

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission on its own motion to conduct an investigation on intrastate switched access charge policies and regulation codified in Neb. Rev. Stat. Section 86-140.) Application No. C-4145 / NUSF-74 / PI-147))) **POST HEARING REPLY COMMENTS OF COX NEBRASKA TELCOM, LLC**))

INTRODUCTION

Cox Nebraska Telcom, LLC (“Cox”) hereby files its Post Hearing Reply Comments in the above-captioned matter. Cox appreciates the opportunity the Nebraska Public Service Commission (“Commission”) has given interested parties to provide input in this docket. The Commission has done an excellent job over the past decade of balancing competing interests when creating its intrastate access polices. Cox’s comments below encourage the Commission to continue to enact access policies asking what is in the best interest of consumers and what advances the state of telecommunications in Nebraska.

IT IS PRUDENT AND REASONABLE TO WAIT FOR FEDERAL GUIDANCE

Cox has stated previously that federal intercarrier compensation policies are integral to the development of sound intrastate switched access policies. Waiting for Federal Communication Commission (“FCC”) action provides the Commission with the assurance that its state policies are consistent with federal guidelines and directives. And, a combined effort will more effectively and comprehensively achieve complete intercarrier compensation reform. The pressure for the FCC to act is only escalating as it is becoming increasingly apparent that current pricing and subsidy structures are not

sustainable. With the myriad of issues existing under the current intercarrier compensation regime and the federal universal service assessment over 14% and only projected to grow higher, there is significant pressure on the FCC that intercarrier compensation reform must be addressed.

In their Post Hearing Comments, Verizon and AT&T cite a number of states that have acted to reform intrastate switched access policies. AT&T, through Exhibit C, lists eighteen states that have adopted some type of access reform. Thirteen states are listed by AT&T as imposing a cap on the Competitive Local Exchange Carrier (“CLEC”) rate, AT&T’s desired outcome in this proceeding. This interestingly demonstrates that apparently thirty-two other states have not undertaken a level of access charge reform that AT&T could reference and that thirty-seven states do not impose a cap on CLEC rates. Thus, while AT&T and Verizon express disbelief that Cox would encourage the Commission to await federal action, this is in fact the more prevalent course that state commission are taking – as demonstrated by AT&T’s own table.

Verizon writes in its Post Hearing Comments that more than fifteen states have adopted measures related to CLEC access rates, generally by placing a cap at the competing Incumbent Local Exchange Carrier’s (“ILEC”) rate. Thus, using Verizon’s own calculations, roughly thirty-five states have not capped CLECs access rates. While Verizon’s comments artfully point out numerous examples of cherry-picked states to support their preferred course of action, they fail to give this Commission credit and consideration that it led a pioneer-effort to reform access in Nebraska in the late 1990s. Nebraska has been a leader in addressing the difficult issue of intercarrier compensation and Verizon’s examples fail to illustrate what other states have done to simply ‘catch up’

to the early access charge reform that this Commission boldly made in Application C-1628 in 1999.

Finally, several of the access charge reform examples that Verizon cites have been achieved through legislation (after what can be presumed to be intense interexchange carrier (“IXC”) lobbying efforts), and through compromises in exchange for LEC pricing flexibility. Nebraska companies obtained pricing flexibility via the passage of LB 835 in 1986. Other reform actions cited by Verizon in their Post Hearing Comments were part of interconnection arbitration proceedings. And Iowa examined access charges as a part of “traffic pumping” complaints. These many examples, while interesting, are not analogous to the present docket, and they fail to make the case for Verizon’s proposals here.

**IF THE COMMISSION REDUCES ACCESS WITHOUT WAITING FOR THE
FCC, THEN REASONABLE PROCEDURES MUST BE ESTABLISHED**

1. A Transition Period Must be Included

At the hearing and in Post Hearing Comments, Cox urged the Commission to allow companies to implement intrastate access rate reductions with flexibility consistent with that afforded ILECs and CLECs when such reductions were implemented by the FCC and in many other states. Cox agrees with Century Link who stated in their Post Hearing Comments, to the extent switched access charge rate reductions are ordered, care should be taken to ensure that existing, previously-approved access revenues are not harmed. As pointed out by NT&T and Orbit.Com in their Post Hearing Comments, lower intrastate access rates will likely result in higher local rates and/or less competition in Nebraska. CLECs will be forced to raise their local rates to make up for the lost

revenue, potentially damaging their ability to compete. Acknowledgement should be given that CLEC access charge rates have been on file and approved for several years and that a genuine, lawful reliance on this revenue presently exists.

To minimize disruption, a reasonable opportunity should be afforded for companies to make any reductions that are ordered through a transition period with an opportunity for gradual rate rebalancing. Indeed, the state examples cited in Verizon's own Post Hearing Comments show numerous instances where states included implementation periods, such as Connecticut – three years, Montana – five years, New Jersey – three years, New Mexico – three years, and Wyoming – three years.

Application C-1628, entered in 1999, allotted ILECs several years to reasonably implement access charge rate reductions.¹ In addition, as Cox has mentioned previously, the FCC included transition periods for companies to lower access rates, allowing three years for CLECs to lower interstate access rates to the relevant incumbent's rates.² Cox recommends the Commission include in its final order a transition period of not less than three years, if the Commission ultimately determines that CLEC access rates must be within 110% of the ILEC rate. The access revenue that companies presently rely upon should be removed only in a gradual process that does not adversely impact consumers or the CLECs' operating abilities. Cox finds the 90-day transition period suggested by Qwest and subsequently endorsed by Verizon in Post Hearing Comments to be disturbingly inadequate.

¹ See *In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform*, Application C-1628, Order entered January 13, 1999. Rural carriers were given a four-year transition period, while non-rural carriers were given a three-year transition period with the expectation that access subsidies be removed within the first two years.

² See *Access Charge Reform, Seventh Report and Order and Further Notice of Proposed Rulemaking*, FCC No. 01-146, 2001 WL 431685.

2. CLEC Access Reform Should Not be Realized Through Serial Formal Complaints, CLEC Reform Should be Examined in a Comprehensive Manner

The Commission's recommended policy of using carrier-to-carrier formal complaints should not be used to achieve switched access charge rate reform for CLECs. A new docket or alternatively, a Progression Order should be opened if the Commission ultimately determines that access charge rate reductions will be required from CLECs to make their rates within 110% of the ILEC which they compete against.

It is with fair validation that Cox opposes the formal complaint process. The energy and zeal to which AT&T and Verizon boast of their right and entitlement to file complaints over anything it so desires cannot go unnoticed. No CLEC should be required to face serial litigation and spend resources defending its long-standing, approved access charges. Yet, one cannot read the AT&T and Verizon comments without seeing that as their prevalent theme. Not only does the threat of such litigation expend a CLEC's time, it brings uncertainty to business plans and risks a CLEC's ability to sustain consistent investment in Nebraska infrastructure. Further, the Commission should not have to allocate its limited resources to adjudicate multiple complaints regarding the same essential subject matter. Detailed CLEC rate policies can be established in a separate docket, allowing all parties to be heard and for issues to be resolved consistently and fairly.

A separate docket (or Progression Order) would enable consideration of the effects of both the size and timing of CLEC access rate reductions on other rates paid by Nebraska telephone consumers. Increases in other rates to offset the access rate reductions should be specifically allowed and appropriate transition times should be developed. Furthermore, it is through this docket that permissible variances in rates can

be determined. Identification of appropriate benchmarks between CLEC and ILEC access rates, including where CLECs serve more than one ILEC area can be developed. And, conditions for waivers can be created. A comprehensive process for CLECs, just like that which was developed for ILECs in Application C-1628 should be created. Comprehensive, widespread CLEC access charge reform would save time, money, resources, and more efficiently achieve reform across the industry. Finally, a specific Commission-led CLEC docket will provide a reasonable path and guide, as opposed to the present proposal of CLECs being subject to the whim and mercy of IXCs unending complaints.

NT&T and Orbit.Com concurred with Cox's suggestion in their Post Hearing Comments and urged the Commission through this docket or in a separate docket, to evaluate CLEC access rate issues. Like Cox, NT&T and Orbit.Com are concerned that the complainant-friendly nature of the Commission's proposal may have certain unintended consequences. Cox urges the Commission to evaluate the efficacy of subjecting CLECs to a potential onslaught of litigation, against the option of establishing CLEC rates on a comprehensive basis led by the Commission, instead of the IXCs.

3. Quantifiable Evidence of Flow Through Should be Submitted by the IXCs

If CLECs or ILECs are required to lower their switched access charges, the Commission should require specific documentation from the IXCs how they will flow through savings to Nebraska consumers. Not only is this in the best interest of consumers, flow-through is required under Neb. Rev. Stat. §86-140. AT&T, in its Post

Hearing Comments inserted the text of §86-140, but failed to include the second part of the statute detailing flow through. This section of the statute reads as follows:

(2) Reductions made to access charges pursuant to subsection (1) of this section *shall* be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges has been reduced. The commission shall have the power and authority to (a) ensure that any access charge reductions made pursuant to subsection (1) of this section are passed on in a manner that is fair and reasonable and (b) review actions taken by any telecommunications company to ensure that this subsection is carried out.³

The Commission should not only require detailed flow through plans, but be extremely mindful how the IXC's promise to achieve the required flow through. For example, an IXC such as AT&T should not be able to eliminate a surcharge that is imposed on a handful of customers and claim that to be sufficient. Such a gesture is the proverbial 'sleeves off of a vest' maneuver.

At this point in the docket, despite numerous rounds of comments and a hearing, neither Verizon nor AT&T has commented on how they intend to flow through access charge rate reductions. While Verizon criticizes Cox for expressing doubt that Nebraskans will benefit from lower access rates, Cox only refers to the record in this proceeding which provides no specific, let alone verifiable information whatsoever from the IXC's indicating how they intend to flow through the reductions they will receive. It is not up to Cox, but the IXC's to disclose to the Commission how Nebraska consumers will benefit from reduced access charge rates and how their flow-through plans adhere to the statutory requirements. Unless genuine flow through commitments are obtained, the policies adopted in this docket and any subsequent ordered access charge rate reductions do nothing but line the pockets of the IXC's, at the expense of consumers.

³ Neb. Rev. Stat. §86-140(2). Emphasis added.

SCHEDULING A WORKSHOP

Finally, some parties indicated in their Post Hearing Comments that they were willing to attend and participate in a workshop. If the Commission chooses to schedule a workshop, Cox encourages the Commission to check the availability of companies' out-of-town participants when selecting a date. For many companies, the attendance of these people is critical as they possess subject matter expertise and hold necessary negotiating authority. If the Commission checks the schedules of interested parties when setting the workshop date, it will hopefully avoid subsequent motions for continuances. Furthermore, Cox requests the Commission to lead such a workshop and to specifically delineate the topics that are subject to discussion. Cox asks that the workshop be used to explore the opportunity to further develop the CLEC-specific docket that has been described and proposed herein.

Respectfully submitted this 26th day of February, 2010.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 26, 2010 the foregoing Post Hearing Reply Comments of Cox Nebraska Telcom, LLC in Docket C-4145 / NUSF-74 / PI-147 was hand-delivered to the Nebraska Public Service Commission and a copy of the same was sent via e-mail to the following:

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