From: Robert Macklin <rmacklin@telx.com>
Sent: Tuesday, July 13, 2010 10:15 AM
To: secretary <secretary@CFTC.gov>
Cc: colocation <colocation@CFTC.gov>
Subject: Comment Letter of Mr. Eric Shepcaro on Rulemaking Release on Colocation/Proximity Hosting Services, File No. 10-006
Attach: Comment Letter to CFTC - Telx.doc

Please accept for comment the attached comment letter of Mr. Eric Shepcaro on the rulemaking release on Colocation/Proximity Hosting Services, File No. 10-006.

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THE INTERCONNECTION COMPANY

July 12, 2010

Mr. David A. Stawick
Secretary to the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Proposed Rules 17 CFR Parts 36, 37, and 38 Co-location/Proximity Hosting Services.

Dear Mr. Stawick:

The Telx Group, Inc. ("Telx"), welcomes the opportunity to submit this letter in response to Commodity Futures Trading Commission's (the "Commission") request for comments on the Commission's proposed rules 17 CFR Parts 36, 37, and 38.

ABOUT TELX

Telx is one of the world's leading network-neutral colocation and interconnection companies. We offer our customers secure facilities to colocate their valuable communications equipment and provide cost-effective and reliable access to over 800 telecommunications carriers, ISPs, content providers and enterprises. While we do serve customers in the financial services industry, most of our customers come from other industries and market segments. We offer all of our customers a place to reliably run their operations and securely exchange critical information, and our customers benefit from increased operational reliability and physical security, as well as a choice of networks and competitive pricing to connect to those networks. Our customers can directly connect to numerous network service providers and other business partners within the same building via interconnections, which greatly increases reliability and transmissions speed while reducing its cost.

SUMMARY

- Regulation of latency reporting and related third-party reporting obligations must be carefully considered to provide a level playing field for third-party colocation suppliers who are otherwise unregulated by the Commission, and must be specifically crafted to avoid adverse unintended consequences. The cost burdens imposed on third-party colocation and interconnection providers of this data collection may in fact price out of the market many of the smaller market participants that the Commission seeks to protect.

- As a network neutral colocation and interconnection provider, Telx strongly supports free and equal access for all market participants. However, since independent colocation and interconnection providers such as Telx serve both financial institutions and non-financial institution customers, companies such as Telx should not be the subject of commission regulatory action.
- Competitive market-based pricing and a healthy third-party marketplace is the best way to ensure that no willing participants are unfairly priced out of the market, or otherwise denied access.

LATENCY AND THIRD-PARTY DATA COLLECTION

Telx competes vigorously with its competitors on providing our customers access to low latency connectivity in the financial market segment as well as other market segments. For instance, the building at 111 8th Avenue, New York, NY is known within the financial industry to offer high-quality, low-latency interconnectivity, and Telx competes heavily with other third-party colocation and interconnection providers for customers in that location. These customers are keenly interested in low-latency connections, and drive business to third-party colocation and interconnection providers who can provide the best service at the best price.

As a preliminary matter, it is important to remember that colocation and interconnection is an infrastructure tool and not a trading practice, and that Telx serves customers from a multiplicity of industries, not just the financial services industry. Therefore, it is not appropriate for regulations intended to regulate market entities to impact Telx as an "innocent bystander." Telx facilities should not be considered facilities of an exchange or trading center, lest all of Telx's non-regulated financial customers be negatively impacted by regulations intended for other industries.

As such, we question the need for a formal, regulated, system of latency disclosure, especially considering that there are no generally accepted standards for calculating and disclosing latency. Latency is comprised of a number of different elements, from the physical aspects of the infrastructure to the speed of the computing devices utilizing the connection. Moreover, latency must be measured between two specific points – but what two points should be used? Telx does not provide an integrated computing solution for its customer, it merely offers them the chance to colocate their equipment and interconnect it to other customers with physical cabling (generally CAT5 or fiber optic cable). Telx does not price different levels of latency differently. Indeed, Telx cannot even sell its customers differing levels of latency; Telx treats all interconnections within a facility in the same manner. Considering that a signal moves through a specific piece of cable at the speed of light, the latency advantage that a customer with a shorter piece of physical cabling may experience compared to a customer in the same facility with a slightly longer cable is de minimis compared to the latency differential that such customers will experience from their own communications and computer equipment, which Telx has no control over.

Since Telx is a network neutral provider that simply colocates whatever communications equipment that its customers install and does not monitor traffic on the installed interconnections, regulations that would cause Telx to collect or disclose latency data would be burdensome at best, and misleading at worst. In fact, it may be impossible for Telx to actually comply with regulations requiring the collection of certain kinds of latency data. At the very least, Telx would have to design and implement new infrastructure in its facilities to collect this data, since Telx currently does not control or even view the data traffic running over interconnections in its facilities.

If the Commission decides to require the collection and disclosure of latency data, this extra burden would make our operations unduly burdensome and increase our cost structure, therefore increasing our prices for all customers, including our financial customers. A broad increase in prices charged by colocation and interconnection providers would undoubtedly impact smaller and lesser capitalized market-participants to a greater extent than larger participants, potentially pricing them out of the market. In addition to working against the Commission's stated goal of access for all willing market participants, such price increases would also materially harm Telx's customers in other industries, since any data collection scheme would almost have to be implemented for all customers, since Telx provides uniform and standardized services to all its customers. Small customers would undoubtedly not be able to afford the capital requirements to build their own colocation facility (of any size), and would be blocked from utilizing the colocation and interconnection products and services that they are currently using.

This kind of collection and reporting requirement is unduly burdensome for third-party providers like Telx, and we urge you not to adopt regulations requiring such collection.

EQUAL ACCESS AND FEE PROVISIONS

Telx provides equal access to its products and services for all customers in its facilities, and believes that all regulated market entities (such as DCMs, DTEFs, ECMs and SPDCs) should do the same. In addition to being a network-neutral interconnection provider (without preference for any network provider), Telx has no arrangement with any customer to prohibit or restrict any potential customer from purchasing Telx's products and services on market-based terms and prices.

Participants in electronic trading can access multiple trading venues within a single Telx facility without discrimination or limitation by size, perceived importance or volume of trading. Smaller trading firms have the same access to Telx and other third-party colocation facilities that their larger counterparts do. We cannot say whether all exchange-controlled or sponsored data centers offer comparable access to all market participants; however it is vital that they do so to maintain a vibrant marketplace. The colocation and interconnection industry is highly competitive and its customers are very demanding. This combination ensures Telx must provide high quality, highly secure, competitively-priced servicing to all market participants.

In the case of the colocation and interconnection products and services provided by Telx and its competitors (that are not themselves exchanges or trading markets), we believe that fees are quite modest and do not create a barrier for smaller firms. The exceedingly intense competition for customers among these companies ensures low fees and high quality service. Moreover, as a network-neutral provider, we license colocation space to large and small customers in all industries; customers can purchase as little as five square feet of cabinet space to as much as thousands of square feet of floor space. In addition, customers can interconnect with any other customer in our facility for a low monthly fee, providing an opportunity for operational cost savings for customers of all sizes. Essentially, we build and maintain infrastructure more cost-effectively than customers can on their own, and offer this infrastructure at modest prices for use by customers of all industries, who in turn are able to make low-latency access broadly available to their own customers. Thus, Telx and its colocation and interconnection competitors are a critical component of a competitive and well-functioning marketplace.

The colocation and interconnection facilities of Telx and its competitors must therefore be free to serve as a strong competitor for the securities exchanges' own colocation services. Unduly burdening Telx and its third-party colocation competitors would bring substantial harm to the marketplace, and eliminate the check on monopoly power that exchange-run data centers would otherwise enjoy. Colocation and interconnection offered by third-parties on a competitive basis is the best way to ensure a lively marketplace.

CONCLUSION

In short, a free and competitive marketplace for colocation and interconnection is the best way to ensure well-functioning equity markets. Burdening Telx and its competitors with additional regulations (whether related to latency data-collection or otherwise) would only serve to harm the already competitive colocation and interconnection market, and increase prices on our customers outside the financial industry. We urge the Commission to carefully craft any regulations to avoid unintended and unnecessary impacts on Telx, other third-party colocation and interconnection providers, and most importantly, our customers.

Thank you again for the opportunity to submit these comments. If any member of the Commission or its staff has any questions concerning our comments, please feel free to contact me at 212-480-3300.

Respectfully Submitted,

/s/ Eric Shepcaro

Eric Shepcaro
Chief Executive Officer