

**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

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).

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 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).