

# EXHIBIT 1

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To

Motion to Compel

August 20, 2009

Verizon 047: In an e-mail message from Penny Petersen, an OrbitCom employee, to Jaque Moore of Verizon, dated June 16, 2009, Ms. Petersen stated "We are billing jurisdictionally."

- a. Please explain what "billing jurisdictionally" means. Identify all facts that support your explanation.
- b. What information does OrbitCom use to bill jurisdictionally?
- c. When did OrbitCom begin billing Verizon jurisdictionally?
- d. When did OrbitCom begin billing other interexchange carriers jurisdictionally?
- e. When OrbitCom began billing Verizon jurisdictionally, what monthly usage period did its bills cover?
- f. Did OrbitCom bill jurisdictionally during the period February 2008 through March 2009?
- g. Prior to the time OrbitCom began billing jurisdictionally, explain the process that OrbitCom used to determine the jurisdiction of switched access calls and to apply the correct jurisdictional rate (i.e., either interstate or intrastate) for the calls.

**RESPONSE:**

- (a) **OrbitCom uses the actual call data supplied by its switching company to determine the jurisdiction of the call.**
- (b) **The call data (EMI records) supplied by the switching company.**
- (c) **Calls made April 1, 2009 which calls were billed in May, 2009.**
- (d) **OrbitCom has been working for some time to test jurisdictional billing. It is a very labor intensive process to switch a carrier to this type of billing requiring the rebuilding of tables within the billing system and then repeating test billings to insure accuracy. It can take up to a year to convert a carrier. Other than test accounts, Orbitcom began billing the process of billing other carriers jurisdictionally at the same time as Verizon.**
- (e) **April 1 through April 30, 2009.**
- (f) **No.**
- (g) **OrbitCom is in a position where it acts as its own IXC. In addition to selling the customer local phone service, OrbitCom offers packages of long distance services with its contracts. OrbitCom's commercial agreement with Qwest**

requires that OrbitCom choose both the PIC and the LPIC for the customer and enter them into Qwest's system. OrbitCom fulfills its obligations to the customer and to Qwest by contracting for wholesale long distance services from carriers. These services are billed in bulk to OrbitCom who then bills the customer. Under these circumstances, if OrbitCom uses one carrier for the PIC and a different carrier for the LPIC in South Dakota, the carrier used for the LPIC will see very nearly all of the originating traffic from OrbitCom end users as Intrastate, since the state and the LATA are identical with the exception of a few border towns. If Verizon is chosen as the LPIC only, virtually 100% of the originating traffic will be intrastate. For terminating traffic and for originating traffic where a carrier such as Verizon is used for both the PIC and the LPIC, OrbitCom applies a default 32/68 PIU --32 interstate 68 intrastate—to these calls as allowed for in its tariff. It has developed this 32/68 PIU from call patterns and experience.

Verizon 048: For each month that OrbitCom has been billing Verizon jurisdictionally, provide a five-day sample of Call Detail Records or other call detail information that demonstrates that OrbitCom correctly determined the jurisdiction of the calls covered by the invoices and that OrbitCom applied the correct jurisdictional rate (i.e., interstate or intrastate) for all of the calls. This request is limited to Call Detail Records or other call detail associated with switched access traffic that OrbitCom billed Verizon in South Dakota. Provide the information separately for BAN 8080SD0555 and BAN 8080SD0222.

**OBJECTION AND RESPONSE:** OrbitCom objects to this Request to the extent that it is overly broad, unduly burdensome and vague as to that information which it seeks. OrbitCom further objects to this Request to the extent that it seeks to impose a greater obligation on OrbitCom than that required by the applicable administrative rules and rules of civil procedure. The CDR is a virtual record of OrbitCom's customers in SD. Given the fact that Verizon is one of OrbitCom's competitors in SD, OrbitCom does not believe it acceptable to give Verizon a complete listing of its SD customers.

Without waiving these objections, see Response to Request No. 47 above. Currently records do not exist in the format Verizon has requested. OrbitCom is willing to work with Verizon to provide Verizon with existing records that will fulfill its needs while still protecting OrbitCom's customer confidentiality and any legal obligations related thereto.

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# **EXHIBIT**

## **LF - 3**

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**From:** Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]  
**Sent:** Tuesday, February 19, 2008 10:03 AM  
**To:** Penny Petersen  
**Cc:** Moore, Jaque A (Jake); Freet, Leslie L  
**Subject:** RE: Dispute Notification-Orbitcom Interstate Rates

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Penny,

We reject your denial of our interstate rate dispute on several grounds. The statute of limitations for disputing overbilled charges is 2 years, per the Communications Act of 1934. In section 415 of the Act, it states, "(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within two years from the time the cause of action accrues, and not after." The disputed charges fall within this 2 year window and are thus disputable. I have not even been able to find a filed copy of Orbitcom's Switched Access Interstate Tariff. If you have a copy of a filed Interstate tariff or a link, please provide one.

We also dispute Orbitcom setting its aggregate rate to \$0.006 as the ILEC benchmark. Qwest's aggregate for Local Switching, Common Trunk Port, Tandem Transport Facility and Termination, Common Transport MUX, and Tandem Switching only comes to \$0.00557. This does not mean that Orbitcom can fairly charge this rate in all cases. The FCC's Eighth Report and Order mandates that CLEC's may only charge for rating elements that are consistent with the specific service they are providing. For example, if a CLEC is not performing the Tandem Switching function, it may not charge the IXC for that element. As a 100% UNEP provider, Orbitcom is entitled to bill only elements that it actually provides to Verizon Business depending on whether the traffic is direct routed, tandem routed or routed through a remote end office.

We are amending our initial dispute to reflect this methodology. For the end offices which Orbitcom is billing VZB for, VZB has DEOT's with 86.8% of these end offices. This traffic is direct routed. The remaining 13.2% of billed traffic would be tandem routed, unless routed through a remote end office. We have rerated Orbitcom's billed Local Switching minutes of usage with a weighted aggregate which is determined by whether the traffic is DEOT routed, Tandem Routed or Host/Remote Routed to determine which elements are applicable. All individual elements excluding Local Switching billed prior to the 7/12/07 invoice cycle are disputed at 100% because these elements are included in the weighted aggregate rate. The total amount now disputed is \$283,207.41. Please review the attached dispute and contact me if you have any questions.

Also, when might we expect the CDR's I requested for following BAN's 8080SD0222, 8080SD0555, 915AWD0222 and 915AWD0555 that support the 12/12/07 invoices?

Can you also provide an explanation for the PIU shift that occurred on the 7/07 invoice? We were being billed consistently a PIU of 34% prior to 7/07 and then it dropped to less than 1%. How does Orbitcom calculate PIU?

Respectfully,  
Jaque Moore  
Line Cost  
Verizon Business  
Phone: (918)590-2474  
Fax: (918)590-1996

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# **EXHIBIT**

**LF – 5**

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**From:** Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]  
**Sent:** Tuesday, March 04, 2008 8:36 AM  
**To:** Penny Petersen  
**Subject:** RE: Dispute Notification-Orbitcom Interstate Rates

Penny,

Do you have a status on the CDR's I requested for BAN's 8080SD0222, 8080SD0555, 915AWD0222 and 915AWD0555 that support the 12/12/07 invoices?

Also, could you provide an update our dispute of Orbitcom's Interstate rates?

Thanks,  
**Jaque Moore**  
Line Cost  
Verizon Business  
Phone: (918)590-2474  
Fax: (918)590-1996

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# **EXHIBIT**

**LF - 6**



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**From:** Freet, Leslie L  
**Sent:** Friday, July 11, 2008 10:18 AM  
**To:** 'Penny Petersen'  
**Cc:** Moore, Jaque A (Jake); 'Michael'; 'Brad VanLeur'  
**Subject:** RE: Please Call Orbitcom

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Penny,

As we discussed today, my review of the Orbitcom invoices indicates that in addition to the rate dispute communicated by Jaque Moore requesting that Orbitcom bill the applicable rates for Direct and Tandem routed traffic, there appears to be an issue with the billed PIU. My analysis is preliminary, but the PIU is averaging 5% on the Orbitcom invoices. I would like to review the call detail records to determine if the jurisdiction is billed accurately. Please provide a 3 day sample of call detail records for the 555 & 222 June 2008 invoices.

Thanks,  
Leslie Freet  
Manager Carrier Cost  
Verizon Business  
918-950-6800

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# **EXHIBIT**

## **LF - 7**

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**From:** Freet, Leslie L  
**Sent:** Tuesday, July 15, 2008 1:59 PM  
**To:** 'Penny Petersen'  
**Cc:** Moore, Jaquie A (Jake); Winfield, Ashley  
**Subject:** RE: Please Call Orbitcom

Penny,

Section 3.4 of Orbitcom's Tariff No. 1 for Wyoming states "When the company receives sufficient call detail to determine the Jurisdiction of some or all originating and terminating access minutes (MOU), the company will use that call detail to render the bills for those MOU and will not use PIU factors." It appears that your current process is contradictory to your jurisdictional reporting language in your tariff and the 5% PIU currently billed to Verizon Business. Please provide the call detail record sample requested below. I have previously provided a Verizon Business contact for negotiating a switched access agreement.

Thanks,  
Leslie Freet  
Manager  
Verizon Business  
918-590-6800

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 20th day of August, 2009, upon the following:

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501  
[patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)  
Telephone: 605-773-3201

Ms. Karen Cremer  
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Thomas F. Dixon