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Via Electronic Filing

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

**Re: UniTel, Inc. 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:

Please be advised that on February 25, 2011, the undersigned, along with Thomas J. Moorman, both counsel for UniTel, Inc. ("UniTel"), attended an *ex parte* meeting with Edward P. Lazarus and Zachary Katz from Chairman Julius Genachowski's office. Also in attendance from the Wireline Competition Bureau of the Federal Communications Commission ("FCC") were Jennifer Prime, Lisa Gelb, William Dever, and Tim Stelzig. The Honorable Jack Cashman, Chairman of the Maine Public Utilities Commission ("MPUC") (the "MPUC Chairman") and Andrew Hagler, Director of Telephone and Water Utility Industries of the MPUC (the "MPUC Director") attended via telephone conference. Joseph G. Donahue attended as 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").

During the meeting, Maine RLECs' counsel reaffirmed that the preemption being sought by Time Warner Cable, Inc. ("TWC") under section 253 of the Communications Act of 1934, as amended, would be inappropriate and that the issuance of a declaratory ruling ("DR") relating to section 251(b) duties and the arbitration of those duties would also be inappropriate. The Maine RLECs' counsel, and independently the MPUC Chairman and the MPUC Director, voiced vigorous opposition to the issuance of a DR that would, in effect, undermine the jurisdiction of the MPUC, as delegated by Congress.

The Maine RLECs' counsel stated that they were uninformed as to what "controversy" was demonstrated in the record in this matter—which is void of any factual information as to multi-state controversy. The Maine RLECs' counsel also stated that, if the FCC thought that a "controversy" existed, the FCC should identify the states in which this alleged controversy exists, explain what the FCC's analysis consisted of and invite the interested parties (including all state commissions) to participate in a Notice of Proposed Rulemaking. If the FCC's goal in issuing a DR is to establish "clarity," it only follows that the facts and circumstances of any decision in "controversy" should be clearly stated on the record so that meaningful analysis of the "controversy" could be considered.

The Maine RLECs' counsel also noted that justification for a DR based on the perceived benefit to broadband deployment would be equally misplaced. UniTel counsel noted that a goal to expand broadband was not a legal basis for construing a jurisdictional statute, and that it was misplaced as UniTel currently provides broadband to nearly 100% of its service area at speeds which meet or exceed the applicable National Broadband Plan articulated goals. The Maine RLECs' counsel argued that there was no proper record to support a finding regarding the effect on broadband expansion in their, or other, service areas.

The Maine RLECs' counsel further stated that the issuance of a DR at this time was at odds with direct acceptance of TWC in the underlying Maine cases in Dockets 2007-611, 2008-214-218 and 2009-40-44. In this regard, three points were stressed:

- (i) The May 5, 2008 Order in Docket 2007-611 (the *May 5th Order*"), which TWC seeks to pre-empt in WC Docket No. 10-143, occurred in a case that was dismissed on the merits by the MPUC after TWC failed to meet its burden of proof. The underlying record demonstrates that it was dismissed in November, 2008.
- (ii) Subsequently, TWC and its CLEC partner filed a petition to terminate each of the Maine RLECs' rural exemption, explicitly recognizing the MPUC authority and jurisdiction in light of the *May 5th Order* in question, as has been explained in detail in UniTel's Comment in Docket No. 10-143, dated August 30, 2011 (the "*UniTel Comments*") at 4-7 (and related attachments to the comments).
- (iii) Julie Laine, Group Vice President and Chief Counsel, Regulatory, to TWC, explicitly testified in response to MPUC Chairman Cashman's question in the underlying hearing in Docket 2009-40-44, that the MPUC was the proper forum to hear and decide the TWC Petition to terminate the RLEC's rural exemption

(Transcript of April 7, 2010, Testimony if Julie P. Laine, Docket No. 2009-40 (Maine PUC), pg 126, lines 9-10; *see also UniTel Comments* at 8).¹

The Maine RLECs also indicated that issuance of an un-noticed DR, without opportunity to comment by all interested parties, and without explanation of the “controversy” being considered all in the context of a unlawful Preemption Petition filed exclusively on the basis of section 253 preemption authority, was effectively and implicitly an end-run by TWC around a proper appeal to the Courts of a MPUC decision denying the merits of TWC’s request that the Maine RLECs’ respective 251(f)(1) exemption be removed. That MPUC decision, in turn, was based on the analysis by the MPUC of an extensive fact-based record which includes thousands of pages of testimony and expert opinion. In contrast, if the FCC issues a DR in this context, it will effectively opine on a single legal interpretation that Congress vested solely in the MPUC in the context of a proceeding addressing a petition to terminate a rural exemption pursuant to section 251(f)(1). Such FCC action will circumvent the MPUC’s detailed analysis and independent fact finding as contained in the MPUC’s July 9, 2010 decision (the “*July 9th MPUC Order*”), which found that terminating UniTel’s rural exemption (as well as that of the other 4 Maine RLECs) would essentially cause the insolvency of UniTel in the near future.

The Maine RLECs emphasized that Recommendation 4.10 of the National Broadband Plan referencing alleged impediments to the expansion of broadband attributed to actions by the MPUC by TWC was factually incorrect wherein TWC stated that the MPUC was prohibiting section 251(a) interconnection. This was explicitly referenced in the *UniTel Comments* at page 2. As UniTel has stated in previous *ex parte* filings in this docket dated December 23, 2010 and January 14, 2011, section 251(a) interconnection is in no way implicated in the underlying MPUC cases denying TWC’s section 251(f)(1) request for the removal of the Maine RLECs’ respective rural exemptions. UniTel is presently, and has been at all times, connected to the Public Switched Telephone Network and no fact exists in this record or before the MPUC that UniTel has blocked any traffic from any carrier. Consistent with these facts, the MPUC Director also advised the FCC staff that the MPUC’s *May 5th Order* explicitly recognized the Maine RLEC’s general duties to interconnect directly and indirectly. TWC factual statements to the contrary in the record in WC Docket No. 10-143 are patently incorrect.

¹ Stuningly, TWC disavowed its participation in Dockets 2009-40-44, and the concomitant jurisdiction of the MPUC, by essentially stating that TWC chose not to appeal the *May 5th Order* from the dismissed case in MPUC Docket 2008-214-218, due to an expectation the TWC would be successful in its petition to terminate each of the Maine RLEC’s rural exemption. *See* TWC Petition at 7.

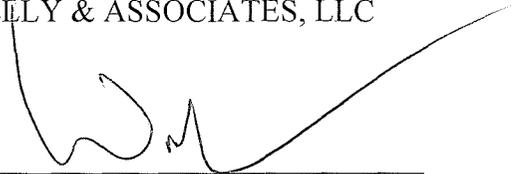
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Finally, the Maine RLECs noted that the *Brazos* case, cited in the MPUC's *May 5th Order* was valid precedent and the most thorough interpretation of the interplay between the duty to the negotiate interconnection agreements and the important RLEC protections provided by Congress in sections 251(c) and 251(f)(1). The Maine RLECs emphasized that allegations of "controversy" on these issues by TWC are red herrings. In short, there is no controversial decision on point, as alleged by reference to cases such as the Federal District Court of Vermont, which is inapposite to the Maine case (the parties engaged in voluntary negotiation in that case). TWC merely does not like the *July 9th MPUC Order* dispositive decision denying TWC's petition to terminate the Maine RLECs' respective rural exemptions, and has failed to appeal it to the Courts as TWC should have done for any lawful relief. The Maine RLECs believe that the FCC should refrain from infusing itself into the context of a fully adjudicated MPUC decision and fact finding through the issuance of a DR; such FCC action will effectively overturn the MPUC legal interpretations of section 251, which would be an abuse of federal authority and a failure to recognize state's rights as delegated by Congress in section 251.

Sincerely,

KELLY & ASSOCIATES, LLC

By:



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cc: E. Lazarus
Z. Katz
J. Prime
L. Gelb
W. Dever
T. Stelzig
The Honorable Jack Cashman
A. Hagler
J. Donahue
T. Moorman