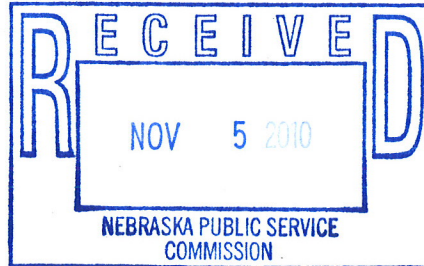


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on)
its own motion, seeking to amend)
Title 291, Chapter 5, Telecommuni-)
cations Rules and Regulations, to)
adopt rules regarding filing of)
agreements containing terms for)
provision of regulated telecommuni-)
cation 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.)

RULE AND REGULATION NO. 177



COMMENTS OF VERIZON

Verizon¹ hereby submits its comments in the above-referenced proceeding. The Verizon entities participating in this proceeding provide competitive long distance or local exchange services in Nebraska, and would be affected by any new requirements regarding the filing or reporting and disclosure of contracts with individual customers.

I. Background and Introduction

On January 20, 2010, the Commission opened a docket to investigate agreements between local exchange carriers (“LECs”) and interexchange carriers (“IXCs”) that were not filed with the Commission and through which the LECs allegedly provided intrastate access services at rates, terms and conditions other than those in the carriers’ filed tariffs.²

Following the submission of comments and a review of responses to data requests, the Commission closed that investigation without taking any action. Because it found “there is

¹ The Verizon entities participating in these comments include MCI Communication Services d/b/a Verizon Business; MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services; Verizon Long Distance LLC; Verizon Enterprise Solutions LLC; and Verizon Select Services, Inc. (collectively “Verizon”).

² *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, Order Opening Docket, Application No. C-4238/PI-157.*

confusion and disagreement regarding Commission policy and requirements ... regarding access agreements and contracts for services outside of a carrier's filed tariff," the Commission decided instead to open a rulemaking proceeding to address the issues that had been raised in the investigation.³

The Commission subsequently opened the instant docket and proposed to adopt rules regarding the filing or listing of agreements containing rates different than those in a carrier's tariff.⁴ Unlike the initial investigation, however, the proposed rules are not limited to "intrastate switched access services," but apparently would apply more broadly to contracts for the provision of any "regulated telecommunication service" that a carrier has tariffed. Specifically, proposed rule 002.21K, entitled "Special Contracts," would require a "carrier rendering regulated telecommunication services under a contract [containing rates different than those in the carrier's tariff to] maintain an up-to-date summary list of all such contracts in its tariff schedules." As an alternative, proposed rule 002.21L would allow a carrier to file a copy of its customer-specific contracts with the Commission within five business days after execution. The Commission's order does not provide a rationale for expanding the scope of this proceeding beyond the original focus on agreements involving switched access services nor does it explain why the proposed regulations are necessary or would be appropriate for competitive communications services including, particularly, retail services provided to business customers.⁵

³ Order Closing Investigation, Application No. C-4238/PI-157 (August 31, 2010) at 2.

⁴ Order Opening Docket and Seeking Comment, entered September 8, 2010.

⁵ Proposed rule 002.21K describes certain detailed information about each customer-specific contract that would have to be included in a carrier's list of contracts. As explained below, much of the requested information is commercially sensitive (*e.g.*, the locations of each customer), would be burdensome to produce, and/or is not necessary to achieve legitimate regulatory goals.

In today's robustly competitive market, a requirement that carriers file (or tariff a list of and disclose details about) customer-specific contracts for competitive communications services is not necessary to protect consumers, especially business customers. Such regulations are anachronistic, which is why policy makers in many jurisdictions have been moving to eliminate legacy requirements that communications carriers file tariffs or customer-specific contracts with regulatory agencies. The proposed rules also ignore the way in which business customers typically procure communication services in today's market. Accordingly, Verizon urges the Commission not to adopt the proposed rules to the extent they would apply to competitive retail communication services, particularly those provided to business customers.

Verizon would not object were the Commission to limit any new filing obligation to inter-carrier contracts for intrastate switched access services, for which competition is not yet robust.⁶ However, the Commission has not shown that the purported rationale for filing or disclosing details about switched access agreements (that is, preventing undue discrimination) is a relevant or actual concern in the context of customer-specific contracts for competitive retail services.

II. Carriers Should Not be Required to File Customer-Specific Contracts for Competitive Retail Services

The proposed rules that would require carriers either to a) provide a list of, and disclose details concerning, contracts in their tariffs or b) file customer-specific contracts for the provision of competitive retail services are not needed to advance any specific,

⁶ Even then, carriers should be permitted to submit information about their contracts in a manner that protects confidential and competitively-sensitive information. For example, in Colorado, carriers may file contracts for switched access service under seal, and another potential purchaser must execute a nondisclosure agreement before it may obtain and review such agreements. See 4 CCR 723-2-2203(c)(IV)(B) and 40-15-105(3) C.R.S.

articulated interest. The Commission's proposals would instead conflict with policies adopted by the Nebraska legislature that are intended to "[p]romote fair competition in all Nebraska telecommunications markets in a manner consistent with the federal act," and "[p]romote diversity in the supply of telecommunications services and products throughout the state."⁷ Consistent with these goals, the legislature authorized the Commission to "limit, remove, or waive regulatory requirements for telecommunications companies when it determines that competition will serve the same purposes as public interest regulation."⁸ Unfortunately, by imposing unnecessary and burdensome new rules on competitive services, the proposed contract filing and disclosure requirements would be a step in the wrong direction. The Commission should reconsider its proposal and take this opportunity to eradicate existing, unnecessary rules rather than attempt to micromanage competitive firms through more and more regulation.

A. New Regulations Are Not Needed and Would Be Counter-Productive Given the Competitive Nature of Nebraska's Communications Market

The rapid expansion of intermodal competition in Nebraska is well-documented. As the Commission has observed, "[m]ultiple factors contribute to increased consumer choice."⁹ Most conspicuous is the widespread adoption of wireless services. The number of wireless "access lines" in Nebraska more than doubled in the past ten years, and now accounts for over 60 percent of the total market (wireline and wireless combined).¹⁰ In the

⁷ Neb. Rev. Stat. § 86-102.

⁸ Neb. Rev. Stat. § 86-126.

⁹ *Annual Report to the Legislature on the Status of the Nebraska Telecommunications Industry*, Nebraska Public Service Commission, September 30, 2010, at 10 ("*2010 Annual Report*").

¹⁰ *See id.* at 3, 10; *2000 Annual Report to the Legislature on the Status of Telecommunications*, Nebraska Public Service Commission, September 30, 2000 ("*2000 Annual Report*"). These figures likely understate the actual extent of wireless penetration. As of June 30, 2009, the FCC found that 11 wireless carriers were serving 1,508,000 mobile telephony subscribers in Nebraska, which is 17 percent more than the number of

local exchange market, CLECs now serve more than 37 percent of the state's access lines, up from only 6 percent a decade earlier.¹¹ Cable television companies have become significant providers of telephony services, particularly in larger markets. The Commission also recently reported that “[t]he number of long distance companies certificated to operate in the state continues to grow,” and that 241 companies are now authorized to provide interexchange services in Nebraska.¹² Technological developments have helped spur the growth of these competitive alternatives. For example, the widespread availability of broadband services enables companies to provide advanced data services as well as voice service throughout the state using Voice over Internet Protocol (VoIP) technology. The Commission has acknowledged that “[i]n just a few short years,” VoIP has evolved rapidly to become “a mainstream commercial product.”¹³

In addition to traditional providers of telephony services, many unregulated firms are aggressively competing to serve business customers. These competitors include IP-based providers; systems integrators and managed service providers like EDS, IBM, Accenture, Northrop Grumman, and Lockheed Martin; equipment vendors such as Lucent and Nortel; and major applications providers like Microsoft. Frequently, large and medium-sized business customers purchase IP Virtual Private Networks, which are increasingly used in place of traditional local, interexchange, and international voice and data services. Large business and enterprise customers also are shifting away from local,

“wireless and other communication provider’s access lines reported for relay remittance purposes” (1,281,986) that this Commission cited in its 2010 Annual Report. *See Local Telephone Competition: Status as of June 30, 2009*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communication Commission (September 2010) at 28 (Table 17).

¹¹ *Compare 2010 Annual Report at 10 with 2000 Annual Report.*

¹² *2010 Annual Report. at 6.*

¹³ *Id.* at 52. In the consumer space, traditional voice telephone services are increasingly being supplanted by consumers’ use of e-mail, instant messaging, Facebook and Twitter, to name a few recent innovations.

interexchange, and international voice and data services that are purchased off-the-shelf in standard configurations, and are migrating toward managed forms of these services that are customized to the user's specific needs.

B. The Proposed Rules Are Not Necessary to Protect Business Customers

Business customers have a plethora of choices in terms of service providers and the services that are available to meet their telecommunications needs. Large business customers and government agencies are sophisticated and knowledgeable in their selection of services and service providers, and have complex requirements that go beyond basic voice services. These customers typically procure telecommunications services from their service providers through contracts that set forth the pertinent terms and conditions of service, and address matters that are critical to the vendor-customer relationship. Oftentimes, the contracts are negotiated in response to a customer's request for proposals and are the result of a competitive bidding process.

It would make no sense to require carriers to maintain and publish a list of these customer-specific contracts, or to file the agreements themselves, either for Commission review and approval, or for administrative tracking purposes. While contracts typically contain many standardized terms and conditions, individual agreements also may be tailored to meet the customer's discrete needs. From a policy standpoint, the Commission should allow customers operating in a competitive environment to negotiate all aspects of their service agreements and implement their service preferences as memorialized in those contracts. Commission review or oversight of the process is neither necessary nor warranted. The Commission's order opening this docket does not identify any market

failure or concerns voiced by any customers that would necessitate such rules or any administrative interference in the carrier-customer relationship.

Many of the large business and enterprise customers that Verizon serves operate at multiple locations across numerous states and/or countries. These customers desire consistency in the terms and conditions of service across all of the states in which they have operations. They want uniform terms, service descriptions, processes and procedures, and the same service quality across all states, regardless of the service or the location where it is offered. For example, they want the terms of local service provided in Nebraska to be consistent with their interstate long distance voice service originating in Illinois, and with all of the services provided to them in Arizona. Consequently, state-specific constraints undermine the customer's ability to exercise competitive choice and a carrier's ability to respond to competitive demand.

Many of Verizon's business customers also want to receive a single bill that contains similar descriptions of the calling plans, taxes and surcharges, and provides for identical customer service treatment across all jurisdictions. Because these customers often purchase multiple services in multiple states, hard-copy billing statements often contain many hundreds, sometimes thousands, of pages. To avoid this, many customers prefer a single electronic bill covering all services wherever they are provided. For example, an oil company headquartered in Texas may have numerous service stations located across the country, including dozens of service stations in Nebraska. While the company may use many complex communications services at its headquarters, each of its service stations may have only two or three lines that may be provisioned with a service using wholesale inputs similar to UNE-P. Such a customer may choose a service provider

that agrees to provide the customer with a single, consolidated bill for all of its services across the country that contains a uniform description of services and charges. To remain competitive, carriers must structure their products and services to accommodate the needs of their customers. Adhering to any state-specific rules regarding billing format and procedures would be cumbersome and contrary to the customer's express interest.¹⁴

To advance the goal of uniformity and simplicity, Verizon has developed a Service Publication and Pricing Guide ("Guide"), which is publicly available on its website at www.verizonbusiness.com/guide. The Guide contains an online catalog of generally available terms, conditions and service descriptions for all local exchange and interexchange services that Verizon offers to large business and enterprise customers. The Guide also allows customers to review the rates for most interstate services and Verizon's state-specific rates in more than 25 other states where the services have been detariffed. (In those states that still require the filing of tariffs for business services, the tariff rates apply.) As compared with having to cull through multiple tariffs or price lists in multiple states, the Guide provides customers and potential customers with a clearer, more cost effective method for reviewing rates, terms and conditions of service. This online resource enables large, multistate companies to evaluate Verizon's service offerings and choose a service provider. Using the Guide as a baseline, potential customers may seek to negotiate additional terms or conditions based on their own particular business needs.

¹⁴ This Commission's rules contain many prescriptive requirements relating to billing practices, including the time frame in which bills must be rendered, the amount and handling of customer deposits, interest and late payment fees, the handling of disputes, customer notices for rate increases, and the disconnection of service, and set forth a number of standards intended to ensure service quality. If a large business customer wants to obtain service and establish a business relationship with its service provider on a consistent, uniform basis, multiple and often conflicting state-specific rules may act as a hindrance, which is contrary to the stated purpose of public utility regulation.

In light of these commercial realities, a requirement that carriers either include details about their customer-specific contracts in their tariffs or file the actual agreements with the Commission would serve no useful purpose. When it opened this docket and proposed to adopt rules 00.21K and 002.21L, the Commission offered no rationale as to why such rules are needed or why they would be in the public interest. Certainly the proposed rules cannot be supported under the rubric of consumer protection. If a business customer wants service to be provided in a uniform manner, the Commission should respect that desire and not interfere with or impede the customer's choice. Moreover, because the Commission did not indicate how it intends to use the information that carriers would file, whether it plans to review and approve any such filing, or whether it reserves the right to reject such a tariff filing, the proposals create uncertainty and would undermine the ability of customers and carriers to freely negotiate agreements that best meet their needs. Any review and/or approval process would only delay implementation of services that business customers desire and have contracted for, usually on a multi-state or nationwide basis. Accordingly, the Commission should abandon its proposal to require carriers to submit such information, particularly with respect to contracts for retail services provided to business customers.

III. The Proposed Rules Are Burdensome and Would Not Achieve Any Valid Public Purpose

The Commission's proposed rules would require carriers to include in their tariffs a "list of contracts with deviations and show at least the following information regarding each contract:

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.”

Compelling the public disclosure of this level of detailed information is not necessary to accomplish any legitimate regulatory objective, would be burdensome to produce, and is counter-productive. Because carriers would have to revise their tariffs every time they enter into a contract, the proposed rules would create an unnecessary administrative burden on carriers as well as on the Commission, assuming it intends to review each such filing. Both customers and carriers alike would consider much of this information commercially and competitively sensitive. For security reasons, large business or government customers would likely object to the public disclosure of the locations of many of their operations, such as a financial institution’s data centers, an electric utility’s generation and transmission facilities, or certain military installations. In addition, requiring the carrier to disclose “each” customer’s location would be needlessly burdensome, especially in the case of a business with many locations in the state, such as bank branches, a chain of convenience stores, or gas stations.

From the carrier’s perspective, requiring it to disclose each type of service that it provides (and, by exclusion, does not provide) to a customer at each location would create a roadmap for its competitors, who could use that information to identify potential sales opportunities and target their marketing efforts. Such a requirement would thus artificially and unfairly distort the competitive process rather than “promote fair competition in all Nebraska telecommunications markets,” as the statute requires. Given the length and complexity both of carriers’ tariffs and their commercial contracts with large business

customers, requiring carriers to “summarize the differences between the tariff and the contract” would also be burdensome and would waste resources that are better devoted to activities involving serving customers. As explained above, contracts with large business customers cover a broad range of topics pertinent to the customer-provider relationship, and often include services and products that are not regulated. Accordingly, any attempt to compare all contract terms with those in the carrier’s tariffs would be difficult and time-consuming and, in the end, would produce nothing that is useful to achieving any legitimate regulatory purpose.

For all these reasons, the Commission’s proposal to elicit certain information from carriers about their customer-specific contracts is ill-advised, violates the interests and expectations of customers in Nebraska, would have anti-competitive consequences, is contrary to the state’s public policy set forth in Neb. Rev. Stat. § 86-102, and should not be adopted.

IV. The Commission Should Not Adopt the Proposed Rules and Instead Eliminate Tariff Requirements for Competitive Retail Services

The discussion above also highlights why traditional tariff filing requirements are an obsolete regulatory constraint, especially for services that carriers provide to business customers. Business customers are well-informed about their choices of services and service providers and do not require or want the sort of “consumer protections” that tariff requirements historically were intended to provide. As large, multi-state customers desire to obtain communications services from a single provider under a uniform set of terms and conditions, state-specific tariffs and related regulations often become an obstacle and conflict with the customers’ reasonable business needs. Eliminating these constraints promotes competition and innovation so that market forces – not antiquated regulatory

filing requirements – dictate the winners and losers in today’s competitive telecommunications market.

For these reasons, legacy tariff filing requirements have been eliminated in many jurisdictions.¹⁵ Policy makers have accomplished this by amending statutes, or by eliminating, waiving or granting exemptions from regulations adopted by state Commissions. For example, Verizon has detariffed local and/or interexchange services or eliminated price lists for enterprise and large business customers in more than half the states. These include Alabama, California, Colorado, Delaware, Florida, Georgia, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Washington and Wyoming.

The Commission can be assured by the industry’s experience in implementing detariffing on a national scale and the reliance instead on customer agreements, without the need for duplicative tariff filings, that detariffing is a reasonable and efficient approach to follow in Nebraska. Detariffing would have no effect on the continued availability of services to retail customers, or on the Commission’s general authority to oversee utility practices. Detariffing would have the positive effects of reducing administrative burdens on service providers and benefitting consumers by increasing the speed to market of new services and pricing plans, and promoting business customers’ interest in obtaining service on uniform terms and conditions wherever they operate.

¹⁵ The Federal Communications Commission ordered the detariffing of interstate long distance services in 1996. *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(G) of the Communications Act of 1934, as Amended*, 11 FCC Rcd 20730, *20779–20780 at ¶¶ 89–90.

In Nebraska, Neb. Rev. Stat. § 86-123(2) states that “[t]he commission may regulate telecommunications company rates pursuant to sections 86-139 to 86-157.” Neb. Rev. Stat. § 86-143(1) and § 86-144(1), in turn, address circumstances in which local competition may be found to exist, and provide that in all exchanges, “telecommunications companies shall file rate lists” for their telecommunications services. By their terms and given the context, these identical requirements apply only to local exchange carriers, as only those entities provide service “in an exchange.” This same requirement is reflected in the Commission’s current rule, Title 291, Chapter 5, section 002.21, which states that “[n]o exchange carrier shall offer access line service to the public, except pursuant to its tariff filed with the Commission.”

Although there is no Nebraska statute that expressly requires interexchange carriers to file tariffs, the Commission, on its own, previously adopted a rule, section 003.08, which provides that “[n]o interexchange carrier shall offer a telecommunications service to the public, except pursuant to its tariff filed with the Commission.” Because the Commission is empowered to “limit, remove, or waive regulatory requirements for telecommunications companies when it determines that competition will serve the same purposes as public interest regulation,”¹⁶ the Commission should use this opportunity to eliminate the requirement that interexchange carriers “shall” file tariffs with the Commission. At a minimum, IXCs should be permitted to withdraw their tariffs, particularly for those services that they offer to business customers.¹⁷ Once tariffs are withdrawn or eliminated, Verizon will make its intrastate rates and applicable terms and

¹⁶ Neb. Rev. Stat. § 86-126.

¹⁷ Under permissive detariffing, carriers that choose to maintain tariffs on file may continue to do so. Because IXCs do not provide switched access service, detariffing their retail services will have no bearing on any concerns the Commission may have with respect to access services offered by LECs.

conditions available on its online Service Publication and Pricing Guide, described above. The Guide will provide sufficient information about its service offerings to existing and potential customers, as well as the Commission. Because service to business customers would be provided pursuant to the terms of the customers' contracts, there is no useful purpose to be served by having a carrier file and maintain a tariff for such services with the Commission.

To the extent the Commission is concerned that it lacks the authority to achieve more comprehensive reform, including the detariffing of local exchange services offered to business customers, the Commission should pursue legislative changes to permit the full detariffing of retail services. Eliminating tariff requirements or permitting carriers to withdraw tariffs for competitive services will better promote all of the legislature's overarching policy goals for telecommunications services in Nebraska.

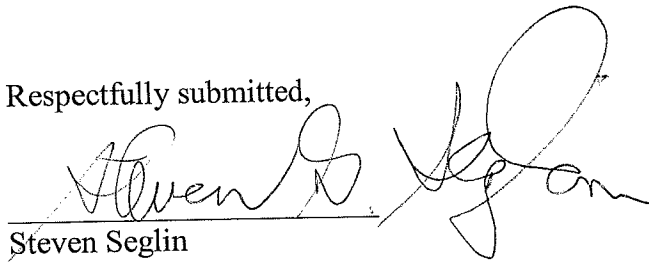
V. Conclusion

The Commission should not adopt the rules proposed in the order commencing this proceeding. There is no need for carriers to file customer-specific contracts or to include details about those arrangements in their tariffs. This is especially true with respect to local and interexchange services that are offered to business customers in Nebraska. The proposed filing and disclosure requirements are not needed to remedy any market failure or to achieve an important regulatory purpose; they would not serve the interests of business customers and, in some ways, would undermine their reasonable commercial and security interests; the rules would have unintended anti-competitive consequences; and would be burdensome to comply with. The Commission should instead take steps to remove

antiquated tariff filing requirements which are no longer needed in today's intensely competitive market.

Dated: November 5, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Seglin", written over a horizontal line.

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