

**Before the
Federal Communications Commission
Washington D.C. 20554**

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

**COMMENTS OF
CHARTER COMMUNICATIONS INC.**

Charter Communications, Inc. (“Charter”) respectfully submits its Comments to the Federal Communications Commission (the “Commission”) in response to the Public Notice issued on July 29, 2010 in the above-captioned proceeding. The Commission asked for comment on two issues:

1. The “CRC/TWC Petition,” and in particular, on the arguments presented in the petition regarding interconnection obligations under Sections 251 and 252; and
2. Whether the Commission should temporarily delay acting on Recommendation 4.10 of the National Broadband Plan to enable the Commission to address the broader set of related interconnection issues raised by the CRC/TW Petition at the same time.

Charter supports the Petition for Preemption filed by CRC Communications of Maine, Inc. (“CRC”) and Time Warner Cable Inc. (“Time Warner”) on June 15, 2010 (the “CRC/TW Petition”). The Commission should preempt the “Section 251(a) Order” issued by the Maine Public Utilities Commission (“MPUC”) on May 5, 2008. In particular, the Commission should clarify that the requirements of both Section 251(a) (the general duty of telecommunications carriers to interconnect) and Section 251(b) (the obligations of all local exchange carriers) apply to Rural Incumbent Local Exchange Carriers (“RLECs”) without exception.

Charter requests that the Commission delay its ruling on Recommendation 4.10 of the National Broadband Plan until all the issues raised by the CRC/TW Petition may be addressed at the same time.

Background

Charter is the nation's fourth (4th) largest cable television operator, with approximately 5.3 million residential and business customers located in twenty-seven (27) states. Charter delivers a wide array of communications services, including (i) "traditional" cable television service, (ii) broadband information services, (iii) high-speed cable modem services, and (iv) interconnected Voice over Internet Protocol ("VoIP") services. Charter serves customers in rural communities throughout the United States and has entered into interconnection agreements with RLECs for the exchange and/or termination of VoIP traffic.

The MPUC issued the "Section 251(a) Order" on May 5, 2008, granting five RLECs an exemption from the general duty of telecommunications carriers to interconnect under Section 251(a) of the Communications Act.¹ The "Section 251(a) Order" effectively prevents CRC and Time Warner from providing interconnected VoIP services in the rural communities served by the five RLECs. CRC and Time Warner have filed their Petition for Preemption requesting the Commission to preempt the MPUC's order and to allow CRC to interconnect with the RLECs under Sections 251(a) and (b). The Commission's ruling in this matter will significantly affect Charter's ability to provide competitive VoIP services in rural communities.

¹ 47 U.S.C. §251(a).

I.
Language of Communications Act is Clear

The MPUC erred when it issued the “Section 251(a) Order,” holding that five RLECs in Maine were exempt from interconnecting with CRC. The language of Section 251 of the Communications Act is clear.² The Section 251(f) exemption for those RLECs does not apply to either Section 251(a) or Section 251(b).

Section 251(a) is entitled “General duty of telecommunications carriers”, and it states:

Each telecommunications carrier has the duty -
(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.³

Section 251(b) is entitled “Obligations of all local exchange carriers” and states “Each local exchange carrier has the following duties.” Section 251(b) then lists the following five duties: (1) Resale; (2) Number Portability; (3) Dialing Parity; (4) Access to Rights-of-Way; and (5) Reciprocal Compensation.⁴

There are no exceptions to the requirements of Section 251(a) and 251(b). Section 251(a) applies to all telecommunications carriers, including RLECs. Section 251(b) applies to all local exchange carriers, including RLECs.

Section 251(c) is entitled “Additional obligations of incumbent local exchange carriers” and states “[in] addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties.” Section 251(c) then lists the additional obligations imposed on an incumbent local exchange carrier relating to (1) the duty to negotiate,

² 47 U.S.C. §251.

³ 47 U.S.C. §251(a).

⁴ 47 U.S.C. §251(b).

(2) interconnection, (3) access to unbundled network elements, (4) resale, (5) notice of changes, and (6) collocation.⁵ But these “additional obligations” do not apply to every local exchange carrier.

Section 251(f) is entitled “Exemptions, suspensions, and modifications.”⁶ Subsection 251(f)(1) states the following:

(1) Exemption for certain rural telephone companies.

(A) Exemption.

Subsection (c) of this section shall not apply to a rural telephone company until

(i) such company has received a bona fide request for interconnection, services, or network elements, and

(ii) the State commission determines (under subparagraph(B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).⁷

The language of Section 251(f)(1) is perfectly clear. It states “Subsection (c) of this section shall not apply to a rural telephone company until ...”⁸ The Section 251(f)(1) exemption only applies to Section 251(c) entitled “additional obligations of incumbent local exchange carriers.” The Section 251(f)(1) exemption does not apply to either Section 251(a) or Section 251(b). The MPUC clearly erred in its May 5, 2008 Order in holding that Section 251(f)(1) provided five RLECs an exemption from the requirements of Section 251(a).

Further, once Sections 251(a) and 251(b) are held to be applicable to the five RLECs, then the MPUC is required to carry out its responsibilities under Section 252.⁹

⁵ 47 U.S.C. §251(c).

⁶ 47 U.S.C. §251(f).

⁷ 47 U.S.C. §251(f)(1)(A).

⁸ 47 U.S.C. § 251(f)(1)(A) (emphasis added).

⁹ 47 U.S.C. §252.

II. The MPUC Ruling Prevents Deployment of Broadband Services in Rural Communities

Since 2000, Charter has invested over Eight Billion Dollars (\$8,000,000,000) to rebuild its network and to deploy broadband services. Much of this investment has occurred in rural communities, and has enabled Charter to provide competitive broadband services for the first time in these areas.

In the Executive Summary of the National Broadband Plan, the staff states that “[g]overnment can influence the broadband ecosystem in four ways.”¹⁰ The first way is to “[d]esign policies to ensure robust competition and, as a result maximize consumer welfare, innovation and investment.”¹¹

The MPUC’s “Section 251(a) Order” is contrary to the stated role of government in the National Broadband Plan. The MPUC has denied competition in the rural communities served by five RLECs and, as a result, has minimized customer welfare and has prevented innovation and investment in broadband services. The staff highlighted the anticompetitive effect of the MPUC’s “Section 251(a) Order,” stating:

There is evidence that some rural incumbent carriers are resisting interconnection with competitive telecommunications carriers, claiming that they have no basic obligation to negotiate interconnection agreements. . . . Without interconnection for voice service, a broadband provider, which may partner with a competitive telecommunications carrier to offer a voice-video-Internet bundle, is unable to capture voice revenues that may be necessary to make broadband entry economically viable.

Accordingly, to prevent the spread of this anticompetitive interpretation of the Act and to eliminate a barrier to broadband deployment, the FCC should clarify rights and obligations

¹⁰ Omnibus Broadband Initiative, “Connecting America: The National Broadband Plan” 2010, at xi.

¹¹ *Id.* at xi.

regarding interconnection to remove any regulatory uncertainty. In particular, the FCC should confirm that all telecommunications carriers, including rural carriers, have a duty to interconnect their networks.¹²

Charter has already invested huge sums in its network to provide broadband services. For Charter to compete in rural communities it must be able to interconnect with RLECs. By granting the CRC/TW Petition, the Commission will promote greater competition and further investment in broadband networks in these rural communities. A denial of the CRC/TW Petition will result in less competition and a delay in deployment of broadband services.

III. Charter's Experience Illustrates the Importance of RLECs' Section 251(a) and (b) Obligations

As noted above, Charter is one of the largest companies nationwide involved in making broadband and interconnected VoIP services available to residential and business customers in small towns throughout rural America. Relying on the rights conferred under Sections 251(a) and (b), Charter has successfully entered into interconnection and/or traffic exchange agreements with over 150 RLECs in seventeen (17) states, including Alabama, California, Georgia, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Oregon, South Carolina, Tennessee, Texas, Washington and Wisconsin.¹³ However, notwithstanding the significant number of agreements that it has completed, Charter has experienced many instances in which an RLEC has delayed, objected or refused to indirectly interconnect, provide dialing parity, agree to reciprocal compensation at symmetrical rates, and/or provide number portability within mandated timeframes. Charter has experienced such

¹² Id. at 49.

¹³ As used in these Comments, Charter enters into an "interconnection agreement" with an RLEC when it intends to offer service within the RLEC's incumbent service area and negotiates a "traffic exchange agreement" with an RLEC when it intends to offer service in a neighboring ILEC's area that has mandatory local calling (e.g., extended area service) routes to and from the RLEC's service area.

problems with RLECs both when it is competing directly with an RLEC in its territory and when Charter is competing in a larger ILEC's neighboring territory but nevertheless must exchange traffic with an RLEC.

For example, Charter often encounters the following scenario when dealing with an RLEC. Charter seeks to launch or launches competitive telephone services in the service territory of a large ILEC – typically, an RBOC like AT&T, Verizon, or Qwest. Because of mandatory local calling requirements that are applicable to the launch area (such as extended area service (“EAS”)), Charter must enter into arrangements with a neighboring RLEC to exchange such mandatory local traffic. While the RLEC interconnects, permits traffic exchange and provides for dialing parity with respect to calls exchanged with the large ILEC with whom Charter intends to compete, the RLEC delays, objects or refuses to establish similar arrangements with Charter. As a result, Charter may be delayed in commencing its provision of telephone services in an area to be launched, or Charter's end user customers in a launched area may be unable to receive locally-dialed calls from the RLEC's end user customers. Not understanding that their inability to receive such calls arises from the RLEC's failure to program its switches to recognize Charter's NPA-NXX codes or the RLEC's failure to permit interconnection for the indirect exchange of traffic, such Charter end user customers may become frustrated, blame Charter, and/or terminate their service with Charter and switch back to their original carrier.

In Charter's experience, state regulators generally have been helpful in resolving impasses with respect to the issues discussed above. However, in the absence of a legal obligation with which an RLEC must comply, disputes and/or standoffs over Section 251(a) and

(b) obligations would be devastating to any carrier seeking to provide competitive telephone services, even if not in direct competition with an RLEC.

While the MPUC's reasoning and conclusions, if upheld, would effectively prohibit the ability of any competitor like Charter to compete directly with an RLEC that chose to disregard its Section 251(a) and (b) obligations, they also would significantly impair the ability of competitive carriers to provide the telephone services like EAS and other mandatory calling arrangements that customers have come to expect in areas that are contiguous to an RLEC's territory. As such, the Commission must reject the MPUC's reasoning and affirm the obligation of RLECs to comply with Sections 251(a) and (b).

**IV.
The Commission Should Delay Ruling on
Recommendation 4.10**

Recommendation 4.10 of the National Broadband Plan states: "The FCC should clarify interconnection rights and obligations and encourage the shift to IP-to-IP interconnection where efficient."¹⁴

The staff then explained the need for interconnection in the first paragraph of Recommendation 4.10, which follows:

For consumers to have a choice of service providers, competitive carriers need to be able to interconnect their networks with incumbent providers. Basic interconnection regulations, which ensure that a consumer is able to make and receive calls to virtually anyone else with a telephone, regardless of service provider, network configuration or location, have been a central tenet of telecommunications regulatory policy for over a century. For competition to thrive, the principle of interconnection – in which customers of one service provider can communicate with customers of another – needs to be maintained.¹⁵

¹⁴ Id. at 49.

¹⁵ Id. at 49.

The Commission has asked for comment on whether the Commission should rule on Recommendation 4.10 first, and then rule on the CRC/TW Petition later, or whether to rule on the broader set of interconnection issues all at the same time. Charter urges the Commission not to postpone resolution of the issues raised by the CRC/TW Petition pending its consideration of Recommendation 4.10. While the latter proceeding is important, and the Commission should proceed with it on schedule, any delay in rejecting the MPUC's approach will be argued by RLECs to be a validation of the MPUC's conclusions. The interconnection issues raised by the CRC/TW Petition will directly affect Charter's ability to provide interconnected VoIP services in rural communities throughout the United States. For these reasons it is better for the Commission to address all the RLEC interconnection issues at one time, based upon the CRC/TW Petition.

Conclusion

The Commission should preempt the MPUC's "Section 251(a) Order" and grant the relief sought by CRC and Time Warner in the CRC/TW Petition. Further, the Commission should clarify that the requirements of both Section 251(a) and Section 251(b) apply to RLECs without exception.

Charter requests that the Commission delay ruling on Recommendation 4.10 of the National Broadband Plan until all the issues raised by the CRC/TW Petition may be addressed at the same time.

Respectfully submitted this 30th day of August, 2010.



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