

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on) Rule and Regulation No. 177
its own motion, seeking to amend Title)
291, Chapter 5, Telecommunications Rules)
and Regulations, to adopt rules regarding)
filing of agreements containing terms for) **COMMENTS OF COX NEBRASKA**
provision of regulated telecommunication) **TELCOM, LLC**
services at rates or charges different from)
the rates and charges for such services)
contained in a carrier's tariff on file with)
the Commission.)

Cox Nebraska Telcom, LLC ("Cox") hereby files these comments for the Commission's consideration in Rule and Regulation No. 177. Cox appreciates the opportunity to provide its input and encourages the Commission to make modifications before proceeding to a hearing in this docket.

INDIVIDUAL CASE BASIS CONTRACTS ("ICBs") ARE NOT THE SUBJECT OF THIS PROCEEDING AND SHOULD NOT BE ENCOMPASSED IN THE PROPOSED RULEMAKING

The telecommunications environment is extremely competitive, and as a result companies routinely combine products in hopes customers will purchase multiple services - some of which are regulated, some of which are not. Today, nearly all providers offer a wide range of products to their customers. For example, Cox offers traditional voice telephone, as well as video, Internet and wireless services. Cox's goal is to bundle its products in hopes of becoming the sole provider of telecommunications services to its customers. Combining non-regulated services with regulated services is good for providers, and also for customers who receive a single bill and discounted prices on the services they purchase.

Bundling is especially common amongst the telecommunications industry to serve large customers that have significant telecommunications needs. One way telecommunications companies, like Cox, best serve large customers is to offer large users the opportunity to customize their service through Individual Case Basis Contracts (“ICBs”). ICBs are essentially service contracts that are negotiated and specifically tailored to meet the individual needs of customers. ICBs have been a long-offered option in the telecommunications industry and have allowed companies to better serve customers who have unique and typically large-scale needs. In today’s world, routinely ICBs combine regulated and non-regulated services.

Cox is concerned the Commission’s proposed rules have departed from the original intent and purpose of the investigative docket and now propose to require companies to file ICBs with the Commission. This rulemaking was initiated out of the Commission’s concerns that certain companies’ switched access rates were not being included in publicly-available tariffs. The existence of such non-tariffed switched access rates was discovered in the Formal Complaints filed between AT&T vs. Orbit.Com (FC-1332 and FC-1335). The Commission subsequently opened a docket to investigate the existence of unfiled switched access rates in the state of Nebraska (C-4238/PI-157). In fact, the caption of the docket denotes it as an investigation concerning unfiled agreements for intrastate switched access services.¹

To conduct the investigation, data requests were sent to local and interexchange carriers in Nebraska seeking information regarding unfiled agreements for intrastate access services at rates, terms and conditions other than those contained in tariffs filed

¹ See Application C-4238/PI-157, *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate unfiled agreements for Intrastate Switched Access Services at rates other than those contained in a carrier’s tariff on file with the Commission* (January 20, 2010).

with the Commission. The Commission entered an Order on August 31, 2010 closing the investigative docket saying there is confusion and disagreement regarding Commission policy regarding access agreements and contracts for services outside a carrier's filed tariff and that a rulemaking proceeding would be appropriate. At no time was there any discussion about the Commission having concerns over contracts, or ICBs.

Despite this, the Commission's proposed rules are not limited to non-tariffed switched access rate agreements. Instead, the rules include all contracts entered into for any services, including ICBs. While the rulemaking proceeding was intended to eliminate confusion and disagreement, the proposed rules actually have the opposite effect. The proposed rules will allow the Commission to significantly expand its present authority from requiring the filing of tariffs to requiring the filing of contracts, such as ICBs.

The proposed rules state:

002.21K Special Contracts: A carrier rendering regulated telecommunication services under a contract that charges, demands, collects or receives a greater, lesser, or different compensation than the rates, fares, and charges specified in its tariff in effect at the time, shall maintain an up-to-date summary list of all such contracts in its tariff schedules. The list shall be designated the list of contracts with deviations and show at least the following information regarding each contract:

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|----------|--------------------------------------------------------------------------------------------------------------------------------|
| 002.21K1 | The name and location of each party to the contract other than the carrier filing the tariff; |
| 002.21K2 | The type of class or service; |
| 002.21K3 | The execution and expiration dates; |
| 002.21K4 | State the most comparable regular tariff by schedule number and summarize the differences between the tariff and the contract; |

002.21L A carrier may file a copy of the executed contract containing deviations from its tariff within five (5) business days after execution instead of updating or maintaining a contracts with deviation list pursuant to section 002.21K.

There is no language limiting the filing of contracts to those concerning switched access rates. A rule requiring the filing of non-tariffed switched access rate agreements would actually be the logical outcome following the Commission's concerns expressed in the AT&T v. Orbit.Com formal complaints and the ensuing investigation conducted in C-4238/PI-157. Cox has no objection to the Commission modifying its rules to ensure contracts and/or agreements concerning switched access rates are on file with the Commission. In fact, after the Commission opened its investigative docket, C-4238/PI-157, Cox filed an amendment to its tariff setting forth the terms and conditions it offers should any provider wish to receive off-tariff switched access rates from Cox.

Cox strongly opposes the Commission rules which extend beyond filing switched access agreements and propose to require the filing of every ICB entered into or a stringently, detailed summary list as proposed in Rule 002.21K. Filing ICBs with the Commission, which are commonly entered into by all companies, will take administrative time and expense. And due to confidentiality clauses, will offer no value for public inspection, which is the true intent behind the regulatory obligation to file tariffs. Filing ICBs with the Commission serves no function other than pushing paperwork from companies to the Commission, yet it involves the significant expenditure of resources.

Furthermore, ICBs often combine regulated services with non-regulated services. It would be difficult and time consuming for carriers to somehow develop a system that sorts ICBs into those subject to the Commission's rule for filing purposes away from

those that are not. In fact, most ICBs couldn't even be placed into a specific either/or category since they contain combinations of regulated and non-regulated products.

The regulatory obligation placed on companies to file tariffs is intended to provide the public with awareness of companies' rates and services. Tariffs give customers the ability to secure services at specific rates and are associated with protectionism. ICBs are not a tariff. They are not an open contract between a provider and the public. Rather, an ICB is individually negotiated between a carrier and a customer, and sets specific terms and conditions to meet a customer's unique needs. Unlike tariffs, the public will not derive any value by requiring carriers to file ICBs. First, most - if not all, ICBs will be filed on a confidential basis and thus will not be open for public inspection. And second, ICBs are negotiated to create a specific, individualized package of services for a single end-user. For example, an ICB could list all tariffed prices, but contain a minor specialized clause to meet a customer's unique service needs.

The Commission's proposed rules stand to require the filing of contracts covering items such as special access or transport which are routinely customized for customers (to offer wireless backhaul, point-to-point circuits, etc). There is fierce competition for these types of contracts in the telecommunications industry. And there is no need for the Commission to insert itself between carriers and their customers to provide regulatory protection in this environment. The ability for telecommunications companies to craft specialized service offerings to meet their customers' needs should not be hindered with regulatory filing requirements unless it is necessary for consumer protection, and no such need has been demonstrated.

In conclusion, Cox supports the Commission's original effort to promulgate rules to ensure off-tariff agreements for switched access rates are filed with the Commission. However, the proposed rules require the filing of contracts, like ICBs, and stretch too far. Requiring the filings of ICBs is a solution in search of a problem. There is no record that indicates there is a concern with the long-standing practice of companies negotiating ICBs with their customers. Nothing indicates any need exists to institutionalize reporting requirements that potentially compromise carrier and customer-sensitive information, and perhaps serve to dissuade companies from entering into ICBs in the future. ICBs have been a staple in the telecommunications industry for many years and bring valuable benefits to consumers. The Commission's proposed rules will simply raise companies' costs and create administrative burdens while bringing no tangible benefits.

Respectfully submitted this 5th day of November, 2010.

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