

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT)	
OF ORBITCOM, INC. AGAINST MCI)	TC08-135
COMMUNICATIONS SERVICES, INC.)	
D/B/A VERIZON BUSINESS SERVICES)	ANSWER TO
AND TELECONNECT LONG DISTANCE)	AMENDED COMPLAINT
SERVICES & SYSTEMS COMPANY D/B/A)	AND COUNTERCLAIM
TELECOM*USA FOR UNPAID ACCESS)	
CHARGES)	

MCI Communications Services, Inc. d/b/a Verizon Business Services (“MCI”)and Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA (“Teleconnect”) (and collectively referred to herein as “Verizon”), by and through their undersigned counsel of record, and pursuant to A.R.S.D. 20:10:01:09, hereby file their answer to the above-referenced Amended Complaint filed by OrbitCom, Inc. (“OrbitCom”) on June 17, 2009.

**ANSWER TO MATERIAL ALLEGATIONS
IN THE AMENDED COMPLAINT**

Paragraph 1. No response is necessary to the statements that OrbitCom is bringing this action and filing its complaint. Verizon denies that it has failed to pay OrbitCom amounts properly invoiced for the provision of intrastate telephone access services in South Dakota. Verizon asserts that Orbitcom has inaccurately and improperly classified certain interstate calls as intrastate calls, and has failed to bill Verizon the correct rates for those calls. Therefore, Verizon denies that OrbitCom has properly charged Verizon pursuant to its state tariff for the provisioning of telephone access services.

Paragraph 2. Verizon has no knowledge or sufficient information to form a belief as to the truth of allegations about OrbitCom's legal status or business contained in this paragraph, and therefore denies same. No response is necessary to the statement about OrbitCom's contact information.

Paragraph 3. Verizon admits the allegations in this paragraph.

Paragraph 4. Verizon has no knowledge or sufficient information to form a belief as to the truth of allegations about OrbitCom's business contained in this paragraph, and therefore denies same.

Paragraph 5. Verizon admits that the Commission's records reflect that VP Telecom, Inc. filed a tariff with the Commission for switched access services that contained rates, terms and conditions. Verizon admits that the Commission' records reflect that the tariff became effective on October 28, 2002. That tariff has subsequently been amended.

Paragraph 6. Verizon admits that MCI Communications Services, Inc. d/b/a Verizon Business Services and Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA are interexchange carriers that provide long distance service in South Dakota.

Paragraph 7. Verizon admits that OrbitCom provides originating switched access service to Verizon for certain, but not all, customers who selected Verizon as their interexchange carrier.

Paragraph 8. Verizon admits that OrbitCom has sent it bills, however, Verizon denies that OrbitCom billed Verizon in accordance with the applicable rates set forth in its tariff. Verizon asserts that to the extent OrbitCom purports to provide service pursuant to Tariff No. 1 of VP Telecom, Inc., it has failed to comply with the provisions of that tariff that govern the

manner in which the jurisdiction of switched access traffic is to be determined, and therefore is not entitled to any relief.

Paragraph 9. Verizon admits that in February 2008, it began disputing bills issued to it by OrbitCom, and requested that OrbitCom issue credits for amounts that OrbitCom had improperly billed Verizon. Verizon denies the allegation that it ceased making all payments until those disputes could be resolved and the appropriate credits were issued. Verizon asserts that since February 2008, it has issued 7 checks to OrbitCom, totaling more than \$214,000 for traffic that OrbitCom billed at intrastate switched access rates in South Dakota. Verizon asserts further that OrbitCom has inaccurately and improperly classified interstate switched access traffic as intrastate traffic, and has not billed the correct rates for such calls. Verizon also asserts that this Commission lacks the jurisdiction to require payment for such interstate traffic. To the extent that OrbitCom's billing statements include charges for interstate service and the Amended Complaint seeks payment for such charges, Verizon asserts that this Commission lacks the jurisdiction to address those allegations. Verizon has no knowledge or sufficient information to form a belief as to the truth of allegations about the calculation of amounts shown on Exhibit 1 to the Amended Complaint, and therefore denies those allegations. Verizon denies that it owes OrbitCom the amounts shown on the invoices included in Exhibit 1 to the Amended Complaint, and denies that any interest, fees or penalties are owed. Verizon denies the remaining allegations of this paragraph.

Paragraph 10. Verizon denies the allegations of this paragraph. To the extent the billing statements include charges for interstate calls that OrbitCom inaccurately and improperly classified as intrastate calls and billed at intrastate rates, Verizon asserts that this Commission

lacks the jurisdiction to require payment of such amounts. Verizon asserts that it has made numerous requests to OrbitCom that it provide Verizon with appropriate documentation to support the validity of its intrastate switched access charges, and that OrbitCom has refused and failed to do so. Verizon denies that it owes OrbitCom the amounts shown on the invoices included in Exhibit 1 to the Amended Complaint, and denies that any interest, fees or penalties are owed.

Paragraph 11. Verizon denies the allegations in this paragraph. To the extent the billing statements include charges for interstate calls that OrbitCom inaccurately and improperly classified as intrastate calls and billed at intrastate rates, Verizon asserts that this Commission lacks the jurisdiction to require payment of such amounts. To the extent this paragraph sets forth a legal conclusion, no response is necessary.

Paragraph 12. Verizon incorporates by reference its answers to paragraphs 1 through 11 of the Amended Complaint.

Paragraph 13. To the extent this paragraph sets forth a legal conclusion, no response is necessary. Verizon denies the remaining allegations in this paragraph.

Paragraph 14. Verizon denies the allegations in this paragraph, for the reasons set forth in paragraph 9 above.

Paragraph 15. To the extent this paragraph sets forth a legal conclusion, no response is necessary. Verizon denies the remaining allegations in this paragraph.

Paragraph 16. Verizon incorporates by reference its answers to paragraphs 1 through 15 of the Amended Complaint.

Paragraph 17. Verizon admits that OrbitCom provided access services and that Verizon collects fees from its customers for providing long distance service. To the extent the allegation addresses payment for interstate calls that OrbitCom inaccurately and improperly classified as intrastate calls and billed at intrastate rates, Verizon asserts that this Commission lacks the jurisdiction to require payment of such amounts. Verizon asserts that OrbitCom has not honored Verizon's requests that OrbitCom provide it with appropriate documentation to support the validity and accuracy of its intrastate switched access charges. Verizon denies the remaining allegations in this paragraph.

Paragraph 18. To the extent this paragraph sets forth a legal conclusion, no response is necessary. Verizon denies the remaining allegations in this paragraph.

Paragraph 19. To the extent this paragraph sets forth a legal conclusion, no response is necessary. Verizon has no knowledge or sufficient information to form a belief as to the truth of the allegation that "OrbitCom is entitled to payment from OrbitCom," and therefore denies same. Verizon denies the remaining allegations in this paragraph.

Paragraphs 1 through 4, on page 5: To the extent OrbitCom seeks relief with respect to charges for interstate services and interstate calls that Orbitcom inaccurately and improperly classified as intrastate calls and billed at intrastate rates, Verizon asserts that this Commission lacks the jurisdiction to issue judgment and require the payment of such charges. Verizon denies that OrbitCom is entitled to any of the relief requested.

AFFIRMATIVE DEFENSES
First Affirmative Defense

1. The Amended Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

2. The Commission lacks jurisdiction to adjudicate disputes over charges for interstate telecommunications services.

Third Affirmative Defense

3. OrbitCom has inaccurately classified interstate calls as intrastate calls and improperly assessed intrastate charges on such interstate calls. The Commission lacks jurisdiction to grant any relief with respect to such interstate calls and to require payment for such calls.

Fourth Affirmative Defense

4. To the extent OrbitCom purports to provide service pursuant to Tariff No. 1 of VP Telecom, Inc., Verizon alleges, on information and belief, that OrbitCom has not obtained the necessary authorization to do so.

Fifth Affirmative Defense

5. To the extent OrbitCom purports to provide service pursuant to Tariff No. 1 of VP Telecom, Inc., it has failed to comply with the provisions of that tariff.

Sixth Affirmative Defense

6. To the extent OrbitCom purports to provide service pursuant to Tariff No. 1 of VP Telecom, Inc., it has failed to comply with the provisions of that tariff that govern the manner in which the jurisdiction of switched access traffic is to be determined, and therefore is not entitled to any relief.

Seventh Affirmative Defense

7. OrbitCom is not entitled to any relief because it failed to evaluate call detail available from the local exchange carrier switches used to provide switched access service to determine the jurisdiction of originating and terminating access minutes of use and to render bills consistent with that call detail.

Eighth Affirmative Defense

8. OrbitCom is not entitled to any relief because it has improperly failed to accurately apply appropriate Percent Interstate Usage (“PIU”) factors to switched access traffic for which it has billed Verizon.

Ninth Affirmative Defense

9. OrbitCom is not entitled to any relief because it has failed to provide appropriate documentation to validate the jurisdiction of traffic for which it has submitted invoices to Verizon.

Tenth Affirmative Defense

10. OrbitCom is not entitled to any relief because it failed to investigate the merits of Verizon’s billing disputes and to resolve them in good faith.

Eleventh Affirmative Defense

11. Since February 2008, Verizon has paid OrbitCom more than \$214,000 in charges that OrbitCom’s invoices stated were for intrastate switched access service in South Dakota, and thus, OrbitCom is not entitled to recover the amounts shown in Exhibit 1 to the Amended Complaint in this proceeding.

Twelfth Affirmative Defense

12. OrbitCom's claims are barred in whole or in part by waiver, estoppel and/or unclean hands.

Thirteenth Affirmative Defense

13. The Commission is not authorized to award attorneys' fees and expenses or other costs in a complaint proceeding.

Fourteenth Affirmative Defense

14. The Commission is not authorized to award interest in a complaint proceeding.

Fifteenth Affirmative Defense

15. The Commission is not authorized to award penalties in a complaint proceeding.

VERIZON'S COUNTER-CLAIM

1. During the period July 12, 2007 through June 12, 2009, OrbitCom failed to properly determine the jurisdiction of certain switched access calls for which it billed Verizon.

2. During the period July 12, 2007 through June 12, 2009, OrbitCom did not bill the correct jurisdictional rates for certain calls included in the invoices it issued to Verizon in South Dakota. The bills that OrbitCom issued to Verizon during that period are not accurate.

3. OrbitCom failed to bill Verizon in accordance with the provisions of the intrastate switched access services tariff of VP Telecom, Inc., Tariff No. 1, in South Dakota, in particular Section 3.4, entitled "Jurisdictional Reporting."

4. On several occasions, Verizon requested OrbitCom to provide call detail records to support its bills and to enable Verizon to determine whether OrbitCom accurately billed traffic based on the correct jurisdiction. Orbitcom has refused and continues to refuse to provide such

information, and has failed to provide Verizon with any call detail records to demonstrate the validity and accuracy of its bills for intrastate switched access service in South Dakota.

5. During the period July 12, 2007 through June 12, 2009, OrbitCom improperly billed Verizon for certain switched access calls in South Dakota and Verizon has paid OrbitCom amounts in excess of that which OrbitCom is legally entitled to collect.

6. Verizon has disputed OrbitCom's bills for intrastate switched access service in South Dakota beginning with invoices issued on July 12, 2007 through June 12, 2009. OrbitCom has denied Verizon's billing disputes, but has failed to provide any reasonable justification or explanation for its denials.

7. OrbitCom has improperly retained the amounts Verizon has overpaid, and OrbitCom has refused to refund or credit the amounts that Verizon has overpaid it for switched access charges in South Dakota.


8. Through July 2007 through June 2009, Verizon Business has disputed \$749,716.68 in charges invoiced to Verizon Business by OrbitCom. Verizon Business has demanded a refund for the disputed amounts paid and has refused to pay \$552,452.71 of OrbitCom's invoiced charges as a result of its dispute with OrbitCom over the disputed traffic. Taking into account the amounts that Verizon Business has refused to pay through June 2009, OrbitCom owes Verizon Business \$197,263.97 it has improperly billed.

WHEREFORE, Verizon requests judgment against Plaintiff (1) for amounts that OrbitCom has improperly collected, withheld, refused to refund and/or credit to Verizon's account; (2) that Orbitcom take nothing by its Amended Complaint and that the Amended

Complaint therefore be dismissed; and (3) for such other and further relief as this Commission deems just and reasonable.

Dated this 7th day of July, 2009.

MAY, ADAM, GERDES & THOMPSON

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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 7th day of July, 2009, he filed electronically and served by e-mail thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following:

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

David A. Gerdes