) is age 65 or older.

3. The Sponsor reserve the right to amend, modify, suspend, revoke, or terminate the Plan or any Component Benefit, in whole or in part at any time, for any reason, at its discretion. This Agreement shall not create any vested rights in any individual.

Exhibit R at pp. 1-4 (emphasis added); *see also* Exhibit S at pp. 1-4 (identical language); *see also* Exhibit T at pp. 1-4 (identical language).

40. Because each of these CBAs expires per its own terms before the relevant portions of the Amendments take effect (January 1, 2014) and because retiree medical benefits are not vested under the Plan Documents or the relevant CBAs, SuperMedia has the right to enact the Amendments affecting the retirees.¹⁴

E. THE DEFENDANT CLASS DISPUTES SUPERMEDIA'S RIGHT TO AMEND

41. On or about June 25, 2012, SuperMedia sent each pertinent group of employees and retirees that may be affected by the Amendments a letter that provided written notice of the terms of the Amendments ("Retiree Notices"). A true and correct copy of the Retiree Notices is attached hereto as Exhibit V. The Retiree Notices explain the scope of the changes made in the Amendments. *Id.* Additionally, they include a "Claim Form" that provides the recipients with an opportunity to make a claim for benefits, raise questions, voice concerns, or make objections regarding the Amendments and SuperMedia's legal right to amend, modify, revoke, or terminate the Plans at any time. *See id.*

42. In response to the Retiree Notices, SuperMedia received executed Claim Forms from the Defendant Class objecting to SuperMedia's legal authority to adopt the Amendments and, generally, to SuperMedia's legal right to amend, modify, revoke, or terminate the Plans at any time. Defendant Foy further makes a claim for benefits. Specifically, Defendant Foy argues in her response that, "whatever active employees received in benefits, we would have also according to contract." Defendant Foy's June 26, 2012 Claim Form, a true and correct copy of which is attached hereto as Exhibit W. Defendant Foy's objection to SuperMedia's right to enact the Amendments, claim for benefits, and claim that SuperMedia cannot change or terminate its

¹⁴ Good faith bargaining with the Defendant Unions will occur prior to the expiration of the CBAs and will encompass these current employees' retiree benefits.

Plans have created a dispute. Defendant Russo similarly claims that SuperMedia does not have the right to enact the Amendments. Defendant Russo's June 26, 2012 Claim Form, a true and correct copy of which is attached hereto as Exhibit X.

43. Based on the current dispute regarding SuperMedia's right to amend, modify, revoke, or terminate the Plans at any time, a substantial controversy exists between Plaintiffs, on the one hand, and the Defendant Class and the Defendant Unions, on the other hand, which is ripe for the Court's determination.

F. CLASS ALLEGATIONS

44. This suit may be maintained as a class action against the Defendant Class because:

- a) The Defendant Class is so numerous that joinder of all class members is impracticable. The Defendant Class is comprised of approximately 3,685 former bargaining and non-bargaining employees, and members of the Defendant Class reside in approximately 44 states across the country. An estimated 376 members reside in the State of Texas.
- b) Questions of law and fact exist that are common to the Defendant Class. For example, some of the common questions of law and fact include, but are not limited to: (1) whether the Amendments are legal, valid, binding, and enforceable; (2) whether the Plan Documents prevent or provide for Plaintiffs' legal rights to amend, modify, revoke, or terminate the Plans at any time; (3) whether the Amendments violate, conflict with, or breach any provision of or obligation under the Plans, collective bargaining agreements, or any other operative agreements; and (4) whether the Amendments have been appropriately approved and implemented by Plaintiffs. These issues prove common, as evidenced by the responses in Retiree Claim Forms submitted by the individuals in the Defendant Class.
- c) The defenses (and claims, if any) of the representative parties will be typical of the defenses (and claims, if any) of the Defendant Class.
- d) The representative parties, Defendant Foy and Defendant Russo, named herein, will fairly and adequately protect the interests of the Defendant Class.

- e) The prosecution of separate actions by or against individual members of the Defendant Class would create a risk of: (1) inconsistent or varying adjudications with respect to individual members of the Defendant Class, which would establish incompatible standards of conduct for Plaintiffs; or (2) adjudications with respect to individual members of the Defendant Class, which would prove dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
- f) The representative parties, on behalf of those similarly situated, have challenged Plaintiffs' authority to enact the Amendments on grounds generally applicable to the entire Defendant Class.
- g) Questions of law or fact, as described above, common to the members of the Defendant Class, predominate over any questions that affect only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

45. The Defendant Class is comprised of former bargaining and non-bargaining employees of SuperMedia, Idearc, Verizon, GTE, Bell Atlantic South, Bell Atlantic North, and NYNEX Corporation, who are participants in SuperMedia's Plans.

46. Plaintiffs maintain the Defendant Class under subsections (b)(1), (b)(2) and (b)(3) of Federal Rule of Civil Procedure 23, and Plaintiffs will seek to certify this class pursuant to Federal Rule of Civil Procedure 23.

VI.

COUNT I: DECLARATORY JUDGMENT

47. Plaintiffs reiterate and reallege the foregoing allegations as if fully set forth herein.

48. Because of the objection to the Amendments and Plaintiffs' legal authority to exercise their rights under the Plans, Plaintiffs seek declaratory relief. Specifically, in this action, Plaintiffs seek declarations that:

- a. The Amendments enacted by Plaintiffs are legal, valid, binding, and enforceable;

- b. The Amendments enacted by Plaintiffs do not violate, conflict with, or breach any provision of or obligation under the Plans, collective bargaining agreements, or any other operative agreements;
- c. As to retirees who are not subject to the GTE Change in Control or to the 1301, 1302, and 2213 CBAs, SuperMedia has the right to modify, amend, revoke, or terminate the Plans or any provisions therein at any time;
- d. As to GTE Retirees who are subject to the provisions of the GTE Change in Control, SuperMedia has the right to modify or amend: (i) the co-payments, deductibles, and other requirements for coverage and benefits, and (ii) the administration, design, coverage, and benefits of the Plans; and
- e. As to defendants who are current or former bargaining unit members of Locals 1301, 1302, or 2213, SuperMedia has the right to amend, modify, revoke or terminate the Plans or any provisions therein at any time after December 31, 2013, and at SuperMedia's discretion.

49. The Supreme Court and the Fifth Circuit have consistently held that plan sponsors retain the unilateral right to amend or terminate retiree health and welfare benefits where the plan documents do not clearly and expressly vest the retirees' benefits. *See, e.g., Inter-Modal Rail Employees Ass'n*, 520 U.S. at 515; *see also Curtiss-Wright Corp.*, 514 U.S. at 78; and *see also Nichols*, 532 F.3d at 373.

50. SuperMedia has maintained the right to amend or terminate through its Plan Documents and has never suggested, much less contractually agreed, that any retiree health and welfare benefits vest. To the contrary, the Plan Documents explicitly state: "No Vested Rights." *See, e.g. Exhibit A*, at § 7.4. Moreover, all operative agreements, including CBAs, with members of the Defendant Class either expire before the effective date of the Amendments or are silent altogether with respect to retiree health and welfare benefits.

VII.
DECLARATORY RELIEF IS APPROPRIATE

51. Federal Rule of Civil Procedure 57 provides for declaratory judgment actions and states that courts should liberally construe such actions to effectuate the objectives of declaratory relief. FED. R. CIV. P. 57.

52. As set forth above, an actual, justiciable, and substantial controversy exists concerning tangible rights of parties that have adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

53. SuperMedia must be able to confirm whether it properly enacted the Amendments and whether the Amendments are legal, valid, binding, and enforceable.

54. If the Court refuses to make this determination at this time, Plaintiffs and the Defendant Class face significant harm, including: (i) heightened uncertainty regarding the effect of the Amendments; (ii) inefficiencies in business operations, (iii) inefficiencies in or inability to adequately plan and prepare for healthcare costs; (iv) high costs of time and expense due to the likelihood of defending or prosecuting numerous lawsuits in multiple courts nationwide; and (v) a substantial financial burden for SuperMedia in carrying a greater than \$315 million contingent liability during a critical time following its emergence from bankruptcy and a widespread recession.

55. Additionally, this dispute is ripe for determination because Plaintiffs have narrowly focused their requested relief to declarations centered around one issue: whether Plaintiffs had the unilateral right to enact the Amendments. Extrinsic or substantial factual development will prove unnecessary or inappropriate because the pertinent facts of this matter—the terms of the Plan Documents and the Amendments—should be undisputed, resulting in a proceeding comprised chiefly of legal issues. Lastly, prompt adjudication would resolve the

dispute because the Court would inform all interested parties of whether the Amendments are effective and enforceable and thereby provide certainty to Plaintiffs as well the members of the Defendant Class and the Defendant Unions.

VIII.
PRAYER FOR RELIEF

For the above reasons, Plaintiffs request that the Court certify the Defendant Class and render judgment as follows:

1. Declarations that:
 - a. The Amendments enacted by Plaintiffs are legal, valid, binding, and enforceable;
 - b. The Amendments enacted by Plaintiffs do not violate, conflict with, or breach any provision of or obligation under the Plans, collective bargaining agreements, or any other operative agreements;
 - c. As to former employees who are not subject to the GTE Change in Control or to the 1301, 1302, and 2213 CBAs expressly described above, SuperMedia has the right to modify, amend, revoke, or terminate the Plans or any provisions therein at any time and at SuperMedia's discretion;
 - d. As to former GTE employees who are subject to the provisions of the GTE Change in Control, SuperMedia has the right to modify or amend: (i) the co-payments, deductibles, and other requirements for coverage and benefits, and (ii) the administration, design, coverage, and benefits of the Plans; and
 - e. As to former employees who are subject to the provisions of the 1301, 1302, or 2213 CBAs, SuperMedia has the right to modify, amend, or terminate the Plans or any provisions therein at any time after December 31, 2013, and at SuperMedia's discretion.
2. Costs of suit; and
3. Such other and further relief to which Plaintiffs may show themselves entitled at law or in equity.

DATED: June 26, 2012

Respectfully submitted,

s/ Richard S. Krumholz

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