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

In the Matter of	)	
	)	
Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended	)	WC Docket No. 10-143
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs	)	

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DECLARATORY RULING

Adopted: May 25, 2011 **Released: May 26, 2011**

By the Commission: Chairman Genachowski issuing a statement; Commissioner Copps concurring and issuing a statement; Commissioner Clyburn approving in part, concurring in part and issuing a statement; Commissioner Baker not participating.

I. INTRODUCTION

1. In this Declaratory Ruling, we reaffirm basic interconnection rights for competitive providers of voice services. The purpose of this ruling is to clarify statutory rights under section 251 of the Communications Act of 1934, as amended (the Act), in light of apparently conflicting determinations in several states. Our decision will promote competition and spur investment in communications networks and services, particularly in rural areas, by encouraging the deployment of facilities-based voice services. The decision will also give competitors the opportunity to offer "triple-play" services (voice, video, and data) by providing interconnection with incumbent carriers in the same area. Moreover, our decision will provide clarity and guidance to incumbent local exchange carriers (LECs), competitive providers, and state commissions about the rights and obligations regarding negotiation and arbitration under section 251.

2. We clarify that LECs are obligated to fulfill all of the duties set forth in sections 251(a) and (b) of the Act, including the duty to interconnect and exchange traffic, even if the LEC has a rural exemption from the obligations set forth in section 251(c).[1] We also clarify that the rural incumbent LECs' obligations under sections 251(a) and (b) can be implemented through the state commission arbitration and mediation provisions in section 252 of the Act.[2] Finally, we reaffirm that providers of wholesale telecommunications services enjoy the same rights as any other telecommunications carrier

[1] *See* 47 U.S.C. §§ 251(a), (b), (f)(1); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act or the Act). The rural exemption is set forth in 47 U.S.C. § 251(f)(1).

[2] *See* 47 U.S.C. § 252.

under sections 251(a) and (b) of the Act.[3] We believe the guidance provided in this Declaratory Ruling is necessary to remove substantial uncertainty regarding the scope of sections 251 and 252 in state commission proceedings.

3. CRC Communications of Maine, Inc. (CRC) and Time Warner Cable Inc. (TWC) asked the Commission to preempt an order by the Maine Public Utilities Commission (Maine PUC) addressing issues similar to the ones we address in this Declaratory Ruling.[4] The Oklahoma Western Telephone Company (OWTC) filed a Petition for Clarification asking "that the Commission clarify that the determination of an exempt rural carrier's interconnection, reciprocal compensation and other duties imposed by section 251(a) and (b) of the Act are not subject to the mandatory negotiation and arbitration procedures respectively specified in sections 251(c) and section 252 of the Act."[5] We decline to grant these petitions. We find that our Declaratory Ruling will clarify parties' rights and obligations under sections 251 and 252 and that preemption is unnecessary. CRC and TWC may submit a request for interconnection under section 251(a) and (b) and may invoke the arbitration procedures of section 252 if the parties are unable to reach a negotiated agreement. We also recognize that state commissions have the responsibility in the first instance for determining whether, and the extent to which, the provisions in section 251(f) apply in a particular context.

II. BACKGROUND

4. *Section 251 Duties.* Section 251 provides a graduated set of interconnection requirements and other obligations designed to foster competition in telecommunications markets, particularly local markets. The nature and scope of these obligations vary depending on the type of service provider involved. Section 251(a) sets forth general duties applicable to all telecommunications carriers, including the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[6] Section 251(b) sets forth additional duties for LECs pertaining to resale of services, number portability, dialing parity, access to rights-of-way, and reciprocal compensation – the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications (*i.e.*, arrangements for exchange of traffic terminating on another carrier's network).[7] Section 251(c) sets forth the most detailed obligations, which apply to *incumbent* LECs, the group of local telephone companies that, prior to the 1996 Act, generally had been subject to little or no competition.[8] These section 251(c) obligations include: the duty to "negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements" to fulfill the section 251(b) and (c) requirements; additional direct, physical interconnection obligations; requirements to unbundle network elements; the duty to allow resale of telecommunications services at wholesale rates; requirements to

[3] *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007) (*TWC Order*).

[4] Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, WC Docket No. 10-143 (filed July 15, 2010) (CRC/TWC Petition).

[5] *See Developing a Unified Intercarrier Compensation Regime; T-Mobile* et al. *Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Oklahoma Western Telephone Company Petition for Clarification of Declaratory Ruling and Report and Order, CC Docket No. 01-92, at 1 (filed Nov. 27, 2006) (OWTC Petition).

[6] 47 U.S.C. § 251(a)(1).

[7] 47 U.S.C. § 251(b).

[8] 47 U.S.C. § 251(c); *see also* 47 U.S.C. §§ 251(h), 252(j) (defining incumbent LEC).

provide notice of network changes; and a requirement to allow collocation of equipment.[9]

5. *The Rural Exemption.* Section 251(f)(1), known as the rural exemption, states that section 251(c) "shall not apply to a rural telephone company"[10] until the rural telephone company, or rural LEC, has received a bona fide "request for interconnection, services, or network elements," and the relevant state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254.[11] The Commission has stated that Congress intended exemption from the section 251(c) requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption.[12] In 1997, the Commission addressed the scope of the rural exemption in the context of section 251(b)'s number portability obligations.[13] The Commission found that because section 251(f)(1) does not exempt rural LECs from the requirements of section 251(b), rural LECs remain subject to the section 251(b) number portability obligations even if they also are subject to section 251(f)(1)'s rural exemption.[14]

6. *Section 252.* Section 252 directs state commissions to mediate and arbitrate interconnection disputes involving an incumbent LEC,[15] as well as to review interconnection agreements arrived at "by negotiation and arbitration."[16] The Commission has declined to adopt rules advising the state commissions on how to conduct mediations and arbitrations, and has stated that the states are in a better position to develop mediation and arbitration rules that support the objectives of the 1996 Act.[17] Under section 252(a), when an incumbent LEC receives a request for "interconnection, services, or network elements pursuant to section 251," and enters into voluntary negotiations, the incumbent LEC may negotiate without regard to the standards set forth in sections 251(b) and (c).[18] Any party voluntarily negotiating such an interconnection agreement may ask a state commission to mediate any differences.[19]

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[9] 47 U.S.C. § 251(c).

[10] *See* 47 U.S.C. § 153(37) (defining "Rural Telephone Company"). The Commission also has defined the term "rural incumbent local exchange carrier" as a carrier that is both an incumbent LEC and satisfies the definition of rural telephone company. *See* 47 C.F.R. § 54.5.

[11] 47 U.S.C. § 251(f)(1)(A).

[12] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16118, para. 1262 (1996) (subsequent history omitted) (*Local Competition Order*). As noted by the Maine rural LECs, section 251(f) reflects a balance between the goals of universal service and local competition, which "sometimes complement and sometimes compete with each other." *See* Letter from Joseph G. Donahue, Counsel for Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, and Oxford West Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-143, at 2 (dated Dec. 23, 2010) (Rural LECs Dec. 23, 2010 *Ex Parte* Letter).

[13] *See Telephone Number Portability*, CC Docket No. 95-116, RM 8535, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7303-05, paras. 117-21 (1997) (*First Number Portability Reconsideration Order*).

[14] *See id.* at 7303-04, para. 117.

[15] 47 U.S.C. §§ 252(a)(2), (b)(1).

[16] 47 U.S.C. §§ 252(a)(1), (e)(1).

[17] *See Local Competition Order*, 11 FCC Rcd at 16127, para. 1283.

[18] 47 U.S.C. § 252(a)(1).

[19] *See* 47 U.S.C. § 252(a)(2).

Additionally, section 252(b) sets forth a mandatory arbitration scheme for interconnection disputes.[20]

7. *Time Warner Cable (TWC) Order.* In 2007, the Wireline Competition Bureau (Bureau) released the *TWC Order*, in which it granted Time Warner Cable's petition asking the Commission to declare that telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to sections 251(a) and 251(b) of the Act when providing telecommunications services to other service providers, including VoIP service providers.[21] In that Order, the Bureau reaffirmed that such "wholesale" providers of telecommunications services are telecommunications carriers for the purposes of sections 251(a) and (b) of the Act, and are entitled to the rights of telecommunications carriers under those provisions.[22] The Bureau concluded that "state commission decisions denying wholesale telecommunications service providers the right to interconnect with LECs pursuant to sections 251(a) and (b) of the Act are inconsistent with the Act and Commission precedent and would frustrate the development of competition and broadband deployment."[23]

8. *CRC Communications and Time Warner Cable Petition for Preemption.* On July 15, 2010, CRC and TWC filed a petition with the Commission seeking preemption[24] of a May 5, 2008 Order (*Maine PUC Order*) issued by the Maine PUC.[25] In that Order, the Maine PUC held that rural incumbent LECs have no obligation to negotiate in good faith under sections 251(a) and (b) of the Act and, until the rural exemption in section 251(f)(1) is lifted, "there is . . . nothing to arbitrate" under section 252.[26] In

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[20] From the 135th to 160th day after the date on which an incumbent LEC receives a request for negotiation under section 252, the carrier or any other party to the negotiation may petition a state commission "to arbitrate any open issues." 47 U.S.C. § 252(b)(1).

[21] *See TWC Order*, 22 FCC Rcd 3513, para. 1; 47 U.S.C. § 251.

[22] *See TWC Order*, 22 FCC Rcd at 3517, paras. 8-9.

[23] *Id.* at 3513, para. 1; *see also* 47 U.S.C. § 153(43) (defining "telecommunications"); 47 U.S.C. § 153(46) (defining "telecommunications service"); 47 U.S.C. § 153(44) (defining "telecommunications carrier"); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22033, para. 264 (1996) (subsequent history omitted) (concluding that wholesale services are included in the definition of "telecommunications service"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9177-78, para. 785 (1997) (subsequent history omitted).

[24] CRC/TWC Petition. Section 253 of the Act, 47 U.S.C. § 253, directs the Commission to preempt any State or local statute, regulation, or other legal requirement if it determines that the State or local statute, regulation, or other legal requirement prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[25] CRC Communications of Maine, Inc. Petition for Consolidated Arbitration with Independent Telephone Companies Towards an Interconnection Agreement Pursuant to 47 U.S.C. 151, 252, Order, Docket No. 2007-611 (Maine Pub. Utils. Comm'n May 5, 2008) (*Maine PUC Order*).

[26] *Maine PUC Order* at 14. The Maine PUC ordered an evidentiary hearing to determine whether the rural exemption should be terminated as to the five rural LECs at issue in the proceeding. *Id.* CRC chose not to appeal the *Maine PUC Order* and instead filed petitions to lift the rural exemption as to the five rural LECs. CRC/TWC Petition at 7. The Maine PUC initially dismissed those five petitions in November 2008 without holding an evidentiary hearing, and CRC filed renewed petitions in January 2009. *Id.* at 7-8. The Hearing Examiner's Report granted CRC's request to lift the rural exemption as to two of the five rural LECs. *See* CRC Communications of Maine's Requests of UniTel, Inc. Lincolnville Telephone Company, Tidewater Telecom, Inc., Oxford Telephone Company, and Oxford West Telephone Company, Examiner's Report, Docket Nos. 2009-40, 2009-41, 2009-42, 2009-43, 2009-44, at 73-75 (Maine Pub. Utils. Comm'n May 27, 2010). However, by order issued July 9, 2010, the Maine PUC denied CRC's renewed petitions on the grounds that CRC had failed to meet its evidentiary burden. CRC Communications of Maine, Inc. Investigations Pursuant to 47 U.S.C. § 251(f)(1) Regarding CRC (continued....)

reaching this conclusion, the Maine PUC found that the statutory source of an incumbent LEC's obligation to negotiate an interconnection agreement with competitive carriers is section 251(c)(1), and that rural LECs were exempt from this provision pursuant to section 251(f)(1).[27] The Maine PUC acknowledged that a rural incumbent LEC "is not exempt from the obligations set forth in § 251(a) and § 251(b)," but concluded that it did not have authority to directly enforce the requirements of those provisions because its arbitration authority "presumes a duty on the part of an ILEC to engage in good faith negotiations regarding the terms of such an agreement in the first instance."[28] CRC and TWC asked the Commission to direct the Maine PUC to compel the rural LECs to negotiate pursuant to sections 251(a) and 251(b) of the Act, and direct the Maine PUC to commence an arbitration should negotiations prove unsuccessful.[29] On July 29, 2010, the Wireline Competition Bureau (Bureau) issued a Public Notice seeking comment on the Petition and the arguments raised therein regarding interconnection obligations under sections 251 and 252 of the Act.[30]

9. *Oklahoma Western Telephone Company Petition.* In November 2006, Oklahoma Western Telephone Company (OWTC) filed a petition requesting that the Commission clarify that the determination of an exempt rural carrier's interconnection, reciprocal compensation, and other duties imposed by sections 251(a) and (b) are not subject to the mandatory negotiation and arbitration procedures, respectively, in section 251(c) and section 252 of the Act.[31] Specifically, OWTC requests clarification of whether a rural incumbent LEC subject to the section 251(f)(1) rural exemption may be compelled to engage in contractual negotiations and arbitration with another carrier.[32]

10. A number of other state commissions that have considered similar issues have reached varying conclusions.[33] For example, the New Hampshire Public Utilities Commission, the Vermont

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Communications of Maine's Requests of UniTel, Inc. Lincolnville Telephone Company, Tidewater Telecom, Inc., Oxford Telephone Company, and Oxford West Telephone Company, Order, Docket Nos. 2009-40, 2009-41, 2009-42, 2009-43, 2009-44, at 54 (Maine Pub. Utils. Comm'n July 9, 2010). The Maine PUC also dismissed CRC's petition as to one rural LEC on the grounds that CRC's request to interconnect was not *bona fide*. *Id.* We recognize that the Maine PUC has expended significant time and resources in reaching its conclusion that the 251(f)(1) rural exemption should not be lifted in this case, and note that such findings may be useful in future proceedings.

[27] *Maine PUC Order* at 14.

[28] *Id.*

[29] CRC/TWC Petition at 29.

[30] *Comment Sought on CRC Communications of Maine and Time Warner Cable Petition for Preemption*, WC Docket No. 10-143, Public Notice, 25 FCC Rcd 10360 (2010). We therefore reject assertions by the Maine rural LECs that interested parties have not been properly noticed or given an adequate opportunity to address these issues. *See* Rural LECs Dec. 23, 2010 *Ex Parte* Letter at 2. A list of commenters responding to the Public Notice is provided in the Appendix.

[31] OWTC Petition. For convenience, in this Declaratory Ruling we refer to a rural LEC that is subject to the exemption in section 251(f)(1) as an *exempt* rural carrier.

[32] OWTC Petition at 5.

[33] *Compare IDT America, Corp. Petition for Arbitration of an Interconnection Agreement with Union Tel. Co.*, Final Order, No. 09-048, 2009 WL 3332257, at 18, *available at*: http://www.puc.nh.gov/Regulatory/Orders/2009orders/25022t.pdf (N.H. Pub. Utils. Comm'n Oct. 7, 2009) (finding a duty to provide interconnection under sections 251(a) and (b) of the Act, "which is not affected by the rural exemption") (*New Hampshire Order*); *Petitions of Vt. Tel. Co., Inc. (VTel), and Comcast Phone of Vt., LLC, d/b/a Comcast Digital Phone (Comcast), for Arbitration of an Interconnection Agreement Between VTel and Comcast, Pursuant to Section 252 of the Telecomm. Act of 1996, and Applicable State Laws*, Order, No. 7469, 2009 WL 290190, at *9, 44 (Vt. Pub. Serv. Bd. Feb. 2, 2009) (*Vermont Order*) (same); *Cambridge Tel. Co. et al. Petitions for* (continued....)

Public Service Board, and the Illinois Commerce Commission found that the rural exemption did not affect the incumbent LEC's obligation to provide interconnection under section 251(a) and (b). The Public Utilities Commission of Texas, the North Carolina Utilities Commission, and the Maine PUC found that incumbent LECs that qualified for a rural exemption under section 251(f)(1) were relieved of the obligation to negotiate in good faith.

III. DISCUSSION

11. We believe it is important to remove the uncertainty surrounding the proper interpretation of sections 251 and 252 in situations where the rural exemption applies. We expect today's Declaratory Ruling will resolve this uncertainty.[34] The Commission has broad discretion to issue a declaratory ruling,[35] and the record reflects uncertainty about whether section 252's negotiation and arbitration provisions apply to requests made to rural incumbent LECs for interconnection and services pursuant to sections 251(a) and (b).[36] Parties assert that this uncertainty impedes efforts to promote local competition

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Declaratory Ruling and/or Suspension or Modification Relating to Certain Duties under Section 251(b) and (c) of the Federal Telecomms. Act, Pursuant to Section 251(f)(2) of that Act; And For Any Other Necessary or Appropriate Relief, Order, No. 05-0259, 2005 WL 1863370 slip op. at 5, 13 (Ill. Commerce Comm'n July 13, 2005) (*ICC Order*) (finding that "an exemption from Section 251(c) does not encompass the obligations imposed in Section 251(b)" and that the rural incumbent LEC was required to "negotiate the terms and conditions for interconnection" under section 251(a) with the requesting telecommunications carrier) *with Petition of Sprint Communications, LP for Arbitration with Pineville Tel. Co.; Application of Sprint Communications Co. L.P. for an Amendment to its Certificate of Public Convenience and Necessity*, Order Holding Sprint's Petition to Establish an Interconnection Agreement in Abeyance, Nos. P-120 SUB-26, P-294 SUB 7, at 11-12, *available at*: http://ncuc.commerce.state.nc.us/cgi-bin/webview/senddoc.pgm?dispfmt=&itype=Q&authorization=&parm2=BAAAAA41001B&parm3=000131039 (N.C. Utils. Comm'n Jan. 14, 2010) (finding that the rural LEC was exempt from negotiating an interconnection agreement regarding 251(b) obligations until the state commission terminates the rural exemption) (*North Carolina Order*); *Maine PUC Order* at 14 (finding that the Maine PUC lacks authority to enforce a rural LEC's section 251(a) and (b) obligations because rural LECs have no duty to negotiate in good faith to fulfill those obligations). *Compare also Harrisonville Tel. Co. v. Ill. Commerce Comm'n*, No. 06-73-GPM, slip op. at 8-9 (S.D. Ill. Sept. 5, 2007) (concluding that "47 U.S.C. § 251(f)(l) provides no exemption for the ILECs from the obligations imposed in" section 251(b)) *and Vermont Tel. Co., Inc. v. Comcast Phone of Vermont, LLC, et al.*, No. 2:09-cv-00198 , slip op. at 11 (D. Vt. Feb. 5, 2010) (finding that the rural exemption "does not affect the substantive duties imposed on communications carriers and LECs" by sections 251(a) and (b)) *with Sprint Communications Co. L.P. v. Pub. Util. Comm'n of Tex.*, No. A-06-CA-065-SS, 2006 WL 4872346, at *4-5 (W.D. Tex 2006) (*Brazos*) (finding that Brazos, the rural incumbent LEC, had no duty to negotiate any interconnection agreement under 251(a) unless and until its rural exemption was lifted).

[34] *See also* CRC/TWC Petition at 1 (requesting that the Commission issue an order to "eliminate a significant obstacle that the Maine Public Utilities Commission . . . has placed in the way of voice competition and broadband deployment" pursuant to "Sections 1.1 *and 1.2* of the Commission's rules and Section 253" of the Act) (emphasis added); CRC/TWC Reply at 7 (stating that the petition also "requests relief pursuant to the rule that authorizes declaratory rulings" and that "the formal mechanism through which the Commission provides relief is ultimately academic").

[35] *See Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973). Under Section 1.2 of the Commission's rules, the Commission may issue a declaratory ruling either to terminate a controversy or to remove uncertainty. 47 C.F.R. § 1.2.

[36] *See infra* note 33 (listing varying state commission and court determinations applying these statutory provisions); Letter from Matthew Brill to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-143, at 1-2 (filed Jan. 21, 2011) (TWC Jan. 21, 2011 *Ex Parte* Letter) (explaining that the North Carolina Utilities Commission adopted the reasoning of the *Brazos* court and compelled Sprint to initiate a rural exemption proceeding in order to interconnect and exchange traffic pursuant to sections 251(a) and (b)); Letter from Mary McManus, Comcast, to Marlene H. (continued....)

and broadband deployment in some parts of the nation.[37] By interpreting the pertinent provisions of the Communications Act, we clarify parties' rights under the statute and do not find it necessary to address the substance of any particular state decisions at this time.[38]

A. Scope of the Rural Exemption

12. For consumers to have a choice of service providers, competitive carriers must be able to interconnect their networks with incumbent providers.[39] Further, as the 1996 Act recognized, without the

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Dortch, Secretary, FCC, WC Docket No. 10-143 (filed Feb. 17, 2011) (Comcast Feb. 17, 2011 *Ex Parte* Letter) (asserting that the pendency of this proceeding has delayed Comcast's attempt to negotiate an interconnection agreement in Vermont). We therefore reject the Maine rural LECs' assertion that "it would be inappropriate to use a declaratory ruling mechanism to resolve some undefined 'controversy.'" *See* Rural LECs Dec. 23, 2010 *Ex Parte* Letter at 1; *see also* Letter from Thomas J. Moorman, Counsel for UniTel, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-143, at 2 (filed Jan. 14, 2011) (Rural LECs Jan. 14, 2011 *Ex Parte Letter*); Letter from Joseph G. Donahue, Counsel for Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, and Oxford West Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-143, at 2 (filed Mar. 3, 2011) (Rural LECs Mar. 3, 2011 *Ex Parte* Letter).

[37] *See, e.g.*, Charter Comments at 5-6 (asserting that by granting the petition, the Commission will promote greater competition and further investment in broadband networks in rural communities); VON Comments at 2 (arguing that because VoIP is a driver of broadband services, the Maine PUC's decision will slow demand for broadband in rural areas); Verizon Reply at 3 (asserting that rural carriers that refuse to comply with section 251(b) contravene Congress's and the Commission's longstanding policy goals of removing barriers to entry and promoting broadband deployment); Comcast Feb. 17, 2011 *Ex Parte* Letter at 2 (asserting that Comcast and other competitive providers may be foreclosed from entering rural areas in other states to offer competitive voice services until the Commission clarifies this issue).

[38] We disagree with Unitel's assertion that petitioners must "pursue any claims they believe they have before a federal court" under section 252. *See* Letter from Thomas J. Moorman, Counsel for UniTel, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-143, at 1 (dated Oct. 27, 2010). CRC and TWC's petition was filed pursuant to section 253 of the Act and section 1.2 of the Commission's rules, not section 252(e)(5). *See supra* note 35. Given our decision to act pursuant to section 1.2 of the Commission's rules, the Commission's authority over particular state decisions is not at issue here. *See also Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with Ameritech Illinois Before the Illinois Commerce Commission; Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with BellSouth Before the Georgia Public Service Commission; Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with GTE South Before the Public Service Commission of South Carolina*, CC Docket Nos. 97-163, 97-164, 97-165, Memorandum Opinion and Order, 13 FCC Rcd 1755, 1776, para. 38 (1997) (*Low Tech Designs Order*) (noting the Commission's concern about state requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service," and stating that if petitioner chooses "to file a section 253 petition, [the Commission] would place such a petition on public notice pursuant to section 253(d)" and "[u]pon review of the record received from all interested parties," take appropriate action). Further, as discussed *infra* note 47, the Act establishes, and courts have confirmed, the primacy of federal authority with regard to several of the local competition provisions of the Act.

[39] *See, e.g.*, FCC, OMNIBUS BROADBAND INITIATIVE (OBI), CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, GN Docket No. 09-51, at 49 (2010) (NATIONAL BROADBAND PLAN) ("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."); *see also* COMPTEL Comments at 3 (arguing that the *Maine PUC Order* prevents competitors from entering the incumbent LECs' markets, preserves the incumbent LECs' monopoly status, and gives rural carriers the unilateral right to veto a competitor's market entry); Charter Comments at 6 (explaining that Charter has successfully entered into interconnection and/or traffic exchange agreements with over 150 RLECs in 17 states relying on the rights conferred under section 251(a)).

ability to exchange telecommunications traffic with the local incumbent carrier, no competitive provider would be able to compete effectively.[40] Thus, when incumbent carriers resist interconnection with competitive telecommunications carriers, it impedes the development of facilities-based voice services in those areas.[41] Competition in local telecommunications markets can deliver significant benefits to consumers in rural communities, including advanced features and cost savings.[42] Such competition can also spur incumbent providers to improve their voice offerings and offer new services, such as broadband, to compete for customers.[43]

13. The ability to provide competitive voice services also drives network investment decisions.[44] The ability to provide such services can play a significant role in enabling a service provider to justify additional investments in broadband network facilities and services.[45] Without interconnection for voice service, a broadband provider, which may partner with a competitive telecommunications carrier to offer a voice-video-Internet bundle, or "triple-play" services, is unable to capture voice revenues that may be necessary to make broadband entry economically viable.[46]

14. Thus, we believe that a uniform, national policy concerning the scope of the rural exemption is necessary to promote local competition, prevent conflicting interpretations of carriers' statutory obligations under the Act, and eliminate a potential barrier to broadband investment.[47] State commissions and federal courts have reached different conclusions about the obligation to negotiate and

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[40] *See* NATIONAL BROADBAND PLAN at 49; *Local Competition Order*, 11 FCC Rcd at 14506, para. 4.

[41] *See* CRC/TWC Petition at 5 (asserting that five rural incumbent LECs in Maine refused their request to interconnect and exchange traffic pursuant to section 251(a) and (b) because they claimed they were exempt from those duties under the rural exemption); Charter Comments at 6-7 (explaining that Charter has experienced many instances in which a rural LEC 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"); COMPTEL Comments at 6-7 (asserting that urgency for Commission action is "exacerbated by the fact that other state commissions have reached similar results" as the Maine PUC); *see also* NATIONAL BROADBAND PLAN at 49; Letter from Matthew A. Brill, Latham & Watkins, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, at 5 & Table (filed Nov. 12, 2009) (TWC Nov. 12, 2009 *Ex Parte* Letter); Verizon Comments at 5 (asserting that the Maine PUC's decision effectively insulates those rural incumbent LECs from the obligation to comply with section 251(b), impeding TWC and other providers from introducing VoIP competition into the rural incumbent LECs' service territories).

[42] *See* CRC/TWC Petition at 3 (asserting that, in areas of rural Maine where CRC and TWC have entered, TWC offers flat-rate unlimited local, in-state, and long-distance calling; Caller ID on TV; and discounts on bundles that include its video and broadband Internet access service).

[43] *See id.* at 3-4.

[44] *See, e.g.*, NATIONAL BROADBAND PLAN at 49; CRC/TWC Petition at 9; Charter Comments at 5-6; Letter from Matthew A. Brill to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-143, at 1 (filed Mar. 1, 2011) (TWC Mar. 1, 2011 *Ex Parte* Letter).

[45] *See* NATIONAL BROADBAND PLAN at 49; TWC Mar. 1, 2011 *Ex Parte* Letter at 1.

[46] *See id.*

[47] The Supreme Court has stated that "the question . . . is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has." *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 379 n.6 (1999). *See also Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946–47 (8th Cir. 2000) ("The new regime for regulating competition in this industry is federal in nature . . . and while Congress has chosen to retain a significant role for the state commissions, the scope of that role is measured by federal, not state law.").

arbitrate under section 251(a) and (b) in the event that the incumbent LEC has a rural exemption under section 251(f)(1). Therefore, to further the Commission's goals in promoting facilities-based competition, we take this opportunity to clarify the relationship between the section 251(a) and (b) obligations and the section 251(f)(1) rural exemption.[48] Consistent with Commission precedent, we reaffirm that all telecommunications carriers, including rural carriers covered by section 251(f)(1), have a basic duty to interconnect their networks under section 251(a) and that all LECs, including rural LECs covered by section 251(f)(1), have the obligation to comply with the requirements set forth in section 251(b).[49] We also clarify that a rural carrier's exemption under section 251(f)(1) offers an exemption only from the requirements of section 251(c) and does not impact its obligations under sections 251(a) or (b).[50]

15. This interpretation flows directly from the language of section 251 itself. As explained above, section 251(a), which applies to "[e]ach telecommunications carrier," imposes a basic duty "to interconnect directly or indirectly" with other telecommunications carriers.[51] Section 251(b) provides that all LECs must provide certain services designed to foster competition for local telecommunications services, including the obligation to provide number portability and dialing parity, as well as establish reciprocal compensation arrangements.[52] Section 251(f)(1) states that section 251(c) "shall not apply to a rural telephone company" until certain requirements have been met.[53] By its terms, section 251(f)(1) does not grant an exemption from the requirements of sections 251(a) or (b). Because sections 251(a) and (b) are separate statutory mandates from section 251(c), the requirements of sections 251(a) and (b) apply to a rural LEC even if it is covered by the section 251(f)(1) exemption.[54]

16. To interpret section 251(f)(1) otherwise would undercut sections 251(a) and (b) and significantly impede compliance with these provisions by rural LECs until termination of the section 251(f)(1) exemption by a state commission. In particular, if section 251(f)(1) were construed to exempt rural LECs from their section 251(a) and (b) duties, unless and until a state commission has terminated the rural exemption, a competing carrier could not avail itself of the rights to interconnection and other services that must be provided under sections 251(a) and (b), which could have a detrimental impact on

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[48] *See* 47 C.F.R. § 1.2 ("The Commission may . . . on motion or its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.").

[49] *See* 47 U.S.C. §§ 251(a)(1), (b); *see also* 47 C.F.R. §§ 51.100, 51.305. We note, of course, that carriers might obtain relief from the section 251(b) obligations in some instances pursuant to section 251(f)(2).

[50] *See* 47 U.S.C. § 251(f)(1); *see First Number Portability Reconsideration Order*, 12 FCC Rcd at 7305, para. 121, n.401 ("Rural LECs are not exempt from Sections 251(a) or (b) requirements under Section 251(f)(1)."); *see also Atlas Telephone Co. v. Oklahoma Corp. Com'n*, 400 F.3d 1256, 1266 (10th Cir. 2005) ("If Congress had intended § 251(c)(2) to provide the sole governing means for the exchange of local traffic, it seems inconceivable that the drafters would have simultaneously incorporated a rural exemption functioning as a significant barrier to the advent of competition. In sum, accepting [the rural carriers'] interpretation of § 251(c) would compel us to assume too much and ignore altogether the express language of the statute.").

[51] 47 U.S.C. § 251(a)(1).

[52] *See* 47 U.S.C. § 251(b).

[53] *See* 47 U.S.C. § 251(f)(1) ("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 . . . that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 . . . ."). .

[54] *See First Number Portability Reconsideration Order*, 12 FCC Rcd at 7304, para. 119; 47 U.S.C. §§ 251(a), (b), (c), (f)(1). We note that the Maine PUC reached the same determination regarding rural incumbent LECs' duties under sections 251(a) and (b). *See supra* text accompanying note 28.

the ability of rural Americans to benefit from competition, innovation, and investment in communications networks and services. We find that such an interpretation would be contrary to Congress's mandate that all telecommunications carriers interconnect directly or indirectly with other telecommunications carriers. Moreover, that section 251(f)(1) makes no mention of the section 251(a) and 251(b) obligations, including the duty to provide dialing parity and establish reciprocal compensation arrangements, is compelling evidence that Congress did not intend to exempt rural LECs from upholding their section 251(a) and 251(b) obligations.[55] Thus, we clarify that rural carriers exempt under section 251(f)(1) from the obligations of section 251(c) remain subject to the obligations set forth in sections 251(a) and (b).

17. We recognize that section 251(c)(1) imposes on incumbent LECs and requesting carriers the duty to negotiate in good faith to fulfill the requirements of section 251(b).[56] The rural exemption therefore relieves covered rural telephone companies from the obligation under 251(c)(1) to "negotiate in good faith" the particular terms and conditions of agreements to fulfill their obligations under section 251(b). However, the obligation to fulfill the requirements set forth in sections 251(a) and (b) does not arise from, or depend upon, the section 251(c)(1) duty to negotiate in good faith. If it did, the three-tiered hierarchy of section 251 would collapse, leaving non-exempt incumbent LECs as the only carriers subject to any duties under section 251.[57] For example, under such a reading of section 251, competitive LECs could not be compelled to interconnect with other competitive LECs under section 251(a), nor provide such competitors with any services set forth in section 251(b).[58] We find that this reading of the Act does not comport with the plain language and design of section 251.[59]

B. Forum for Implementation of Rural Incumbent LECs' Section 251(a) and (b) Obligations

18. Having concluded that carriers covered by section 251(f)(1)'s rural exemption remain subject to the duties in sections 251(a) and (b), we next clarify the processes through which those requirements may be implemented.[60] We find that the Act is ambiguous as to whether the section 252 arbitration process can be invoked to implement and enforce the obligations in sections 251(a) and (b).[61] Specifically, we note that the text of sections 251 and 252 does not expressly address this issue.[62]

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[55] *See First Number Portability Reconsideration Order*, 12 FCC Rcd at 7304, para. 119; *see also Atlas Tel. Co. v. Oklahoma Corp. Com'n*, 400 F.3d at 1266.

[56] 47 U.S.C. § 251(c)(1).

[57] Section 251(a) imposes relatively limited obligations on all telecommunications carriers; section 251(b) imposes moderate duties on local exchange carriers; and section 251(c) imposes more rigorous obligations on incumbent LECs. *See supra* para. 4.

[58] This is because competitive LECs are not subject to the section 251(c)(1) obligation to negotiate in good faith in this situation, since the obligations imposed by section 251(c) apply only to negotiations involving incumbent LECs. *See* 47 U.S.C. § 251(c).

[59] *Local Competition Order*, 11 FCC Rcd at 15505, para. 3.

[60] *See, e.g.*, CRC/TWC Petition at 23-24 (requesting preemption of the *Maine PUC Order* because, "[c]ontrary to the MPUC's ruling, the plain language of Section 252 authorizes state commissions to arbitrate disputes arising from requests for interconnection under Sections 251(a) and (b)"); CRC/TWC Reply at 3 (asserting that the Commission should declare that a state commission has the affirmative duty to arbitrate interconnection agreements under section 252).

[61] *See AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 397 (1999) ("It would be gross understatement to say that the 1996 Act is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction.").

[62] 47 U.S.C. §§ 251, 252.

Because the statute provides no definitive guidance as to how requests made to incumbent LECs for interconnection and services pursuant to sections 251(a) and (b) are to be implemented, state commissions and federal courts that have addressed the issue have reached different conclusions on the matter.[63]

19. For the reasons discussed below, we conclude that requests made to incumbent LECs for interconnection and services pursuant to sections 251(a) and (b) are subject to state commission arbitration as set forth in section 252, and that section 251(f)(1) does not exempt rural incumbent LECs from the compulsory arbitration process established in that provision. In addition to arbitration, requests for interconnection and services pursuant to sections 251(a) and (b) are also subject to voluntary negotiation remedies, including mediation by the state commission.[64] As discussed in greater detail below, our conclusion is consistent with the language, structure, and intent of sections 251 and 252.

20. As an initial matter, the statutory text itself persuades us that this is a reasonable interpretation of the Act.[65] Much of the language of section 252 speaks broadly of the states' role in implementing section 251. We find ample support to conclude that Congress did not intend to restrict the arbitration authority of state commissions to matters arising under section 251(c). For example, several of section 252's jurisdictional and procedural provisions, on their face, refer generally to *all* interconnection disputes arising under section 251; these provisions do not restrict the arbitration authority of state commissions to matters arising under section 251(c). First, section 252(a) states that an incumbent LEC may negotiate and enter into a binding agreement upon "receiving a request for interconnection, services, or network elements pursuant to section 251."[66] Second, section 252(c) establishes general standards for state commission arbitration regarding "the requirements of section 251."[67] Third, section 252(e) directs the state commission to review "*[a]ny* interconnection agreement adopted by negotiation or arbitration," and grants the state commission authority to reject any interconnection agreement "if it finds that the agreement does not meet the requirements of section 251."[68] We emphasize that none of these provisions refer to a specific subclause in section 251, but rather to section 251 in general. Moreover, where

[63] *Compare, e.g.*, *New Hampshire Order*, at 18 (finding that the right to conduct an arbitration for purposes of enforcing obligations under sections 251(a) and (b) is not barred by section 251(f)); *Cellco Partnership d/b/a Verizon Wireless*, Order of Arbitration, Docket No. 03-00585, Slip Copy, 2006 WL 707481, at *6 (Tenn. Reg. Auth. Jan. 12, 2006) (finding that to the extent section 251(a) and (b) obligations are not resolved through negotiations, they are properly resolved through section 252 arbitration proceedings); *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications and CenturyTel of Wash., Pursuant to 47 U.S.C. Section 252*, Third Supplemental Order Confirming Jurisdiction, Docket No. UT-023043, 2002 WL 32866416, *2 (Wash. Utils. & Transp. Comm'n October 2002) (holding that "the duty to interconnect set forth in Section 251(a) is enforceable through the arbitration provisions of Section 252(b)" because "[n]othing in Section 252(a) limits the negotiation and arbitration processes to matters falling within Section 251(c)") *with North Carolina Order*, at 20 (finding that section 252's arbitration provisions require negotiations to have taken place, and that the rural LEC was exempt from such negotiations under section 251(f)); *Maine PUC Order* at 14.

[64] *See* 47 U.S.C. § 252(a)(2).

[65] *See Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 & n.11 (holding that an agency's interpretation of a statutory scheme it is entrusted to administer is entitled to deference unless "arbitrary, capricious, or manifestly contrary to the statute," and that a court "need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding").

[66] 47 U.S.C. § 252(a). Section 252(a)(1) also requires the submission of "any interconnection agreement negotiated" before the enactment of the 1996 Act to the state commission." 47 U.S.C. § 252(a)(1).

[67] 47 U.S.C. § 252(c).

[68] 47 U.S.C. § 252(e) (emphasis added).

Congress intended to refer only to a specific subsection of section 251, it did so expressly.[69] For example, section 252(d) describes the pricing standard to be used in arbitrating the rates for reciprocal compensation pursuant to section 251(b)(5).[70] We therefore conclude that Congress intended section 252 to apply to requests to incumbent LECs for interconnection, services, or network elements made pursuant to sections 251(a) and (b), as well as pursuant to section 251(c).[71]

21. We note that, in this Declaratory Ruling, we do not address obligations associated with section 251(a) in isolation.[72] The obligations of section 251(b) are not self-effectuating.[73] Rather, they are implemented in agreements that may implicate the interconnection obligations set forth in section 251(a) in a way not raised by section 251(a) in isolation. For example, when a LEC interconnects directly or indirectly with other carriers for the exchange of access traffic, that does not currently implicate section 251(b), and the pricing of the transport and termination of that traffic is governed by state and federal access charge rules.[74] When carriers interconnect directly or indirectly for the exchange of reciprocal compensation traffic, by contrast, details of the interconnection arrangement can be relevant to determining the appropriate reciprocal compensation rates under sections 251(b)(5) and 252(d)(2) and the Commission's rules.[75] We find it consistent with the structure and purpose of the Act for the state commissions, which are tasked with, at a minimum, arbitrating or reviewing any agreements relating to section 251(b) obligations, to also review issues relating to section 251(a) interconnection where issues relating to both sets of obligations are implicated in the same request for interconnection. Because this Declaratory Ruling addresses the authority of a state to arbitrate section 251(a) issues in conjunction with its arbitration of section 251(b) issues, we find inapposite prior Commission decisions suggesting that the procedures of section 252 are not applicable in matters involving section 251(a) alone.[76]

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[69] *See, e.g.*, 252(d)(1), (d)(3), (g), (j).

[70] 47 U.S.C. § 252(d)(2).

[71] We therefore deny OWTC's petition, and, as discussed *supra*, clarify that section 251(a) and (b) interconnection requests made to incumbent LECs are subject to the state commission arbitration authority set forth in section 252.

[72] We therefore reject the arguments of the Maine rural LECs that the conclusions we reach today constitute an "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)," *see* Rural LECs Dec. 23, 2010 *Ex Parte* Letter at 3, or that "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." *See* Rural LECs Jan. 14, 2011 *Ex Parte Letter* at 3.

[73] *See, e.g.*, Verizon Comments at 8.

[74] *See, e.g.*, 47 C.F.R. § 51.701(b)(1) (specifically excluding "interstate or intrastate exchange access, information access, or exchange services for such access" from the scope of the reciprocal compensation pricing rules).

[75] *See* 47 U.S.C. §§ 251(b)(5), 252(d)(2)(A); *Local Competition Order*, 11 FCC Rcd at 16012-25, paras. 1033-59. We note that by permitting a state commission to suspend or modify a rural carrier's section 251(b) obligations in section 251(f)(2), Congress gave states an important role when weighing local competition concerns against universal service needs. *See* 47 U.S.C. § 251(f)(2).

[76] This Declaratory Ruling therefore has no impact on the continuing validity of the Commission's prior decisions arising under section 251(a) in isolation. *See, e.g.*, *CoreComm Communications, Inc., and Z-Tel Communications, Inc., v. SBC Communications, Inc. et al.*, File No. EB-01-MD-017, Order on Reconsideration, 19 FCC Rcd 8447, 8454-55, para.18 (2004) (vacated on other grounds) (*Z-Tel*) (asserting that "[n]either the general interconnection obligation of section 251(a) nor the interconnection obligation arising under section 332 is implemented through the negotiation and arbitration scheme of section 252"); *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual* (continued....)

22. This interpretation of the statute advances the goals of the Communications Act in several respects. For one, this interpretation advances the Act's competition policy goals. As the Commission has recognized, Congress did not intend to insulate small or rural LECs from competition, preventing subscribers in those communities from obtaining the benefits of competitive local exchange service, including innovative offerings.[77] We therefore reject the arguments of some commenters that oppose state arbitration of section 251(a) and (b) requirements without recognizing any alternative forum for enforcement of those requirements.[78] Were we to find that section 252 does not apply to requests made to incumbent LECs for interconnection or services under sections 251(a) and (b), our interpretation of the statute would foreclose an important avenue for implementing section 251(a) and (b) obligations.[79]

23. Although, in theory, enforcement of sections 251(a) and (b) might occur through the courts or Commission proceedings, we believe that state arbitration pursuant to section 252 is more consistent with Congressional intent, given the Act's overall framework for implementing section 251. Congress purposefully established a role for state commissions to arbitrate and approve interconnection agreements in the first instance, permitting the Commission to preempt a state commission's jurisdiction only upon a failure to carry out its duties.[80] As a result, state commissions have built up significant expertise in adjudicating interconnection disputes under sections 251(a) and (b). Given the central role of state commissions in implementing section 251, we do not believe that Congress intended to deprive rural

(Continued from previous page)
Arrangements under Section 252(a)(1), WC Docket No. 02-89, Memorandum Opinion and Order, 17 FCC Rcd. 19337, 19341, n.26 (2002) (stating that "only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed" with the state commission pursuant to section 252(a)(1)). *See also* Letter from Matthew A. Brill, Counsel for TWC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-143 (Jan. 11, 2011) (stating that "the Petition arises from CRC's requests to interconnect and exchange traffic with the RLECs pursuant to Sections 251(a) *and* (b)" and denying that the Petition or any of Petitioners' pleadings asserted a right to arbitration under section 251(a) standing alone).

[77] *Local Competition Order*, 11 FCC Rcd at 16118, para. 1262; *see also supra* paras. 12-13 (discussing the benefits of competition, including the ability of competitors to offer a "triple play" of voice, video, and data services). State commissions similarly have recognized the benefits of competition in rural areas. *See, e.g.*, *ICC Order*, Docket No. 05-0259, at 13 ("Competition in the telecommunications industry has brought significant technological advances that few who live in rural Illinois have been able to take advantage of.").

[78] *See, e.g.*, Rural LEC Comments at 2; Unitel Comments at 10-11; Unitel Reply at 2, 4; *see also Brazos*, 2006 WL 4872346 at *4-5.

[79] The Act does not contain an exemption from the duty to interconnect under section 251(a), and as the Commission has previously recognized, "the only statutory avenue for relief from the Section 251(b) requirements" is for a rural incumbent LEC to request suspension or modification of those requirements under the procedure established by section 251(f)(2). *First Number Portability Reconsideration Order*, 12 FCC Rcd at 7304, para. 117. "A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of" section 251(b) or (c). 47 U.S.C. § 251(f)(2); *see also* COMPTEL Comments at 3; *Vermont Tel. Co., Inc. v. Comcast Phone of Vermont, LLC, et al.*, No. 2:09-cv-00198 , slip op. at 11 (D. Vt. Feb. 5, 2010) (rejecting the argument that rural incumbent LECs are bound by the substantive requirements of 251(b) but are not bound by the "mandatory arbitration process that would lead to an eventual agreement" as "circular" and as ignoring the canon of statutory interpretation that you must view a specific provision in light of the statutory whole); *New Hampshire Order*, at 19 (finding that absent recourse to section 252 arbitration, a competitive carrier may be unable to obtain interconnection under sections 251(a) and (b) for the purpose of providing local service, notwithstanding its right to such interconnection). This is particularly true given that rural carriers subject to the section 251(f)(1) rural exemption do not have a statutory duty to negotiate in good faith pursuant to section 251(c) to implement the requirements of section 251(b).

[80] *See* 47 U.S.C. § 252(b)(1), (e)(1), (e)(5).

carriers and their competitors of the benefits of this expertise.[81] Further, under the Act, it is the state commission that has authority to suspend or modify the requirements of section 251(b) in appropriate circumstances.[82] Thus, state arbitration of section 251(a) and (b) obligations is consistent with the role envisioned by Congress for state commissions, and draws upon the expertise states have developed in arbitrating and approving interconnection agreements pursuant to section 252. Our interpretation also provides competing carriers with a clear path for seeking implementation of a rural incumbent LEC's local competition obligations under sections 251(a) and (b), including basic interconnection, dialing parity, number portability, and reciprocal compensation, even when the rural incumbent LEC is exempt from the more rigorous obligations of section 251(c).

24. We reject commenters' claims that, because "[s]ection 251(f)(1) . . . exempts rural carriers from the duty to negotiate in good faith over the terms and conditions of agreements to fulfill the duties of section 251(b),"[83] such carriers cannot be compelled to arbitrate pursuant to section 252.[84] As explained above, rural incumbent LECs have a duty to provide the interconnection and services set forth in sections 251(a) and (b), even if exempt from the section 251(c) "duty to negotiate in good faith" the terms and conditions of agreements to fulfill those duties. Moreover, section 252(b) does not link state arbitration authority to "negotiation" by an incumbent LEC, but to the incumbent LEC's receipt of "a request for negotiation under this section."[85] Consequently, we reject arguments that the prerequisite for arbitration is that negotiations have taken place.[86] Therefore, if a rural carrier were to decline or refuse to negotiate with a carrier that has requested to negotiate an agreement for "interconnection, services, or network elements,"[87] then the arbitration provisions in section 252(b)(1) would be triggered after the statutorily-prescribed time period has passed. In such case, either carrier could petition the state commission to arbitrate "any open issues" relating to the request for interconnection and services made pursuant to sections 251(a) and (b).[88] Such an interpretation is consistent with the language of sections

[81] To the extent that Congress intended to relieve incumbent LECs of some of their obligations under section 251, Congress provided for that relief through section 251(f)(1)-(2). Congress further recognized the expertise of state commissions by leaving to the states determinations regarding exemptions, suspensions, and modifications pursuant to section 251(f) in the first instance.

[82] 47 U.S.C. § 251(f)(2). The state commission shall grant such a request "to the extent that, and for such duration as, the State commission determines that such suspension or modification (A) is necessary (i) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience, and necessity." *Id.*

[83] *First Number Portability Reconsideration Order*, 12 FCC Rcd at 7304, para. 117, n.393.

[84] *See* Maine PUC Comments at 9, n.7; Rural LECs Comments at 3; Unitel Comments at 12-13.

[85] *See Brazos* at *5; Maine PUC Comments at 10-11; Rural LECs Comments at 2; MPA/NASUCA Comments at 10-11.

[86] To the contrary, as stated above, the statutory prerequisite for a petition to the state commission for arbitration is a "request" for negotiation. 47 U.S.C. § 252(b)(1); *see also Vermont Tel. Co., Inc. v. Comcast Phone of Vermont, LLC, et al.*, No. 2:09-cv-00198, slip op. at 11-12 (D. Vt. Feb. 5, 2010) ("Even without negotiation under § 251(c), the Board still has jurisdiction to arbitrate "any open issues" under § 252(b)(1) . . . ."); *Vermont Order* at *44 (holding that "the triggering event for the Board's arbitration jurisdiction is 'a request to negotiate' an interconnection agreement, not actual negotiations"); Verizon Comments at 6 (arguing that a request to a rural incumbent LEC to implement the section 251(b) duties is sufficient to initiate the negotiation and arbitration process).

[87] 47 U.S.C. § 252(a)(1).

[88] 47 U.S.C. § 252(b)(1).

251 and 252, provides for a coherent relationship between these statutory provisions, and supports the overall pro-competitive and market-opening purposes of the Act. By contrast, if we were to construe the statute to compel arbitration only after an exempt rural incumbent LEC had entered into voluntary negotiations, that interpretation would provide a disincentive for such carriers to begin voluntary negotiations to fulfill their obligations under sections 251(a) and 251(b), which conflicts with these pro-competitive, market-opening purposes of the Act.

25. Finally, we reject the contention of some commenters that, to enforce the section 251(a) and (b) obligations, an interconnecting carrier must first have the rural exemption lifted by the state commission.[89] We observe that such an approach would subject the rural incumbent LEC to the full range of section 251(c) obligations, in addition to those of sections 251(a) and (b). By contrast, our approach allows the rural incumbent LEC to retain its exemption from more rigorous section 251(c)(2) interconnection, as well as unbundling and wholesale access requirements, while still providing it the procedural protections of having state commissions arbitrate section 251(a) and (b) interconnection and services requests. We find that this reading of the statute better preserves the protections that Congress intended for rural LECs.

C. Wholesale Carriers

26. We also reaffirm the Bureau's conclusion in the *TWC Order* that the Act does not differentiate between the provision of telecommunications services on a wholesale or retail basis for the purposes of sections 251(a) and (b), as well as that Order's holding that providers of wholesale telecommunications services enjoy the same rights as any other "telecommunications carrier" under those provisions of the Act.[90] The definition of "telecommunications services" in the Act does not specify whether those services are "retail" or "wholesale," but merely specifies that "telecommunications" be offered for a fee "directly to the public, or to such classes of users as to be effectively available directly to the public."[91] As was more fully explained by the Bureau in the *TWC Order*, the definition of "telecommunications services" has long been held to include both retail and wholesale services under Commission precedent.[92] We reaffirm the Bureau's finding that wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to sections 251(a) and (b) when providing telecommunications services to other service providers, including for the specific purpose of providing wholesale services to interconnected VoIP providers.[93] As the Bureau stated, a contrary decision would impede the important development of wholesale telecommunications and facilities-based VoIP competition, as well as broadband investment and deployment, by limiting the ability of wholesale carriers to offer service.[94]

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[89] *See, e.g.*, Unitel Comments at 11 (asserting that section 252 does not apply unless and until a carrier is subject to section 251(c)(1)); Unitel Reply at 2, 4 (same).

[90] *See TWC Order*, 22 FCC Rcd at 3517, para. 9; *see also id.* at n.19 (affirming the longstanding Commission usage of a wholesale transaction of a service or product as an input to further sale to an end user, in contrast to a retail transaction for the customer's own personal use or consumption).

[91] 47 U.S.C. § 153(46).

[92] *See TWC Order*, 22 FCC Rcd at 3517-18, paras. 11-12 (explaining that under Commission precedent, the definition of "telecommunications service" is not limited to retail services, but also includes wholesale services when offered on a common carrier basis).

[93] Just as section 251(c) interconnection was not at issue—and therefore not addressed—in the *TWC Order*, we likewise do not address the interpretation or application of section 251(c) in this Order.

[94] *See TWC Order*, 22 FCC Rcd at 3517, para. 8.

27. In reaffirming these interconnection rights, we promote facilities-based voice competition, and also bolster the case for deploying additional broadband facilities and upgrading existing broadband networks in rural areas.[95] We reaffirm that VoIP providers may obtain access to and interconnection with the local exchange network through competitive carriers. Therefore, today's clarifications regarding the rights of wholesale carriers to interconnect pursuant to sections 251(a) and (b) advance the objectives of the Communications Act.[96]

D. CRC/TWC Petition for Preemption

28. Because we clarify in this Declaratory Ruling that (i) rural incumbent LECs which are exempt from the requirements of section 251(c) nevertheless are subject to the obligations imposed by sections 251(a) and (b); and (ii) requests for interconnections and services made to incumbent LECs pursuant to sections 251(a) and (b) can be implemented and enforced through the section 252 arbitration process, we need not address CRC's and TWC's request to preempt the *Maine PUC Order*.[97] Our clarification in this Declaratory Ruling provides guidance to parties in Maine and elsewhere about the rights and obligations to negotiate and arbitrate the provisions of section 251(a) and (b), even in the face of a section 251(f)(1) rural exemption.

IV. ORDERING CLAUSES

29. Accordingly, IT IS ORDERED, pursuant to sections, 1, 3, 4, 201-205, 251, 252, and 303(r), of the Communications Act, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 251, 252, 303(r), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Declaratory Ruling in WC Docket No. 10-143 and GN Docket No. 09-51 IS ADOPTED.

30. IT IS FURTHER ORDERED, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that this Declaratory Ruling SHALL BE EFFECTIVE upon release.

31. IT IS FURTHER ORDERED, pursuant to section 253 of the Communications Act, as amended, 47 U.S.C. § 253, that the Petition for Preemption filed by CRC Communications of Maine, Inc. and Time Warner Cable Inc. in WC Docket No. 10-143 on July 15, 2010 IS DISMISSED WITHOUT PREJUDICE.

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[95] *See* TWC Nov. 12, 2009 *Ex Parte* Letter at 1. In affirming the rights of wholesale carriers, we also make clear that today's decision in no way diminishes the ongoing obligations of these wholesalers as telecommunications carriers, including compliance with any technical requirements imposed by the Commission or state commissions.

[96] We note that the regulatory classification of the service provided to the ultimate end user has no bearing on the wholesale provider's rights as a telecommunications carrier to interconnect under section 251. As such, we clarify that the statutory classification of a third-party provider's VoIP service as an information service or a telecommunications service is irrelevant to the issue of whether a wholesale provider of telecommunications may seek interconnection under section 251(a) and (b). We do not address in this ruling the statutory classification of VoIP services. *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

[97] For these same reasons, we deny petitioners' request for preemption under section 251(d)(3). 47 U.S.C. § 251(d)(3); CRC/TWC Petition at 18 n.49.

32. IT IS FURTHER ORDERED, pursuant to section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Petition for Clarification of Declaratory Ruling and Report and Order filed by Oklahoma Western Telephone Company on November 27, 2006 in CC Docket No. 01-92 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX

List of Commenters
WC Docket No. 10-143

Commenter	Abbreviation
Charter Communications, Inc.	Charter
Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, and Oxford West Telephone Company	Rural LECs
Maine Public Utilities Commission	Maine PUC
Maine Public Advocate and the National Association of State Utility Consumer Advocates	MPA/NASUCA
National Cable & Telecommunications Association	NCTA
NTCH, Inc.	NTCH
Telephone Association of Maine	TAM
Unitel, Inc.	Unitel
Verizon	Verizon

Reply Comments

Reply Commenter	Abbreviation
CRC Communications of Maine, Inc. and Time Warner Cable Inc.	CRC/TWC
Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, and Oxford West Telephone Company	Rural LECs
Maine Public Utilities Commission	Maine PUC
Maine Public Advocate and the National Association of State Utility Consumer Advocates	MPA/NASUCA
Telephone Association of Maine	TAM
Unitel, Inc.	Unitel
Texas Statewide Telephone Cooperative, Inc.	TSTCI
Verizon	Verizon

STATEMENT OF CHAIRMAN JULIUS GENACHOWSKI

Re: *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended; A National Broadband Plan for Our Future; Developing a Unified Intercarrier Compensation Regime; T-Mobile* et al. *Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-92

This Declaratory Ruling resolves uncertainty regarding the rights of new market entrants to interconnect with incumbent telephone companies, facilitating increased competition and broadband deployment. We affirm that new entrants seeking to interconnect with the incumbent's network may require the incumbent carrier to negotiate terms of access, and, if the negotiations prove unsuccessful, new entrants may invoke rights to state arbitration. These rights to negotiation and arbitration apply even if the incumbent carrier is a rural carrier, and thus exempt from certain interconnection and other obligations (section 251(c) obligations).

Carriers and state commissions look to the Commission for guidance about ambiguous provisions of the Communications Act, such as the relationship between the rural exemption and the interconnection negotiation and arbitration provisions, which is at issue here. Over the past few years, different jurisdictions have reached varying conclusions on this issue, creating uncertainty, fostering disputes, and inhibiting competition and broadband deployment. Other states will likely face the issue in the future.

Our statutory interpretation is fully consistent with the pro-competitive goals of the Communications Act: It will enable competitors to offer triple play packages – voice, video, and broadband – by interconnecting with incumbent telephone networks, which may be necessary to offer voice service to rural consumers.

Congress gave state commissions primary responsibility for determining when a carrier should be exempt from specific interconnection obligations, and today's ruling does not alter that authority. The ruling instead provides clarity about how to apply other aspects of the Communication Act's local competition requirements when a carrier is entitled to such an exemption.

CONCURRING STATEMENT OF COMMISSIONER MICHAEL J. COPPS

Re: *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended; A National Broadband Plan for Our Future; Developing a Unified Intercarrier Compensation Regime; T-Mobile* et al. *Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-92

Competition and Universal Service are cornerstones of the 1996 Telecommunications Act. In order to achieve those goals, Congress created important roles for both state and federal regulators. The narrow legal question before us requires this result but a good policy outcome pulls us in another direction. I'm concerned about the unintended consequences of today's decision on consumers in Maine who rely on these rural phone companies for service. I believe the Maine PUC is best equipped to balance the interests of Maine consumers and carrier responsibilities.

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN
Approving in Part, Concurring in Part

Re: *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended; A National Broadband Plan for Our Future; Developing a Unified Intercarrier Compensation Regime; T-Mobile* et al. *Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-92

Given that there are conflicting interpretations of rural local exchange carriers' obligations to negotiate for interconnection under Sections 251(a) and (b), I support the findings made in this Declaratory Ruling. Providing clarity for incumbents, competitors, and state regulators will likely avoid unnecessary pleadings, hearings, and delays with respect to local telephone competition and network deployment. Unfortunately, in Maine, the Public Utilities Commission ("PUC"), along with the competitors and rural local exchange carriers, already expended significant resources conducting a Section 251(f)(1) evidentiary hearing. As a result, the Maine PUC found that local phone competition in some limited areas in its state would be an undue economic burden and that universal service would be impaired as a result. Congress clearly contemplated a role for state regulators in determining whether local competition serves the public interest and universal service goals pursuant to Section 251(f) with respect to areas served by rural local exchange carriers. Moreover, I believe the findings that the Maine PUC already made are germane to the issues raised in Time Warner Cable Petition. As such, I would have preferred more acknowledgment in the Declaratory Ruling of the tension this decision is creating in Maine, as a result of our findings. Nonetheless, to the extent that the rural local exchange carriers and the Maine PUC believe that the PUC's conclusions remain applicable, Section 251(f)(2) provides an avenue for relief from the Section 251(b) interconnection obligations.

In this proceeding, Time Warner Cable duly noted that the National Broadband Plan recommended that the Commission clarify interconnection obligations because the uncertainty can deter private investment in broadband networks.[1] Of course, this isn't the only recommendation in the Plan that addresses possible barriers to broadband deployment. Recommendation 8.19 of the Plan states, in part, that Tribal, state, regional and local governments should have the flexibility to address their own broadband needs when the private sector has not done so. Yet, some broadband providers continue to ignore this recommendation, as they unwisely encourage state legislatures to pass bills that would discourage, and in some cases, prevent local and regional governments from investing in broadband networks themselves.[2] In fact, Time Warner Cable has been actively supporting such legislation in North Carolina which, unfortunately, has now become law.

I am disheartened by these efforts, as there are many areas of the nation that need broadband in order to promote economic development, support small businesses, and create new jobs, in addition to serving residential consumers. The Commission is working hard to address the barriers to deployment outlined in the National Broadband Plan to encourage deployment and adoption in unserved and underserved areas. Indeed, in March, we adopted an Order to streamline pole access and reduce pole costs for broadband providers, and we adopted a Notice of Inquiry to review how this Commission can work with our state, local, Tribal, and federal partners to improve policies for providers' access to rights

[1] Petition at 3-4, & 10 (citing the National Broadband Plan at 49 & 66 n. 93).

[2] Statement by FCC Commissioner Mignon L. Clyburn, On Proposed Anti-Municipal Broadband Legislation (rel. April 4, 2011), *available at* http://www.fcc.gov/commissioners/clyburn/statements.html (last visited April 13, 2011).

of way and for wireless facilities siting. Of course, we are not stopping there. This Commission also has committed itself to reforming the Universal Service Fund so that every American has access to broadband at home.[3] State legislation that erects barriers to broadband deployment is contrary to the National Broadband Plan's goals of encouraging broadband deployment and adoption, and the work this Commission has undertaken to address our nation's broadband needs.

[3] Statement by FCC Commissioners, Making Universal Service and Intercarrier Compensation Reform Happen (March 15, 2011) *available at* http://blog.broadband.gov/?entryId=1335554 (last visited May 25, 2011).