December 23, 2010

Via Electronic Filing
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th 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, William S. Kelly and Thomas J. Moorman, counsel to UniTel, Inc. ("UniTel"), and Stephen G. Kraskin, federal counsel to Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company and Oxford West Telephone Company (the "Lincolnville & Oxford RLECs") (UniTel and the Lincolnville & Oxford RLECs being referred to herein as the "Maine RLECs") and the undersigned who is state counsel for the Lincolnville & Oxford RLECs met with the following individuals from the Commission's Office of General Counsel: Austin Schlick, Sonja Rifken, Julie Veach and Raelynn Remy. Also in attendance from the Commission's Wireline Competition Bureau was Tim Stelzig. Andrew Hagler from the Maine Public Utilities Commission (the "Maine Commission") was also in attendance but will be filing a separate ex parte notice.

The General Counsel's Staff, Wireline Competition Bureau Staff and the Maine RLECs engaged in a discussion regarding the scope of section 251(a), (b) and (c) duties, as well as the jurisdiction and authority of the Maine Commission under the Telecommunications Act regarding arbitration proceedings with regard to each of the enumerated subsections of section 251.

We discussed the language at page 14 of the Maine Commission's decision dated May 5, 2008 in Docket 2007-611 (the "*May 5, 2008 Order*"), which is stated by the Petitioners to be the subject of their Petition. The language expressly confirmed that RLECs are not exempt from the duties set forth in sections 251(a) and 251(b), and also correctly ruled that the Maine Commission would have authority under the Telecommunications Act to arbitrate issues regarding these duties only if the Rural Exemption of the RLEC has been terminated.

The Maine RLECs emphasized the fact-driven nature of the issues in the adjudicatory proceedings before the Maine Commission, and that a declaratory ruling by the Commission would be inappropriate in the absence of a full and fair airing of the underlying factual issues, and that it would be inappropriate to use a declaratory ruling mechanism to resolve some undefined "controversy." Neither the Maine RLECs nor any other parties with an interest in the subject matter of any declaratory ruling, including State Commissions, State Consumer

Advocates and other RLECs, have been properly noticed or given an adequate opportunity to address any firm set of issues or any alleged facts related to the alleged controversy.

During discussion on the scope of rule making authority of the Commission, the General Counsel referenced *AT & T v. Iowa Utilities Board,* 119 S.Ct. 721 (1999). This case is misapplied and misunderstood by the Petitioners in their Reply Comments.[1] The Court actually stated, "If there is any "presumption" applicable to this question, it should arise from the fact that a federal program administered by 50 independent state agencies is surpassing strange." Id, pg 378, n.6. The *Iowa* decision clearly accepts the FCC's rule making authority under section 201—but in no way does it encourage rulemaking without notice, such as would effectively occur if a declaratory ruling were issued in this proceeding.

The Maine RLECs also called attention to the incorrect characterizations in this proceeding that the Maine Commission somehow has acted to prohibit the section 251(a) general duty regarding interconnection. Factually, no question exists with any of the Maine RLECs meeting their general duty to interconnect directly or indirectly under section 251(a); the Maine RLECs are interconnected with the Public Switched Telephone Network and no blocking of traffic is occurring.

The Maine RLECs also explained that the Petitioners state that they seek to have the Commission preempt the May 5, 2008 Order. But this order was interim in nature and was part of a proceeding that was fully and finally dismissed by the Maine Commission two years ago in November 2008. Therefore, preemption at this time by the Commission may, in the eyes of the Petitioners, have the effect of over-turning the Maine Commission's more recent *July 9th Order*. This would be unlawful, as such an adjudicatory proceeding must be resolved via the federal courts on appeal of the law as applied to the facts.

The Maine RLECs noted that Section 251(f) was enacted by Congress to protect universal service. Section 251(f) reflects the balancing desired by Congress regarding the goals of universal service and competition, which sometimes complement and sometimes compete with each other. It was also the intent of Congress that this balancing be conducted by the State Commissions. This tool has been applied sparingly and when appropriate in accordance with the discretion of the State Commission pursuant to the requirements of the Telecommunications Act. There is no fact or allegation even to suggest that the Rural Exemption has been widely and improperly utilized, much less utilized in the areas of the 2,000,000 rural homes passed claimed in the Time Warner ex parte letter of December 10, 2010.

The Maine RLECs believe that a preemption or declaratory ruling as the Petitioners request would improperly extend the bounds of the arbitration provisions in section 252 beyond the scope intended by Congress. Moreover, it may improperly be used to extend the boundaries of section 251. The course sought by the Petitioners appears intended to suggest that the 251(a)

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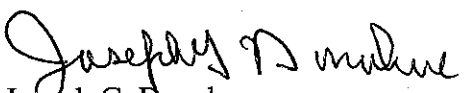
[1] See, Reply Comments of CRC Communications of Maine, Inc. and Time Warner Cable, Inc., dated September 13, 2010, WCB Dkt. No.10-143, in which the Petitioners stated: "In fact, in response to an early state commission challenge to FCC authority under Section 251, the Supreme Court not only made clear that the Commission has authority to 'make rules governing matters to which the 1996 Act applies,' but characterized the notion that a state's interpretation of the federal statute could trump that of the FCC as 'surpassing strange'." pg 8.

general duty language be expanded upon by the Commission so as to give it authorization over intrastate services that may be requested pursuant to the general section 251(a)(1) duty to interconnect. At the least, any such attempt cannot be the subject of a declaratory ruling. An expansive attempt to utilize section 251(a) to usurp a state commission's jurisdiction over wholly intrastate services not specifically identified in section 251(b) and (c) is not sustainable in the absence of administrative due process, at the least, and more likely is not sustainable without Congressional action.

The Commission should not accede to the Petitioners' apparent attempt to utilize section 251(a) to obtain from any rural telephone company or any of the Maine RLECs an interconnection service that is subject to exemption or suspension pursuant to section 251(f). The Petitioners cannot rewrite the Act to obtain under section 251(a) that which they cannot obtain under section 251(b) or (c).

Respectfully submitted,



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