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January 14, 2011

Via Electronic Filing

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

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

Dear Ms. Dortch:

On January 13, 2011, William S. Kelly, counsel to UniTel, Inc. ("UniTel"), 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"), Dr. Robert Loube of Rolka Loube Saltzer Associates appearing independently on behalf of the Maine Office of the Public Advocate (the "OPA"), and the undersigned (who is also counsel for UniTel) met with Bradley Gillen, Legal Advisor to Commissioner Baker, 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 Maine RLECs in this proceeding, the Maine RLECs and the OPA briefly noted that the representation made by Time Warner Cable ("TWC") in its January 11, 2011 ex parte regarding its alleged consistent references to section 251(a) and section 251(b) is contradicted by the record in this proceeding. Specifically, TWC's recent statement failed to acknowledge that the interconnection request that had been made by CRC Communications of Maine, Inc. ("CRC") (TWC's wholesale carrier) was a request made for section 251(a), section 251(b) and section 251(c) interconnection, and it was adjudicated that way by the Maine Public Utilities Commission (the "Maine Commission"). See, e.g., Comments of UniTel, Inc., WC Docket No. 10-143, filed August 30, 2010 ("UniTel Comments") at 2-3. Moreover, TWC's statement in its January 11, 2010 ex parte is at odds with that which TWC had previously indicated (and erroneously so) within TWC's November 12, 2009 ex parte in WC Docket No. 09-51. In that 2009 ex parte submission, TWC indicated that the then pending request by CRC before the

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Maine Commission requested “section 251(a) interconnection only. . . .” *See, e.g., id.* at 14-15 quoting TWC’s November 12, 2009 ex parte at Attachment 4. After making these points, the Maine RLECs referenced their previously stated positions noted in earlier ex parte presentations filed in this proceeding on December 22, 2010. Among those positions, the following points were presented.

First, the Maine RLECs and OPA made clear that there is no section 251(a)(1) issue raised in this proceeding as each of the Maine RLECs are interconnected directly or indirectly with the Public Switched Telephone Network (“PSTN”), and that there is no fact in this proceeding, nor was there before the “Maine Commission, suggesting any call blocking occurring or failure to allow access to and from the PSTN. These facts confirm the presentation made in the UniTel Comments at page 2, and of the Comments of Lincolnville & Oxford RLECs at page 2, in this proceeding.

Second, the Maine RLECs and OPA indicated that the Maine Commission’s July 9, 2010 section 251(f)(1) decision (the “July 9th 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 Commission 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.

Third, any claim that the subject matter raised in the instant Section 253(a) Petition filed by CRC Communications of Maine, Inc. (“CRC”) and 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. There is also 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. Thus, there is no public policy or legal justification for a declaratory ruling *sua sponte* from the FCC. (The Maine RLECs and OPA note that the Petitioners did not seek a declaratory ruling in their Preemption Petition).

Finally, the Maine RLECs and the OPA stated that, because the Petition for Preemption has no basis in fact and the law, 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 9th Decision in addressing the TWC and CRC requests to

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terminate the rural companies' respective rural exemption with regard to the negotiation of section 251(b) and (c) duties. Moreover, 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,



Thomas J. Moorman
Counsel for UniTel, Inc.

cc: B. Gillen
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W. Kelly