

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Petition of CRC Communications of Maine, Inc.) WC Docket No. 10-143
And Time Warner Cable Inc.)
For Preemption Pursuant to Section 253)
Of the Communications Act, as Amended)

To: The Commission

**COMMENTS IN SUPPORT OF PREEMPTION PETITION
OF CRC COMMUNICATIONS OF MAINE, INC.
AND TIME WARNER CABLE INC.**

NTCH, Inc. ("NTCH"), by its attorneys, hereby offers these Comments in support of the Petition for Preemption filed by CRC Communications of Maine, Inc. and Time Warner Cable Inc. (collectively, "Petitioners"). The scenario outlined in Petitioners' pleading represents the very sort of administrative nightmare that the 1996 amendments to the Communications Act were designed to preclude. Congress sought in the '96 amendments not only to ensure interconnection rights and foster competition, but to place the administrative mechanisms necessary to accomplish those objectives on a highly expedited fast track. The concept was to mandate good faith negotiations, and then move if necessary to a streamlined arbitration so that potential competition was not mired interminably in administrative quagmires. Despite these provisions of the Act, Petitioners seem to have run into delay after delay after delay at the Maine PUC. The record does not reflect why the Maine PUC failed to act in the Section 251(f)1)(B) proceeding within the 120 days required by the Act, but the two year pendency of that matter alone demonstrates that the strong Congressional imperative requiring speedy resolution of interconnection issues is not being implemented.

Sections 251 - 253 of the Communications Act reflect a recognition that there might be some reluctance on the part of state Public Utility Commissions to permit new entrants into small telecommunications markets which had been stable, comfortable monopolies for many years, sometimes many decades, often under local family-owned control. While wrapping themselves in the mantle of "providers of last resort," many rural LECs simply use their monopoly status to remain the provider of only resort. As such, they offer the public exactly what monopoly providers always provide: higher cost, lower quality service. The situation may be likened to the pre-MCI, pre-*Carterfone* era when telecommunications in this country was largely dominated by a single service and equipment provider. People were reasonably happy because they had no idea what other services and equipment were available. Once the *Carterfone* decision and a series of court cases involving MCI forced open the equipment and long distance service markets, the public suddenly became aware that it could have fax machines, voice mail, data, interstate and international long distance, and a host of other services at a fraction of the prices it had been paying for monopoly service. Competition was literally forced upon the country, but those actions spawned the vibrant, highly competitive equipment and service market which we have today.

The '96 Amendments also implicitly recognized that there might be a reluctance on the part of state commissions to rock the boat, particularly when the monopoly providers are local folks from the state who have worked hand in hand with the commissions for decades, while the prospective competitors are often outsiders with no proven record, no local ties, and no history of relationships with the commissions. The "captive regulator" dynamic is a familiar and understandable one; indeed, if truth be told, that was very much the situation of the Federal Communications Commission and AT&T when MCI and Sprint intruded onto the scene in the

1970's. The powerful historical regulator/client nexus between the Commission and its familiar monopoly regulatee had to be broken. The same, unfortunately, is sometimes true of state commissions.

This is one reason why state-sanctioned telecommunications monopolies continue to live and thrive in many rural parts of America. Rural LECs have very strong lobbies indeed, and even the '96 amendments reflect a nod to that power in the exemption from some provisions of the Act for rural LECs. See 47 USC Section 251(f). As a competitor or potential competitor in many rural markets, NTCH frequently finds itself bumping up against inequities in access to universal service funds, stimulus funds, interconnection rights, interconnection rates, and other obstacles which impede or, as a practical matter, prevent service in competition with rural LECs from ever getting off the ground. In all of these areas, rural LECs enjoy advantages and privileges which serve to entrench them in monopoly service despite the willingness of new entrants to offer superior service at a lower price. It is, of course, the public who suffers when this happens, but often the rural public, like 1960's America, has no idea that it can get better service at a lower cost because competition is simply frozen out.

Not all state commissions take this approach, and we cannot address the specifics of what motivated the Maine PUC here. Let us assume that the Maine PUC honestly believes, for whatever reason, that permanently maintaining a highly profitable telephone monopoly for certain phone companies will best serve the needs of the Maine public. The fact nevertheless remains that Congress has declared a national policy to open the door to basic competition in telecommunications markets by requiring all telecommunications carriers to interconnect pursuant to Section 251 (a). That much seems clear from a simple reading of the statute and its legislative history.

New section 251(a) imposes a general duty to interconnect directly or indirectly between all telecommunications carriers ... New section 251(f)(1) provides for the exemption of rural telephone companies from the requirements of new subsection (c) until a bona fide request is received that the State commission determines is not unduly economically burdensome, is technically feasible, and is consistent with the universal service provisions of new Section 254

Conference Report 104-458 to accompany S. 652, Jan. 31, 1996, pages 121-122. Petitioners laid out compellingly and at great length how the potential exemption in 251(f)(1) expressly applies only to the provisions of Section 251(c) and not to the basic interconnection obligations of 251(a) and (b). This is certainly borne out by the Committee Report.

Significantly, the bill as passed superseded the House version of the bill which would have simply permitted State commissions "to waive section 242 [later renumbered as Section 251] requirements with respect to rural telephone companies." *Ibid.* at 121. Clearly, the conference version of the bill explicitly *reduced* the scope of permissible exemption from the requirements of Section 251 which could be granted by State commissions: in the House version, all requirements of Section 251, including the duty to interconnect, could be waived for rural LECs, while in the version actually passed by Congress only the provisions of Section 251(c) were subject to exemption.

Fourteen years after the 1996 Telecom amendments, many markets still remain tightly closed. The Commission must now act boldly, broadly and decisively to pry those markets open. Such an action would be in direct furtherance of the stated objectives of the National Broadband Plan and would send a strong message to State commissions that the Communications Act must be interpreted and applied so as to foster full competitive entry as quickly as possible and without administrative foot-dragging. At a minimum, the Commission should

1. preempt states from preventing interconnection by new telecommunications entrants with rural LECs;

2. clarify that the exemption provisions of Section 251(f) do not apply to the basic obligations to interconnect set forth in Sections 251(a) and (b);

3. clarify the bases on which a state PUC could refuse to terminate the rural exemption applicable to Section 251(c). That provision may not be used to circumvent the fundamental interconnection obligations of Sections 251(a) and (b); and

4. declare that when a state PUC takes longer than 120 days to act on an exemption proceeding under Section 251(f), the Commission shall deem such delay to have the effect of prohibiting the ability of an entity to provide telecommunications service under Section 253(a), and in that case the State's authority to act shall be automatically preempted and the rural exemption shall be deemed terminated, unless the Commission provides otherwise.

Respectfully submitted,

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