

KELLY & ASSOCIATES, LLC  
ATTORNEYS

William S. Kelly

96 High Street  
Belfast, Maine 04915  
e-mail: kellylaw@bluestreakme.com

(207) 338-2702  
(207) 338-0328 Fax

December 23, 2010

**Via Electronic Filing**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Petition of CRC Communications of Maine, Inc. and Time Warner  
Cable Inc. for Preemption Pursuant to Section 253  
WC Docket No. 10-143  
Notice of Ex Parte Meeting**

Dear Ms. Dortch:

On December 22, 2010, the undersigned William S. Kelly and Thomas J. Moorman, Counsel to UniTel, Inc. ("UniTel"), met with Margaret McCarthy, Policy Advisor to Commissioner Cops, to discuss the issues that are raised in the above-captioned matter.

In addition to relaying the key positions and legal arguments set forth in the submissions by the RLECs in this proceeding, we also made clear that there is no section 251(a)(1) issue raised in this proceeding as each of the RLECs are interconnected directly or indirectly with the Public Switched Telephone Network, and that there is no fact in this proceeding, nor was there before the Maine Public Utilities Commission (the "Maine Commission"), suggesting any call blocking occurring or failure to allow access to and from the Public Switched Telephone Network. These facts confirm the presentation made in the Comments of UniTel at page 2 in this proceeding.

In addition, we indicated that the Maine Commission's July 9, 2010 section 251(f)(1) decision (the "*July 9<sup>th</sup> Decision*") was fact laden, based on sworn testimony, expert opinion and evidence, and entirely consistent with 47 U.S.C. § 251(f)(1). Any effort to end run such decision through assertions of the need for a declaratory ruling to resolve alleged uncertainty with respect to the proper construction of section 251 of the Act were wholly misplaced. The plain language of both section 251(a)(1) and section 251(c)(1), as well the FCC's rules implementing these sections (47 C.F.R. §51.100 and 47 C.F.R. § 51.301, respectively) are clear and unambiguous. These statutory sections and rules form no basis for any suggestion that there is some need for a general declaration as to what those statutory sections or Commission rules state and mean.

So too, any claim that the subject matter raised in the instant Section 253(a) Petition filed by CRC Communications of Maine, Inc. ("CRC") and Time Warner Cable ("TWC") is evidence of an issue of uncertainty across the states is equally misplaced. No facts have been presented

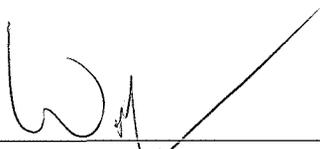
which demonstrate that the section 251(f)(1) issues addressed by the Maine Commission are common place issues addressed by other state commission. Thus, there is no public policy or legal justification for a declaratory ruling sua sponte from the FCC. (We note that TWC did not seek a declaratory ruling in its Preemption Petition).

Also misplaced is any suggestion that the 2 million homes passed by TWC as stated in its December 9, 2010 ex parte submission in this proceeding has any bearing on the specific facts and resolution of those facts by the Maine Commission in the *July 9<sup>th</sup> Decision*. TWC has provided no fact that would suggest that the section 251(f)(1) issues it (along with CRC) expressly petitioned to be litigated before the Maine Commission are implicated by the operations that comprise the remainder of the vast majority of the 2 million homes passed that TWC referenced. Any possible solicitation of this fact from the Chairman's office may have been sought to bolster an argument that a declaratory ruling is appropriate under 47 C.F.R. § 1.2 to "terminate a controversy or remove uncertainty." To be sure, it will take a very creative use of the 2,000,000 figure to suggest or bolster the conclusion (*albeit* improper conclusion) that a declaratory ruling is needed to remove any alleged uncertainty about what interconnection rights TWC can and cannot assert with respect to rural telephone companies serving those 2,000,000 customers. Moreover, there is no fact existing or alleged that remotely suggests that rural telephone companies all over the nation (or in the specific areas generally served by TWC) are asserting their rural exemption in response to an interconnection request submitted by TWC.

Having no basis in fact and the law, the RLECs reiterated that the TWC Petition should be denied. No procedural device such as a declaratory ruling can be sustained that would have the effect of end running the specific language and requirements of *July 9<sup>th</sup> Decision* in addressing the TWC and CRC requests to terminate the rural companies' respective rural exemption with regard to the negotiation of section 251(b) and (c) duties. A declaratory ruling allowing a carrier to have the same forms of interconnection as those exclusively enumerated in sections 251(b) and (c) under some construction of section 251(a) would be the very type of end run on the jurisdiction of state commissions that section 251(f) of the Act does not allow.

Respectfully Submitted,  
KELLY & ASSOCIATES, LLC

By: \_\_\_\_\_

  
William S. Kelly

cc: M. McCarthy  
T. Moorman