



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking To Review Policies
Concerning Intrastate Carrier Access Charges.

R.03-08-018
Filed August 21, 2003

**COMMENTS OF COX CALIFORNIA TELCOM, L.L.C., DBA COX
COMMUNICATIONS AND CHARTER FIBERLINK CA-CCO, LLC ON ASSIGNED
COMMISSIONER'S RULING SOLICITING COMMENT ON PROPOSED
MODIFICATIONS TO DECISIONS 06-04-071 AND 07-12-020 REGARDING
INTRASTATE SWITCHED ACCESS RATES, DATED APRIL 24, 2012**

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Pursuant to the Commission’s Rules of Practice and Procedure, Cox California Telcom, L.L.C., dba Cox Communications, (U-5684-C) (“Cox”) and Charter Fiberlink CA-CCO, LLC (U-6878-C) (“Charter”), hereby submit these comments in response to the Assigned Commissioner’s ruling, dated April 24, 2012 (“AC Ruling”).

I. Introduction and Summary of Recommendations.

The AC Ruling seeks comment on proposed modifications of two decisions issued in this docket, in light of the Federal Communications Commission (“FCC”) decision modifying rules governing intercarrier compensation (“FCC Order”).¹ Among other things, the FCC Order requires carriers to lower their terminating intrastate switched access rates over a given number of years depending on the type of carrier, commencing on July 1, 2012. The FCC Order also requires that access rates attributable to “toll VoIP-PSTN” traffic be transitioned to interstate access rates effective December 29, 2011. The AC Ruling solicits comments on issues related to the advice letters that both incumbent LECs and competitive LECs may need to submit to comply with the July 1, 2012 deadline.

To help ensure that carriers submit advice letters that are consistent with the FCC’s new rules, Cox and Charter recommend that the Commission:

- Clarify that it is not requiring competitive LECs to submit cost studies or revenue data in support of the rates they will implement effective July 1, 2012, or with regard to the intrastate rates that are the subject of the FCC Order that have already been fully transitioned to their corresponding interstate levels;

¹ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011).

- Conclude that it is not necessary to modify D.07-12-020 with respect to the competitive LECs' rates being the higher of AT&T's or Verizon's intrastate access charges, plus 10%;
- Permit carriers to submit any confidential data under seal and subject to non-disclosure agreement, as may be necessary; and
- Permit carriers to submit an informational advice letter within ten days of the Commission adopting a final order on this matter and a Tier 1 advice letter that reduces rates consistent with the FCC Order no later than June 30, 2012.

II. The Commission Should Not Require All Competitive LECs To File Data Included In Appendix A Attached To the AC Ruling.

The AC Ruling reflects that the FCC Order requires local exchange carriers to reduce terminating intrastate switched access rates as follows:

Intrastate terminating switched end office and transport rates, originating and terminating dedicated transport, and reciprocal compensation rates, if above the carrier's interstate access rate, *are reduced by 50 percent of the differential between the rate and the carrier's interstate access rate.*²

To implement this requirement, the FCC's rules include three separate sections that respectively describe how rate-of-return carriers, price-cap carriers and competitive LECs should implement the rate reductions.³ The AC Ruling correctly reflects that a competitive LEC may either apply the required revenue reduction to its intrastate rates ("Option 1") or apply its interstate rate structure and rates to its intrastate access service ("Option 2A"), in addition to a transitional per-minute charge on end office switching equal to its revenue reduction (this latter option, when applied by a carrier with Option 2A, will be referred to as "Option 2B"). The FCC's rules expressly state that a competitive LEC *may*, but is not required to, include a transitional per-minute charge.⁴ In addition, and although not mentioned in the AC Ruling, a

² AC Ruling, p. 8. Emphasis added.

³ See 47 C.F.R. §§ 51.907, 51.909 and 51.911.

competitive LEC's intrastate access rates may already mirror its interstate access rates, including with respect to what the FCC refers to as "toll VoIP-PSTN" traffic, which intercarrier compensation rates were transitioned to interstate access rates effective December 29, 2011.⁵

Consistent with the FCC's rules concerning toll VoIP-PSTN traffic, Cox has already updated its tariff such that intrastate toll VoIP-PSTN traffic is billed at the rates equal to Cox's interstate switched access rates as provided in Cox Communications Tariff FCC No. 4.⁶ With respect to the terminating switched access rates applicable to non-VoIP-PSTN traffic, Cox will implement Option 2A – meaning it will not include an additional transitional per-minute charge. Cox can implement the Option 2A requirements via a straight-forward formula that (a) captures the difference between its interstate rate and its intrastate rate; and then (b) subtract 50% of that amount from Cox's existing intrastate rates. In pursuing this option, it is not necessary for Cox to use its intrastate demand and/or any of its interstate or intrastate revenue data in order to calculate the reductions in intrastate access rates needed to comply with the FCC's rules. Thus, Cox should not be required to provide any of the supporting data described in the AC Ruling.

Charter has already implemented Option 2A, to the extent that, consistent with the FCC Order, Charter has already applied its interstate rate structure and rates to its intrastate access service.⁷ It would serve no purpose for Charter or other entities whose intrastate access rates have already transitioned to interstate levels to make the extensive filings described in the AC

⁴ The FCC's rule states, "In the alternative, a Competitive Local Exchange Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal year 2011 intrastate switched access demand." 47 C.F.R. § 51.911(b)(5). Emphasis added.

⁵ See FCC Order, ¶¶ 933-975; 47 C.F.R. § 51.913.

⁶ See Cox Advice Letter, 993, dated December 29, 2011.

⁷ See Charter Advice Letter 123, dated December 29, 2011.

Ruling.⁸ Accordingly, to the extent an entity has already filed access tariff revisions with the Commission encompassing such reductions, no further information is needed by the Commission.

The AC Ruling, Appendix A, which shows what type of information carriers would be required to submit as supporting data, appears to be developed to collect information from rate-of-return carriers, price-cap carriers and possibly competitive LECs that will pursue Option 1 or Option 2B. Specifically, Cox and Charter understand that these carriers would be required to determine their “intrastate demand,” and intrastate and interstate “revenues” to comply with the new FCC rules. However, Appendix A should not be applied to competitive LECs that are implementing Option 2A or those that have already fully transitioned their intrastate access rates to interstate levels, because it is not necessary for them to produce the data or calculate the reductions in revenue to demonstrate compliance with the FCC’s new rules.

Additionally, the Commission has never required competitive LECs to produce or provide cost studies or revenue information for their respective intrastate switched access rates. The FCC Order does not suggest or require that the Commission do otherwise here.

Cox and Charter recommend that the Commission should not require competitive LECs that have effectively implemented or will be implementing Option 2A to submit Appendix A.

Instead, the Commission may direct competitive LECs that choose that option to submit (a) an

⁸ Similarly, nothing in the FCC’s recently-released Second Order on Reconsideration justifies requiring the filing of the supporting data described in the AC Ruling. As described below, the Second Order on Reconsideration merely modifies the FCC’s rules to permit local exchange carriers, prospectively, to tariff a transitional default rate until June 30, 2014, equal to their intrastate originating access rates when they originate intrastate toll VoIP traffic. *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Second Order on Reconsideration, FCC 12-47 (rel. April 25, 2012) (hereafter “Second Order or Reconsideration”).

advice letter that reflects that the competitive LEC is following Option 2A (i.e., is not including an additional transition per-minute charge); and (b) a spreadsheet that reflects the corresponding formula that the carrier used to implement the other requirements in Option 2A. For those competitive LECs that have already transitioned their intrastate access rates in California to interstate levels, an informational advice letter or other filing confirming that such event has occurred should be sufficient.

III. Implementing The FCC Order Does Not Require the Commission to Modify Decision 07-12-020.

The AC Ruling correctly reflects that in D.07-12-020, the Commission capped competitive LECs' access rates at the higher of AT&T's or Verizon's intrastate access charges plus 10 percent. The AC Ruling suggests, however, that to be consistent with the FCC Order competitive LECs should remove the 10% "markup" from their current intrastate rates.⁹ The AC Ruling errs by determining that the cap on CLEC intrastate access rates adopted in D.07-12-020 includes a 10% "mark-up" that must be removed from CLECs' existing switched access rates to be consistent with the FCC Order.

Specifically, the FCC Order states that competitive LECs may not raise their intrastate switched access rates as of December 29, 2011, but it does not require – or even suggest – that any reduction in competitive LECs' intrastate switched access rates on a going-forward basis should be based on the rates of any incumbent LEC:

Notwithstanding any other provision of the Commission's [FCC's] rules:

- (1) In the case of Competitive LECs operating in an area served by a Price Cap Carrier, *no such Competitive LEC may increase* the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on December 29, 2011.¹⁰

⁹ AC Ruling, p. 6.

¹⁰ 47 C.F.R. § 51.911(a)(1).

The new rules do not require the intrastate access rates of competitive LECs to match the intrastate access rates of incumbent LECs' because that was not an objective of the FCC, *per se*. The FCC requires all intrastate switched access rates to reach interstate levels at the second step of the transition, and as CLEC interstate rates are already capped at ILEC rates, there was no reason for the FCC to act on CLECs' current rates other than to adopt the transition required in the new rules. As such, the AC Ruling errs in requiring competitive LECs to reduce their current rates "to be consistent with the FCC's objectives" ¹¹

Further, the record in this proceeding does not permit the Commission to order competitive LECs to reduce their current switched access rates by 10 percent. In D.07-12-020, the Commission required competitive LECs to reduce their then-existing switched access rates so that by January 1, 2009, they would be capped at the higher of AT&T's and Verizon's rates plus 10%. Specifically, in D.07-12-020, the Commission adopted CALTEL's proposal that the "cap must be set at the incumbent carrier's access rate plus 10%." ¹² CALTEL's proposal was not based on competitive LECs' costs actually being the same as either of the incumbent LECs' costs. Not surprisingly, D.07-12-020 does not include any findings stating that competitive LECs' costs were or should be the same as AT&T's or Verizon's respective costs, such that the ten percent could be deemed a "mark-up." Thus, the Commission would commit legal error by making that type of finding now.

Accordingly, Cox and Charter strongly recommend that the Commission correct the error in the AC Ruling and direct competitive LECs to implement the FCC Order based on their existing intrastate and interstate rates in effect as of December 29, 2011.

¹¹ AC Ruling, p. 6.

¹² D.07-12-020, p. 16.

IV. If Carriers Submit Confidential and Proprietary Data, Then They Must Be Allowed To Submit It Subject to PU Code Section 583 and The Current Version of General Order 66-C.

Provided that the Commission adopts Cox's and Charter's recommendations described in Section II and does not require competitive LECs to submit any demand or revenue data, or require any carrier to submit cost support, then Cox and Charter do not have any concerns about the submission and sharing of information they will be submitting in support of their advice letters or other filings.

However, if carriers elect to implement the FCC's rules by applying the required revenue reduction to their intrastate rates and are therefore required to submit the data in Appendix A, Cox and Charter support the Commission concluding that such carriers may submit that information under seal. If a carrier indicates that it will protest another carrier's advice letter, as permitted under GO 96-B, then Cox and Charter would support the Commission requiring the protesting carrier to execute a non-disclosure agreement with the carrier that filed the advice letter in order to obtain a copy of the information submitted in Appendix A.

V. The Commission Should Allow Carriers to File Information Advice Letters First and Then Formal Advice Letters No Later Than June 30, 2012.

The AC Ruling solicits comments on whether carriers should be required to file the requisite advice letters within 10 days of the final order adopted by the Commission. Cox and Charter anticipate that even with the shortened time frames for filing comments on the AC Ruling and the yet-to-be-issued proposed decision, the Commission will not hear this matter until its June 7, 2012, meeting.

On April 25, 2012, the FCC released its Second Order on Reconsideration and it allows all "LECs to tariff default charges equal to intrastate originating access for originating intrastate toll VoIP traffic (including traffic that originates in IP, terminates in IP, or both) at intrastate

rates until June 30, 2014.”¹³ Consistent with the FCC Order, Cox and Charter previously submitted advice letters to comply with the FCC Order concerning VoIP-PSTN traffic. However, in response to the Second Order on Reconsideration, Cox and Charter will be filing advice letters (and, with respect to Cox, to update the VoIP-PSTN portion of its tariff), but they may only do so after the rule has been published in the Federal Register. Cox and Charter anticipate they will file such advice letters by approximately June 30, 2012.

Accordingly, to minimize both the number of advice letters that Cox and Charter, as well as other carriers, will submit and the submissions that will actually modify intrastate switched access tariffs, Cox and Charter strongly recommend that the Commission permit carriers to submit, within ten days of the final order, either an information advice letter filing or a formal Tier 1 advice letter that implements the requirements of the final order adopted in this proceeding. Those carriers that initially submit an information advice letter will be required to submit a Tier 1 advice letter by June 30.

Allowing carriers to submit an informational filing will ensure that Staff receives the same information from all carriers at the same time, but also provides carriers with the flexibility to implement multiple changes to their intrastate switched access tariffs on a single date through a single advice letter.

VI. Conclusion.

Cox and Charter commend the Commission for soliciting comment on these issues in order to assist carriers and Staff in implementing the FCC’s new requirements. For all the reasons discussed herein, Cox and Charter respectfully request that the Commission adopt the recommendations summarized on the first page of these comments and otherwise described herein.

¹³ Second Order on Reconsideration, ¶ 30.

Dated: May 2, 2012

Respectfully submitted on behalf of Cox and
Charter, pursuant to Rule 1.8(d),
/s

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