

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

TC08-135

**PRE-FILED REBUTTAL
TESTIMONY OF
MICHAEL POWERS**

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ON BEHALF OF ORBITCOM, INC.

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Q. Mr. Powers, have you had a chance to review the testimony filed on behalf of Verizon by Leslie Freet?

A. Yes I have.

Q. Do you have any general observations regarding Ms. Freet's testimony?

A. Yes I do.

Q. What are those observations?

A. First, Ms. Freet addresses several background issues that are completely irrelevant and have no bearing on the issues before the commission. Ms. Freet, for some reason, attempts to resurrect issues that Verizon representatives and even their attorneys have previously concluded were no longer issues. Second, Ms. Freet, who is admittedly not a lawyer, spends many pages of her testimony offering legal conclusions, interpreting rules and statutes and citing hearsay



1 **Q. What do you intend to address with this rebuttal testimony?**

2 A. As an initial matter I would like to put this proceeding in context for the
3 Commission; then I will address Ms. Freet's testimony. First, I will clarify the
4 record with respect to three irrelevant issues which Ms. Freet raises in her
5 testimony. These issues are the CLEC interstate access charge benchmark;
6 OrbitCom's Interstate tariff, and the issue regarding OrbitCom's tandem switching
7 charges. Despite Verizon's purported desire to address only intrastate issues
8 here, Verizon has, for some reason, improperly raised these issues in this forum.
9 While I certainly do not wish to squander the Commission's time, I feel I must
10 respond to Ms. Freet's mischaracterizations of the facts and the governing law. I
11 will be as brief and factual as possible.

12 Second, I will address intrastate issues which are properly before the
13 Commission. Those issues are the PIU (Percentage of Interstate Usage) and its
14 application and the DEOT (Direct End Office Trunks).

15 **Q. How does OrbitCom bill the IXC's for the interstate calls for which it
16 provides facilities to IXC's?**

17 A. In 2000, the FCC issued its mandatory de-tariffing order. CLECs like OrbitCom
18 were limited to charging no more than the local ILEC rate. The local ILEC rate
19 would be referred to as the benchmark rate. CLEC's would eventually have the
20 option but were not required to file tariffs to clarify non-rate issues, but could not
21 include a rate higher than the competing ILEC. The FCC confirmed this in the
22 Sprint Communications Company, Inc. v. MGC Communications, Inc. (Docket
23 EB-00-MG-002 FCC 00-206 2000, (MP2-01). In the Sprint case, the FCC

1 confirmed CLECs were not required to file interstate tariffs with the FCC if they
2 charged the benchmark rate or lower. As recently as today I checked the FCC
3 website and this holding is still accurate. (MP2-02). This Exhibit also references
4 the mandatory de-tariffing order on page 2. OrbitCom uses either the benchmark
5 rate for interstate access or a lower composite rate. OrbitCom has found that
6 many carriers prefer the composite rate as it is easier to understand and the
7 actual Qwest rate contains a mileage factor which in SD can add up quickly.

8 **Q. Was Verizon billed the ILEC tariffed rate for SD interstate access?**

9 A. Yes, up until March 2008 we billed the tariffed rate. Then we began billing the
10 composite rate set forth in our tariff to Verizon in March of 2008. In this case, it
11 was in response to Jaque Moore's inability to understand how the mileage factor
12 applies in the ILEC tariff, which we were mirroring. He has stubbornly clung to
13 the assertion that the benchmark ILEC rate totals .005557. (MP2-03) It was not
14 until March of 2009 when Verizon (through Attorney Richard Severy) finally
15 admitted Mr. Moore's error during a conference call. This rate was applied to
16 spreadsheets filed by Verizon with OrbitCom on Feb. 18, 2008; May 8, 2008;
17 Sept. 12, 2008; and April 7, 2009. Note the rate was still being used even after
18 Mr. Severy and Mr. Moore admitted it was incorrect.

19
20 I have attached a chart to show the actual ILEC (Qwest rate) in South Dakota.
21 (MP2-04.0). What Mr. Moore could not or would not understand is that the
22 tandem transport charge is per mile. So there is not one benchmark rate, the
23 rate changes with every mile the originating Central Office is from the tandem.

1 The rate elements I used are identical to the ones in Mr. Moore's document,
2 except the tandem transport element must be multiplied by the mileage.
3 I then created a chart of all the central offices in South Dakota and their
4 distances from the respective tandems and calculated the ILEC "benchmark" for
5 traffic from that central office. (MP2-04.1).

6 To verify that my application of the ILEC tariff was correct, I examined carrier
7 access bills from Qwest the ILEC. I am attaching one such bill and it matches
8 the application of the tariff as I have described. (MP2-04.2). It is for Madison,
9 SD, which is 37 miles from the Tandem according to the bill. The rate of
10 (0.006169) matches both of the charts.

11 To the best of my knowledge, Qwest still controls over 50% of all the access lines
12 in its territory. The access bills from Qwest to Verizon must run into the
13 hundreds of millions of minutes each month. If Ms Freet's group does not audit
14 them, they surely must have access to them? Why does Jaque Moore not know
15 what the ILEC benchmark really is as applied? How hard could it be to verify the
16 ILEC rate by looking at the bills from the ILEC itself? Given these fundamental
17 gaps in knowledge it seems to me that Verizon and its agents are either grossly
18 misinformed, or are not acting in good faith, or both. If Verizon does not agree
19 with my explanation of "the benchmark" I invite them to bring some of those
20 many access bills from Qwest to the hearing and show everyone differently.

21 **Q. Were there discussions of using the actual benchmark verses the**
22 **composite rate?**

1 A. Yes, I informed Verizon through its Attorney Richard Severy that we would bill
2 either the composite rate for interstate access or the actual Qwest rate with the
3 mileage factor—his choice. I did warn him that the actual ILEC rate would be
4 higher. Either one and we would re-rate any calls if necessary. He changed the
5 subject at that point, and as you can see, Verizon is still disputing the interstate
6 rate billed by Orbitcom. Apparently they did not want to resolve that issue.

7 **Q. Was your offer of settlement on the ILEC benchmark rate ever accepted?**

8 A. No. Apparently Verizon wants to pay neither the flat rate nor the ILEC rate like
9 everyone else.

10 **Q. Ms. Feet testified that Verizon had a “difficult” time finding OrbitCom’s**
11 **South Dakota switched access tariff. How do respond?**

12 A. I find it very difficult to believe that Verizon, a Fortune 20 company with billions of
13 dollars in annual profits, and hundreds of regulatory staff could not obtain
14 OrbitCom’s intrastate tariff. I would like to give a little background information
15 about OrbitCom and how we are structured. OrbitCom is a small company
16 relative to Verizon. We had no regulatory experts on staff in 2008. When we
17 began operating as a UNE-P provider in 2002, we hired a consulting firm to write
18 our tariffs. After receiving approval of the tariffs, we gave them to our billing
19 company, another outside contractor to implement the rates and charges in the
20 billing system. Ms. Freet makes a lot of noise in her testimony about trying to get
21 information from Orbitcom about both tariffs and billing records. She and Verizon
22 seemed to make demands for information that we are under no obligation to

1 provide and does not and did not exist in the form they wanted it, but they wanted
2 us to create it for them.

3 Ms. Freet states on page one of her testimony that she is the “group manager” of
4 the Tulsa Carrier Cost department. As her title would indicate, she apparently
5 has command over a “group” of an unspecified number of individuals involved in
6 tariff and billing issues. As I indicated above, OrbitCom does not have on staff a
7 “group manager”, a “group” or even an individual dedicated to these issues.

8 Penny Petersen’s job responsibilities are primarily managing OrbitCom’s
9 information technologies and management information systems, so she ends up
10 with carrier access billing questions because part of her job was to interact with
11 the billing company we were using at the time. Ms. Peterson had a strong IT
12 background but no telecom experience when she joined OrbitCom in 2004. Brad
13 VanLear and I focus on the core issues of any small business including sales,
14 operations, finance and administration. Nevertheless, it is OrbitCom’s
15 responsibility to deal with billing and tariff issues properly, and we have done so.
16 In response to Ms. Freet’s staff’s request for OrbitCom’s tariff we directed both
17 Jaque Moore and Ms. Freet to the state Commission’s offices and web sites. We
18 have found this to be the easiest, fastest, and I might add most accurate method
19 of obtaining current tariffs. The South Dakota PUC’s website is exceptionally
20 user friendly. When I went to the State of SD PUC website, it took me 3 clicks
21 and less than 30 seconds to view the OrbitCom tariff. I do not see how this can
22 be evasive in any manner. (MP2-05). The tariff is listed on the PUC website
23 under OrbitCom. The emails from Ms. Freet have always gone to OrbitCom.

1 The bills which Ms Freet claims they audited (and are using as an excuse to
2 withhold payment from OrbitCom) are from: ORBITCOM/FKA VP TELECOM
3 and have said that in big letters on the front page of the bill since our name
4 change in 2003. I was going to include the front page of one of our bills as an
5 exhibit, but I see Ms. Freet already did in not one, but two of her Exhibits, so let
6 me refer to them: LF 4 and LF 24. For Ms Freet to pretend it was such a
7 laborious process to learn of our name change only after beginning their audit
8 and then include not once, but twice, copies of the very bills they are disputing
9 which say "Orbitcom FKA VP Telecom as exhibits again speaks to a lack of
10 honesty. I am going to add another face page from 2006, a year or two before
11 Ms Freet began this process. (MP2-06) It looks the same to me. By the way, the
12 checks written by Verizon are made payable to VP Telecom d/b/a OrbitCom.
13 (MP2-07) The testimony of Ms. Freet regarding the name is simply trying to
14 mislead the Commission on a nonissue, and falsely frame Orbitcom as evasive.

15
16 **Q. Ms. Freet also alleges that Verizon must have access to OrbitCom's**
17 **Customer Detail Record, or "CDRs." How do you respond?**

18 This is another instance where Verizon attempts to muddy the waters; Verizon's
19 demands for various billing information have been both shifting in their nature,
20 and needlessly overbroad. While Ms. Freet has testified that Verizon must have
21 access to OrbitCom's CDRs to verify the accuracy of OrbitCom's billings and that
22 once Verizon was satisfied with the accuracy, it would pay the bills, Ms. Freet
23 should know that CDRs are not necessary. Verizon's own expert, William

1 Munsell, who it used in another dispute, has testified that SS7 signaling
2 information (which Verizon is and always has been in possession of) is more
3 than sufficient to verify billing for access charges. (MP2-08, page 9).
4 Nonetheless, OrbitCom did provide Verizon with CDRs; however, then Verizon
5 threw up another artificial barrier, and protested they were not in the correct
6 format (despite the fact that Verizon never requested any particular "correct"
7 format and despite the fact the data could have been manipulated by Verizon in
8 any way it liked). Verizon then suggested Excel as a format. When OrbitCom
9 offered to provide the records in an Excel format as requested, Verizon changed
10 its request and wanted the actual Daily Usage File (DUF) which contains CPNI
11 and other non-public information on customers and other carriers. Now, Verizon
12 has filed a motion to compel provision of the DUF, which again, Verizon's own
13 expert, Mr. Munsell, could tell this Commission, is not necessary. This is nothing
14 more than a diversionary tactic by Verizon.

15 **Q. Why is what OrbitCom did and provided not evasive?**

16 A. Verizon has thousands of employees. Ms. Freet's testimony tries to show she is
17 knowledgeable in the field of access fees and tariffs and yet she claims they
18 couldn't find the OrbitCom tariffs for months? That does not seem to me to be an
19 honest statement. If they are actually that incompetent, perhaps the SD PUC
20 could arrange a training session for them on how to get tariffs off the website.
21 When OrbitCom offered what was requested, the request always seemed to
22 evolve into another request.

23 **Q. What about the filing of an interstate tariff?**

1 A. Mr. Moore's questions about an interstate tariff were quite baffling to us.
2 Remember, we began as a UNE-P provider in 2002, right when the FCC had
3 ruled that CLEC's were mandatorily de-tariffed and required to bill at the ILEC
4 rate after a step down period. We were certain we were allowed to bill interstate
5 access in accordance with the FCC rules, but were unaware we were even
6 allowed to file an interstate tariff unless it was forbearance of the benchmark rate.
7 Ms Freet was around for the CLEC access reform order in 2000, and had to be
8 aware of the mandatory de-tariffing required by CLECs, as it was and still is a
9 significant issue. Indeed, when Jaque Moore filed the first alleged dispute on
10 February 19, 2008, it was based on the benchmark rate. I am admitting to my
11 ignorance on this matter at the time, but Ms. Freet claims expertise in the
12 opening page of her testimony.

13
14 Are Mr. Moore and Ms. Freet now claiming that they do not know that interstate
15 tariffs are filed with the FCC? That the FCC has a phone number? (1-202-418-
16 1500). That if you call this number they will mail you a copy of a requested tariff
17 (You have to pay for the copying) or tell you there is not one on file?

18 **Q. When did Verizon first dispute billing from Orbitcom?**

19 A. It was on February 14th of 2008, Jaque Moore of Verizon sent Penny Petersen of
20 OrbitCom an email with a spreadsheet attached. (MP2-9).

21 In the email, Mr. Moore states that OrbitCom's Interstate rates are non-compliant
22 etc. He then says "The attached dispute report (MP2-9 pages 2 and 3) provides
23 a dispute breakdown by BAN and billing element. However, as we can see, it

1 contains neither of those breakdowns. What he submitted are 24 months (12 per
2 page) with "USE_Q" and "USE_A" columns with numbers in them and a dispute
3 total. There is no explanation of what rate elements USE_A and USE_Q
4 represent, and we are not aware of any industry language that incorporates
5 those terms.

6 I would like to clarify OrbitCom's attitude toward disputes. We are not rigid about
7 form, just so the substance is understandable. We take seriously all good faith
8 disputes of our bills, and why wouldn't we? Access customers are valuable to us
9 and like any good business, we try to keep our customers happy. If we think any
10 dispute is legitimate, we will try to resolve it quickly and fairly. Unfortunately,
11 Verizon and the other IXCs have a long history of lodging "billing disputes" that
12 are not made in good faith and resorting to self-help refusals to pay legitimate
13 bills in order to drive small companies like OrbitCom out of business. As the
14 FCC noted in the Seventh Report and Order, when the IXCs complained that
15 CLECs were engaged in "regulatory arbitrage," the "IXCs' primary means of
16 exerting pressure on CLEC access rates has been to refuse payment for the
17 CLEC access services." 16 FCC Rcd. at 9932, ¶ 23. The FCC immediately
18 chastised the IXCs for their anarchic resort to self-help: "We see these
19 developments as problematic for a variety of reasons. We are concerned that
20 IXCs appear routinely to be flouting their obligations under the tariff system.
21 Additionally, the IXCs' attempt to bring pressure to bear on CLECs has resulted
22 in litigation both before the Commission and in the courts." Id. Nonetheless, Ms.

1 Freet attempts to defend Verizon's use of self-help against OrbitCom (see Freet
2 Direct Testimony, 24)

3 **Q. Did Verizon properly dispute OrbitCom's invoices?**

4 A. In a word, no. In this industry, there is another kind of dispute, which is a
5 thinly veiled excuse to begin withholding payments legitimately due. For some
6 reason, the offenders in this area are usually the larger customers, particularly
7 the ILEC's who have entered the long distance business. Mr. Moore did not do
8 himself or Verizon any favors in his approach, because this dispute had the smell
9 of the illegitimate kind. From here forward I will use the term invalid to describe a
10 dispute lacking the necessary information to investigate, and illegitimate to
11 describe a false dispute

12 For OrbitCom, or any other company like us, we need to be furnished certain
13 basic information in order to investigate a dispute in accordance with our tariff.
14 Access billing and dispute resolution can seem very complex but we at OrbitCom
15 think we have boiled it down to a simple solution. It is: RATE TIMES MINUTES.
16 So if an IXC will tell us what rate it is disputing, that is, what we billed them
17 versus what they believe to be the correct rate, and how many minutes are
18 involved we are half way there. The other half is that the rates and minutes have
19 to be identified by billing period (we bill by the calendar month so that is not
20 complicated) and the Billing Account Number (BAN). As you can see, Verizon
21 has 43 BANs with OrbitCom. (MP2-10). The bans are created off the Carrier
22 Identification Code (CIC) such as 0555 and 0222. It is necessary to have a
23 different BAN for each CIC code in each state to comply with different tariffs,

1 taxing requirements, jurisdictional authorities, etc. Broken out this way, we can
2 research the rate and the minutes involved, and if resolved in favor of the
3 customer, can properly apply the credits to the right billing period and jurisdiction.
4 Mr. Moore's dispute has only one of these, the twenty four billing periods prior to
5 the filing of his dispute. The fact that he says in his email that his attached
6 dispute report provides a dispute breakdown by BAN and billing element (but it
7 doesn't) tells us he knows what is required for any carrier to investigate a
8 dispute. I guess there is always a chance it will land on someone's desk who is
9 too stupid or too lazy to investigate and will just approve it, but that would not be
10 Ms. Petersen or myself. Ms. Petersen emailed Mr. Moore and told him the
11 interstate rate we are charging knowing that it is within the benchmark. She also
12 cited the dispute time frame specified in our intrastate tariffs since that is all we
13 have and, of course, is all she was familiar with at the time. (MP2-11). Mr.
14 Moore emailed back on Feb 19th (MP2-12 page 1) disagreeing with the time
15 frame of ninety days and our interstate rate of \$.006, stating that the benchmark
16 rate is .00557, insinuating that as a UNE-P provider OrbitCom cannot bill tandem
17 switching, that Verizon has DEOT's with 86.8% of Qwest offices, and raising his
18 dispute amount to include this tandem switching/deot dispute. He has attached a
19 spreadsheet that he calls "the dispute". It has twenty four lines but only 7
20 identified billing periods, and not by BAN and no minutes are listed. We once
21 again have two columns labeled USE Q and USE A which must mean something
22 different this time since before his rate element disputed was the interstate rate,
23 and now it is the tandem DEOT combined together. He also attached a

1 spreadsheet showing the Qwest rate elements for over 50 miles but neglects to
2 multiply the miles times the rate (as required) resulting in an understated
3 benchmark rate. Incidentally, Mr. Moore, who works for Ms Freet, is in the
4 business of verifying bills and must know it is impossible to investigate a dispute
5 when two elements are mixed together, combined with the other shortcomings in
6 his information provided, but that is apparently the whole idea. Mr. Moore also
7 asks some questions that, contrary to Ms Freet's testimony, Ms. Petersen
8 answers the next day. This sets up the next move for Verizon, since their
9 disputes are illegitimate (and invalid) –remember the difference- their only hope
10 is bullying, which was plan B all along-remember, we have seen this movie a
11 couple of times and know what is coming next. Verizon stops paying any access
12 bills regardless of jurisdiction. This is wrong because the Filed Rate Doctrine
13 and many a Federal Court¹ has ruled self-help to be improper. For a good
14 explanation of the Filed Rate Doctrine and its application, I attach to my
15 testimony a copy of the findings of the Minnesota PUC "In the Matter of the
16 Complaint of PrairieWave Telecommunications, Inc. against AT&T
17 Communications of the Midwest. (MP2-13).

18 **Q. Verizon claims that OrbitCom cannot charge for tandem switching. Do you**
19 **agree with that statement?**

20 **A. No, I do not. Neither does the FCC.**

¹ See e.g., MGC Comms v. AT&T Corp., 14 FCC Rcd 11647, 11659 (1999) (concluding that withholding access fees under tariff "amounts to impermissible self-help and a violation of" 47 U.S.C. § 201(b)); Communique Telecomms., Inc., Declaratory Ruling & Order, 10 FCC Rcd 10399, 10405 (1995) (holding that "Customers who claim that tariff rates are unreasonable may file complaints with the Commission under Section 208 of the Communications Act, but may not automatically withhold payments of legally tariffed charges merely by asserting that the rates are unreasonable.").

1 **Q. What support do you have for that statement?**

2 A. In the Eighth Report and Order dated May 18, 2004 (MP2-14) the FCC stated
3 that "a competitive LEC that provides access to its own end users is providing the
4 functional equivalent of the services associated with the rate elements listed in
5 section 61.26(a)(3) and therefore is entitled to the full benchmark rate."
6 (Paragraph 15) I have attached only the first 11 pages of that Order in order to
7 not make this record any more voluminous. In OrbitCom's case, it can only
8 provide access to its own end users. It is not trying to charge 2 tandem switching
9 charges like that in the FCC Cox case. I discussed our scenario with Victoria
10 Goldberg, an attorney at the FCC. She told me that OrbitCom was entitled to
11 charge, and more importantly, to be paid for the full benchmark rate with all
12 elements as it was providing the functional equivalent of that service. Ms.
13 Goldberg also stated that in a collection action the Judge or PUC could write to
14 the FCC for written confirmation of this fact.

15 **Q. Isn't it true that OrbitCom does not own the facilities that it uses?**

16 A. Not really. As is common in the telecommunications industry, we lease facilities;
17 no carrier in this country that I am aware of owns all of the facilities it uses to
18 provide service. Ownership is nothing more or nothing less than a bundle of
19 rights. OrbitCom leases the local loops and a portion of the switch from Qwest.
20 It pays Qwest for switching. In return, Qwest agrees that it will not charge the
21 IXC and that the CLEC (in this case OrbitCom) has the right to charge for that
22 function. I am including two pages from our QLSP agreement with Qwest (MP2-
23 15) that define the switching elements leased which include tandem and access

1 tandem switching. The first paragraph of the first page states that capitalized
2 terms have the definitions assigned to them in the Agreement. Paragraph 1.1.1
3 provides in part “QLSP Services consist of local switching (including the basic
4 switching function, the port, plus the features, functions, and capabilities of the
5 Switch, including all compatible and available vertical features[.]” Please note
6 the word Switch is capitalized and defined on page 11 where the definition states
7 in part “Switch includes but is not limited to End Office Switches, Tandem
8 Switches, Access Tandem Switches...” (MP2-15). It is interesting to note that
9 Verizon not only participated in, but lead the groups that negotiated the terms of
10 the precursor to the QLSP agreement, the QPP, with Qwest when they were still
11 MCI. The QPP contains almost all of the same terms as the QLSP. OrbitCom
12 participated in those negotiations. Verizon should know that Qwest transferred
13 the switching and charge rights to the CLECs in both agreements.

14 **Q. Do you know of any other CLEC’s that charge for tandem switching in SD?**

15 **A.** I don’t know if they charge it as I haven’t seen copies of their bills but I know that
16 Ms. Freet on page 12 of her testimony states that “Verizon’s Business’s own
17 CLEC, MCI Metro Access Transmission Services, LLC is also a UNE-P provider
18 and customer of Qwest. (A UNE-P provider is similar to OrbitCom, leasing all
19 switching functions from Qwest.) I looked to see if they have a tariff filed in South
20 Dakota, and they do. Incidentally, I found this tariff on the SD PUC website in 3
21 clicks and it took me less than 15 seconds to find. I’m getting faster. Perhaps I
22 could teach that seminar for Verizon. (MP2-16)

23

1 Anyone reading this who hasn't figured out by now what I found in Verizon's SD
2 tariff may want to get some coffee. Surprise, Surprise, Surprise- 5.2.3.1.2 states
3 that "When the end office switch serving the end user customer is leased on a
4 UNE-P basis by the company from the ILEC serving the area, Tandem Connect
5 will be provided and billed entirely by MCI. When I look for the pricing, I find a
6 composite rate in 6.4.4.2 of \$.059954. WOW! That is 46/10000th of a cent per
7 minute off of OrbitCom's rate to Verizon. All of the tandem elements included in
8 the rate are in the footnotes at the bottom of the page. So Verizon's own CLEC,
9 when providing service on a UNE-P basis, is charging for all the elements of
10 tandem switching and Ms. Freet is stating to this commission that OrbitCom
11 cannot.

12 Incidentally, this tariff was filed June 6, 2008. That is four months AFTER
13 Verizon began withholding payments from Orbitcom partly based on a claim that
14 OrbitCom cannot bill for tandem switching.

15 **Q. How would you explain how OrbitCom can charge for use of facilities it
16 does not own?**

17 **A.** For all practical purposes, a lease of equipment is an ownership interest so the
18 question is a misstatement. OrbitCom has an ownership interest in the local and
19 tandem switch. It is the same interest that it has in the local loop. IXCs such as
20 Verizon have never challenged payment of fees for use of the local switch or for
21 the local loop. Since the ownership interest in the tandem switch is identical,
22 how can they say they do not have to pay for use of that tandem switch?

1 **Q. I would now like to turn to the “Real” issues in this matter, the first being**
2 **the Percentage of Interstate Use or PIU. How does OrbitCom determine the**
3 **PIU it uses to jurisdictionalize the IXC traffic?**

4 A. OrbitCom follows its SD tariff. The tariff in Section 3.4 provides 3 alternate
5 methods for determining the PIU (MP2-17). The first would be actual call data.
6 This would come from jurisdictional billing. OrbitCom began using this in April of
7 2009. The second method allowed by the tariff is to use a PIU developed by the
8 company, in this case OrbitCom. This is the method OrbitCom used with Verizon
9 and others prior to April 2009. The third method is to use a PIU provided by the
10 customer. OrbitCom uses this method with carriers who have provided a PIU
11 that Orbitcom can agree with and are realistic.

12 **Q. You testified that these 3 methods are alternatives. Who chooses which**
13 **alternative method to use?**

14 A. The company, that is, OrbitCom applies its own tariff.

15 **Q. When OrbitCom used alternative two, that is using a PIU that it developed,**
16 **how did OrbitCom develop its PIU?**

17 A. My partner Brad VanLeur and I have been in the telecommunications business in
18 South Dakota for 30+ years. Most of those years were spent operating long
19 distance only companies. We know our customer base in South Dakota. It is
20 primarily in small towns and consists of small town businesses. Brad and I each
21 grew up in one of those small towns in South Dakota and have been to nearly all
22 of them several times. As statewide elected officials, I’m sure the
23 Commissioners have been as well. OrbitCom has very few residential

1 customers. Those small town businesses have 2-3 lines. Even in the larger
2 population area such as Sioux Falls our average customer has three lines. They
3 mostly call within the state to other small towns. They are closed on weekends.
4 Our weekend traffic is only 10% of our weekday traffic. Based upon our years of
5 experience in reviewing our records and traffic patterns and our customer base,
6 we knew the toll traffic would be largely intrastate so we set the PIU where we
7 thought it would be based on our experience and used a 32/68 PIU with the 68
8 being the percent of intrastate usage and the 32 being the percent of interstate
9 usage. After considerable growth and operating history, I reviewed the bill from
10 our main supplier of long distance services and it confirmed that the traffic
11 pattern was what our experience told us it would be - both for outbound and toll-
12 free. (MP-18).

13 **Q. Why didn't OrbitCom use actual billing information until April of 2009?**

14 **A.** This is a case where OrbitCom's tariff writer got a little ahead of the curve.
15 OrbitCom is a small company and we had no regulatory or tariff expertise on staff
16 until Pat Mastel joined us in February of 2009. We relied on an outside
17 consulting firm to write our tariffs and then would furnish the tariff to our billing
18 company, another outside contractor, to implement the billing. Early in 2007, our
19 tariff consultant contacted us and suggested changing the language of page 21
20 to include billing by jurisdiction, as apparently more and more of the calls were
21 being appropriately identified by the ILEC. OrbitCom followed his suggestion and
22 amended page 21 in March of 2007. However, our billing company was unable
23 to implement this change to our satisfaction. OrbitCom was not able to properly

1 bill jurisdictionally until April of 2009 for March usage. As was explained to
2 Richard Severy, one of Verizon's in-house attorneys, it took a significant amount
3 of money and time to implement jurisdictional billing. OrbitCom spent over
4 \$500,000 on hardware and software to implement this change. It also spent
5 many months testing the system until it was satisfied that the bills that were sent
6 were accurate. After implementing the jurisdictional billing, it was determined
7 that the PIU that OrbitCom had been using for Verizon in South Dakota was
8 accurate, which was no surprise to us. For the minutes Orbitcom billed Verizon
9 for in June of 2009 the PIU was 22.43% for originating minutes and 30.18% for
10 terminating calls. For July of 2009 the PIU was 29.21% for originating and
11 31.86% for terminating. I am attaching a spreadsheet for each month that shows
12 the number of minutes billed out of each C.O. and the totals and calculations.
13 (MP2-19). I am also attaching copies of the actual bills sent to Verizon for these
14 two months so if someone is so inclined they can quickly see that the minutes on
15 the spreadsheet come directly off the bill. (MP2-20 A,20B, 20C, and 20D). I
16 apologize for the volume of paper, but I don't consider spreadsheets prepared
17 internally and submitted without the source documents attached as evidence of
18 anything other than that someone knows how to use Excel.

19 **Q. You testified that one alternative is to use a customer provided PIU. Would**
20 **you explain that for us?**

21 **A.** When a customer provides a valid realistic PIU to use going forward, OrbitCom
22 has the option, but not obligation, to use that PIU for unknown traffic on a going
23 forward basis.

1 **Q. Why do you use the phrase “realistic?”**

2 A. If a customer were to provide information that is so unrealistic that it not usable,
3 OrbitCom has the option under its tariff to use an alternative method. Again, the
4 method of determining the PIU is the decision of the company—OrbitCom, not
5 the Customer.

6 **Q. Is this method of determining a PIU, in your experience, common in the**
7 **industry?**

8 A. Yes, it is common. Verizon’s CLEC chooses the PIU—the default PIU—in their
9 South Dakota tariff when a PIU is not provided in the access request nor filed on
10 a quarterly basis. Incidentally, Verizon’s default PIU is 50 % in South Dakota,
11 and so is Qwest’s. I don’t see how Verizon can stand in front of this Commission
12 and claim that all of the traffic out of South Dakota is 77% interstate, and even
13 claim 91% in one of their documents. If that is what it is, why not be fair and
14 make that the default PIU in its own access filings?

15 **Q. In the present case, did Verizon ever provide a PIU for use by OrbitCom?**

16 A. Yes, they did, but not on a timely basis. Robin Fishbein of Verizon provided
17 OrbitCom with a chart containing PIU factors for several states including SD on
18 August 21, 2008. This chart had every state with a PIU of 90% or more interstate
19 usage. This is extremely unrealistic. Additionally, Verizon wanted this rate going
20 forward and backwards. There is no provision in OrbitCom’s tariff for a PIU filing
21 to be applied retroactively. (MP2-21)

22 I do not like to sound like a broken record, so I will not mention Verizon’s SD tariff
23 states in 2.3.3.1.1 that the PIU “shall not be retroactively adjusted if the customer

1 provides the factor at a later date.” Who are these people who want one set of
2 rules for them and the opposite for everyone else? And why should we let them
3 profit in South Dakota by approving any Alltel transfers? (MP2-16).

4 **Q. Did OrbitCom apply this PIU to the unknown traffic?**

5 A. No, it did not.

6 **Q. Why not?**

7 A. In our experience we knew that 91% (the PIU Verizon provided for SD) was not a
8 real number. OrbitCom personnel requested additional information on how this
9 PIU was calculated. No response was ever received from Verizon to that
10 request. In fact, OrbitCom throughout this period has requested information on
11 how the PIU is calculated by Verizon. Verizon informed OrbitCom during one
12 telephone conference with Mr. Severy that “Verizon uses actual OrbitCom traffic
13 information received from Qwest” to compute the PIU. When OrbitCom
14 requested the name of the person who calculated the PIU, it was always told that
15 this person (a name was never and to date still has not ever been provided) was
16 not available. The PIU requested by Verizon varied from the 91% provided by
17 Mr. Fishbein to 77% provided by Mr. Severy. Because Verizon did not provide
18 backup for this varying PIU, and all the various ones provided were contrary to
19 our knowledge of OrbitCom’s traffic patterns, OrbitCom did not apply it to the
20 unknown traffic. Also regarding this matter, in yet another desperate effort to
21 make OrbitCom look like the bad actor instead of them in Verizon’s little drama, it
22 appears that Verizon has fabricated evidence. On page 42 of her testimony, Ms.
23 Freet says “Mr. Fishbein responded immediately in an email message asking for

1 clarification etc. A printed copy of this email is contained in Exhibit LF-26. I
2 thought it odd that I did not have a copy of this email in my computer files as it
3 lists me as being cc'd on it. I asked Penny Petersen to forward me a copy and
4 she didn't have it either. Neither did Brad VanLeur, also cc'd. This was very
5 odd, as we all try to keep everything in matters such as this.

6 **Q. Did Verizon ever inform OrbitCom of how the PIU was calculated?**

7 A. Yes, in its answers to interrogatories Verizon finally admitted that it uses all
8 Qwest traffic in SD to arrive at its PIU, not just OrbitCom's traffic as it had
9 previously stated.

10 **Q. Is that a realistic method to calculate a PIU?**

11 A. Absolutely not. As I previously testified, OrbitCom's traffic comes from a small
12 town customer base. It does not have any huge call centers like Citibank, First
13 Premier, HSBC, Wells Fargo, Sanford Health or other similar customers. For
14 Verizon to expect OrbitCom to use those call centers traffic to calculate
15 OrbitCom's PIU is totally disingenuous.

16 **Q. Would you consider it to be fair to use such a PIU for one IXC?**

17 A. No, I wouldn't. To use such an inflated and not factually based PIU for any single
18 carrier would not be honest to other carriers that provide genuine and fact based
19 PIUs. It would in effect bypass OrbitCom's tariff by giving one IXC a preferred
20 rate over other carriers and be contrary to the Filed Rate Doctrine

21 **Q. The final issue that you wanted to discuss is that of the Direct End Office**
22 **Trunk ("DEOT") that Verizon has claimed in its answer prevents it from**

1 **being charged the element of tandem switching with any access fees**

2 **OrbitCom charges Verizon. Would you please explain what is a DEOT?**

3 A. A DEOT in this application refers to a specific circuit that carries an IXC's traffic
4 from the local central office switch to the IXC's switch, bypassing the tandem
5 switch. A DEOT is usually ordered by the IXC from the LEC by way of an Access
6 Service Request or ASR. The circuit is built and according to industry practice
7 assigned and given a specific ID number. This circuit ID number is used for
8 troubleshooting and billing, as well as other things. Even your home phone line
9 has a circuit ID number, usually the ten-digit phone number with additional alpha-
10 numeric characters. That circuit will then only be used for the requesting
11 company's traffic. No other company's traffic would be directed through that
12 circuit as it would either be improper by the LEC (charging multiple companies for
13 multiple circuits when only one circuit is used) or improper for the requesting
14 company (paying for only one company's traffic but sending multiple companies
15 traffic via the circuit.)

16 **Q. In this case Verizon claims to have a DEOT to Qwest and thus should not**
17 **be charged for tandem switching. Do you agree with that statement?**

18 A. No, I do not.

19 **Q. Why not?**

20 A. First, a DEOT to Qwest is not a DEOT to OrbitCom. Verizon does not have any
21 DEOT's to OrbitCom as Verizon has not sent any ASRs to OrbitCom to request
22 these circuits or trunks. OrbitCom's agreements with Qwest provide that
23 OrbitCom has leased a portion of the Qwest switch and it (OrbitCom) can provide

1 wholesale carriers with ports to direct these type of circuits. OrbitCom has in its
2 South Dakota tariff the option for IXC's to purchase DEOTS from OrbitCom.
3 Additionally, under its agreements with Qwest, OrbitCom directs how traffic
4 directed to it should be routed not Qwest. Since no ASRs exist, no trunks or
5 circuits exist between Verizon and OrbitCom, and OrbitCom has not—and would
6 not for reasons previously stated—directed Qwest to route OrbitCom's end user
7 LD traffic over someone else's circuits or trunks, the DEOT statement of Verizon
8 is completely without support.

9 Ms. Freet's testimony even challenges OrbitCom's ability to provide DEOTs on a
10 UNE-P basis. Let's see, we negotiated similar agreements in conjunction with
11 MCI-maybe we should refer again to Verizon's South Dakota tariff. I'll bet by now
12 Verizon is wishing I had not found their tariff. No, in fact, I'll bet they were wishing
13 I hadn't found it even before now. There it is! 5.2.3.1.1. DEOTs can be ordered
14 where Verizon is serving the area via UNE-P.

15
16
17 Second, Verizon may be guilty of many things, but making poor business
18 decisions is generally not one of them; they didn't get to be a multi billion dollar,
19 Fortune 20 company that way. Putting direct end office trunks to all of the Qwest
20 end offices in South Dakota does not make business sense due to the expense
21 of the circuits. The typical range is at least 100,000 MOU before a circuit is
22 economically supported. If long distances are involved, that number can go up
23 significantly. It would not make economic sense for Verizon to have DEOTs to

1 Iroquois, De Smet, Elk Point, Arlington, Whitewood, or Hill City to name a few.
2 Traffic volume would never justify the expense. I base my traffic volume
3 statement partially on Ms. Freet's Ex. LF-28. Based upon that and the previous
4 refusal to provide circuit IDs, it is my opinion that Verizon does not have DEOTs
5 to any Qwest C.O.'s in South Dakota except perhaps Sioux Falls, where the
6 traffic volume and short distance between the Qwest CO and Verizon's Point of
7 Presence may result in a cost savings over tandem switching.

8
9 Third, there is some type of arrangement whereby Verizon is routing its OrbitCom
10 originating and/or terminating destined traffic via an improper circuit.

11 **BEGIN CONFIDENTIAL INFORMATION:**

12 After initially denying OrbitCom's data request for circuit I.D.s (alpha-numeric
13 identification codes assigned to virtually all telecom circuits for troubleshooting,
14 record keeping, and billing) Verizon furnished a list (Exhibit MP2 -22) shortly
15 before this response was due. It contains a list of most of the CCLI (local Qwest
16 switch) codes associated with the Qwest served cities in South Dakota.

17 It then contains two columns labeled 555 network and 222 network. Both of the
18 columns are then populated with an alphanumeric code AL plus six digits, except
19 for the CCLI code that indicates the Qwest tandem switch in Sioux Falls. The
20 codes are different for the "555 network" and the "222 network" which would
21 indicate that Verizon has not one specific DEOT circuit to each end office, but
22 two. As I said earlier, the cost of even one circuit cannot be justified in most
23 cases. Qwest offers DEOTs in its access tariff at the analog level, DS-1 (24

1 voice channels also known as T-1), DS-3 (28 T-1s or 672 voice channels), or
2 optical, which usually starts at the OC-3 (3 DS-3's or 2016 voice channels)
3 Further examination shows that many of the codes are repetitive. For example,
4 virtually all of the west river CLLI codes are followed by AL116363 for the "222
5 network" and "AL135723" for the "555 network". Many of the ones for the east
6 river CCLI codes show up more than once.

7 Since DEOT is an acronym for "direct end office trunking" and the industry
8 standard for "DEOTs" in the world of access is a point to point connection
9 between the IXC's switch (in this case Verizon) and the local ILEC's central office
10 (the CLLI) the fact that the number repeats itself indicates it cannot be a DEOT.
11 The columns with the AL numbers in them are labeled "LEC TSC code". As a
12 side note, I am willing to bet the telecom industry has more acronyms than the
13 US government, but this one indicates something interesting. "LEC" we already
14 know means "Local Exchange Carrier" - in this case Qwest. "TSC" is an
15 acronym for "Two-Six Code", which is two alpha characters followed by six
16 numeric ones which we have here, e.g., AL141647. What this means is that this
17 is not a circuit ID.

18 But what then is a Two -Six Code which we have here. It is a ROUTING code
19 used by the LEC, to indicate a trunk group to route the traffic. Since this is the
20 only logical trunk group to route this traffic, and the trunk group shows up in more
21 than one CO, this indicates that the traffic is going onto Qwest's tandem network
22 with every other IXC's traffic and being transported to the tandem switch in Sioux
23 Falls. This is called Tandem Transport. Once it arrives in Sioux Falls the only

1 way to separate the traffic back out is to run it through the tandem switch to be
2 sent to the respective IXC's. This is called Tandem Switching. Orbitcom has the
3 right to bill for Tandem Transport and Tandem Switching.

4 An interesting concluding note is that the only CLLI code on Verizon's furnished
5 exhibit that does not have a two six routing code but what appears to be actual
6 circuit IDs is not a central office at all, it is the CCLI code that indicates the Sioux
7 Falls Tandem switch. This is perfectly normal, since once Qwest's tandem
8 network has brought the traffic from around the east river area to the tandem
9 switch, the switch must now send it to the carriers such as Verizon, and Verizon
10 needs circuits into the tandem switch to receive the traffic. All this works in
11 reverse if the call is coming from Verizon's LD network.

12 From the evidence presented that circuit is either being used improperly or there
13 is some type of "arrangement" between Qwest and Verizon. In either event, it is
14 improper and affects many other carriers. OrbitCom believes the Commission
15 should open a full inquiry into the practice to determine how the practice started
16 and whether fines or sanctions should be levied against the wrongdoers. Verizon
17 and or Qwest are deliberately underpaying competitive LECs such as OrbitCom.
18 This practice simply cannot be allowed to continue. It improperly deprives a LEC
19 of income that is due and allowable under the Communications Act of 1934 as
20 amended.

21
22 Fourth, there is the possibility that the traffic is being properly routed through the
23 tandem. Under that scenario, Verizon must pay the tandem charges.

1

2 **Q. Wouldn't Verizon be correct in stating they would not have to pay tandem**
3 **switching charges if they did have a DEOT to Qwest?**

4 A. No, they would not be correct.

5 **Q. Why?**

6 A. Even if for the sake of argument, Verizon did have a DEOT to every Qwest end
7 office and I do not believe they do, under the FCC's findings in the Eighth Report
8 and Order, OrbitCom is providing the functional equivalent of the tandem switch
9 as it is providing Verizon access to its (OrbitCom's) own (and only its own) end
10 users. Thus, under the Eighth Report and Order previously cited, Verizon must
11 pay OrbitCom all of the rate elements. Additionally, as I previously testified, a
12 DEOT to Qwest is not a DEOT to OrbitCom. Verizon has been welcomed and
13 encouraged to place an ASR with OrbitCom. To date, they have refused to do
14 so.

15 **Q. How would you sum up your testimony here today?**

16 A. I would simply state that this matter will be quickly and equitably settled if all
17 parties will obey the law. If Verizon would have submitted a valid dispute in the
18 beginning, none of this would probably have happened. If Verizon followed the
19 law, they would not use self-help which the courts have rules as improper.
20 Computing amounts owed is a simple mathematical equation, rate X minutes.
21 The rate is in the filed and approved tariff. Verizon has not directly challenged
22 that tariff. The minutes are contained within the bills. The PIU is easily seen on
23 the call records which have been provided to Verizon.

1 **Q. As you prepare this testimony today, does Verizon owe OrbitCom money**
2 **for unpaid access usage?**

3 A. Yes, they do.

4 **Q. How much does Verizon owe for use of OrbitCom's network facilities?**

5 A. As of August 12, 2009, Verizon owes OrbitCom \$649,878.82 for South Dakota
6 intrastate access usage. I anticipate this amount will keep increasing until the
7 matter is resolved.

8 **Q. Do you believe Verizon has a valid dispute with OrbitCom?**

9 A. No, I do not.

10 **Q. Why not?**

11 A. I believe that Verizon is trying to use a back door approach to attack not only our
12 tariff but those of other carriers. There seems to be a pattern of activity here on
13 Verizon's part. They are using self-help and attacking rate elements and the
14 application thereof from the tariff, all the while stating vehemently that they are
15 not attacking the tariff. The pattern consists of using self-help and coercion from
16 non-payment of legitimately charged rates from a properly filed and approved
17 tariff to force carriers into informal side agreements. This type of arrangement is
18 contrary to the Filed Rate Doctrine.

19 Additionally, each time Verizon requests information we provide what was
20 requested. Then Verizon either ignores us, changes the subject, or states that
21 we did not provide them the information that was requested "in the proper
22 format". When we ask for information, they ignore our requests. Mr. Moore's
23 spreadsheets also show in excess of 10,000,000 MOU in many months and in 2

1 months MOUs in excess of 14,000,000 that OrbitCom billed Verizon for access.
2 (MP2-23). I have gone through and reviewed all of OrbitCom's access bills to
3 Verizon. The actual bills vary from 2.1 million to 2.4 million MOU per month, a
4 difference of approximately 12 million minutes! Not only did Mr. Moore falsely
5 state the MOUs, he downwardly adjusted OrbitCom bills based on these false
6 totals and continues to use these false monthly totals in his most recent
7 spreadsheets. His last spreadsheet was hundreds of pages long, five pages wide
8 and could not be viewed or printed and deciphered without an enigma machine.
9 (MP2-24) Verizon admitted it withheld current payments that it knew were
10 legitimate for alleged past overpayments. Later their alleged dispute evolved into
11 a DEOT and PIU dispute. OrbitCom followed its filed and approved tariff in
12 handling the dispute. When OrbitCom advised Verizon that its so called disputes
13 were out of compliance and even gave Verizon directions on what to do to come
14 into compliance, it was again ignored. (MP2-25). Verizon demanded that
15 OrbitCom not follow the tariff by ignoring the 60-day window for disputes on
16 billings. I could go on and on but this should be sufficient to show Verizon's
17 motives.

18 **Q. Have you tried to discuss settlement with Verizon?**

19 **A.** Yes we have. I initially discussed settlement with Ms. Freet. I even made an
20 offer to her. She did not respond to that offer but did come up with additional
21 items to dispute--her initial dispute was an overcharge of the interstate
22 benchmark rate. After that, OrbitCom's attorney made a settlement proposal to
23 Richard Severy (Verizon's in-house counsel.) After that proposal was made Mr.

1 Severy did not take or return telephone calls, nor did he respond to emails for
2 almost 2 ½ months. It appears that Verizon did not want to settle the matter.
3 They just wanted to not pay. It fits into their pattern of activity. Delay, delay, and
4 more delay.

5 **Q. Does this conclude your testimony?**

6 **A.** Other than reserving the right to update amounts owing and outstanding issues,
7 yes it does.

EXHIBIT

MP2-01

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--------------------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| Sprint Communications Company, L.P., |) | |
| |) | |
| Complainant, |) | |
| |) | File No. EB-00-MD-002 |
| v. |) | |
| |) | |
| MGC Communications, Inc., |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM OPINION AND ORDER

Adopted: June 7, 2000

Released: June 9, 2000

By the Commission:

1. In this order, we deny Sprint's claim that the exchange access rates charged by MGC Communications, Inc. are unjust and unreasonable, and violate section 201(b) of the Communications Act of 1934, as amended (the Act).¹ As discussed below, we find that, by relying solely on the rates of MGC's incumbent competitors to establish a benchmark for reasonableness, Sprint has failed to meet its burden in this proceeding.

I. FACTS

2. MGC Communications is a facilities-based competitive local exchange carrier (CLEC) with operations in Nevada, California, Illinois, Georgia and Florida.² It offers both terminating and originating switched access service to interexchange carriers (IXCs) under its Tariff FCC No. 1.³ Sprint Communications Company L.P. (Sprint) operates as a non-dominant

¹ 47 U.S.C. § 201(b).

² Complaint at 3, ¶ 6

³ See Complaint at 4, ¶ 9 & Exh. 3. MGC's tariff states that its access service "provides a two-point communications path between [an IXC] designated premises and an end user's premises" and "provides for the ability to originate calls from an end user's premises to [an IXC] designated premises, and to terminate calls from [an IXC] designated premises to an end user's premises in the LATA where it is provided." MGC Tariff FCC No. 1, ¶ 6.1.

interexchange carrier (IXC) throughout the United States and receives interstate access services from MGC in the five states in which MGC operates.⁴

3. In July 1997, MGC began both sending originating access traffic onto Sprint's network and providing terminating access service by completing calls from Sprint's network.⁵ For each category of MGC's tariffed access service, its rates are substantially higher than those charged by the incumbent local exchange carriers (ILECs) with which MGC competes in its various service areas.⁶ Once Sprint began receiving MGC's access-charge bills, it began recalculating the bills, applying the ILEC's tariffed rate and paying only that amount.⁷ On January 11, 2000, Sprint filed its complaint, alleging that MGC's tariffed access rates are unreasonably high, in violation of section 201(b).⁸

II. DISCUSSION

4. Sprint argues that MGC's tariffed access rates are unjust and unreasonable under section 201(b)⁹ because they exceed the rates charged by the ILECs in the areas where MGC operates. Sprint bases its argument on language from our access charge reform docket stating, "terminating rates that exceed those charged by the incumbent LEC serving the same market *may suggest* that a competitive LEC's terminating access rates are excessive."¹⁰ From this passage, Sprint apparently seeks to create a *per se* rule, applicable to both terminating *and* originating access, under which *any* access rate that exceeds the competing ILEC rate would violate section 201(b). Thus, in its prayer for relief, Sprint requests that we declare that MGC's tariffed access rates are unjust and unreasonable "to the extent that they have exceeded the tariffed rates of the

⁴ Complaint at 3, ¶ 5

⁵ See MGC Complaint at 5, ¶ 12, admitted, in relevant part, in Sprint Answer at 5, ¶ 12.

⁶ According to evidence that Sprint submitted with its complaint, the average ILEC rate for local switching in MGC's service areas is approximately \$0.004747, while MGC's tariffed rate is \$0.0700. This amounts to a difference of approximately 1400%. Similarly, MGC's rates for local transport exceed the average ILEC rate by approximately 260%; its rates for an inquiry of the 800-number database exceed the average ILEC rate by approximately 150%. See Complaint at 5-6. See also Exhs. 1 & 2 to Complaint (providing side-by-side rate comparisons for different categories of service).

⁷ MGC challenged Sprint's refusal to pay the tariffed rates for access service in a complaint filed on December 3, 1999. See *MGC Communications Co. v. Sprint Communications Co., L.P.*, File No. EB-99-MD-033. That proceeding will be the subject of a subsequent order.

⁸ See Complaint at 7

⁹ Section 201(b) provides, in relevant part that "[a]ll charges, practices, classifications and regulations for and in connection with [interstate] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful." 47 U.S.C. § 201(b).

¹⁰ *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16142, ¶ 364 (1997) (emphasis added). See Sprint Opening Brief at 3.

former monopoly ILECs providing access services in the same areas as MGC.”¹¹ Similarly, in its proposed conclusions of law, Sprint argues that, “[b]ecause MGC’s tariffed interstate access rates exceed[] those of the former incumbent LECs providing access in the same areas as MGC,” they violate section 201(b).¹² Sprint also asserts that its reliance on the ILEC rate is supported by a series of decisions stretching back to 1938, in which the Commission set rates for international telegraph carriers to allow a fair rate of return to the lowest-cost, bellwether provider.¹³

5. As an initial matter, the parties disagree on which side bears the burden of proof with respect to Sprint’s 201(b) claims. Sprint argues that, in this proceeding, MGC must justify the reasonableness of its rates because Sprint has requested that, if we find MGC’s rates to be unreasonable under section 201(b), we then exercise our authority under section 205(a) of the Act and prescribe a reasonable rate to be charged on a prospective basis.¹⁴ The difficulty with Sprint’s argument on this point is that it presupposes a finding favorable to Sprint on the threshold question that it has raised in this complaint proceeding: whether MGC’s rates are reasonable. Section 205(a) empowers the Commission to prescribe a just and reasonable charge “[w]henever, after full opportunity for hearing, upon a complaint . . . the Commission shall be of opinion that a charge” violates the Act.¹⁵ On Sprint’s complaint, however, the first question that we must address is whether MGC’s rate is unreasonable. This question is presented in the context of a section 208 complaint challenging the rate under section 201(b). In such circumstances, it is well settled that the complainant bears the burden of establishing that the challenged rate is unreasonable.¹⁶

6. Relying, as it does, solely on the competing ILEC rate as a benchmark for what is just and reasonable, Sprint has failed to meet its burden in this action. We decline Sprint’s invitation to hold that any access rate that is higher than the ILEC’s is necessarily unjust and unreasonable under section 201(b). Nothing in the Commission’s existing rules or orders supports Sprint’s legal position. In particular, Sprint’s reliance on our access charge reform order

¹¹ Sprint Complaint at 7, ¶ 20.

¹² Complaint, Appendix A at 1. *See also* Complaint at 7, ¶ 18 (“MGC violates Section 201(b) of the Act by seeking to impose charges for access elements that exceed those of the former monopoly ILECs providing access services in the same areas as MGC.”); *id.* at 5, ¶ 11 (“MGC’s tariffed rates . . . exceeded those of the former monopoly incumbent local exchange carriers providing access services in the same areas as MGC. As such, they violate the requirements of Section 201(b) . . .”) (citation omitted).

¹³ Sprint Opening Brief at 4-5 (citing, *inter alia*, *Postal Telegraph-Cable Co.*, 5 FCC 524, 527 (1938)).

¹⁴ *See* Sprint Opening Brief at 9; Sprint Reply Brief at 6. In both of its briefs, Sprint relies on our order in *Resale and Shared Use of Common Carrier Facilities and Services*, Report and Order, 60 FCC2d 261, 284-85, ¶ 42 (1976).

¹⁵ 47 U.S.C. § 205(a).

¹⁶ *See AT&T Corp. v. Bell Atlantic Corp.*, 14 FCC Rcd 556, 594, 602, ¶¶ 88, 108 (1998); *Infomxx, Inc. v. New York Tel. Co.*, FCC 97-359, File No. E-96-26, 1997 WL 621592, ¶ 16 (1997); *Beehive Tel., Inc. v. Bell Operating Companies*, 10 FCC Rcd 10562, 10566, ¶¶ 23-24 (1995), *affirmed after voluntary remand*, 12 FCC Rcd 17930 (1997).

is misplaced. There, we noted only that CLEC terminating access rates higher than the competing ILEC rates "may suggest" that the CLEC rates are excessive; in no way did we announce a *per se* rule of the sort for which Sprint now contends. As a CLEC, MGC is not subject to our part 69 access-charge rules,¹⁷ nor is it required to file tariffs under part 61 of our rules.¹⁸ Indeed, to the extent a review of the reasonableness of a CLEC's rates depends on a carrier-specific review of the costs of providing service, it is impossible to be categorical on this point since a CLEC's costs may not be comparable to those of an ILEC.¹⁹ None of the rate-making decisions that Sprint cites is to the contrary.

III. CONCLUSION AND ORDERING CLAUSES

7. We deny Sprint's complaint because we reject its argument that any access rate greater than that charged by an incumbent LEC is necessarily unjust and unreasonable within the meaning of section 201(b).

¹⁷ See 47 C.F.R. § 69.1, *et seq.*

¹⁸ See 47 C.F.R. § 61.1, *et seq.*

¹⁹ In the Access Charge Reform Docket, we acknowledged that CLEC access rates may "be higher due to the CLECs' high start-up costs for building new networks, their small geographical service areas, and the limited number of subscribers over which CLECs can distribute costs." *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14343, ¶ 244 (1999). However, we noted that requiring IXCs to bear these costs may "impose unfair burdens on IXC customers that pay rates reflecting these CLEC costs even though the IXC customers may not subscribe to the CLEC." *Id.*

As Sprint notes, staff denied it discovery into the question of whether MGC may cross-subsidize certain portions of its operations with its access revenues. See Sprint Opening Brief at 8. See also February 17, 2000, letter of Jeffrey Dygert (FCC) to counsel for the parties. However, that decision was not based on the conclusion that such information necessarily would be irrelevant to the reasonableness of CLEC access rates. Rather, the discovery request was denied because it was irrelevant to the claim as Sprint pleaded it – that MGC's rates were *per se* unreasonable because they exceeded the competing ILEC rates – and, under our rules, complainants are bound by the manner in which they plead their claims. Under rule 1.721, complaints are required to include citation to the portion of the Act alleged to have been violated, a "complete statement of facts which, if proven true, would constitute such a violation," and "[p]roposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the complaint." 47 C.F.R. § 1.721(a)(4) - (6). See also, *e.g.*, *Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report & Order, 12 FCC Rcd 22497, 22534, ¶ 82 (1997). By requiring parties to engage in fact pleading, rather than the notice pleading permitted in federal court, our rules require that the full basis for a claim be set out in a complaint. Having failed adequately to plead its cross-subsidy argument, Sprint was barred from seeking to raise it, or seeking discovery on it, later in the action.

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 201 and 208 of the Act, as amended, 47 U.S.C. §§ 154(i), 201 and 208, Sprint's formal complaint filed in this proceeding IS DENIED.

9. IT IS FURTHER ORDERED that both of the above proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

EXHIBIT

MP2-02



Tariffs

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Tariffs

Tariffs contain the rates, terms and conditions of certain services provided by telecommunications carriers. The most common tariff filed at the FCC is for interstate local access service. These tariffs are filed by local exchange carriers, or LECs.

Long-distance companies and others pay the rates set out in these tariffs to LECs for access to local networks at the originating and/or terminating ends of a long-distance call. Access services include:

- Switched access, used primarily for long-distance calls originating and/or terminating over a standard phone line.
- Special access, a dedicated line provided by a local phone company to a customer, which could be a long-distance company, for the customer's exclusive use.
- Access tariffs may also include rates and conditions for services that include DSL from certain carriers, packet-switched services, long-distance directory assistance access and other services.

Carriers do not file tariffs for local and intrastate service with the FCC, because the FCC's regulations govern only interstate and international services. Except in very limited circumstances, long-distance companies are not permitted to file tariffs for long-distance service because the FCC has determined that the long-distance market is competitive. Like long-distance service, many broadband services have been detariffed. Tariffs are optional for competitive LECs, but they may not file tariffs for switched access if the price does not comply with [benchmark rules](#).

Tariffs must be just and reasonable and may not be unreasonably discriminatory under [Sections 201\(a\)](#) and [202\(b\)](#) of the Communications Act of 1934, as amended.

Tariff Investigations

The FCC may investigate any tariff before or after it becomes effective. Investigations can be on the FCC's own initiative or in response to a complaint.

Tariffs are typically filed under a process that gives the public 15 days' notice on proposed price increases and seven days' notice on proposed price reductions. Any member of the public may file comments during the time allowed under the rules. Tariffs filed under this process are "deemed lawful," meaning that if an investigation subsequent to the effective date shows that tariffs are unlawful, the carrier is only liable prospectively.

[Part 61](#) of the FCC's rules detail other possible notice periods under which carriers can file tariffs, as well all other rules governing tariffs. Tariffs are administered by the [Pricing Policy Division](#).

[top of page](#)

How to Cancel a Tariff

In order to minimize their costs, non-dominant carriers may cancel several tariffs or revise several tariffs under one cover letter with the payment of one filing fee provided that each tariff has the same Issuing Carrier name and the Issue Date is identical for each tariff.

Non-dominant interexchange carriers filing on their own behalf may use the following examples as references for how to cancel their tariff(s):

- [Sample Cover Letter](#)
- [Sample Tariff Supplement](#)
- [Sample Check Sheet](#)

Organizations that file tariffs on behalf of multiple non-dominant carriers may request a waiver of applicable filing rules so that they may cancel the tariff(s) of multiple non-dominant carriers or file revisions to the tariff(s) of multiple non-dominant carriers under one Consolidated Cover Letter with the payment of one filing fee, provided that all the tariffs have the same Issue Date.

Waiver of the applicable filing rules for this purpose must be requested by filing an Application for Special Permission, including the applicable filing fee. Organizations are reminded that they must file the Consolidated Application for Special Permission and obtain approval prior to filing the Consolidated Cover Letter. Organizations filing on behalf of multiple non-dominant interexchange carriers may use the following examples as references for how to cancel multiple tariffs.

- [Sample Consolidated Application for Special Permission](#)
- [Consolidated Cover Letter Tariff](#)
- [Sample Tariff Supplement](#)
- [Sample Check Sheet](#)

Non-dominant interexchange carriers are reminded that all tariff filings (not Applications for Special Permission) must be made on either a 3 1/2 inch diskette or CD-ROM containing the complete tariff including the revised material. Applications for Special Permission must be submitted in paper format.

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Detariffing Information

7/31/2001

DOMESTIC INTEREXCHANGE SERVICE DETARIFFING

Effective July 31, 2000, all non-dominant carriers were required to cancel (detariff) their interexchange services and thereafter provide their domestic interstate interexchange services on a non-tariffed basis. For more details about mandatory detariffing and the limited use of permissive tariffing, [click here](#).

Additional Information:

- A. [Public Notice](#)
- B. [Order](#)

C. List of Detariffing Orders**International Detariffing Takes Effect January 28, 2002**

No later than January 28, 2002, all non-dominant carriers must cancel (detariff) their international interexchange tariffs and thereafter provide their international interexchange services on a non-tariffed basis. During the interim transition period from April 28, 2001 - January 28, 2002, carriers may file new or revised tariffs for mass market international interexchange services. Carriers may not file new or revised contract tariffs or tariffs for other long term international service arrangements. For more details about mandatory detariffing and the limited use of permissive tariffing, [click here](#).

Additional Information:

- A. [Public Notice](#)
- B. [News Release](#)

CLEC Permissive Detariffing and Application of the Benchmark Rate

CLECs may file tariffs or offer service on a permissively detariffed basis even on a detariffed basis, the rates and regulations are still subject to 201(b) and 202(a) of the Act. Switched access rates are subject to a benchmark rate requirement, also Truth-in-Billing precepts may apply.

Additional Information:

- A. [Truth-in-Billing](#)
- B. [CLEC Access Information](#)
- C. [Order](#)

[top of page](#)

Electronic Tariff Filing System (ETFS)

The [Electronic Tariff Filing System \(ETFS\)](#) is a web-based system through which incumbent LECs must submit official tariffs and associated supporting materials to the FCC. The public may also use ETFS to view these tariffs and documents.

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last reviewed/updated on July 24, 2009

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Federal Communications Commission
445 12th Street SW
Washington, DC 20554
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TTY: 1-888-TELL-FCC (1-888-835-5322)
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E-mail: fccinfo@fcc.gov

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- [Required Browser Plug-ins](#)
- [Freedom of Information Act](#)

EXHIBIT

MP2-03

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

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

| Element | Qwest Rates |
|----------------------------|--------------------|
| Common Trunk Port | 0.00074700 |
| Local Switching | 0.00197400 |
| Tandem Facility Over 50 | 0.00001500 |
| Tandem Termination Over 50 | 0.00024000 |
| Common MUX | 0.00003600 |
| Tandem Switching | 0.00254500 |

UNE-P Qwest Aggregate Rate

| | |
|--|------------|
| DEOT Routed Traffic-Includes Local Switching | 0.00197400 |
| Host Remote Traffic-Includes Local Switching, Tandem Facility and Termination | 0.00222900 |
| Tandem Routed Traffic- Includes Common Trunk Port, Local Switching, Tandem Facility and Termination, Common MUX, and Tandem Switching | 0.00555700 |

EXHIBIT

MP2-04.0

Qwest FCC #5

| | | | |
|---------------------|--------------------|----------|---|
| Local Switching | 0.001974 | 0.001974 | |
| Port | 0.000747 | 0.000747 | These three items comprise the tandem equivalent |
| Mux | 0.000036 | 0.000036 | |
| Tandem Switching | 0.002545 | 0.002545 | |
| Tandem Equivalent | 0.003328 | 0.003328 | |
| | | 0.005302 | Subtotal LS + TE |
| Tnspt Term | - 0 mile | | |
| | 0.000180 <=8 mile | | This is a fixed rate depending on distance. So one of the four always goes into the cost. This example is twelve miles from CO to tandem, so we use the 8 to <25 miles rate |
| | 0.000231 <=25 mile | 0.000231 | |
| | 0.000238 <=50 mile | | |
| | 0.000240 >50 mile | | |
| | | 0.005533 | Subtotal LS + TE +TT |
| Tnspt Mileage | - 0 mile | | |
| | 0.000048 <=8 mile | | This varies per mile, since it is the actual miles times the rate from the band the mileage falls into. |
| | 0.000027 <=25 mile | 0.000324 | |
| | 0.000017 <=50 mile | | |
| | 0.000015 >50 mile | | |
| | | 0.005857 | Subtotal LS +TE+TT+TM |
| | | | See attached chart for an idea of the entire totals of "The Benchmark" |
| 800 data base query | 0.004053 | | |

| Miles | per mile | Variable Benchmark | Fixed Benchmark | Total Benchmark |
|-------|----------|-----------------------|--------------------|--------------------|
| 1 | 0.000048 | 0.000048 | 0.005482 | 0.00553 |
| 2 | 0.000048 | 0.000096 | 0.005482 | 0.005578 |
| 3 | 0.000048 | 0.000144 | 0.005482 | 0.005626 |
| 4 | 0.000048 | 0.000192 | 0.005482 | 0.005674 |
| 5 | 0.000048 | 0.00024 | 0.005482 | 0.005722 |
| 6 | 0.000048 | 0.000288 | 0.005482 | 0.00577 |
| 7 | 0.000048 | 0.000336 | 0.005482 | 0.005818 |
| 8 | 0.000027 | 0.000216 | 0.005533 | 0.005749 |
| 9 | 0.000027 | 0.000243 | 0.005533 | 0.005776 |
| 10 | 0.000027 | 0.00027 | 0.005533 | 0.005803 |
| 11 | 0.000027 | 0.000297 | 0.005533 | 0.00583 |
| 12 | 0.000027 | 0.000324 | 0.005533 | 0.005857 |
| 13 | 0.000027 | 0.000351 | 0.005533 | 0.005884 |
| 14 | 0.000027 | 0.000378 | 0.005533 | 0.005911 |
| 15 | 0.000027 | 0.000405 | 0.005533 | 0.005938 |
| 16 | 0.000027 | 0.000432 | 0.005533 | 0.005965 |
| 17 | 0.000027 | 0.000459 | 0.005533 | 0.005992 |
| 18 | 0.000027 | 0.000486 | 0.005533 | 0.006019 |
| 19 | 0.000027 | 0.000513 | 0.005533 | 0.006046 |
| 20 | 0.000027 | 0.00054 | 0.005533 | 0.006073 |
| 21 | 0.000027 | 0.000567 | 0.005533 | 0.0061 |
| 22 | 0.000027 | 0.000594 | 0.005533 | 0.006127 |
| 23 | 0.000027 | 0.000621 | 0.005533 | 0.006154 |
| 24 | 0.000027 | 0.000648 | 0.005533 | 0.006181 |
| 25 | 0.000017 | 0.000425 | 0.00554 | 0.005965 |
| 26 | 0.000017 | 0.000442 | 0.00554 | 0.005982 |
| 27 | 0.000017 | 0.000459 | 0.00554 | 0.005999 |
| 28 | 0.000017 | 0.000476 | 0.00554 | 0.006016 |
| 29 | 0.000017 | 0.000493 | 0.00554 | 0.006033 |
| 30 | 0.000017 | 0.00051 | 0.00554 | 0.00605 |
| 31 | 0.000017 | 0.000527 | 0.00554 | 0.006067 |
| 32 | 0.000017 | 0.000544 | 0.00554 | 0.006084 |
| 33 | 0.000017 | 0.000561 | 0.00554 | 0.006101 |
| 34 | 0.000017 | 0.000578 | 0.00554 | 0.006118 |
| 35 | 0.000017 | 0.000595 | 0.00554 | 0.006135 |
| 36 | 0.000017 | 0.000612 | 0.00554 | 0.006152 |
| 37 | 0.000017 | 0.000629 | 0.00554 | 0.006169 |
| 38 | 0.000017 | 0.000646 | 0.00554 | 0.006186 |
| 39 | 0.000017 | 0.000663 | 0.00554 | 0.006203 |
| 40 | 0.000017 | 0.00068 | 0.00554 | 0.00622 |
| 41 | 0.000017 | 0.000697 | 0.00554 | 0.006237 |
| 42 | 0.000017 | 0.000714 | 0.00554 | 0.006254 |
| 43 | 0.000017 | 0.000731 | 0.00554 | 0.006271 |
| 44 | 0.000017 | 0.000748 | 0.00554 | 0.006288 |
| 45 | 0.000017 | 0.000765 | 0.00554 | 0.006305 |
| 46 | 0.000017 | 0.000782 | 0.00554 | 0.006322 |
| 47 | 0.000017 | 0.000799 | 0.00554 | 0.006339 |
| 48 | 0.000017 | 0.000816 | 0.00554 | 0.006356 |
| 49 | 0.000017 | 0.000833 | 0.00554 | 0.006373 |
| 50 | 0.000015 | 0.00075 | 0.005542 | 0.006292 |
| 75 | 0.000015 | 0.001125 | 0.005542 | 0.006667 |
| 100 | 0.000015 | 0.0015 | 0.005542 | 0.007042 |
| 150 | 0.000015 | 0.00225 | 0.005542 | 0.007792 |
| 200 | 0.000015 | 0.003 | 0.005542 | 0.008542 |
| 250 | 0.000015 | 0.00375 | 0.005542 | 0.009292 |

EXHIBIT
MP2-04.1

| CLLI | Miles to Tandem | Transport Mileage Rate | Transport Mileage Charge | Local Switching | Tandem Equivalent | Transport Termination Local | Rate Per Minute |
|-------------|-----------------|------------------------|--------------------------|-----------------|-------------------|-----------------------------|-----------------|
| ABRDSDCODS0 | 150 | 0.000015 | 0.002250 | 0.001974 | 0.003328 | 0.000240 | 0.007792 |
| ARTNSDCORS1 | 60 | 0.000015 | 0.000900 | 0.001974 | 0.003328 | 0.000240 | 0.006442 |
| BLFRSDCORS1 | 51 | 0.000015 | 0.000765 | 0.001974 | 0.003328 | 0.000240 | 0.006307 |
| BLHKSDCERS1 | 5 | 0.000048 | 0.000240 | 0.001974 | 0.003328 | 0.000180 | 0.005722 |
| CHBLSDCORS1 | 132 | 0.000015 | 0.001980 | 0.001974 | 0.003328 | 0.000240 | 0.007522 |
| CLMNDCORS1 | 31 | 0.000017 | 0.000527 | 0.001974 | 0.003328 | 0.000238 | 0.006067 |
| DESMDCORS1 | 71 | 0.000015 | 0.001065 | 0.001974 | 0.003328 | 0.000240 | 0.006607 |
| ELPNDCORS1 | 59 | 0.000015 | 0.000885 | 0.001974 | 0.003328 | 0.000240 | 0.006427 |
| FTPRSDCERS1 | 190 | 0.000015 | 0.002850 | 0.001974 | 0.003328 | 0.000240 | 0.008392 |
| HLCYSDCORS1 | 20 | 0.000027 | 0.000540 | 0.001974 | 0.003328 | 0.000231 | 0.006073 |
| HRBGSDCORS1 | 7 | 0.000048 | 0.000336 | 0.001974 | 0.003328 | 0.000180 | 0.005818 |
| HURNSDCODS1 | 93 | 0.000015 | 0.001395 | 0.001974 | 0.003328 | 0.000240 | 0.006937 |
| IRQSSDCORS1 | 80 | 0.000015 | 0.001200 | 0.001974 | 0.003328 | 0.000240 | 0.006742 |
| LEADSDCORS1 | 32 | 0.000017 | 0.000544 | 0.001974 | 0.003328 | 0.000238 | 0.006084 |
| MDSNSDCERS1 | 37 | 0.000017 | 0.000629 | 0.001974 | 0.003328 | 0.000238 | 0.006169 |
| MLBNSDCORS1 | 115 | 0.000015 | 0.001725 | 0.001974 | 0.003328 | 0.000240 | 0.007267 |
| MLLRSDCORS1 | 131 | 0.000015 | 0.001965 | 0.001974 | 0.003328 | 0.000240 | 0.007507 |
| MTCHSDCODS1 | 66 | 0.000015 | 0.000990 | 0.001974 | 0.003328 | 0.000240 | 0.006532 |
| ORVLMNORRS8 | 57 | 0.000015 | 0.000855 | 0.001974 | 0.003328 | 0.000240 | 0.006397 |
| PIRRSDCODS6 | 190 | 0.000015 | 0.002850 | 0.001974 | 0.003328 | 0.000240 | 0.008392 |
| RDFSDCORS1 | 128 | 0.000015 | 0.001920 | 0.001974 | 0.003328 | 0.000240 | 0.007462 |
| RPCYSDCODS1 | 0 | 0.000048 | 0.000000 | 0.001974 | 0.003328 | 0.000180 | 0.005482 |
| RPVYSDCORS1 | 6 | 0.000048 | 0.000288 | 0.001974 | 0.003328 | 0.000180 | 0.005770 |
| SPRFSDCORS1 | 33 | 0.000017 | 0.000561 | 0.001974 | 0.003328 | 0.000238 | 0.006101 |
| STRGSDCORS1 | 27 | 0.000017 | 0.000459 | 0.001974 | 0.003328 | 0.000238 | 0.005999 |
| SXCYIADTDS1 | 74 | 0.000015 | 0.001110 | 0.001974 | 0.003328 | 0.000240 | 0.006652 |
| SXFLSDCODS2 | 0 | 0.000048 | 0.000000 | 0.001974 | 0.003328 | 0.000180 | 0.005482 |
| SXFLSDSERS1 | 1 | 0.000048 | 0.000048 | 0.001974 | 0.003328 | 0.000180 | 0.005530 |
| SXFLSDSWDS0 | 5 | 0.000048 | 0.000240 | 0.001974 | 0.003328 | 0.000180 | 0.005722 |
| TEA SDCORS1 | 8 | 0.000048 | 0.000384 | 0.001974 | 0.003328 | 0.000180 | 0.005866 |
| TMLKSDCORS2 | 251 | 0.000015 | 0.003765 | 0.001974 | 0.003328 | 0.000240 | 0.009307 |
| VLNTNENWDS0 | 171 | 0.000015 | 0.002565 | 0.001974 | 0.003328 | 0.000240 | 0.008107 |
| VOLGSDCORS1 | 55 | 0.000015 | 0.000825 | 0.001974 | 0.003328 | 0.000240 | 0.006367 |
| VRMLSDCODS0 | 54 | 0.000015 | 0.000810 | 0.001974 | 0.003328 | 0.000240 | 0.006352 |
| WHWSDCORS1 | 33 | 0.000017 | 0.000561 | 0.001974 | 0.003328 | 0.000238 | 0.006101 |
| WRWKSDCORS1 | 11 | 0.000027 | 0.000297 | 0.001974 | 0.003328 | 0.000231 | 0.005830 |
| WTTWSDCODS0 | 95 | 0.000015 | 0.001425 | 0.001974 | 0.003328 | 0.000240 | 0.006967 |
| YNTNSDCODS1 | 57 | 0.000015 | 0.000855 | 0.001974 | 0.003328 | 0.000240 | 0.006397 |

EXHIBIT

MP2-04.2



BILL NO 605 R24-0018 018
 INVOICE NO R240018018-05158
 BILL DATE [REDACTED]
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*** DETAIL OF USAGE CHARGES FOR OFFICE MDSNSDCERS1 ***

USAGE BILLING CYCLE MAY 07 05 THRU JUN 06 05

INTERSTATE

| RATE CATEGORY | ZN | QUANTITY | RATE | AMOUNT |
|---|----|----------|----------|--------------|
| SWITCHED TRANSPORT | | | | |
| TRANSMISSION VARIABLE | | | | |
| HOST TO REMOTE | | | | |
| TANDEM SXFLSDC009T | | | | |
| AN 1015004 | | | | |
| ORIGINATING MINUTES SXFLSDC0DS1- 37 MI | | 117 | .0000170 | .07 (0.0736) |
| HOST TO REMOTE SUBTOTAL | | 117 | | .07 |
| TOTAL TRANSMISSION VARIABLE | | 117 | | .07 |
| TRANSMISSION FIXED | | | | |
| HOST TO REMOTE | | | | |
| TANDEM SXFLSDC009T | | | | |
| AN 1015004 | | | | |
| ORIGINATING MINUTES SXFLSDC0DS1- 37 MI | | 117 | .0002380 | .03 |
| HOST TO REMOTE SUBTOTAL | | 117 | | .03 |
| TOTAL TRANSMISSION FIXED | | 117 | | .03 |

x 37
 000629

C.0278

||

BILL NO
INVOICE NO
BILL DATE
ACNA

605 R24-0018 018
R240018018-05158
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*** DETAIL OF USAGE CHARGES FOR OFFICE MDSNSDCERS1 ***

USAGE BILLING CYCLE MAY 07 05 THRU JUN 06 05

INTERSTATE

| <u>RATE CATEGORY</u> | <u>ZN</u> | <u>QUANTITY</u> | <u>RATE</u> | <u>AMOUNT</u> |
|-----------------------------------|-----------|-----------------|-------------|---------------|
| TANDEM SWITCHING CHARGE | | | | |
| AN 1015004 ORIGINATING MINUTES | | 117 | .0025450 | .30 |
| TOTAL TANDEM SWITCHING CHARGES | | 117 | | .30 |
| TOTAL SWITCHED TRANSPORT CHARGES | | | | .40 |

(.2977)

||



BILL NO
INVOICE NO
BILL DATE
ACNA

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R240018018-05158
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*** DETAIL OF USAGE CHARGES FOR OFFICE MDSNSDCERS1 ***

USAGE BILLING CYCLE MAY 07 05 THRU JUN 06 05

| RATE CATEGORY | INTERSTATE | | RATE | AMOUNT |
|----------------------------|------------|----------|----------|--------|
| | ZN | QUANTITY | | |
| END OFFICE | | | | |
| LOCAL SWITCHING | | | | |
| AN 1015004 | | | | |
| ORIGINATING MINUTES | | 117 | .0019740 | .23 |
| LOCAL SWITCHING SUBTOTAL | | 117 | | .23 |
| SHARED TRUNK PORT | | | | |
| AN 1015004 | | | | |
| ORIGINATING MINUTES | | 117 | .0007470 | .09 |
| SHARED TRUNK PORT SUBTOTAL | | 117 | | .09 |
| TOTAL END OFFICE CHARGES | | | | .32 |

BILL NO
INVOICE NO
BILL DATE
ACNA

605 R24-0018 018
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*** DETAIL OF USAGE STATISTICS FOR OFFICE MDSNSDCERS1 ***

USAGE BILLING CYCLE MAY 07 05 THRU JUN 06 05

INTERSTATE

ORIGINATING PIU LUP PDR RECRDED MOU MESSAGES AT/MSG MIN/AT FACTORD MOU

TANDEM

AN 1015004

MTX .000036 - too small to register

MTS 117 13 0.0000 .0000 117

TOTAL 117 13 117

TOTAL INTERSTATE USAGE CHARGES FOR OFFICE MDSNSDCERS1 .72

*.00615 per
minute
Total
Rounding
error*

*Actual elements add
to .006169*

||

EXHIBIT

MP2-05

Public Utilities Commission
Capitol Building, 1st floor
500 E. Capitol Ave.
Pierre, SD 57501-5070
Phone: (605) 773-3201
Toll-free Fax: 1-866-757-6031

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Dusty Johnson
Chairman
Elected 2004
Term Ends 2010



Steve Kolbeck
Vice Chairman
Elected 2006
Term Ends 2012

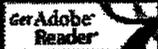


Gary Hanson
Commissioner
Elected 2002, 2008
Term Ends 2014

About the PUC

Public Utilities Commission
Capitol Building, 1st floor
500 E. Capitol Ave.
Pierre, SD 57501-5070
Phone: (605) 773-3201
Toll-free Fax: 1-866-757-6031

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- AT&T Communications of the Midwest, Inc.
- Armour Independent Telephone Company d/b/a Golden West Telecommunications (See LECA Tariff)
- Aventure Communication Technology L.L.C. d/b/a Aventure Communications
- Beresford Municipal Telephone Company (See LECA Tariff)
- Bridgewater-Canistota Independent Telephone d/b/a Golden West Telecommunications (See LECA Tariff)
- Budget Prepay Inc. d/b/a Budget Phone
- Bullseye Telecom
- Capital Telephone
- Cheyenne River Sioux Tribe Telephone Authority (See LECA Tariff)
- City of Brookings Municipal Telephone Company d/b/a Swiftel Communications (See LECA Tariff)
- City of Faith Telephone Company (See LECA Tariff)
- Comtel Telecom Assets LP. d/b/a VarTec Telecom, also d/b/a Excel Telecommunications
- FiberComm, L.C.
- Golden West Telecommunications Cooperative, Inc. (See LECA Tariff)
- Granite Telecommunications, LLC
- Hills Telephone Company, Inc. (See LECA Tariff)
- Interstate Telecommunication Cooperative, Inc. (See LECA Tariff)
- Ionex Communications North, Inc.
- James Valley Cooperative Telephone Company (See LECA Tariff)
- Jefferson Telephone LLC d/b/a Long Lines (See LECA Tariff)
- Kadoka Telephone Company d/b/a Golden West Telecommunications (See LECA Tariff)
- Kennebec Telephone Company (See LECA Tariff)
- Knology of the Black Hills, LLC
- Knology Community Telephone, Inc.
- Knology of the Plains, Inc.
- Level 3 Communications, LLC
- Local Exchange Carrier Association, Inc. (LECA)
- Long Lines Metro, LLC
- Matrix Telecom, Inc. d/b/a Matrix Business Technologies
- McCook Cooperative Telephone Company (See LECA Tariff)
- MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services
- McLeodUSA Telecommunications Service
- Metropolitan Telecommunications of South Dakota, Inc.
- Midcontinent Communications, Inc.
- Midstate Telecom, Inc.
- Northern Valley Communications, LLC
- NOS Communications, Inc.
- OrbitCom, Inc.
- Qwest Corporation
- RC Communications, Inc. d/b/a RC Services (See LECA Tariff)
- Roberts County Telephone Cooperative Association (See LECA Tariff)
- Sace Telecom, Inc.

EXHIBIT

MP2-06

909A - ORBITCOM

8080SD055
00162
001
January 2006

Switched Access Service
Feature Group D

BAR: 8080SD000000000

Billing Company:
ORBITCOM, INC., FKA VP TELECOM
1701 N LOUISE AVE
SIOUX FALLS SD 57107-0210

Billing Inquiries Contact:
CABS Support (605) 977-6900

Addressed To:
MCI WORLDCOM
REGION 6
PO BOX 2039
MECHANICSBURG PA 17055

UNBUNDLED BILLING

Balance Due Information

| Explanation | Amount |
|---------------------|--------------|
| Previous Balance | \$ 22,492.44 |
| Adjustments | |
| Dec 14 CASH PAYMENT | 10,821.29 |
| Balance Forward | \$ 11,671.15 |

Detail Of Current Charges

| Explanation | Amount |
|------------------------|--------------|
| SOUTH DAKOTA | |
| Usage Charges | |
| 8080 - ORBITCOM | |
| IntraState - IntraLATA | 7,043.51 |
| IntraState - InterLATA | 0.14 |
| InterState - IntraLATA | 0.13 |
| InterState - InterLATA | 3,086.62 |
| Total Usage Charges | \$ 10,130.40 |
| Total Current Charges | \$ 10,130.40 |

Remit Payment To:
909A - ORBITCOM
ORBITCOM, INC., FKA VP TELECOM
1701 N LOUISE AVE
SIOUX FALLS SD 57107-0210

Total Due By 02/12/2006 \$ 21,801.55

F:135 G:000 S:00000 P:00000

EXHIBIT

MP2-07

DO NOT ACCEPT THIS CHECK UNLESS YOU SEE A TRUE WATERMARK THAT DISPLAYS THE VERIZON IMAGE WHEN HELD TO THE LIGHT. FACE OF DOCUMENT HAS A TWO COLOR BACKGROUND.

verizon

88-156/531

22001 Loudoun County Parkway
Ashburn, VA 20147

Wachovia Bank, N.A.
Controlled Disbursement Account
Winston-Salem, NC

Date
04/28/2008

Check No.
1006170276

\$*****73,739.94*

PAY EXACTLY

*** SEVENTY-THREE THOUSAND SEVEN HUNDRED THIRTY-NINE
USD and NINETY-FOUR Cents ***

Void After 120 Days

TO THE ORDER OF

VP TELECOM DBA ORBITCOM
ATTN CABS DEPT
1701 N LOUISE AVE
SIOUX FALLS SD 57107-0210

Catherine J. Webster

⑈ 1006170276⑈ ⑆ 053101561⑆ 2079900576197⑈

VERIFY AUTHENTICITY BY RUBBING THE GRAY VERIZON IMAGE ON BACK OF CHECK. SEE BACK FOR ADDITIONAL SECURITY INFORMATION.

4-29-08

DO NOT ACCEPT THIS CHECK UNLESS YOU SEE A TRUE WATERMARK THAT DISPLAYS THE VERIZON IMAGE WHEN HELD TO THE LIGHT. FACE OF DOCUMENT HAS A TWO COLOR BACKGROUND.

verizon

22001 Loudoun County Parkway
Ashburn, VA 20147

Wachovia Bank, N.A.
Controlled Disbursement Account
Winston-Salem, NC

Date
07/11/2008

Check No
1007028388

66-156/531

\$*****79,027.78*

PAY EXACTLY

*** SEVENTY-NINE THOUSAND TWENTY-SEVEN USD and
SEVENTY-EIGHT Cents ***

Void After 120 Days

TO THE ORDER OF VP TELECOM DBA ORBITCOM
ATTN CABS DEPT
1701 N LOUISE AVE
SIOUX FALLS SD 57107-0210

Catherine J. Webster

⑈ 1007028388 ⑆ ⑆ 053101561 ⑆ 2079900576197 ⑆

VERIFY AUTHENTICITY BY RUBBING THE GRAY VERIZON IMAGE ON BACK OF CHECK. SEE BACK FOR ADDITIONAL SECURITY INFORMATION.

7-13-08

DO NOT ACCEPT THIS CHECK UNLESS YOU SEE A TRUE WATERMARK THAT DISPLAYS THE VERIZON IMAGE WHEN HELD TO THE LIGHT. FACE OF DOCUMENT HAS A TWO COLOR BACKGROUND.



22001 Loudoun County Parkway
Ashburn, VA 20147

Wachovia Bank N.A.
Controlled Disbursement Account
Winston-Salem, NC

Date 01/02/2009
Check No. 1007097238

66 156/531

\$*****41,521.80*

PAY EXACTLY

*** FORTY-ONE THOUSAND FIVE HUNDRED TWENTY-ONE USD and
EIGHTY Cents ***

Void After 120 Days.

TO THE ORDER OF VP TELECOM DBA ORBITCOM
ATTN CABS DEPT
1701 N LOUISE AVE
SIOUX FALLS SD 57107-0210

Catherine J. Webster

⑈ 1007097238 ⑆ ⑆ 053101561 ⑆ 2079900576197 ⑆

VERIFY AUTHENTICITY BY RUBBING THE GRAY VERIZON IMAGE ON BACK OF CHECK. SEE BACK FOR ADDITIONAL SECURITY INFORMATION.

1-9-09

EXHIBIT

MP2-08

**BEFORE THE
PUBLIC SERVICE COMMISSION OF
MARYLAND**

**COMPLAINT OF CAVALIER TELEPHONE)
MID-ATLANTIC, LLC FOR BREACH OF)
INTERCONNECTION TERMS BY) Case No. 9046
VERIZON INC. AND REQUEST FOR)
IMMEDIATE RELIEF REQUIRING PAYMENT)
OF ACCESS CHARGES)**

**IN THE MATTER OF THE COMPLAINT OF)
VERIZON MARYLAND INC.)
FOR BREACH OF INTERCONNECTION)
AGREEMENT AGAINST CAVALIER TELEPHONE) Case No. 9094
MID-ATLANTIC, LLC)
)**

**TESTIMONY OF WILLIAM MUNSELL
ON BEHALF OF VERIZON MARYLAND INC.**

April 20, 2007

1
2 **INTRODUCTION AND PURPOSE OF TESTIMONY**
3

4 **Q. Please state your name and business address.**

5 A. My name is William Munsell. My business address is 600 Hidden Ridge,
6 Irving, Texas 75038.

7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed by Verizon Services Corporation and represent Verizon
9 Communications Inc. operating telephone company affiliates in
10 negotiations with competitive local exchange carriers ("CLECs") for
11 interconnection, resale, and unbundled elements pursuant to section 251 of
12 the Communications Act of 1934, as amended by the Telecommunications
13 Act of 1996 ("the Act"). My services in my current position also have
14 included working to resolve disputes with CLECs, as well as providing
15 expert testimony, as in this case.

16 **Q. Please describe your educational background and professional**
17 **experience.**

18 A. I received an undergraduate degree in Economics from the
19 University of Connecticut, and a Master's degree from Michigan
20 State University in Agricultural Economics. I joined the company
21 (then GTE) in 1982. During the course of my career, I have held
22 positions of increasing responsibility in the following groups:
23 Demand Analysis and Forecasting, Pricing, Product Management,
24 the Open Market Program Office, and Contract Negotiations.
25

1 **Q. Please provide additional detail regarding your Company work**
2 **experience.**

3 **A. I started my career with the company in the Demand Analysis and**
4 **Forecasting group, where I spent approximately five years. In my position**
5 **with that group, I was primarily responsible for developing access line and**
6 **network usage forecasts, including access minute forecasts. I then moved**
7 **to the Pricing organization, where I served as a Pricing Analyst, a position**
8 **in which I was responsible for developing intrastate intraLATA toll prices**
9 **and intrastate switched access rates. Later, I was promoted into a higher**
10 **level position in the Product Management organization as the Product**
11 **Manager for GTE's intraLATA toll product line.**

12 **In 1989, I accepted a position with the company's Telephone Operations**
13 **group in Irving, Texas as a Senior Product Manager for intraLATA toll**
14 **calling plans for all of the states in which the company operated. In 1994,**
15 **I became a Senior Product Manager for the Switched Access Service**
16 **organization. In this role, I was responsible for managing the switched**
17 **access rates for Verizon (then GTE) North Inc. I also had responsibility**
18 **for the systems development and rollout of intrastate intraLATA equal**
19 **access in all states served by GTE.**

20 **In 1996, I became a Product Manager for interconnection matters,**
21 **a position in which I helped GTE develop practices and systems**
22 **capabilities to comply with the Act. In December 1997, I was promoted to**
23 **a position within a new program office that was created to develop**

1 solutions to the many systems issues that GTE faced in the new
2 competitive environment. I focused on numerous issues in that position,
3 including those related to Local Number Portability ("LNP") and
4 interconnection between GTE and other carriers (including CLECs and
5 interexchange carriers or "IXCs"). In addition, I attended numerous
6 meetings of the Alliance for Telecommunications Industry Solutions'
7 ("ATIS") Ordering & Billing Forum ("OBF"), specifically in the Billing
8 and Message Processing subcommittees (including the Multiple Exchange
9 Carrier Access Billing or "MECAB" subcommittee). In the spring of
10 1999, I accepted my present position as a manager in Verizon Services
11 Corporation's Interconnection Services Policy and Planning group.

12 **Q. What is the purpose of your testimony?**

13 **A.** I will explain the purpose behind Cavalier's obligation to provide EMI records
14 under the parties' interconnection agreement. I will also explain how Verizon
15 was damaged by Cavalier's failure to provide those records, including how
16 Verizon was unable to bill interexchange carriers (IXC's) for calls originated by
17 Cavalier without the EMI records, and how Verizon calculated the approximate
18 amount of revenue lost as a result of its inability to bill IXCs for these calls.

THE IMPORTANCE OF EMI RECORDS

19 **Q. What is the origin of Cavalier's obligation to provide EMI records?**

20 **A.** Cavalier is a facilities-based CLEC that operates in the mid-Atlantic area,
21 including Maryland. On March 1, 2000 Verizon and Cavalier entered into an
22 interconnection agreement ("ICA") by which Cavalier adopted the terms of a

1 November 3, 1999 interconnection agreement between Verizon and Sprint
2 Communications Company, LP. This agreement was subsequently approved
3 by and filed with the Commission. Attachment 6, Section 2.9 to the ICA requires
4 that “[Cavalier] will provide [Verizon] with the Switched Access Summary Usage
5 Data (category 1150XX records) on magnetic tape or via such other media as the
6 parties may agree to, no later than ten (10) business days after the date of its
7 rendering of the bill to the relevant IXC, which bill shall be rendered no less
8 frequently than monthly. [Cavalier] will send such data to the location specified
9 ‘by BA.’ This obligation is consistent with MECAB standards and is routinely
10 included in Verizon’s interconnection agreements.

11 **Q. What is MECAB?**

12 **A.** MECAB refers to a detailed set of standards developed by the Billing
13 Committee of the OBF (Ordering and Billing Forum) of the Alliance for
14 Telecommunications Industry Solutions, the industry group responsible
15 for developing industry standard procedures. The OBF’s mission is to
16 “provide[] a forum for customers and providers in the telecommunications
17 industry to identify, discuss and resolve national issues which affect
18 ordering, billing, provisioning and exchange of information about access
19 services, other connectivity, and related matters.”¹ The OBF generally
20 resolves industry issues through consensus of a wide variety of carriers,
21 including IXCs, CLECs, Wireless providers, and ILECs like Verizon. I
22 have been a Verizon representative on the Billing and Message Processing

¹ See <http://www.atis.org/obf/index.asp>.

1 committees of the OBF, and worked on many issues involving standards
2 for the processing and billing of usage data in the post-Act environment. I
3 do not believe that Cavalier participates in the OBF.

4 **Q. How do the MECAB standards affect Cavalier's obligation to provide EMI**
5 **records?**

6 **A.** The origin of the EMI obligation is the MECAB documentation setting forth the
7 industry standards with respect to billing. Verizon's contracts and Verizon's
8 switches are set up according to MECAB standards reflecting the consensus in the
9 industry as to which carriers generate records for which calls. Section 6 of
10 MECAB, "Usage and Data Exchange", sets forth the standards for the
11 recording of usage sensitive services and the exchange of such call records
12 between service providers. Specifically, section 6.1 provides "Regardless of
13 the MPB option selected and where contractual relationships exist, the
14 detailed usage records should be passed to the other provider(s) to
15 process..... When providers do not have the detailed recordings available for
16 billing the IXC, the official recording company will provide the detailed
17 usage record based on contractual relationships. The official recording
18 company is defined as the following:
19 contractual obligation to provide EMI records is consistent with the industry
20 1. The end office company for originating traffic." Therefore, Cavalier's
21 contractual obligation to provide EMI records is consistent with the industry
22 standard.

23

1 **Q. How are the EMI records generated?**
2 **A. EMI records from the end office carrier are produced from originating AMA**
3 records that are generated when a switched access (or exchange access) call is originated.
4 They are essential to bill interexchange carriers (IXCs) because the originating AMA
5 record is designed to capture the Carrier Identification Code "CIC" code that identifies
6 the long distance provider selected by the end user for each call. It is the CIC code that
7 local service providers like Cavalier and Verizon utilize in determining which IXC to
8 bill the switched access charges to. When an exchange access call is routed from
9 the end office to the access tandem (an originating switched access call), the CIC of the
10 IXC selected by the end user is signaled to the access tandem. It is the CIC code
11 that the access tandem relies on to determine which IXC to route the call to, since
12 the called telephone number provides no information about what IXC the end user
13 has selected as their toll provider. In the terminating direction (when an IXC
14 delivers an exchange access call to the access tandem for routing to the end office
15 serving the called number), there is no like requirement that the IXC delivering
16 the call insert their CIC in the signaling stream. This is because in the terminating
17 direction the call can be routed to the called party based on the called telephone
18 number alone, without reference to a CIC.

19 **Q. Do Verizon's switches create an AMA record when the call originates from a**
20 **CLEC for delivery to an IXC via an access tandem switch of Verizon?**

21 **A. When calls originate with a CLEC and transit Verizon's network for delivery to**
22 IXCs, Verizon's switch does not generate an AMA record, consistent with
23 MECAB standards. In fact Verizon does not create an originating access record

EXHIBIT

MP2-01

1 at the tandem switch for Verizon's own traffic.

2 **CAVALIER'S PERFORMANCE UNDER THE CONTRACT**

3 **Q. Did Cavalier ever comply with its obligations under Section 2.9 of**
4 **Attachment 6?**

5 **A. Immediately after the contract was entered, Cavalier complied with its obligation**
6 **to provide EMI records. At that time, summary EMI records were provided in**
7 **accordance with the MECAB standards that were then in effect. I understand that**
8 **Cavalier paid New York Access Billing LLC (known as the New York Access**
9 **Pool or "NYAB Pool") to handle its billing and sent all AMA call records it**
10 **generated to the NYAB Pool. The NYAB Pool then used the appropriate Cavalier**
11 **records to bill IXC's on Cavalier's and Verizon's behalf.**

12 **Q. Did Cavalier stop sending EMI records to Verizon pursuant to Section**
13 **2.9 of Attachment 6?**

14 **A. In early 2001 the MECAB standards pertaining to EMI records were changed to**
15 **specify that detailed EMI records should be provided, rather than summary EMI**
16 **records, and that the exchange of summary EMI records would be discontinued**
17 **effective August 31, 2002. The summary EMI records merely provided a**
18 **standard way to consolidate the detailed EMI records (which are created for every**
19 **originating exchange access call) and thereby reduce the number of records**
20 **exchanged. Around the same time, I understand that Cavalier decided to handle**
21 **its own billing rather than paying the NYAB Pool for billing services. When**
22 **Cavalier took over this billing, it stopped providing records to the NYAB**
23 **Pool and has never sent any EMI records for originating exchange access traffic**

1 directly to Verizon. Upon information and belief, Cavalier generates the records
2 necessary to bill their access charges to the IXC's, but has chosen not to spend
3 the resources to generate comparable records for Verizon and to send
4 them.

5 **Q. When did Cavalier stop providing EMI records?**

6 **A. Cavalier has not provided any EMI records since February of 2002.**

7 **Q. Has Verizon requested that Cavalier resume its provisioning of EMI records**
8 **to Verizon?**

9 **A. Verizon personnel have made numerous requests to Cavalier to fulfill its**
10 **contractual obligations and to provide EMI records.**

11 **VERIZON IS DAMAGED BY CAVALIER'S FAILURE TO PROVIDE EMI**

12 **Q. Given that the calls are routed from Cavalier through Verizon, why can't**
13 **Verizon generate EMI records for the traffic at issue?**

14 **A. Verizon does not have a process in place to bill IXCs access charges when the end**
15 **office carrier does not provide EMI records.**

16 Verizon access tandem switches do not generate an originating AMA
17 record for originating exchange access calls that transit its network on access
18 trunks. Verizon could set up the trunks that carry the exchange access traffic
19 that Cavalier originates and routes to the Verizon access tandems to generate an
20 AMA record, but the record that would be generated would be a terminating
21 access record, not an originating access record, and therefore would not contain
22 the CIC code of the IXC. Instead, it would contain Cavalier's CIC code. This
23 record therefore could not be used to bill IXCs.

1 **Q. How did Verizon estimate its damages in this case?**

2 **A. In order to estimate the damages that Verizon experienced due to Cavalier not**
3 **providing the required EMI records, in October of 2006 I requested and obtained**
4 **a study of the SS7 signaling data for the month of October 2006. Specifically, the**
5 **SS7 data provided all calls that Cavalier routed to Verizon MD access tandem**
6 **switches and which contained a CIC code in the SS7 signaling. The presence of**
7 **the CIC code in the SS7 signaling is what uniquely identifies this traffic as**
8 **exchange access traffic for which Cavalier should be supplying Verizon with EMI**
9 **records. For calls that could be assigned a jurisdiction (interstate or intrastate)**
10 **based on the calling and called numbers, I relied on that information. For calls where a**
11 **jurisdiction could not be determined, for example 800 calls, I relied on jurisdiction**
12 **factors specific to that type of traffic. This resulted in a quantification for the month of**
13 **October of the number of interstate and intrastate exchange access minutes that Cavalier**
14 **routed to IXC's via Verizon access tandem switches in MD. To each of these quantities I**
15 **applied an average rate per minute ("ARPM") for just those switched access rates that**
16 **Verizon would have been able to bill to the IXC's had Cavalier provided the EMI**
17 **records as required. I then multiplied the resulting monthly figure by the**
18 **number of months between April 15, 2003 and February 15, 2007.**

19 **Q. Can Verizon get the information necessary to bill IXCs through the SS7 data**
20 **that Verizon collects and maintains?**

21 **A. Verizon theoretically has access to billing information through SS7 data.**
22 **However, in order to use this data to bill IXCs Verizon would have to constantly**
23 **monitor all Cavalier calls, develop a process for pulling out the IXC calls and**

1 develop a second process for turning the SS7 data into call records that would be
2 accepted by Verizon's Carrier Access Billing System (CABS), in order to bill the
3 IXC. This would involve extensive resources to monitor the calls, as well as to
4 design the interface between the SS7 data source and CABS, and would cost
5 Verizon tens of millions of dollars to implement for all third party originating
6 exchange access traffic. Also, this would not be an industry standard method of billing.
7 Verizon does not use SS7 data for billing, but rather only for validation and
8 dispute resolution purposes.

9 **Q. Would IXCs accept as valid bills generated of the SS7 data?**

10 **A. I do not know. Verizon has not attempted to bill any IXC using only SS7**
11 **data, and I am not aware of any other carrier that has just only SS7**
12 **data to bill IXCs.**

13 **Q. Does this conclude your testimony?**

14 **A. Yes.**

EXHIBIT

MP2-09

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]
Sent: Thursday, February 14, 2008 3:36 PM
To: Penny Petersen
Cc: Moore, Jaque A (Jake)
Subject: Dispute Notification-Orbitcom Interstate Rates

Penny,

I have completed a review of Orbitcom's Interstate rates. We are disputing Orbitcom's Interstate rates for being non compliant with the FCC's 7th Order by exceeding the ILEC benchmark. The attached dispute report provides a dispute breakdown by BAN and billing element. We are disputing \$268,935.55 going back to the January 2006 invoice cycle. If you have any questions, please contact me.

Could you also provide CDR's for the following BAN's 8080SD0222, 8080SD0555, 915AWD0222 and 915AWD0555 that support the 12/12/07 invoices?

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

| INV_D | ST_CO_C | BAN_N | ST_C | JUR_I | R_ELMT_C | R_TYP_I | USE_R | QWEST RATE | DIFFERENCE | MI_Q | REC_NUM_EO_C | BL_CYC_FR_D | BL_CYC_TO_D | USE_Q | USE_A | DISPUTE |
|------------------|---------|-------|------|-------|----------|---------|-------|------------|------------|------|--------------|-------------|-------------|------------|--------------|-------------|
| 1/12/2007 Total | | | | | | | | | | | | | | 1,324,400 | \$12,200.52 | \$11,142.19 |
| 2/12/2007 Total | | | | | | | | | | | | | | 1,534,519 | \$14,220.75 | \$12,572.60 |
| 3/12/2007 Total | | | | | | | | | | | | | | 1,864,188 | \$17,185.61 | \$15,535.96 |
| 4/12/2007 Total | | | | | | | | | | | | | | 2,244,201 | \$20,655.85 | \$18,699.00 |
| 5/12/2007 Total | | | | | | | | | | | | | | 1,876,393 | \$17,476.27 | \$15,839.20 |
| 6/12/2007 Total | | | | | | | | | | | | | | 2,025,665 | \$18,874.28 | \$17,117.64 |
| 7/12/2007 Total | | | | | | | | | | | | | | 57,755 | \$347.13 | \$232.61 |
| 8/12/2007 Total | | | | | | | | | | | | | | 84,059 | \$604.85 | \$338.46 |
| 9/12/2007 Total | | | | | | | | | | | | | | 109,007 | \$654.37 | \$438.78 |
| 10/12/2007 Total | | | | | | | | | | | | | | 98,973 | \$594.17 | \$398.35 |
| 11/12/2007 Total | | | | | | | | | | | | | | 112,715 | \$676.57 | \$453.64 |
| 12/12/2007 Total | | | | | | | | | | | | | | 96,100 | \$595.90 | \$394.61 |
| 1/12/2008 Total | | | | | | | | | | | | | | 52,448 | \$554.86 | \$371.67 |
| Grand Total | | | | | | | | | | | | | | 11,522,761 | \$104,524.13 | \$93,805.31 |

| INV_D | ST_CO_C | BAH_N | ST_C | JUR_I | R_ELMT_C | R_TYP_I | USE_R | QWEST RATE | DIFFERENCE | ML_Q | REC_NUM_EO_C | BL_CYC_FR_D | BL_CYC_TO_D | USE_Q | USE_A | DISPUTE |
|------------------|---------|-------|------|-------|----------|---------|-------|------------|------------|------|--------------|-------------|-------------|------------|--------------|--------------|
| 1/12/2006 Total | | | | | | | | | | | | | | 1,476,012 | \$13,766.22 | \$12,566.65 |
| 2/12/2006 Total | | | | | | | | | | | | | | 1,656,039 | \$15,417.69 | \$14,063.89 |
| 3/12/2006 Total | | | | | | | | | | | | | | 1,508,380 | \$14,098.96 | \$12,868.45 |
| 4/12/2006 Total | | | | | | | | | | | | | | 1,812,918 | \$16,889.67 | \$16,217.36 |
| 5/12/2006 Total | | | | | | | | | | | | | | 1,691,390 | \$15,851.81 | \$14,283.16 |
| 6/12/2006 Total | | | | | | | | | | | | | | 2,115,091 | \$19,578.19 | \$17,675.06 |
| 7/12/2006 Total | | | | | | | | | | | | | | 2,067,680 | \$19,047.60 | \$17,381.17 |
| 8/12/2006 Total | | | | | | | | | | | | | | 1,928,223 | \$17,728.29 | \$16,176.79 |
| 9/12/2006 Total | | | | | | | | | | | | | | 2,106,492 | \$19,394.14 | \$17,667.62 |
| 10/12/2006 Total | | | | | | | | | | | | | | 1,891,042 | \$14,812.10 | \$13,321.63 |
| 11/12/2006 Total | | | | | | | | | | | | | | 1,429,348 | \$13,123.62 | \$11,983.43 |
| 12/12/2006 Total | | | | | | | | | | | | | | 1,387,120 | \$12,806.37 | \$11,704.31 |
| Grand Total | | | | | | | | | | | | | | 20,762,735 | \$191,910.46 | \$176,130.24 |

EXHIBIT

MP2-10

| <u>Account Name</u> | <u>Account Code</u> | <u>Cur. Bal.</u> | <u>30 Days</u> | <u>60 Days</u> | <u>90 Days</u> | <u>120 Days</u> | <u>150 Days</u> | <u>180 Days</u> | <u>Total</u> |
|---------------------|---------------------|------------------|----------------|----------------|----------------|-----------------|-----------------|-----------------|--------------|
| MCI WORLDCOM | 914AND0555 | \$19,485.69 | \$19,194.34 | \$18,036.33 | \$33,157.23 | \$16,480.85 | \$14,868.21 | \$135,730.86 | \$256,953.51 |
| MCI WORLDCOM | 912AOD0555 | \$248.61 | \$201.73 | \$260.79 | \$218.80 | \$344.73 | \$257.66 | \$2,890.85 | \$4,423.17 |
| MCI WORLDCOM | 912AOD0222 | \$224.69 | \$85.18 | \$64.18 | \$72.58 | \$185.84 | \$174.04 | \$2,276.12 | \$3,082.63 |
| MCI WORLDCOM | 914AND0222 | \$8,777.45 | \$8,188.46 | \$8,530.84 | \$8,954.31 | \$3,886.05 | \$3,747.53 | \$34,617.86 | \$76,702.50 |
| MCI WORLDCOM | 911AMD0555 | \$2,248.13 | \$1,679.00 | \$1,770.68 | \$1,633.20 | \$1,692.81 | \$1,487.21 | \$8,355.12 | \$18,866.15 |
| MCI WORLDCOM | 8080SD0222 | \$12,245.62 | \$11,921.30 | \$11,954.27 | \$10,917.65 | \$9,502.58 | \$8,775.26 | \$72,612.61 | \$137,929.29 |
| MCI WORLDCOM | 8080SD0555 | \$24,894.11 | \$23,977.29 | \$24,172.11 | \$28,248.85 | \$35,158.12 | \$32,540.44 | \$341,659.88 | \$510,650.80 |
| MCI WORLDCOM | 910AID0222 | \$2,401.30 | \$1,977.43 | \$1,954.83 | \$2,685.40 | \$1,973.91 | \$1,243.29 | \$10,259.69 | \$22,495.85 |
| MCI WORLDCOM | 910AID0555 | \$6,104.30 | \$6,077.21 | \$5,429.54 | \$6,222.89 | \$7,726.29 | \$7,286.51 | \$58,443.73 | \$97,290.47 |
| MCI WORLDCOM | 913AED0222 | \$4,078.39 | \$3,599.68 | \$2,771.71 | \$3,593.02 | \$3,626.58 | \$3,413.06 | \$27,275.41 | \$48,357.85 |
| MCI WORLDCOM | 913AED0555 | \$12,913.86 | \$13,169.56 | \$10,772.64 | \$15,291.51 | \$15,459.87 | \$15,635.46 | \$136,639.05 | \$219,881.95 |
| MCI WORLDCOM | 915AWD0222 | \$1,291.78 | \$1,082.35 | \$771.97 | \$1,752.11 | \$3,787.02 | \$3,422.54 | \$36,926.98 | \$49,034.75 |
| MCI WORLDCOM | 915AWD0555 | \$9,481.32 | \$9,894.36 | \$9,926.14 | \$11,191.10 | \$19,009.91 | \$17,964.76 | \$174,427.79 | \$251,895.38 |
| MCI WORLDCOM | 8080SD0987 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.69 | \$0.69 |
| MCI WORLDCOM | 911AMD0222 | \$1,247.39 | \$987.81 | \$1,105.99 | \$925.04 | \$781.39 | \$485.93 | \$3,287.12 | \$8,820.67 |
| MCI WORLDCOM | 915AWD0987 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$2.42 | \$1.61 | \$0.85 | \$4.88 |
| MCI WORLDCOM | 915AWD0220 | \$0.00 | \$0.00 | \$0.00 | \$0.01 | \$0.00 | \$0.07 | \$0.44 | \$0.52 |
| MCI WORLDCOM | 911AMD0550 | \$0.25 | \$0.45 | \$0.16 | \$0.27 | \$0.30 | \$0.03 | \$1.89 | \$3.35 |
| MCI WORLDCOM | 377CCD0555 | \$143.49 | \$134.26 | \$125.79 | \$135.87 | \$221.06 | \$216.64 | \$1,460.45 | \$2,437.56 |
| MCI WORLDCOM | 377CCD0222 | \$48.49 | \$29.12 | \$12.98 | \$15.94 | \$50.06 | \$71.43 | \$292.31 | \$520.33 |
| MCI WORLDCOM | 915AWD0550 | \$1.10 | \$0.39 | \$0.41 | \$0.39 | \$0.16 | \$0.81 | \$12.81 | \$16.07 |
| MCI WORLDCOM | 955DXD0555 | \$94.02 | \$70.04 | \$60.86 | \$71.28 | \$151.59 | \$144.16 | \$1,262.14 | \$1,854.09 |
| MCI WORLDCOM | 955DXD0222 | \$16.11 | \$11.08 | \$11.56 | \$17.42 | \$29.58 | \$27.08 | \$543.88 | \$656.71 |
| MCI WORLDCOM | 913AED0987 | \$0.07 | \$0.05 | \$0.06 | \$0.07 | \$0.04 | \$0.47 | \$3.64 | \$4.40 |
| MCI WORLDCOM | 913AED0550 | \$0.71 | \$0.60 | \$0.53 | \$0.68 | \$0.62 | \$0.49 | \$36.14 | \$39.77 |
| MCI WORLDCOM | 957DWD0222 | \$2,159.68 | \$1,728.98 | \$1,572.22 | \$1,273.22 | \$1,225.89 | \$1,122.93 | \$4,016.72 | \$13,099.64 |
| MCI WORLDCOM | 957DWD0555 | \$5,315.72 | \$4,417.36 | \$3,406.83 | \$753.01 | \$1,096.60 | \$994.43 | \$8,441.82 | \$24,425.77 |
| MCI WORLDCOM | 552CID0222 | \$20.10 | \$19.06 | \$17.11 | \$19.42 | \$62.92 | \$51.22 | \$589.32 | \$779.15 |
| MCI WORLDCOM | 251DOD0222 | \$92.84 | \$74.57 | \$134.43 | \$94.97 | \$97.17 | \$0.00 | \$462.03 | \$956.01 |
| MCI WORLDCOM | 552CID0555 | \$58.56 | \$52.10 | \$41.51 | \$31.35 | \$87.61 | \$69.97 | \$177.06 | \$518.16 |
| MCI WORLDCOM | 251DOD0555 | \$147.22 | \$76.79 | \$69.39 | \$29.87 | \$53.98 | \$85.12 | \$39.65 | \$502.02 |
| MCI WORLDCOM | 915AWD0321 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.32 | \$0.32 |
| MCI WORLDCOM | 915AWD0832 | \$0.07 | \$0.08 | \$0.08 | \$0.00 | \$0.12 | \$0.00 | \$0.12 | \$0.47 |

| | | | | | | | | | |
|--------------|------------|---------|---------|----------|------------|----------|----------|----------|------------|
| MCI WORLDCOM | 8080SD5957 | \$71.48 | \$91.53 | \$80.51 | \$73.21 | \$180.37 | \$132.00 | \$669.63 | \$1,298.73 |
| MCI WORLDCOM | 913AED5957 | \$56.23 | \$56.12 | \$49.68 | \$43.68 | \$94.92 | \$67.68 | \$441.29 | \$809.60 |
| MCI WORLDCOM | 251DOD0550 | \$6.95 | \$0.05 | \$0.43 | \$0.06 | \$0.00 | \$4.46 | \$0.00 | \$11.95 |
| MCI WORLDCOM | 914AND0220 | \$0.13 | \$0.00 | \$0.06 | \$0.04 | \$0.07 | \$0.25 | \$0.00 | \$0.55 |
| MCI WORLDCOM | 914AND0321 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.19 | \$0.00 | \$0.19 |
| MCI WORLDCOM | 914AND0550 | \$0.06 | \$0.04 | \$0.06 | \$0.05 | \$0.00 | \$3.78 | \$0.00 | \$3.99 |
| MCI WORLDCOM | 956DUD0222 | \$0.81 | \$0.84 | \$5.75 | \$0.07 | \$10.99 | \$0.00 | \$0.00 | \$18.46 |
| MCI WORLDCOM | 954DAD0222 | \$27.93 | \$22.88 | \$70.38 | \$0.39 | \$40.43 | \$0.00 | \$0.00 | \$162.01 |
| MCI WORLDCOM | 954DAD0555 | \$84.53 | \$65.24 | \$81.60 | \$1,115.66 | \$0.00 | \$0.00 | \$0.00 | \$1,347.03 |
| MCI WORLDCOM | 956DUD0555 | \$14.24 | \$12.03 | \$246.47 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$272.74 |

\$1,756,130.13

43 BANS

EXHIBIT

MP2-11

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

From: Penny Petersen [mailto:ppetersen@svtv.com]
Sent: Friday, February 15, 2008 10:45 AM
To: Moore, Jaque A (Jake)
Subject: RE: Dispute Notification-Orbitcom Interstate Rates

Jaque -

We are charging .006 per minute which is the ILEC benchmark.
Also, we can not accept disputes that are outside of the 90 day window.
Please let me know if you have further questions.

Thanks,
Penny

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]
Sent: Thursday, February 14, 2008 3:36 PM
To: Penny Petersen
Cc: Moore, Jaque A (Jake)
Subject: Dispute Notification-Orbitcom Interstate Rates

Penny,

I have completed a review of Orbitcom's Interstate rates. We are disputing Orbitcom's Interstate rates for being non compliant with the FCC's 7th Order by exceeding the ILEC benchmark. The attached dispute report provides a dispute breakdown by BAN and billing element. We are disputing \$268,935.55 going back to the January 2006 invoice cycle. If you have any questions, please contact me.

Could you also provide CDR's for the following BAN's 8080SD0222, 8080SD0555, 915AWD0222 and 915AWD0555 that support the 12/12/07 invoices?

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

EXHIBIT

MP2-12

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

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

| | | | | |
|-------------|------------|--------------|-------------|--------------|
| Total | 1,478,632 | \$12,762.22 | \$44.37 | \$13,216.52 |
| Total | 1,482,639 | \$16,177.89 | \$11.18 | \$16,189.07 |
| Total | 1,893,309 | \$14,688.96 | \$28.43 | \$14,717.39 |
| Total | 1,873,316 | \$16,683.27 | \$27.83 | \$16,711.10 |
| Total | 1,491,309 | \$16,651.81 | \$23.98 | \$16,675.79 |
| Total | 2,116,991 | \$19,872.19 | \$784.98 | \$19,872.19 |
| Total | 2,087,899 | \$19,627.80 | \$784.98 | \$19,627.80 |
| Total | 1,886,223 | \$17,223.29 | \$747.00 | \$17,223.29 |
| Total | 2,108,682 | \$19,284.14 | \$784.98 | \$19,284.14 |
| Total | 1,699,642 | \$14,612.19 | \$287.79 | \$14,612.19 |
| Total | 1,428,348 | \$15,323.22 | \$346.89 | \$15,323.22 |
| Total | 1,287,728 | \$12,896.27 | \$918.02 | \$12,896.27 |
| Total | 1,326,608 | \$12,296.22 | \$482.37 | \$12,296.22 |
| Total | 1,586,978 | \$14,256.74 | \$271.88 | \$14,256.74 |
| Total | 1,446,682 | \$13,612.19 | \$287.79 | \$13,612.19 |
| Total | 2,142,911 | \$20,164.96 | \$287.79 | \$20,164.96 |
| Total | 1,678,283 | \$17,478.27 | \$287.79 | \$17,478.27 |
| Total | 2,028,888 | \$18,874.28 | \$287.79 | \$18,874.28 |
| Total | 87,788 | \$247.53 | \$38.44 | \$285.97 |
| Total | 84,688 | \$264.26 | \$282.77 | \$546.03 |
| Total | 103,027 | \$284.37 | \$282.85 | \$567.22 |
| Total | 84,373 | \$284.37 | \$282.85 | \$567.22 |
| Total | 112,716 | \$278.27 | \$271.88 | \$550.15 |
| Total | 86,190 | \$468.80 | \$286.29 | \$755.09 |
| Total | 82,428 | \$254.88 | \$222.28 | \$477.16 |
| Grand Total | 32,285,496 | \$286,534.88 | \$13,327.17 | \$299,862.05 |

7/12/2007 Total
8/12/2007 Total
9/12/2007 Total
10/12/2007 Total
11/12/2007 Total
12/12/2007 Total
Grand Total

| Element | Qwest Rates |
|----------------------------|--------------------|
| Common Trunk Port | 0.00074700 |
| Local Switching | 0.00197400 |
| Tandem Facility Over 50 | 0.00001500 |
| Tandem Termination Over 50 | 0.00024000 |
| Common MUX | 0.00003600 |
| Tandem Switching | 0.00254500 |

UNE-P Qwest Aggregate Rate

| | |
|--|------------|
| DEOT Routed Traffic-Includes Local Switching | 0.00197400 |
| Host Remote Traffic-Includes Local Switching, Tandem Facility and Termination | 0.00222900 |
| Tandem Routed Traffic- Includes Common Trunk Port, Local Switching, Tandem Facility and Termination, Common MUX, and Tandem Switching | 0.00555700 |

EXHIBIT

MP2-13

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

| | |
|--------------------|--------------|
| LeRoy Koppendrayer | Chair |
| Marshall Johnson | Commissioner |
| Ken Nickolai | Commissioner |
| Thomas Pugh | Commissioner |
| Phyllis A. Reha | Commissioner |

In the Matter of the Complaint of PrairieWave
Telecommunications, Inc. Against AT&T
Communications of the Midwest

ISSUE DATE: February 8, 2006

DOCKET NO. P-442/C-05-1842

ORDER FINDING FAILURE TO PAY
TARIFFED RATE, REQUIRING FILING,
AND NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On November 21, 2005, PrairieWave Telecommunications, Inc. (PrairieWave), a competitive local exchange carrier serving customers in ten Minnesota exchanges, filed a complaint under Minn. Stat. § 237.462 against AT&T Communications of the Midwest, Inc. (AT&T), an interexchange carrier. The complaint claimed that AT&T was refusing to pay PrairieWave's tariffed rates for intrastate access services, thereby failing to meet its obligations as a telecommunications carrier under Minnesota law and inhibiting local retail competition. The complaint asked the Commission to order AT&T to pay PrairieWave's tariffed access rates.

On December 15, 2005, AT&T filed an answer and counterclaim. The answer admitted that AT&T had not paid monthly invoices submitted by PrairieWave and that it had denied PrairieWave's requests for payment. The counterclaim alleged that PrairieWave's tariffed access rates were unjust, unreasonable, discriminatory, anti-competitive, and therefore illegal and unenforceable. The counterclaim asked the Commission to dismiss the complaint, open an investigation into PrairieWave's access rates, find those rates to be unjust, unreasonable, and harmful to the public interest, and set new rates at just and reasonable levels.

On December 30, 2005, PrairieWave filed an answer to the counterclaim, denying its allegations.

On January 4, 2006, the Minnesota Department of Commerce (the Department) filed comments on the complaint and counterclaim. The Department argued that the complaint turned on legal and policy issues best resolved through argument and analysis and that the counterclaim turned on factual issues best resolved through an evidentiary proceeding.

On January 12, 2006, the case came before the Commission. At that time AT&T admitted that it had refused to pay PrairieWave's tariffed access rates on grounds that they were excessive, had failed to pay the portion AT&T considered non-excessive for an undetermined period of time, and did not have in hand an accurate accounting of the amounts of money at issue.

After the Commission deliberated and determined, among other things, that AT&T was legally obligated to pay PrairieWave's tariffed access rates, AT&T and PrairieWave reached an agreement on the treatment of disputed billings from the filing of AT&T's counterclaim. The two parties agreed that AT&T would establish a private escrow account into which it would deposit the disputed portion of PrairieWave's access charge billings, beginning with the date on which the counterclaim was filed and continuing through the pendency of this proceeding.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission finds that AT&T is obligated to pay PrairieWave's tariffed access rates and that it has failed to do so. The Commission rejects AT&T's contention that it was authorized to withhold payment on the basis of its belief that the tariffed rates were excessive, unjust, unreasonable, and therefore illegal.

The Commission will treat AT&T's counterclaim that PrairieWave's tariffed access rates are excessive, unjust, unreasonable, and therefore illegal, as a complaint under Minnesota Rules 7812.2210, subp. 17 and will refer it to the Office of Administrative Hearings for evidentiary development.

These actions will be explained in turn.

II. AT&T Was and Is Obligated to Pay Tariffed Access Rates

The filed rate doctrine is the longstanding regulatory principle that common carriers are bound by the terms of their tariffs; they cannot make side agreements with individual customers, and any side agreements they do make will be stricken. *Black's Law Dictionary*¹ defines the filed rate doctrine in this way:

Filed rate doctrine. Doctrine which forbids a regulated entity from charging rates for its services other than those properly filed with the appropriate federal regulatory authority.

¹ *Black's Law Dictionary*, sixth edition.

Although state and federal policy initiatives promoting competition in the local telecommunications market now give carriers unprecedented flexibility in pricing their services, the filed rate doctrine remains intact. No matter how flexible pricing decisions may become, prices and rates must be filed with the Commission and charged uniformly throughout carriers' service areas,² including prices and rates subject to adjustment in response to unique cost, geographic, or market factors or unique customer characteristics.³

PrairieWave therefore lacked the right to accede to AT&T's request to retroactively adjust its access rates, and AT&T lacked the right to pay any rate other than the tariffed rate.

Further, AT&T had a duty to promptly pay all access charges incurred. Both the seamless telecommunications network on which the public depends and the competitive telecommunications marketplace that state and federal policymakers seek, require the prompt satisfaction of inter-carrier financial obligations.

Failing to promptly satisfy these obligations threatens the integrity of the network by creating grounds for disconnection⁴ and jeopardizes competition by depriving unpaid carriers of the funds they need to stay in business. For these reasons, the Commission has long viewed prompt payment of access charges as an integral part of providing adequate service.⁵

The Commission will therefore require AT&T to make a filing permitting the Commission, the Department, and the parties to this case to determine AT&T's unpaid access charge obligation to PrairieWave. At a minimum, this filing must set forth all amounts billed by PrairieWave since this dispute began, all amounts paid by AT&T, and the difference between the two amounts.

² Minn. Stat. § 237.074; Minn. Stat. §§ 237.07 and 237.09, applicable to telecommunications carriers under Minn. Stat. § 237.035 (e); Minnesota Rules 7812.2100, subps. 2, 3, 5, 8, and 9.

³ Minn. Stat. § 237.07, subd. 2, applicable to telecommunications carriers under Minn. Stat. § 237.035 (e); Minnesota Rules 7812.2210, subps. 2 and 5 A and B.

⁴ Disconnection requires Commission approval under Minn. Stat. §§ 237.12, subd. 2 and 237.74, subd. 6 (a) (2) and subd. 9, applicable to telecommunications carriers under Minn. Stat. § 237.035 (e) and under Minnesota Rules 7812.2210, subp. 11.

⁵ In the *Matter of Three Petitions to Discontinue Service to Access Plus*, Docket No. P-999/CI-92-1061, P-421/EM-92-999, P-3006/M-92-1032, P-478/EM-92-1031, ORDER PERMITTING DISCONTINUANCE OF SERVICE, REQUIRING 30-DAY WAIVER OF NONRECURRING CHARGES, AND REQUIRING ACCESS PLUS TO SHOW CAUSE (September 4, 1994) and ORDER ACCEPTING LATE-FILED PETITIONS, GRANTING INTERVENTION PETITION, DENYING PETITIONS FOR RECONSIDERATION, AND REVOKING CERTIFICATE OF AUTHORITY (January 14, 1993).

Pursuant to the parties' agreement, the difference between the two amounts from the date of the filing of the counterclaim through the conclusion of this proceeding will be placed in escrow by AT&T.

III. AT&T's Counterclaim Merits Investigation

The counterclaim filed by AT&T alleges that PrairieWave's intrastate access rates are excessive, unreasonable, discriminatory, anti-competitive, and harmful to the public. PrairieWave concedes that these rates are approximately 100% higher than the intrastate access rates charged by the State's largest local exchange carrier, but argues that they are not excessive in light of PrairieWave's costs and other factors.

AT&T raises serious allegations that require investigation. The Commission will therefore treat AT&T's counterclaim as a complaint under Minnesota Rules 7812.2210, subp. 17 and will refer it to the Office of Administrative Hearings for evidentiary development, as set forth below.

NOTICE AND ORDER FOR HEARING

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over PrairieWave's provision of intrastate telecommunications services under the Minnesota Telecommunications Act, Minnesota Statutes Chapter 237, including the following specific grants of jurisdiction: Minn. Stat. §§ 237.035 (e), 237.16, 237.081, 237.461, 237.462, and 237.74.

The Commission finds that it cannot resolve the issues raised in the counterclaim on the basis of the record before it. Those issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

II. Issues to be Addressed

The issue in this case is whether PrairieWave's intrastate access rates are unreasonable, excessive, unduly discriminatory, anti-competitive, harmful to the public, or otherwise unlawful. Minnesota Rules 7812.2210, subp. 8 authorizes the Commission to change competitive carriers' rates or take other appropriate action upon complaint and upon finding that the rate complained of:

- unreasonably restricts resale;
- is unreasonably discriminatory;
- is deceptive, misleading, fraudulent, or otherwise unlawful;
- impedes the development of fair and reasonable competition or reflects the absence of an effectively competitive market; or
- has caused or will result in substantial customer harm.

Before making these findings the Commission must conduct an investigation under Minnesota Rules 7812.2210, subp. 17. The investigation may proceed by notice and comment or by contested case proceedings, as in this case.

Minn. Stat. § 237.74, subd. 4 also authorizes the Commission to take remedial action whenever it finds that any rate charged by a telecommunications carrier is unreasonably discriminatory or that any service provided by a telecommunications carrier is inadequate or cannot be obtained.

The parties shall address the above issues in the course of contested case proceedings. They may also raise and address other issues relevant to the counterclaim.

III. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200, and the Commission's rules governing complaints against competitive local exchange carriers, Minnesota Rules 7812.2210, subp. 17.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Kevin O'Grady, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2218; or Lisa Crum, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-5945.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities: Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are AT&T, PrairieWave, and the Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will inform the parties of its time and place.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

Both PrairieWave and AT&T emphasized their need for prompt resolution of this dispute. AT&T is harmed by uncertainty regarding its financial obligations, and PrairieWave is harmed by uncertainty regarding its revenue stream.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these concerns and requests that the Administrative Law Judge submit his final report as expeditiously as possible.

IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

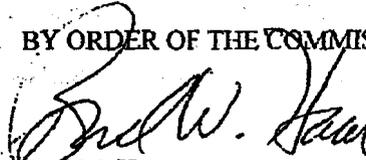
V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. AT&T shall promptly make a filing permitting the Commission, the Department, and the parties to this case to determine AT&T's unpaid access charge obligation to PrairieWave. At a minimum, the filing must set forth all amounts billed by PrairieWave since this dispute began, all amounts paid by AT&T, and the difference between the two amounts.
2. The Commission hereby refers the issues raised in AT&T's counterclaim to the Office of Administrative Hearings for contested case proceedings, as set forth above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

(SEAL)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).

P442/C-05-1842, ListID# 1 AT&T: In the matter of a Complaint Against AT&T for Unpaid Intrastate Switched Access Services

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EXHIBIT

MP2-14

Before the
Federal Communications Commission
Washington, D.C. 20554

| | | |
|--|---|------------------------|
| In the Matter of |) | |
| |) | |
| Access Charge Reform |) | CC Docket No. 96-262 |
| |) | |
| Reform of Access Charges Imposed by |) | |
| Competitive Local Exchange Carriers |) | |
| |) | |
| Petition of Z-Tel Communications, Inc. |) | CCB/CPD File No. 01-19 |
| For Temporary Waiver of Commission Rule |) | |
| 61.26(d) to Facilitate Deployment of Competitive |) | |
| Service in Certain |) | |
| Metropolitan Statistical Areas |) | |

**EIGHTH REPORT AND ORDER AND
FIFTH ORDER ON RECONSIDERATION**

Adopted: May 13, 2004

Released: May 18, 2004

By the Commission: Chairman Powell issuing a statement.

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I. INTRODUCTION

1. As part of its effort to establish a pro-competitive, deregulatory national policy framework for the United States telecommunications industry, the Commission, in the *CLEC Access Reform Order*, adopted a new regulatory regime for interstate switched access services provided by competitive local exchange carriers (competitive LECs) to interexchange carriers (IXCs).¹ Specifically, the Commission limited to a declining benchmark the amounts that competitive LECs may tariff for interstate access services, restricted the interstate access rates of competitive LECs entering new markets to the rates of the competing incumbent local exchange carrier (incumbent LEC), and established a rural exemption permitting qualifying carriers to charge rates above the benchmark for their interstate access services.² In this Fifth Order on Reconsideration, we resolve seven petitions for clarification and/or reconsideration of the *CLEC Access Reform Order*.³ As explained in further detail below, we clarify certain aspects of the *CLEC Access Reform Order* and deny the petitions for reconsideration.⁴ We also address and deny a pending petition seeking a temporary waiver of section 61.26(d) of the Commission's rules.⁵ In the Eighth Report and Order, we decline to set a separate access rate for originating 8YY traffic

¹ See *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) (*CLEC Access Reform Order*).

² See generally *id.*

³ A complete list of the pleadings filed is contained in Appendix B.

⁴ In addition to the petitions for clarification and/or reconsideration, several parties requested that the Commission stay the *CLEC Access Reform Order* pending reconsideration or judicial review. See Mpower Communications Corp. and North County Communications, Inc., *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Emergency Petition for Stay of Order, June 18, 2001 (Mpower Petition for Stay); TDS Metrocom, Inc., *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Petition for Stay Pending Reconsideration, June 28, 2001 (TDS Petition for Stay); Letter from Jonathan E. Canis, Counsel to Business Telecom, Inc. *et al.*, to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 96-262 (filed May 25, 2001) (requesting that the Commission stay the effective date of the *CLEC Access Reform Order* on its own motion) (Joint CLEC May 25 *Ex Parte*). After the Commission did not act on the request for a stay, Mpower and North County sought a stay from the D.C. Circuit Court of Appeals. On June 28, 2001, the D.C. Circuit denied the request for a stay. See *Mpower Communications Corp., et al. v. FCC*, No. 01-1280, Order dated June 28, 2001. We now deny as moot the Mpower Petition for Stay.

⁵ See *In the Matter of Petition of Z-Tel Communications, Inc. and Z-Tel Communications of Virginia, Inc. for Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Services in Certain Metropolitan Statistical Areas*, filed Aug. 3, 2001 (Z-Tel Waiver Petition).

and allow it to be governed by the same declining benchmark as other competitive LEC interstate access traffic.

II. BACKGROUND

2. In the *CLEC Access Reform Order*, the Commission addressed a variety of issues arising from market disputes between IXCs and competitive LECs over the level of competitive LEC interstate access rates.⁶ The Commission observed that competitive LEC access rates varied dramatically, and that access rate disputes between IXCs and competitive LECs created significant financial uncertainty for both groups of carriers.⁷ Moreover, the Commission found that carrier disputes appeared likely to threaten network ubiquity, a result that the Commission concluded could have significant public safety ramifications.⁸ In order to ensure that competitive LEC access rates are just and reasonable, the Commission sought to eliminate regulatory arbitrage opportunities that previously existed with respect to tariffed competitive LEC access services.⁹

3. The Commission concluded that the market structure for access services prevented competition from effectively disciplining prices.¹⁰ It explained that an IXC has no competitive alternative for access to a particular end-user and, because the IXC pays for access charges and recovers those costs through averaged rates, the end-user has no incentive to avoid high-priced providers for access services.¹¹ The Commission found that certain competitive LECs used the tariff system to set access rates that were subject neither to negotiation nor to regulation designed to ensure their reasonableness, and then relied on their tariff to demand payment from IXCs for access services that the long distance carriers likely would have declined to purchase at the tariffed rate.¹²

4. To address this market failure, the Commission revised its tariff rules to align tariffed competitive LEC access rates more closely with those of the incumbent LECs.¹³ The Commission set a benchmark rate for competitive LEC access rates and concluded that competitive LEC access rates at or below the benchmark would be presumed just and reasonable.¹⁴ Under the rules the Commission adopted, a competitive LEC may not tariff interstate access charges above the higher of (1) the competing incumbent LEC rate, or (2) the benchmark rate or the lowest rate the competitive LEC tariffed for interstate access service within the six months preceding the effective date of the order, whichever is

⁶ For a more detailed background, see *CLEC Access Reform Order*, 16 FCC Rcd at 9926-30, paras. 8-20.

⁷ *Id.* at 9931-32, paras. 22-23.

⁸ *Id.* at 9932-33, para. 24.

⁹ See *id.* at 9924-25, paras. 2-3. The Commission limited its application of the tariff rules to competitive LEC interstate access services (defined only as interstate switched access services unless otherwise specified to the contrary). *Id.* at 9924, para. 2 & n.2.

¹⁰ *Id.* at 9936, para. 32.

¹¹ *Id.* at 9935, para. 31.

¹² *Id.* at 9925, para. 2.

¹³ See 47 C.F.R. § 61.26.

¹⁴ *CLEC Access Reform Order*, 16 FCC Rcd at 9925, para. 3.

lower.¹⁵ Competitive LEC access charges above the benchmark (or above the competing incumbent LEC rate, if it is higher) are mandatorily detariffed and may be imposed only pursuant to a negotiated agreement.¹⁶ During the pendency of negotiations, or if the parties cannot agree, the competitive LEC must charge the IXC the appropriate benchmark rate.¹⁷ The Commission also concluded that an IXC would violate section 201(a) of the Act by refusing to complete a call to, or accept a call from, an end-user served by a competitive LEC charging rates at or below the benchmark.¹⁸

5. In order to avoid too great a disruption for competitive carriers, the Commission implemented the benchmark in a way that allows competitive LEC rates to decrease over time until they reach the rate charged by the competing incumbent LEC.¹⁹ The benchmark was set at 2.5 cents per minute for the first year after the *CLEC Access Reform Order* became effective, and moved to 1.8 and 1.2 cents per minute in the second and third years, respectively.²⁰ At the end of the third year, the rate will parallel the access rate charged by the competing incumbent LEC.²¹ Additionally, the Commission ruled that competitive LECs may tariff the benchmark rate only for service in the Metropolitan Statistical Areas (MSAs) where they were serving customers on June 20, 2001, the effective date of the new rules.²² In those MSAs where a competitive LEC initiates service after the effective date of the order, it may not tariff a rate higher than the applicable incumbent LEC rate (the "CLEC new markets rule").²³

6. The Commission also adopted a rural exemption to the benchmark regime. The exemption is available for a competitive LEC that competes with a non-rural incumbent LEC, where no portion of the competitive LEC's service area falls within: (1) any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (2) an urbanized area, as defined by the Census Bureau.²⁴ If a competitive LEC originates traffic from or terminates traffic to end-users located within either of these two types of areas, the carrier is ineligible for the rural exemption to the benchmark rule.²⁵ In recognition of the substantially higher loop costs incurred by competitive LECs in rural areas, competitive LECs qualifying for the rural exemption are permitted to tariff rates up to the highest rate band in the National Exchange Carriers Association (NECA) tariff, minus the NECA tariff's carrier common line (CCL) charge.²⁶

¹⁵ 47 C.F.R. § 61.26(b).

¹⁶ *CLEC Access Reform Order*, 16 FCC Rcd at 9925, para. 3.

¹⁷ *Id.*

¹⁸ *Id.* at 9960-61, para. 94.

¹⁹ *Id.* at 9944-45, para. 52.

²⁰ 47 C.F.R. § 61.26(c).

²¹ *Id.*

²² *CLEC Access Reform Order*, 16 FCC Rcd at 9947, para. 58.

²³ 47 C.F.R. § 61.26(d).

²⁴ 47 C.F.R. § 61.26(a)(6), (e).

²⁵ *Id.* See also *CLEC Access Reform Order*, 16 FCC Rcd at 9954, para. 76.

²⁶ 47 C.F.R. § 62.26(e).

7. Seven parties petitioned for reconsideration or clarification of the *CLEC Access Reform Order*, and various parties filed oppositions, comments, and replies.²⁷ The petitioners challenge the validity of the CLEC new markets rule, the structure of the benchmark, and the transition period.²⁸ Further, the petitioners seek clarification regarding what access rates apply when more than one incumbent LEC operates within the competitive LEC's service area.²⁹ Another petitioner asks the Commission to clarify that a competitive LEC may charge only the portion of the benchmark rate that reflects the access services actually provided.³⁰ Several petitioners also challenge various aspects of the rural exemption. These challenges include arguments to expand the scope of the rural exemption, to make the rural benchmark available to competitive LECs entering new areas, and to add the carrier common line (CCL) charge as well as the multi-line business pre-subscribed interexchange carrier charge (PICC) to the rural exemption rate.³¹ Finally, certain petitioners request clarification or reconsideration regarding several other issues, including requirements under sections 201(a), 202(a), 203(c), and 214 of the Communications Act.³²

8. In a Further Notice of Proposed Rulemaking that accompanied the *CLEC Access Reform Order*, the Commission sought additional comment on whether access rates for originating toll-free, or 8YY, traffic should immediately be moved to the competing incumbent LEC rate, rather than following the declining benchmark over three years.³³ As discussed in more detail below, several parties commented on this issue.

9. For the reasons discussed below, we deny petitions for reconsideration of the *CLEC Access Reform Order* but address several issues raised in petitions for clarification. Specifically, we clarify that a competitive LEC is entitled to charge the full benchmark rate if it provides an IXC with access to the competitive LEC's own end-users. We also find that the rate a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions, and we amend our rules in accordance with this finding. We further clarify that any PICC imposed by a competitive LEC qualifying for the rural exemption may be assessed in addition to the rural benchmark rate if and only to the extent that the competing incumbent LEC charges a PICC. In addition, we identify permissible ways in which competitive LECs may structure their rates if they serve a geographic area with more than one incumbent LEC. We also clarify the source of our authority to impose IXC interconnection obligations under section

²⁷ See Appendix B for a complete list of pleadings filed. Both competitive LECs and IXCs have sought review of the *CLEC Access Reform Order* in the D.C. Circuit. See *AT&T Corp. v. FCC*, Case No. 01-1244 (filed May 31, 2001); *Sprint Corp. v. FCC*, Case No. 01-1263 (filed June 11, 2001); *Mpower Communications Corp. & North County Communications, Inc. v. FCC*, Case No. 01-1280 (filed June 22, 2001). The cases were consolidated and the court is holding the petitions for review in abeyance pending the Commission's completion of this reconsideration proceeding. See *AT&T Corp. v. FCC*, Case Nos. 01-1244, 01-1263, and 01-1280, Order (D.C. Cir. Jan. 8, 2002) (granting the Commission's motion to hold the appeals in abeyance).

²⁸ See Focal Petition at 2-6; TDS Petition at 7-9; Time Warner Petition at 2-9.

²⁹ See TelePacific Petition at 1-3.

³⁰ See Qwest Petition at 2-4.

³¹ See MCLEC Petition at 2-14; RICA Petition at 3-12.

³² See Qwest Petition at 4-6; RICA Petition at 12-15; RICA Reply at 8-9.

³³ See *CLEC Access Reform Order*, 16 FCC Rcd at 9962-64, paras. 99-104.

201(a) and we deny a pending petition for waiver of the CLEC new markets rule. Finally, we decline to set a separate access rate for originating 8YY traffic and allow it to be governed by the same declining benchmark as other competitive LEC interstate access traffic.

III ORDER ON RECONSIDERATION

A. Accounting for Services Still Provided by the Incumbent LEC

10. Qwest asks the Commission to clarify the rules to ensure that a competitive LEC charges only the portion of the competing incumbent LEC rate that reflects the services that the carrier actually provides.³⁴ Qwest emphasizes that the competitive LEC's tariffed rate should exclude the amounts paid for access services necessary to connect an IXC to an end-user that are not provided by the competitive LEC.³⁵ Thus, when one or more of the services necessary to originate or terminate an interexchange call is provided by a carrier other than the competitive LEC, Qwest suggests that the benchmark rate should be correspondingly reduced.³⁶ For instance, Qwest argues that where the incumbent LEC still provides tandem switching, the IXC should have to pay that charge to the incumbent LEC only, and not to both the incumbent LEC and the competitive LEC.³⁷

11. ALTS opposes the requested clarification, arguing that Qwest's characterization of the services Qwest receives and for which it pays is incorrect.³⁸ According to ALTS, IXCs that exchange traffic with competitive LECs through the incumbent LEC tandem receive a service from both the incumbent LEC and the competitive LEC, and, accordingly, it is appropriate for both the competitive LEC and the incumbent LEC to bill such IXCs.³⁹ ALTS asserts that an IXC can avoid paying for incumbent LEC services by interconnecting directly with a competitive LEC, thereby bypassing the incumbent LEC network altogether.⁴⁰

12. ASCENT and Focal center their opposition on the administrative burden they allege would result from Qwest's proposed clarification.⁴¹ ASCENT argues that, as a policy matter, the Commission left competitive LECs with maximum flexibility to structure their charges as long as they did not "exceed a benchmark ultimately reflective of incumbent LEC charges," and that removing an access

³⁴ Qwest Petition at 2-4.

³⁵ *Id.* at 2.

³⁶ *Id.* at 3.

³⁷ *Id.*

³⁸ ALTS Comments at 12.

³⁹ *Id.* See also ASCENT Reply at 4-5.

⁴⁰ ALTS Comments at 12. See also Letter from Richard M. Rindler, Counsel for US LEC Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-262 and 01-92, filed Aug. 25, 2003 at 5-6 (US LEC Aug. 25 *Ex Parte* Letter).

⁴¹ See, e.g., Focal Comments at 7 (asserting that Qwest's request would "vitiate the benchmark as a simple, easy-to-administer guide identifying when CLEC access charges will be presumed reasonable").

component from competitive LEC rates would be inconsistent with the Commission's intent.⁴² Similarly, Focal argues that requiring the change advocated by Qwest "would essentially transform the benchmark from an overall measure of the reasonableness of a CLECs' rates that affords CLECs flexibility in setting rate structures, to a rate and rate structure prescription."⁴³ Z-Tel interprets Qwest's request as a requirement that competitive LECs mirror incumbent LEC access tariff elements, and it argues that such a requirement would be inappropriate because this may not accurately reflect how a competitive LEC's costs are incurred.⁴⁴ Z-Tel further argues that, particularly for UNE-P providers, Qwest's proposal may prevent competitive LECs from recovering their costs. Z-Tel explains that, because the per-minute and per-port components of UNE rates are determined by state commissions, and not necessarily in conjunction with this Commission's review of the same incumbent LEC's interstate tariff, it is possible that the cost of providing a minute of access over the UNE platform could exceed the per-minute interstate access rate for the same incumbent LEC.⁴⁵

13. We deny Qwest's request for clarification that the full benchmark rate is not available in situations when a competitive LEC does not provide the entire connection between the end-user and the IXC. Under section 61.26(b) of the Commission's rules, a competitive LEC's tariffed rate for "its interstate switched exchange access services" cannot exceed the benchmark.⁴⁶ Under section 61.26(a)(3), the term interstate switched exchange access services "shall include the functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching."⁴⁷ The rate elements identified in section 61.26(a)(3) reflect those services needed to originate or terminate a call to a LEC's end-user. When a competitive LEC originates or terminates traffic to its own end-users, it is providing the functional equivalent of those services, even if the call is routed from the competitive LEC to the IXC through an incumbent LEC tandem. Consequently, because there may be situations when a competitive LEC does not provide the entire connection between the end-user and the IXC, but is nevertheless providing the functional equivalent of the incumbent LEC's interstate exchange access services, we deny Qwest's petition.⁴⁸

⁴² ASCENT Comments at 4. See also US LEC Aug. 25 *Ex Parte* Letter at 4, 6 (stating that the Commission's intent was to maintain rate structure flexibility for competitive LECs and to require only that the competing LEC's rate not exceed the benchmark).

⁴³ Focal Comments at 7.

⁴⁴ Z-Tel Opposition at 6.

⁴⁵ *Id.* at 6.

⁴⁶ 47 C.F.R. § 61.26(b).

⁴⁷ 47 C.F.R. § 61.26(a)(3).

⁴⁸ IXCs argue that paragraph 55 of the *CLEC Access Reform Order* could be read to suggest that the Commission intended the benchmark to be available only when the competitive LEC provided the full connection between the IXC and the end-user. See AT&T Opposition at 19; Letter from Robert J. Aamoth and Jennifer M. Kashatus, Counsel for ITC DeltaCom Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-262 and 01-92, at 2 (filed Sept. 11, 2003). We find that this is not the best reading of paragraph 55. When read in conjunction with the definition contained in section 61.26(a)(3), we think the two lists of elements described in paragraph 55 were intended to illustrate what might be (continued...)

14. Although we deny Qwest's petition, we also reject the argument made by some competitive LECs that they should be permitted to charge the full benchmark rate when they provide any component of the interstate switched access services used in connecting an end-user to an IXC.⁴⁹ The approach advocated by these competitive LECs, in which rates are not tethered to the provision of particular services, would be an invitation to abuse because it would enable multiple competitive LECs to impose the full benchmark rate on a single call. It also would enable competitive LECs to discriminate among IXCs by providing varying levels of service for the same price.⁵⁰ As the Supreme Court clearly has stated, rates "do not exist in isolation. They have meaning only when one knows the services to which they are attached."⁵¹

15. Through pleadings in this proceeding, as well as a petition for declaratory ruling filed by US LEC,⁵² the Commission is aware that there have been a number of disputes regarding the appropriate compensation to be paid by IXCs when a competitive LEC handles interexchange traffic that is not originated or terminated by the competitive LEC's own end-users. Because neither the *CLEC Access Reform Order* nor other applicable precedent addressed the appropriate rate in this scenario, we now conclude that the benchmark rate established in the *CLEC Access Reform Order* is available only when a competitive LEC provides an IXC with access to the competitive LEC's own end-users. As explained above, a competitive LEC that provides access to its own end-users is providing the functional equivalent of the services associated with the rate elements listed in section 61.26(a)(3) and therefore is entitled to the full benchmark rate.

16. Some competitive LECs argue that they should be entitled to collect the full benchmark rate, even when they do not serve the end-user, if they enter into a joint billing arrangement with the carrier that does serve the end-user.⁵³ We acknowledge that there are situations where a competitive LEC

(Continued from previous page) _____
considered the "functional equivalent" of incumbent LEC access services, rather than mandating the provision of a particular set of services.

⁴⁹ US LEC, for example, argues that a competitive LEC may charge the maximum benchmark rate even where that competitive LEC provides only some portion of the transport component of the switched access service, leaving other carriers to provide the bulk of the service, including (i) the connection between the caller and the local switch, (ii) end office switching, as well as, possibly, (iii) additional tandem-switched transport. See Letter from Patrick J. Donovan, Counsel for US LEC Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-262 and 01-92 (filed April 29, 2003); see also TelePacific Sept. 25 *Ex Parte* Letter at 3 (arguing that the *CLEC Access Reform Order* permits competitive LECs to charge the benchmark rate for the access services they provide to IXCs regardless of the access functions or rate structure).

⁵⁰ Although unreasonable discrimination often takes the form of different pricing for the same service, the Supreme Court has made clear that providing different levels of service for the same tariffed price may be equally unreasonable. See *AT&T v. Central Office Telephone*, 524 U.S. 214, 223 (1998) ("An unreasonable 'discrimination in charges,' that is, can come in the form of a lower price for an equivalent service or in the form of an enhanced service for an equivalent price.").

⁵¹ *Id.*

⁵² See *Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket No. 01-92, Public Notice, DA 02-2436 (rel. Sept. 30, 2002) (seeking comment on a petition for declaratory ruling filed by US LEC).

⁵³ See, e.g., White Paper on CMRS/CLEC Intercarrier Compensation, attached to Letter from Kathryn A. Zachem, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-262 and 01-92, at 5-6 (filed Jan. 16, 2004) (Verizon Wireless White Paper); Letter from Patrick J. Donovan, Counsel for US LEC Corp., to Marlene H. Dortch, Secretary, Federal Communications (continued....)

may bill an IXC on behalf of itself and another carrier for jointly provided access services pursuant to meet point billing methods.⁵⁴ We note, however, that the validity of these joint billing arrangements is premised on each carrier that is party to the arrangement billing only what it is entitled to collect from the IXC for the service it provides.⁵⁵ In cases where the carrier serving the end-user had no independent right to collect from the IXC, industry billing guidelines do not, and cannot, bestow on a LEC the right to collect charges on behalf of that carrier. For example, the Commission has held that a CMRS carrier is entitled to collect access charges from an IXC only pursuant to a contract with that IXC.⁵⁶ If a CMRS carrier has no contract with an IXC, it follows that a competitive LEC has no right to collect access charges for the portion of the service provided by the CMRS provider.⁵⁷

17. Because of the many disputes related to the rates charged by competitive LECs when they act as intermediate carriers, we conclude that it is necessary to adopt a new rule to address these situations. Specifically, we find that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions.⁵⁸ We conclude that regulation of these rates is necessary for the all the reasons
(Continued from previous page)

Commission, CC Docket Nos: 96-262 and 01-92, filed Aug. 25, 2003 at 6-7 (stating that US LEC may utilize meet point billing arrangements with the CMRS provider to jointly provision access service to the wireless end-user and that it is entitled to the benchmark rate).

⁵⁴ See *In the Matter of Access Billing Requirements for Joint Service Provision*, CC Docket No. 87-579, Phase II, Order, 65 Rad. Reg. 2d 650, paras. 2-5 (1988), *applications for review denied*, 4 FCC Rcd 7914 (1989). Indeed, the industry has developed standards, *i.e.*, the Multiple Exchange Carrier Access Billing Standard ("MECAB"), to govern meet point billing arrangements, and the Commission has required LECs to follow the MECAB standards. See, *e.g.*, *In the Matter of Waiver of Access Billing Requirements and Investigation of Permanent Modifications*, CC Docket No. 87-579, Memorandum Opinion and Order, 3 FCC Rcd 13, 16-17, paras. 29-31 (1987) (subsequent history omitted).

⁵⁵ See, *e.g.*, *In the Matter of Access Billing Requirements for Joint Service Provision*, CC Docket No. 87-579, Phase II, Order, 65 Rad. Reg. 2d 650, para. 87 (1988) ("We therefore conclude that those LECs whose current tariff provisions would allow a LEC to impose [termination] charges if that LEC is an intermediate, non-terminating carrier are required to modify their tariff provisions to preclude such charges in these circumstances.").

⁵⁶ See *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192 (2002) (*Sprint/AT&T Declaratory Ruling*), *petitions for review dismissed*, *AT&T Corp. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003).

⁵⁷ We reject the argument made by Verizon Wireless that the *Sprint/AT&T Declaratory Ruling* does not limit the ability of a CMRS provider to collect access charges from an IXC if the CMRS provider has a contract with an intermediate competitive LEC. See Verizon Wireless White Paper at 21. We will not interpret our rules or prior orders in a manner that allows CMRS carriers to do indirectly that which we have held they may not do directly. See *Sprint/AT&T Declaratory Ruling*, 17 FCC Rcd at 13198, para. 12 ("There being no authority under the Commission's rules or a tariff for Sprint PCS unilaterally to impose access charges on AT&T, Sprint PCS is entitled to collect access charges in this case only to the extent that a contract imposes a payment obligation."). Moreover, we also reject the argument by Verizon Wireless that IXCs taking service under certain competitive LEC tariffs are somehow bound by these competitive LEC/CMRS agreements. See Verizon Wireless White Paper at 22. Indeed, except in limited circumstances, the Commission's rules specifically prohibit cross-referencing other documents within a tariff. See 47 C.F.R. § 61.74(a).

⁵⁸ We note that competitive LECs continue to have flexibility in determining the access rate elements and rate structure for the elements and services they provide consistent with the *CLEC Access Reform Order*. See *CLEC Access Reform Order*, 16 FCC Rcd at 9946, para. 55. For this reason, we reject concerns expressed by some commenters that this constraint would require competitive LECs to adopt the incumbent LEC rate structure. See, (continued....)

that we identified in the *CLEC Access Reform Order*. Specifically, as competitive LECs and CMRS providers concede,⁵⁹ an IXC may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or terminating carrier and it is necessary to constrain the ability of competitive LECs to exercise this monopoly power. This new rule regarding rates that may be charged when a competitive LEC is an intermediate carrier will apply on a prospective basis.⁶⁰

18. Neither the *CLEC Access Reform Order* nor the *Sprint/AT&T Declaratory Ruling* addressed the appropriate rate a competitive LEC may charge when it is not serving the end-user; therefore, during the time between the effective date of *CLEC Access Reform Order* and the effective date of this reconsideration order, general pricing principles must govern any dispute over the appropriate competitive LEC rate. As a rule, access rates, like all other tariffed rates, must be just and reasonable under section 201(b) of the Act, and access tariffs, like all other tariffs, must clearly identify each of the services offered and the associated rates, terms, and conditions.⁶¹ In this case, the Commission established only a single rate for each year of the transition period and did not state that this rate was available only if a competitive LEC served the end-user on a particular call. Accordingly, prior to this order on reconsideration, it would not have been unreasonable for a competitive LEC to charge the tariffed benchmark rate for traffic to or from end-users of other carriers, provided that the carrier serving the end-user did not also charge the IXC and provided that the competitive LEC's charges were otherwise in compliance with and supported by its tariff.⁶²

19. We reject the argument that Qwest's petition provides no basis for any change to the currently effective transitional benchmark rates. In an *ex parte* filing, US LEC argues that Qwest's request for clarification applies only to the final benchmark rates, as distinct from the transitional benchmark rates.⁶³ US LEC suggests that any clarification must be so limited and may apply only to the final benchmark rates at the competing incumbent LEC rate.⁶⁴ We disagree. The language and the arguments made in the petition suggest that Qwest's request is not limited in the manner suggested by US LEC. Although the petition requests that the Commission clarify the meaning of the "competing ILEC rate," it contains several statements that could apply equally to the transitional benchmark rates.⁶⁵ The

(Continued from previous page)

e.g., Focal Comments at 6-7; Z-Tel Opposition at 3-6. See also US LEC Aug. 25 *Ex Parte* Letter at 2-3 (positing a number of arguments against imposing incumbent LEC rate structures on competitive LECs).

⁵⁹ See Verizon Wireless White Paper at 19 n.58 ("CMRS carriers wield as much 'monopoly power' here as CLECs do in the situations described in the [*CLEC Access Reform Order*].").

⁶⁰ See, e.g., 5 U.S.C. § 551(4); *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208, 109 S. Ct. 468, 471-72 (1988).

⁶¹ 47 U.S.C. § 201(b). See also 47 C.F.R. § 61.2(a).

⁶² See *ITC DeltaCom Communications, Inc. v. US LEC Corp. et al.*, No. 3:02-CV-116-JTC (N.D. Ga. March 15, 2004) (holding that an IXC has no duty to pay a competitive LEC for transiting wireless toll-free calls where the terms of the competitive LEC's tariff cover only access to the competitive LEC's own end-users or transport of traffic that originates or terminates through a LEC switching system).

⁶³ See US LEC Aug. 25 *Ex Parte* Letter at 7.

⁶⁴ *Id.*

⁶⁵ For instance, Qwest requests that the competing LEC's "tariffed rate should exclude the amounts paid for access service that are . . . not provided by the competitive LEC." Qwest Petition at 2. In addition, even if Qwest intended its request to apply solely to the final benchmark rates, as US LEC suggests, we believe that clarifying the application of the transitional benchmark rates is a logical outgrowth of Qwest's proposal. See *City of* (continued...)

arguments presented by Qwest to support its request are equally applicable to the transitional benchmark rates. Therefore, we find no reason why the Commission is prevented from clarifying the application of the transition benchmark rates or amending its rules prospectively, as set forth above.

20. Finally, we address a request by NewSouth Communications, Inc. that we clarify the meaning of the term "competing ILEC rate" as it applies to a competitive LEC that originates or terminates calls to its end-users after the three-year transition period ends on June 21, 2004.⁶⁶ NewSouth argues that a competitive LEC should be permitted to charge for all of the competing incumbent LEC access elements (including tandem switching and end office switching) if its switch serves a geographic area comparable to the competing incumbent LEC's tandem switch.⁶⁷ AT&T and MCI oppose NewSouth's request and assert that a competitive LEC may assess access charges on IXCs only for those access services that the competitive LEC actually provides.⁶⁸

21. We agree with NewSouth that clarification of this issue is necessary to avoid litigation and uncertainty, but we decline to adopt NewSouth's proposal. A primary objective of the *CLEC Access Reform Order* is to ensure that competitive LEC access charges are more closely aligned with incumbent LEC access rates.⁶⁹ As noted by AT&T and MCI, our long-standing policy with respect to incumbent LECs is that they should charge only for those services that they provide.⁷⁰ Under this policy, if an incumbent LEC switch is capable of performing both tandem and end office functions, the applicable

(Continued from previous page)

Stoughton v. United States EPA, 858 F.2d 747, 751 (D.C. Cir. 1988) (holding that an agency may make changes to a proposed rule if the changes are a logical outgrowth of a proposal and previous comments). In order for a final rule to be a logical outgrowth of a proposal, the agency must have provided proper notice of the initial proposal. *See Sprint Corp. v. FCC*, 315 F.3d at 376. Because Qwest's petition was properly noticed in the context of a rulemaking proceeding, the logical outgrowth analysis may be applied. *See Access Charge Reform*, CC Docket No. 96-262, Public Notice, Report No. 2490 (rel. June 29, 2001), 66 Fed. Reg. 35628 (2001).

⁶⁶ See Letter from Jake E. Jennings, Senior Vice President, Regulatory Affairs and Carrier Relations, NewSouth Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-262, at Attach. (filed Mar. 2, 2004) (attaching Letters from Jake E. Jennings, Senior Vice President, Regulatory Affairs and Carrier Relations, NewSouth Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 1 (filed Feb. 27, 2004).

⁶⁷ *Id.* at 1-2. NewSouth states that this is the standard that is applied pursuant to our reciprocal compensation rules for purposes of determining whether a competitive LEC may charge the tandem interconnection rate. *See* 47 C.F.R. § 51.711(a)(3).

⁶⁸ See Letter from Peter H. Jacoby, General Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-262, at 2-4 (filed Mar. 30, 2004) (AT&T Mar. 30 *Ex Parte* Letter); Letter from Henry G. Hultquist, MCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-262, at 2-3 (filed Mar. 22, 2004) (MCI Mar. 22 *Ex Parte* Letter). For example, they state that the functions performed by a competitive LEC switch when it subtends an incumbent LEC tandem are the same as those performed by an incumbent LEC end office, and therefore the competitive LEC should not be permitted to charge for tandem switching. *See* AT&T Mar. 30 *Ex Parte* Letter at 3; MCI Mar. 22 *Ex Parte* Letter at 2.

⁶⁹ *CLEC Access Charge Order*, 16 FCC Rcd at 9925, para. 3.

⁷⁰ See AT&T Mar. 30 *Ex Parte* Letter at 3 (citing *Bell Atlantic Telephone Companies*, 6 FCC Rcd 4794 (1991)); MCI Mar. 22 *Ex Parte* Letter at 2 (citing *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556 (1998)).

EXHIBIT

MP2-15

**QWEST LOCAL SERVICES PLATFORM™ AGREEMENT
ATTACHMENT 2—QLSP™ Service Description**

Qwest will provide Qwest Local Services Platform™ ("QLSP™") service offerings according to the following terms and conditions. Except as set forth in this Attachment, capitalized terms have the definitions assigned to them in the Agreement. CLEC may use QLSP Services to provide any Telecommunications Services, Information Services, or both that CLEC chooses to offer.

1.1 General QLSP Service Description.

1.1.1. QLSP Services consist of local switching (including the basic switching function, the port, plus the features, functions, and capabilities of the Switch including all compatible and available vertical features, such as hunting and anonymous call rejection, provided by the Qwest switch) ("Local Switching") and Shared Transport in combination. Qwest Advanced Intelligent Network (AIN) Services such as remote access forwarding and Qwest Voice Messaging Services (VMS) may also be purchased with compatible QLSP Services. These Network Elements will be provided in compliance with all Telcordia and other industry standards and technical and performance specifications to allow CLEC to combine the QLSP Services with a compatible voicemail product and stutter dial tone. Qwest will provide access to 911 emergency Services and directory listings in accordance with the terms and conditions of CLEC's Interconnection Agreements ("ICAs"). As part of the QLSP Service, Qwest combines the Network Elements that make up QLSP Service with analog/digital capable Loops, with such Loops (including services such as line splitting) being provided in accordance with the rates, terms and conditions of the CLEC's ICAs as described below. CLEC may also purchase Qwest Commercial High Speed Internet (HSI) Service (also known as Qwest Digital Subscriber Line® (DSL)), under a separate Services agreement, to be used with compatible QLSP Service.

1.1.2. QLSP Service is available in six different service arrangements, each of which is described more fully below: QLSP Residential; QLSP Business; QLSP Centrex (including Centrex 21, Centrex Plus, and in Minnesota only Centron); QLSP ISDN BRI; QLSP Public Access Lines ("PAL"); QLSP PBX Analog DID and non-DID (one way and two way) trunks.

1.1.3 Nothing in this Agreement precludes Qwest from withdrawing availability of comparable, functionally equivalent services from its retail end user customers. In the event of such withdrawal and/or discontinuation, Qwest may also withdraw availability of the equivalent QLSP Service.

1.2 Combination of QLSP Service with Loops. Except as described below, the Loop will be provided by Qwest under the applicable ICAs in effect between Qwest and CLEC at the time the order is placed. As part of the QLSP Service, Qwest will combine the Local Switching and Shared Transport Network Elements with the Loop.

1.2.1 Due to the rules and regulations promulgated by the FCC pertaining to the availability of Unbundled Network Element ("UNE") Loops under Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") in its *Report and Order-Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, FCC 05-170, WC Docket No. 04-223, (effective September 16, 2005) ("OFO"), Qwest will provide to CLEC the Loop element of QLSP Services purchased in

the following nine Omaha Nebraska Wire Centers under the terms of this Agreement: Omaha Douglas; Omaha Izard Street; Omaha 90th Street; Omaha Fort Street; Omaha Fowler Street; Omaha O Street; Omaha 78th Street; Omaha 135th Street; and Omaha 156th Street.

1.2.2 The following QLSP Service types will be combined with 2-wire loops: QLSP Business; QLSP Centrex (including Centrex 21); Centrex Plus; Centron in Minnesota Only; QLSP ISDN BRI; QLSP PAL; QLSP PBX Analog non-DID and 1-Way DID Trunks; and QLSP Residential.

1.2.3 QLSP PBX Analog 2-Way DID Trunks will be combined with 4 wire loops.

1.3 Local Switching. Local Switching encompasses Line Side and Trunk Side facilities including the basic switching function, plus the features, functions, and all vertical features that are loaded in Qwest's end office Switch. Vertical features are software attributes on end office Switches and are listed on the Qwest wholesale website. Local Switching components include analog line Port, digital line port supporting BRI ISDN, and analog trunk ports.

1.3.1 Line Port. Line Port attributes include: telephone number; dial tone; signaling (Loop or ground start); on/off hook detection; audible and power ringing; Automatic Message Accounting (AMA Recording); and blocking options.

1.3.2. Operator Services and Directory Assistance Services are provided under the terms and conditions of CLEC's ICAs.

1.3.3. Digital Line Port Supporting BRI ISDN. Basic Rate Interface Integrated Services Digital Network (BRI ISDN) is a digital architecture that provides integrated voice and data capability (2 wire). A BRI ISDN Port is a Digital 2B+D (2 Bearer Channels for voice or data and 1 Delta Channel for signaling and D Channel Packet) Line Side Switch connection with BRI ISDN voice and data basic elements. For flexibility and customization, optional features can be added. BRI ISDN Port does not offer B Channel Packet service capabilities. The serving arrangement conforms to the internationally developed, published, and recognized standards generated by International Telegraph and Telephone Union (formerly CCITT).

1.3.4. Analog Trunk Port. DS0 analog trunk Ports can be configured as DID, DOD, and two-way.

1.3.4.1 Analog trunk Ports provide a 2-Way Analog Trunk with DID, E&M Signaling and 2-Wire or 4-Wire connections. This Trunk Side connection inherently includes hunting within the trunk group.

1.3.4.2 All trunks are designed as 4-Wire leaving the Central Office. For 2-Wire service, the trunks are converted at the End User Customer's location.

1.3.4.3. Two-way analog DID trunks are capable of initiating out going calls, and may be equipped with either rotary or touch-tone (DTMF) for this purpose. When the trunk is equipped with DID call transfer feature, both the trunk and telephone instruments must be equipped with DTMF.

**QWEST LOCAL SERVICES PLATFORM™ AGREEMENT
ATTACHMENT 1- DEFINITIONS**

"Miscellaneous Charges" mean charges that Qwest may assess in addition to recurring and nonrecurring rates set forth in the Rate Sheet, for activities CLEC requests Qwest to perform, activities CLEC authorizes, or charges that are a result of CLEC's actions, such as cancellation charges, additional labor and maintenance. Miscellaneous Charges are not already included in Qwest's recurring or nonrecurring rates. Miscellaneous Charges shall be contained in or referenced in the Rate Sheet.

"Network Element" is a facility or equipment used in the provision of Telecommunications Service or an information service or both. It also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for Billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service or an information service or both, as is more fully described in the Agreement.

"Operational Support Systems" or "OSS" mean pre-ordering, Provisioning, maintenance, repair and billing systems.

"Order Form" means service order request forms issued by Qwest, as amended from time to time.

"Person" is a general term meaning an individual or association, corporation, firm, joint-stock company, organization, partnership, trust or any other form or kind of entity.

"Port" means a line or trunk connection point, including a line card and associated peripheral equipment, on a Central Office Switch but does not include Switch features. The Port serves as the hardware termination for line or Trunk Side facilities connected to the Central Office Switch. Each Trunk Side Port is typically associated with one or more telephone numbers as the Customer's network address.

"Premises" refers to Qwest's Central Offices and Serving Wire Centers; all buildings or similar structures owned, leased, or otherwise controlled by Qwest that house its network facilities; all structures that house Qwest facilities on public rights-of-way, including but not limited to vaults containing Loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by Qwest that is adjacent to these Central Offices, Wire Centers, buildings and structures.

"Proof of Authorization" or "POA" shall consist of verification of the End User Customer's selection and authorization adequate to document the End User Customer's selection of its local service provider and may take the form of a third party verification format.

"Provisioning" involves the exchange of information between Telecommunications Carriers where one executes a request for a set of products and services from the other with attendant acknowledgments and status reports.

"Public Switched Network" includes all Switches and transmission facilities, whether by wire or radio, provided by any Common Carrier including LECs, IXCs and CMRS providers that use the North American Numbering Plan in connection with the provision of switched services.

"Serving Wire Center" denotes the Wire Center from which dial tone for local exchange service would normally be provided to a particular Customer Premises.

"Switched Transport" is defined as local interoffice transmission facilities shared by more than one Carrier, including Qwest, between End Office Switches, between End Office Switches and Tandem Switches (local and

Access Tandem Switches), and between Tandem Switches within the Local Calling Area, as described more fully in the Agreement.

"Switch" means a switching device employed by a Carrier within the Public Switched Network. Switch includes but is not limited to End Office Switches, Tandem Switches, Access Tandem Switches, Remote Switching Modules, and Packet Switches. Switches may be employed as a combination of End Office/Tandem Switches.

"Switched Access Traffic," as specifically defined in Qwest's interstate Switched Access Tariffs, is traffic that originates at one of the Party's End User Customers and terminates at an IXC Point of Presence, or originates at an IXC Point of Presence and terminates at one of the Party's End User Customers, whether or not the traffic transits the other Party's network.

"Tariff" as used throughout this Agreement refers to Qwest interstate Tariffs and state Tariffs; price lists, and price schedules.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a Common Carrier under the Act only to the extent that it is engaged in providing Telecommunications Services, except that the FCC shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

"Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means a Service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to End User Customers intercommunicating Service of the character ordinarily furnished by a single exchange, and which is covered by the exchange Service charge, or comparable Service provided through a system of Switches, transmission equipment or other facilities (or combinations thereof) by which a subscriber can originate and terminate a Telecommunications Service.

"Trunk Side" refers to Switch connections that have been programmed to treat the circuit as connected to another switching entity.

"Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Carrier's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more Central Offices, used for the provision of basic exchange Telecommunications Services and access Services, are located.

Terms not otherwise defined here but defined in the Act and the orders and the rules implementing the Act or elsewhere in the Agreement, shall have the meaning defined there. The definition of terms that are included here and are also defined in the Act, or its implementing orders or rules, are intended to include the definition as set forth in the Act and the rules implementing the Act.

January 11, 2007/OrbitCom

CDS-070111-0015; CO-CDS-070111-0016; ID-CDS-070111-0017; IA-CDS-070111-0018; MN-CDS-070111-0019; MT-CDS-070111-0020;
ND-CDS-070111-0022; NM-CDS-070111-0023; ND-CDS-070111-0024; OR-CDS-070111-0025; SD-CDS-070111-0026; UT-CDS-070111-0027;
WA-CDS-070111-0028; WY-CDS-070111-0029

Qwest QLSP Agreement

EXHIBIT

MP2-16



205 North Michigan Avenue
Suite 1100
Chicago, IL 60601

June 5, 2008

VIA FEDERAL EXPRESS

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

RECEIVED

JUN 06 2008

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Re: **REVISED TARIFF PAGES: TC08-042**
MCImetro Access Transmission Services LLC d/b/a Verizon Access
Transmission Services: South Dakota Tariff No. 2

Dear Ms. Van Gerpen:

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("Verizon Access") is filing revised tariff pages for Docket No. TC08-042.

The revised tariff pages reflect the new effective date of June 15, 2008, and revisions which were previously submitted to South Dakota Public Utilities Commission staff for review. The revisions made to 8YY Traffic Transit Service are a result of discussions between Verizon Access and AT&T. The following tariff pages included in the attached are being submitted with revisions.

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Page No. 58
Page No. 65
Page No. 67

Please date stamp and return the enclosed copy of this letter to my attention in the enclosed self-addressed stamped envelope. If you have any questions, please call me at (312) 260-3245 or send me an email at shannon.brown@verizonbusiness.com.

Respectively submitted,

Shannon L. Brown
Tariff Manager
Verizon Business

Enclosure

ACCESS SERVICES

TITLE PAGE

SOUTH DAKOTA TELECOMMUNICATIONS TARIFF

This tariff contains the descriptions, regulations, service standards, and rates applicable to the furnishing of service and facilities for telecommunications services provided by MCImetro Access Transmission Service LLC d/b/a Verizon Access Transmission Services, with principal offices at 22001 Loudoun County Parkway, Ashburn, VA 20147. This tariff applies for services furnished within the state of South Dakota. This tariff is on file with the South Dakota Public Service Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

MCImetro ACCESS TRANSMISSION SERVICES LLC
d/b/a VERIZON ACCESS TRANSMISSION SERVICES

REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES
APPLYING TO ACCESS SERVICES BETWEEN
FIXED POINTS IN THE STATE OF SOUTH DAKOTA

Issued: 4/22/08

Effective: 6/15/08

Shannon L. Brown
Tariff Manager
205 N. Michigan Avenue, Suite 1100
Chicago, IL 60601

ACCESS SERVICES

CHECK SHEET

Pages 1 – 68 inclusive of this tariff are effective as of the date shown. Original and revised pages, as named below, comprise all changes from the original tariff in effect on the date indicated.

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ACCESS SERVICES

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Issued: 4/22/08

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ACCESS SERVICES

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MCImetro ACCESS TRANSMISSION SERVICES LLC
d/b/a VERIZON ACCESS TRANSMISSION SERVICES

SOUTH DAKOTA TARIFF NO. 2
ORIGINAL PAGE NO. 7

ACCESS SERVICES

APPLICATION OF TARIFF

This tariff sets forth the service offerings, rates, terms and conditions applicable to the furnishing of intrastate access service within the State of South Dakota by MCImetro Access Transmission Services d/b/a Verizon Access Transmission Services (hereinafter "The Company").

Issued: 4/22/08

Effective: 6/15/08

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ACCESS SERVICES

TARIFF FORMAT PAGES

- A. Page Numbering - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. However, new pages are occasionally added to the tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.
- B. Page Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on filed with the South Dakota PSC. For example, the 4th revised Page No. 14 cancels the 3rd revised Page No. 14. Because of various suspension periods, deferrals, etc., the South Dakota PSC follows in their tariff approval process, the most current Page number on file with the Commission is not always the tariff page in effect. Consult the Check Page No. for the Page No. currently in effect.
- C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2.
 - 2.1.
 - 2.1.1.
 - 2.1.1.A.
 - 2.1.1.A.1.
 - 2.1.1.A.1.(a).
 - 2.1.1.A.1.(a).I.
 - 2.1.1.A.1.(a).I.(f).
 - 2.1.1.A.1.(a).I.(f).(1).
- D. Check Pages - When a tariff filing is made with the South Dakota PSC, an updated check page accompanies the tariff filing. The check page lists the pages contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check page is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some pages). The tariff user should refer to the latest check page to find out if a particular page is the most current on file with the South Dakota PSC.

ACCESS SERVICES

EXPLANATION OF SYMBOLS, REFERENCE MARKS, AND ABBREVIATIONS OF TECHNICAL TERMS
USED IN THIS TARIFF

The following symbols shall be used in this tariff for the purpose indicated below:

- D - To signify discontinued rate or regulation.
- I - To signify increased rate.
- M - To signify a move in the location of text.
- N - To signify new rate or regulation.
- R - To signify reduced rate.
- T - To signify a change in text but no change in rate or regulation.

ACCESS SERVICES

1. **DEFINITIONS**

Certain terms used generally throughout this tariff for the Access Services of this Company are defined below.

Access Code: A uniform five or seven digit code assigned by the Company to an individual customer. The five digit code has the form 10XXX, and the seven digit code has the form 950-XXXX or 101XXXX.

Access Service: Switched Access to the network of a Carrier for the purpose of originating or terminating communications.

Access Service Request (ASR): The industry service order format used by Access Service customers and access providers as agreed to by the Ordering and Billing Forum.

Access Tandem: An Exchange Carrier's switching system that provides a concentration and distribution function for originating or terminating traffic between local switching centers and customers' premises.

Advance Payment: Payment of all or part of a charge required before the start of service.

Alternate Access: Alternate Access has the same meaning as Local Access except that the provider of the service is an entity other than the local Exchange Carrier authorized or permitted to provide such service. The charges for Alternate Access may be specified in a private agreement rather than in a published or special tariff if private agreements are permitted by applicable governmental rules.

Authorized User: A person, firm, corporation or other entity that either is authorized by the Customer to use Access Services or is placed in a position by the Customer, either through acts or omissions, to use Access Services.

Bit: The smallest unit of information in the binary system of notation.

Carrier or Common Carrier: See Interexchange Carrier or Exchange Carrier.

Channel(s): An electrical or, in the case of fiber optic-based transmission systems, a photonic communications path between two or more points of termination.

Common Channel Signaling (CCS): A high speed packet switched communications network which is separate (out of band) from the public packet switched and message networks. It is used to carry addressed signaling messages for individual trunk circuits and/or database related services between signaling points in the CCS network.

Company: MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, a Delaware corporation, which is the issuer of this tariff.

ACCESS SERVICES

1. DEFINITIONS (Cont.)

Conventional Signaling: The inter-machine signaling system has been traditionally used in North America for the purpose of transmitting the called number's address digits from the originating Local Switching Center which terminates the call. In this system, all of the dialed digits are received by the originating switching machine, a path is selected, and the sequence of supervisory signals and outpulsed digits is initiated. No overlap outpulsing ten digit ANI, ANI information digits, or acknowledgment link are included in this signaling sequence.

Customer: The person, firm, corporation or other entity which orders Service and is responsible for the payment of charges and for compliance with the Company's tariff regulations.

Dedicated: A facility or equipment system or subsystem set aside for the sole use of a specific customer.

Duplex Service: Service which provides for simultaneous transmission in both directions.

800 Data Base Access Service: The term "800 Data Base Access Service" denotes a toll-free originating Trunkside Access Service when the 8XX Service Access Code (i.e., 800, 822, 833, 844, 855, 866, 877, or 888 as available) is used. The term 8XX is used interchangeably with 800 Data Base Service throughout this Tariff to describe this service.

End User: Any individual, association, corporation, governmental agency or any other entity other than an Interexchange Carrier which subscribes to intrastate service provided by an Exchange Carrier.

Exchange Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service.

Fiber Optic Cable: A thin filament of glass with a protective outer coating through which a light beam carrying communications signals may be transmitted by means of multiple internal reflections to a receiver, which translates the message.

Firm Order Confirmation (FOC): Acknowledgment by the Company of receipt of an Access Service Request from the Customer and commitment by the Company of a Service Date.

Hub: The Company office where all customer facilities are terminated for purposes of interconnection to Trunks and/or cross-connection to distant ends.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

Interexchange Carrier (IC) or Interexchange Common Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in state or foreign communication for hire by wire or radio, between two or more exchanges.

ACCESS SERVICES

1. DEFINITIONS (Cont.)

Joint User: A person, firm or corporation designated by the Customer as a user of access facilities furnished to the Customer by the Company, and to whom a portion of the charges for such facilities are billed under a joint use arrangement.

Kbps: Kilobits, or thousands of Bits, per second.

LATA: A local access and transport area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192 for the provision and administration of communications services.

Line Information Data Base (LIDB): The data base which contains billing information such as telephone numbers, calling card numbers and associated billed number restriction data used in connection with the validation and billing of calls.

Local Access: The connection between a customer's premises and a point of presence of the Exchange Carrier.

Local Switching Center: The switching center where telephone exchange service customer station Channels are terminated for purposes of interconnection to each other and to interoffice Trunks.

Mbps: Megabits, or millions of Bits, per second.

Meet Point Billing: The arrangement through which multiple Exchange Carriers involved in providing Access Services, divide the ordering, rating, and billing of such services on a proportional basis, so that each Exchange Carrier involved in providing a portion of the Access Service agrees to bill under its respective tariff.

Network: The Company's digital fiber optics-based network located in the Continental United States.

Network Services: The Company's telecommunications Access Services offered on the Company's Network.

Non-Recurring Charges: The one-time initial charges for services or facilities, including but not limited to charges for construction, installation, or special fees, for which the Customer becomes liable at the time the Service Order is executed.

Off-Hook: The active condition of Switched Access or a telephone exchange service line.

On-Hook: The idle condition of Switched Access or a telephone exchange service line.

ACCESS SERVICES

1. DEFINITIONS (Cont.)

Out of Band Signaling: An exchange access signaling feature which allows customers to exchange call control and signaling information over a communications path which is separate from the message path.

Point of Presence: Location where the Customer maintains a facility for purposes of interconnecting to the Company's Network.

Premises: The space occupied by a Customer or Authorized User in a building or buildings or on contiguous property (except railroad rights-of-way, etc.).

Presubscription: An arrangement whereby an End User may select and designate to the Company an Interexchange Carrier (IXC) or Carriers it wishes to access, without an Access Code, for completing interLATA calls. The selected IXC(s) are referred to as the End User's Primary Interexchange Carrier (PIC). The End User may select any IXC that orders FGD Switched Access Service at the Local Switching Center that serves the End User.

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Service Commencement Date: For Direct Connect Switched Access Service, the first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or this tariff, in which case the Service Commencement Date is the date of the Customer's acceptance of service. The parties may mutually agree on a substitute Service Commencement Date. If the Company does not have an executed Service Order from a Customer, the Service Commencement Date will be the first date on which the service or facility was used by the Customer. For Tandem Connect Customers, the Service Commencement Date will be the first date on which the service or facility was used by the Customer.

Service Order: The written request for Network Services executed by the Customer and the Company in a format devised by the Company; or, in the alternative, the submission of an Access Service Request by the Customer in the manner specified in this tariff. The signing of a Service Order or submission of an ASR by the Customer and acceptance thereof by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff, but the duration of the service is calculated from the Service Commencement Date.

ACCESS SERVICES

1. DEFINITIONS (Cont.)

Service(s): The Company's telecommunications Access Services offered on the Company's Network.

Shared Facilities: A facility or equipment system or subsystem which can be used simultaneously by several customers.

Signaling Point of Interface: The Customer designated location where the SS7 signaling information is exchanged between the Company and the Customer.

Signaling System 7 (SS7): The common Channel Out of Band Signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

Signaling Transfer Point Access: Allows the Customer to access a specialized switch which provides SS7 network access and performs SS7 messaging routing and screening.

Switched Access Service: Access to the switched network of an Exchange Carrier for the purpose of originating or terminating communications. Switched Access is available to carriers, as defined in this tariff.

Trunk: A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

Issued: 4/22/08

Effective: 6/15/08

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ACCESS SERVICES

2. REGULATIONS

2.1 Undertaking of the Company

2.1.1 Scope

Access Services consist of furnishing communications service in connection with one-way and/or two-way information transmission between points within the State of South Dakota under the terms of this tariff.

2.1.2 Shortage of Equipment or Facilities

2.1.2.1 The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company when necessary because of lack of facilities or due to some other cause beyond the Company's control.

2.1.2.2 The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's Fiber Optic Cable facilities as well as facilities the company may obtain from other Carriers from time to time, to furnish service as required at the sole discretion of the Company.

2.1.2.3 The provisioning and restoration of service in emergencies shall be in accordance with Part 64, Subpart D, Appendix A of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities.

2.1.3 Terms and Conditions

2.1.3.1 Except as otherwise provided herein, service is provided and billed on the basis of a minimum period of at least one month, and shall continue to be provided until cancelled by the Customer, in writing, on not less than 30 days notice. Unless otherwise specified herein, for the purpose of computing charges in this tariff, a month is considered to have 30 days.

2.1.3.2 Customers may be required to enter into written Service Orders which shall contain or reference the name of the Customer, a specific description of the service ordered; the rates to be charged, the duration of the services, and the terms and conditions in this tariff. Customer will also be required to execute any other documents as may be reasonably requested by the Company.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.1 Undertaking of the Company (Cont.)

2.1.3 Terms and Conditions (Cont.)

2.1.3.3 At the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month to month basis at the then current rates unless terminated by either party upon 30 days written notice. Any termination shall not relieve Customer of its obligation to pay any charges incurred under the Service Order and this tariff prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the Service Order shall survive such termination.

2.1.3.4 This tariff shall be interpreted and governed by the laws of the State of South Dakota without regard for the State's choice of laws provisions.

2.1.3.5 The Customer agrees to operate Company-provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void Company liability for interruption of service and may make the Customer responsible for damage to equipment pursuant to section 2.1.3.6 below.

2.1.3.6 The Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.

2.1.4 Liability of the Company

2.1.4.1 The liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, errors, other defects, or representations by the Company, or use of these services or damages arising out of the failure to furnish the service whether caused by act or omission, shall be limited to the extension of allowances for interruption as set forth in 2.6 below. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.1 Undertaking of the Company (Cont.)

2.1.4 Liability of the Company (Cont.)

2.1.4.2 The Company's liability for willful misconduct, if established as a result of judicial or administrative proceedings, is not limited by this tariff. With respect to any other claim or suit, by a Customer or by any others, for damages associated with the ordering (including the reservation of any specific number for use with a service); installation (including delays thereof), provision, termination, maintenance, repair interruption or restoration of any service or facilities offered under this tariff, and subject to the provisions of Section 2.6, the Company's liability, if any, shall be limited as provided herein.

2.1.4.3 The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction action, or request of The United States government or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal state, or local governments, or of any military authority; preemption of existing service in compliance with national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lockouts work stoppages, or other labor difficulties.

2.1.4.4 The Company shall not be liable for (a) any act or omission of any entity furnishing the Company or the Company's Customers facilities or equipment used for the interconnection with Access Services; or (b) for the acts or omissions of other Common Carriers or warehousemen.

2.1.4.5 The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.1 Undertaking of the Company (Cont.)

2.1.4 Liability of the Company (Cont.)

2.1.4.6 The Customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other actions, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, condition, location, or use of any installation or equipment provided by the Company. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this Section 2.1.4.6 as a condition precedent to such installations.

2.1.4.7 The Company shall not be liable for any defacement of or damage to Customers Premises resulting from the furnishing of services or equipment on such Premises or the installation or removal thereof, unless such defacement or damage is caused by the gross negligence or willful misconduct of the Company's agents or employees. No agents or employees of other participating Carriers shall be deemed to be agents or employees of the Company.

2.1.4.8 Notwithstanding the Customer's obligations as set forth in Section 2.3.2 below, the Company shall be indemnified, defended and held harmless by the Customer, or by others authorized by it to use the service, against any claim, loss or damage arising from Customer's use of services furnished under this tariff, including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the material, data, information, or other content transmitted via the Company's service; and patent infringement claims arising from combining or connecting the service offered by the Company with apparatus and systems of the Customer or others; all other claims arising out of any act or omission of the Customer or others, in connection with any service provided by the Company pursuant to this tariff.

2.1.4.9 The Company shall be indemnified and held harmless by the End User against any claim, loss or damage arising from the End User's use of services offered under this tariff including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the End User's own communications; patent infringement claims arising from the End User's combining or connecting the service offered by the Company with facilities or equipment furnished by the End User of another Interexchange Carrier; or all other claims arising out of any act or omission of the End User in connection with any service provided pursuant to this tariff.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.1 Undertaking of the Company (Cont.)

2.1.4 Liability of the Company (Cont.)

2.1.4.10

2.1.4.11

The Company makes no warranties or representation, express or implied, including warranties or merchantability or fitness for a particular use, except those expressly set forth herein.

2.1.4.12

The Company shall not be liable for any act or omission of any other company or companies furnishing a portion of the service, or for damages associated with service, Channels, or equipment which result from the operation of Customer-provided systems, equipment, facilities or service which are interconnected with Company services.

2.1.4.13

The Company does not guarantee nor make any warranty with respect to service installations at locations at which there is present an atmosphere that is explosive, prone to fire, dangerous or otherwise unsuitable for such installations. The Customer and End User shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits or other actions, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to, or death of, any person or persons, or for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, locations or use of service furnished by the Company at such locations.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.1 Undertaking of the Company (Cont.)

2.1.4 Liability of the Company (Cont.)

2.1.4.14 The Company shall not be liable for the Customer's failure to fulfill its obligations to take all necessary steps including, without limitation, obtaining, installing and maintaining all necessary equipment, materials and supplies, for interconnecting the terminal equipment or communications system of the Customer, or any third party acting as its agent, to the Company's Network. The Customer shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's service, that the signals emitted into the Company's Network are of the proper mode, band-width, power, data speed, and signal level for the intended use of the Customer and in compliance with the criteria set forth in Section 2.1.6 following, and that the signals do not damage Company equipment, injure its personnel or degrade service to other Customer. If the Customer or its agent fails to maintain and operate its equipment and/or system or that of its agent properly, with resulting imminent harm to Company equipment, personnel, or the quality of service to other Customers, the Company, may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service without liability.

2.1.4.15 The Company shall not be liable for any act or omission concerning the implementation of Presubscription, as defined herein.

2.1.4.16 With respect to Telecommunications Relay Service (TRS), any service provided by Company which involves receiving, translating, transmitting or delivering messages by telephone, text telephone, a telecommunications device for the deaf, or any other instrument over the facilities of Company or any connecting Carrier, Company's liability for the interruption or failure of the service shall not exceed an amount equal to the Company's charge for a one minute call to the called station at the time the affected calls was made.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.1 Undertaking of the Company (Cont.)

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable, notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

2.1.6 Provision of Equipment and Facilities

2.1.6.1 The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.

2.1.6.2 The Company shall use reasonable efforts to maintain facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.

2.1.6.3 The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.

2.1.6.4 Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.

2.1.6.5 The Customer shall be responsible for the payment of service charges imposed on the Company by another entity, for visits to the Customer Premises when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.1 Undertaking of the Company (Cont.)

2.1.6 Provisions of Equipment and Facilities (Cont.)

2.1.6.6 The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Notwithstanding the above, the Company shall not be responsible for:

- (a) the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission;
- (b) the reception of signals by Customer-provided equipment; or
- (c) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

2.1.6.7 The Company intends to work cooperatively with the Customer to develop network contingency plans in order to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.

2.1.6.8 The Company reserves the reasonable right to assign, designate or change telephone numbers, any other call number designations associated with Access Services, or the Company serving central office prefixes associated with such numbers, when necessary in the conduct of its business.

2.1.7 Non-routine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in unusual locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.1 Undertaking of the Company (Cont.)

2.1.8 Special Construction

Subject to the arrangement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken and characterized by one or more of the following:

- (a) where facilities are not presently available and there is no other requirement for the facilities so constructed;
- (b) of a type other than that which the Company would normally utilize in the furnishing of its services;
- (c) where facilities are to be installed over a route other than that which the Company would normally utilize in the furnishing of its services;
- (d) where facilities are requested in a quantity greater than that which the Company would normally construct;
- (e) where installation is on an expedited basis;
- (f) on a temporary basis until permanent facilities are available;
- (g) installation involving abnormal costs; or
- (h) in advance of its normal construction schedules.

Special construction charges for Switched Access Service will be determined as described in Section 6.5.1, following.

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this tariff remains in the Company, its agents, contractors or suppliers.

2.2 Prohibited Uses

- 2.2.1 The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and SDPUC regulations, policies, orders, and decisions; and if the reseller intends to provide intrastate services, is certified with the South Dakota Public Utilities Commission.
- 2.2.3 The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.3 Obligations of the Customer

2.3.1 Obligations: The Customer shall be responsible for:

- (a) the payment of all applicable charges pursuant to this tariff;
- (b) reimbursing the Company for damage to, or loss of, the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company. The Company will, upon reimbursement for damages to its facilities or equipment, cooperate with the Customer in prosecuting a claim against the person causing such damage and the Customer shall be subrogated in the Company's right of recovery of damages to the extent of such payment;
- (c) providing at no charge, as specified from time to time by the Company, any needed personnel, equipment, space, and power to operate Company facilities and equipment installed on the Customer Premises, and the level of heating and air conditioning necessary to maintain the proper operating environment on such Premises;
- (d) obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide Access Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1(c) above. Any costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this subsection prior to accepting an order for service;

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.3 Obligations of the Customer

2.3.1 Obligations: The Customer shall be responsible for: (Cont.)

- (e) providing a safe place to work and complying with all laws and regulations regarding the working conditions on the Premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing, and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;
- (f) complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses, and permits as may be required with respect to, the location of Company facilities and equipment in any Customer Premises or the rights-of-way for which Customer is responsible for obtaining under Section 2.3.1(d) above; and granting or obtaining permission for Company agents or employees to enter the Customer Premises at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company; and
- (g) not creating or allowing to be placed or maintained any liens or other encumbrances on the Company's equipment or facilities.

2.3.2 Claims

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees for:

- (a) any loss, destruction or damage to property of the Company or any third party, or the death of or injury to persons, including, but not limited to employees or invitees of either the Company or the Customer, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees;
- (b) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.3 Jurisdictional Reporting

2.3.3.1 Percent Interstate Usage (PIU): The jurisdictional reporting requirements will be as specified below. When a Customer orders Access Service via an Access Service Request (ASR), the Customer must provide the Company with a report of its Projected Percent Interstate Usage (PIU). In addition, the Customer must provide the Company with an auditable PIU report in each calendar quarter following installation of service. The Customer must provide the PIU report in whole numbers. The PIU report will be used by the Company to apportion the Customer's use and/or charges between interstate and intrastate service. If the Customer fails to provide the required PIU report, the PIU factor will be determined as set forth in 2.3.3.1.1 below and shall not be retroactively adjusted if the Customer provides the factor at a later date.

2.3.3.1.1 Effective on the first of January, April, July and October of each year the Customer shall update the PIU factor and report the result to the Company (Quarterly PIU Report). The Quarterly PIU Report will be based on the Customer's traffic in preceding 3-month period (calendar quarter) ending the last day of December, March, June and September (calendar quarter), respectively, and shall serve as the basis of the PIU factor to be used for the next calendar quarter.

2.3.3.1.1.1 If the Customer does not provide the Company a Quarterly PIU Report, the Company will assume the PIU factor to be the same as specified in the Quarterly PIU Report most recently provided by the Customer. If a Customer has never provided the Company a Quarterly PIU Report or the Customer is a new customer, the Company will assume the PIU factor to be the same as specified in the Access Service Request, except, of the Company can reasonably determine jurisdiction by the Customer's monthly call detail, the Company will determine the Customers' PIU on a monthly basis. If a Customer has never provided the Company a Quarterly PIU Report and has never provided a PIU factor in a Access Service Request, the Company will set the Customer's PIU factor on a default basis as 50 percent interstate and 50 percent intrastate traffic for the next calendar quarter.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.3 Jurisdictional Reporting

2.3.3.1 Percent Interstate Usage (PIU) (Cont.)

2.3.3.1.2 Originating Access: Originating access minutes may be based on traffic originating at the State, LATA or Local Switching Center level, provided that the traffic being measured is only traffic originating from the Company Local Switching Center(s). Originating access minutes will be measured as follows, based on type of access:

2.3.3.1.2.1 For Feature Group D Switched Access Service(s), as defined in Section 5.2.1, where the Company can determine jurisdiction by it's call detail, the projected Percent Interstate Usage (PIU) will be developed by the Company on a monthly basis by dividing the measured interstate originating access minutes by the total originating access minutes.

2.3.3.1.2.2 For Feature Group D with 950 Access, as defined in Section 5.5.3.1, the Customer must provide the Company with a projected PIU factor by supplying the Company with an interstate percentage of originating access minutes.

2.3.3.1.2.3 For 500, 700, 8XX, calling card and operator service access, the Customer must provide the Company with a projected PIU factor for each type of access. The Customer who provides a PIU factor shall supply the Company with an interstate percentage of originating access minutes. The PIU factor will be used to determine the jurisdiction for billing purposes of 500, 700, Toll Free 8YY, Toll Free 8YY Transit Traffic Service, calling card and operator service access. The Company will apply the PIU filed by the Customer for Toll Free 8YY to the 8YY Transit Traffic delivered to Customers.

2.3.3.1.3 Terminating Access: For Feature Group D Switched Access Service(s), the Customer must provide the Company with a projected PIU factor by supplying the Company with an interstate percentage of terminating access minutes on a quarterly basis, as described in Sections 2.3.3.1.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.3 Jurisdictional Reporting (Cont.)

2.3.3.2 Percent Local Usage (PLU): The jurisdictional reporting requirements will be as specified below. When a Customer orders Access Service via an Access Service Request (ASR), the Customer must provide the Company with a report of its Projected Percent Local Usage (PLU). In addition, the Customer must provide the Company with an auditable PLU report in each calendar quarter following installation of service. The Customer must provide the PLU report in whole numbers. The PLU report will be used by the Company to apportion the Customer's use and/or charges between interstate and intrastate service. If the Customer fails to provide the required PLU report, the PLU will be determined as set forth in 2.3.3.2.1 below and shall not be retroactively adjusted if the Customer provides the factor as a later date.

2.3.3.2.1 Effective on the first of January, April, July and October of each year the Customer shall update the PLU factor and report the result to the Company (Quarterly PLU Report). The Quarterly PLU Report will be based on the Customer's traffic in preceding 3-month period (calendar quarter) ending the last day of December, March, June and September (calendar quarter), respectively, and shall serve as the basis of the PLU factor to be used for the next calendar quarter.

2.3.3.2.1.1 If the Customer does not provide the Company a Quarterly PLU Report, the Company will assume the PLU factor to be the same as specified in the Quarterly PLU Report most recently provided by the Customer. If a Customer has never provided the Company a Quarterly PLU Report or the Customer is a new customer, the Company will assume the PLU factor to be the same as specified in the Access Service Request, except, if the Company can reasonably determine jurisdiction by the Customer's monthly call detail, the Company will determine the Customer's PLU on a monthly basis. If a Customer has never provided the Company a Quarterly PLU Report and has never provided a PLU factor in a Access Service Request, the Company will set the Customer's PLU factor on a default basis as 50 percent interstate and 50 percent intrastate traffic for the next calendar quarter.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.3 Obligations of the Customer (Cont.)

2.3.3 Jurisdictional Reporting (Cont.)

2.3.3.3 Jurisdictional Reports Verification: For Switched Access Service, if a billing dispute arises or a regulatory commission questions the projected PIU factor, the Customer will provide the data issued to determine the projected PIU factor. The Customer will supply the data within 30 days of the Company request.

The Customer shall keep records of call detail from which the percentage of interstate and intrastate use can be ascertained and, upon request of the Company, shall make the records available for inspection as reasonably necessary for purposes of verification of the percentages.

2.3.3.3.1 The Company reserves the right to conduct an audit of the Customer's PIU Report and PLU Report. The Company and/or the customer may request an audit of the PIU Report or the PLU Report within 6 months of the Company's receipt the PIU Report and/or PLU Report, as applicable. Such request must be made on no less than ten days written notice to the other party. Audits shall be conducted during normal business hours at the office of the party being audited. Such audit must be performed by an independent auditor mutually agreed to by the parties. Independent auditor cost will be paid for by the party which requests the audit.

2.4 Customer Equipment and Channels

2.4.1 In General

A Customer may transmit or receive information or signals via the facilities of the Company.

2.4.2 Station Equipment

2.4.2.1 The Customer is responsible for providing and maintaining any terminal equipment on the Customer Premises. The electric power consumed by such equipment shall be provided by, and maintained at the expense of, the Customer. All such terminal equipment must be registered with the FCC under 47 C.F.R., Part 68 and all wiring must be installed and maintained in compliance with those regulations. The Company will, where practicable, notify the Customer that temporary discontinuance of the use of a service may be required; however, where prior notice is not practicable, nothing contained herein shall be deemed to impair the Company's right to discontinue forthwith the use of a service temporarily if such action is reasonable under the circumstances. In case of such temporary discontinuance, the Customer will be promptly notified and afforded the opportunity to correct the condition which gave rise to the temporary discontinuance. During such period of temporary discontinuance, credit allowance for service interruptions as set forth in Section 2.6 following is not applicable.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.4 Customer Equipment and Channels (Cont.)

2.4.2 Station Equipment (Cont.)

2.4.2.2 The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring shall be such as not to cause damage or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

2.4.3 Interconnection of Facilities

2.4.3.1 Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Access Services and the Channels, facilities, or equipment of others shall be provided at the Customer's expense.

2.4.3.2 Access Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.

2.4.4 Inspections

2.4.4.1 Upon reasonable notification to the Customer, and at reasonable times, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2.2 for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment. No credit will be allowed for any interruptions occurring during such inspections.

2.4.4.2 If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment, and personnel from harm. The Company will, upon request 24 hours in advance, provide the Customer with a statement of technical parameters that the Customer's equipment must meet.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements

2.5.1 Payment for Service

The Customer is responsible for payment of all charges for services and facilities furnished by the Company to the Customer or its Joint or Authorized Users.

2.5.1.1 Taxes

The Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) excluding taxes on the Company's net income imposed on or based upon the provision, sale or use of Access Services. All such taxes shall be separately designated on the Company's invoices. Any taxes imposed by a local jurisdiction (e.g., county and municipal taxes) will only be recovered from those Customers located in the affected jurisdictions. If an entity other than the Company (e.g. another carrier or a supplier) imposes charges on the Company, in addition to its own internal costs, in connection with a service for which the Company's Non-Recurring Charge is specified, those charges will be passed on to the Customer. It shall be the responsibility of the Customer to pay any such taxes that subsequently become applicable retroactively.

2.5.1.2 A surcharge is imposed on all charges for service originating at addresses in states which levy, or assert a claim of right to levy, a gross receipts tax on the Company's operations in any such state, or a tax on interstate access charges incurred by the Company for originating access to telephone exchanges in that state.¹ This surcharge is based on the particular state's receipts tax and other state taxes imposed directly or indirectly upon the Company by virtue of, and measured by, the gross receipts or revenues of the Company in that state and/or payment of interstate access charges in that state. The surcharge will be shown as a separate line item on the Customer's monthly invoice.

¹Pending the conclusion of any challenge to a jurisdiction's right to impose a gross receipts tax the Company may elect to impose and collect a surcharge covering such taxes, unless otherwise constrained by court order or direction, or it may elect not to impose and collect the surcharge. If it has collected a surcharge and the challenged tax is found to have been invalid and unenforceable, the Company, in its sole discretion, will either reduce service rates for a fixed period of time in the future in order to flow-through to Customers an amount equivalent to the funds collected or it will credit or refund such amounts to affected Customers (less its reasonable administrative costs), if the funds collected were retained by the Company or if they were delivered over to the taxing jurisdiction and later returned to the Company, or negotiate an arrangement with the taxing jurisdiction that benefits Customers in the jurisdiction in the future.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges

The Company shall bill on a current basis all charges incurred by, and credits due to, the Customer under this tariff attributable to services established, provided, or discontinued during the preceding billing period. All bills for services provided to or on behalf of the Customer by the company are due in immediately funds.

2.5.2.1 Non-Recurring Charges are payable when the service for which they are specified has been performed. Recurring Charges which are not dependant on usage will be billed in advance of the month in which service is provided. The Company bill Non-Recurring Charges and Recurring Charges monthly to the Customers.

2.5.2.2 All Charges are due and payable within 30 days after the invoice date.

2.5.2.2.1 If the payment due date would cause payment to be due on a Saturday, Sunday or Holiday (New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, or any day which is a legally observed Federal government Holiday), the payment due date shall be as follows:

2.5.2.2.1.1 If the payment due date falls on a Sunday or on a Holiday which is observed on Monday, the payment date shall be the first non-Holiday day following that day, and;

2.5.2.2.1.2 If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday or Friday, the payment date shall be the last non-Holiday day before such Saturday or Holiday.

2.5.2.3 When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro-rata basis, based on a thirty-day month.

2.5.2.4 Billing of the Customer by the Company will begin on the Service Commencement Date. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges

2.5.2.5 Amounts not paid within 30 days after the date of invoice will be considered past due and subject to the following late payment provisions.

2.5.2.5.1 Late Payment Charges: If (i) no payment is received by the Company from the Customer; (ii) a partial payment of the amount due is received by the Company after the payment due date and/or (iii) payment is received by the Company in funds that are not immediately available to the Company, a late payment charge shall be applied. The late payment charge will be a amount equal to the lessor of the following:

2.5.2.5.1.1 The highest interest rate which may be levied by law for commercial transactions, compounded daily for each day from the payment due date through and including the date the Customer makes payment to the Company; or,

2.5.2.5.1.2 .0005 percent of the amount due compounded daily, for each day from the payment due date through and including the date the Customer makes payment to the Company. Calculation by this method yields an 18 percent annual percentage rate.

Interest shall not be assessed on any previously assessed late payment charges.

If the Company becomes concerned at any time about the ability of a Customer to pay its bills, the Company may require that the Customer pay its bills within a specified number of days less than 30 days after the date of the invoice and make such payments in cash or the equivalent of cash.

If a service is disconnected by the Company in accordance with Section 2.5.5 following and later restored, restoration of service will be subject to all applicable installation charges.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges (Cont.)

2.5.2.6 Billing Dispute: The Customer shall notify the Company of any disputed items on an invoice within 90 days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the South Dakota Public Service Commission in accordance with the Commission's rules of procedure. If the customer disputes a bill, the Customer must document its claim to the Company in writing. For purposes of this tariff, the dispute date is the date on which the Customer presents sufficient documentation to support a claim.

2.5.2.6.1 Sufficient documentation consists of, but is not limited to, the following information, where such information is relevant to the dispute and available to the Customer:

The nature of the dispute (i.e., alleged incorrect rate, alleged incorrect minutes of use, etc.), including the basis for the Customer's belief that the bill is incorrect;

The type of usage (i.e., originating or terminating);

The Company end office where the minutes of use originated or terminated (if applicable);

The number of minutes in dispute;

The billing account number(s) (BANs) assigned by the Company;

The dollar amount in dispute;

The date of the bill(s) in question;

Circuit number or complete system identification and DS3 system identification if the dispute concerns a Connecting Facility Assignment (CFA) on a DS1. Line number, trunk number and Two Six Code (TSC) should also be provided;

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges (Cont.)

2.5.2.6 Billing Dispute (Cont.)

2.5.2.6.1 (Cont.)

Purchase Order Number (PON) and dates involved (due date or as-of date) for disputes involving order activity and what the Customer believe is incorrect (e.g. non-recurring charge, mileage, circuit identification) and why they believe it to be incorrect (not received, not ordered, incorrect rate, etc.) For order activity disputes documentation should include traffic reports, billing cycle, and, is the service is shared, both main and shared service BANs. Line number, trunk number and Two Six Code as well as end-office identification should also be provided; and/or,

Any other information necessary to facilitate dispute resolution.

If additional information from the Customer would assist in resolving the dispute, the Customer may be requested to provide this information. This data may include, but is not limited to, summarized usage data by time of day. The request for such additional information shall not affect the dispute date established by this section.

2.5.2.6.2 The date of resolution shall be the date on which the Company completes its investigation of the dispute, notifies the Customer of the disposition and, if the billing dispute is resolved in favor of the Customer, applies the credit for the amount of the dispute resolved in the Customer's favor to the Customer's bill, including the disputed amount interest credit, as appropriate.

2.5.2.6.3 Application of Late Payment Charges and Interest Credits to Disputed Amounts: Any payments withheld pending settlement of the dispute shall be subject to the late payment charges set forth in Section 2.5.2.5 preceding. The Company will resolve the dispute and assess interest credits or late payment charges to the Customer as follows:

2.5.2.6.3.1 If the dispute is resolved in favor of the Company and the Customer has paid the disputed amount on or before the payment due date no interest credits or late payment charges will apply to the disputed amounts.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges (Cont.)

2.5.2.6 Billing Dispute (Cont.)

2.5.2.6.3 Application of Late Payment Charges and Interest Credits to Disputed Amounts (Cont.)

2.5.2.6.3.2 If the dispute is resolved in favor of the Company and the Customer has withheld the disputed amount, any payments withheld pending settlement will be subject to the late payment charge set forth in Section 2.5.2.5.

2.5.2.6.3.3 If the dispute is resolved in favor of the Customer and the Customer has paid the disputed amount, the Customer will receive a credit from the Company for the disputed amount plus interest at a rate of .0005 percent, compounded daily from the date of payment to the resolution date.

2.5.2.6.3.4 If the dispute is resolved in favor of the Customer and the Customer has withheld the disputed amount, no interest credits or late payment will apply.

2.5.2.7 Ordering, Rating and Billing of Access Services Where More Than One Exchange Carrier is Involved:

All Recurring and Non-Recurring Charges for services provided by each Exchange Carrier are billed under each Company's applicable tariffs. Under a Meet Point Billing arrangement, the Company will only bill for charges for traffic carried between the Company Local Switching Center and the End User.

The multiple billing arrangement described in this section is subject to the provisions of the Multiple Exchange Carrier Access billing Guidelines (MECAB) and the Multiple Exchange Carrier Ordering and Design Guidelines (MECOD), except that the Company will not bill for local transport as described in MECAB. The Company will bill the Tandem Connect (as defined in Section 5.2.3.1.2) rate elements as specified in this Tariff.

The Company must notify the Customer of: 1) the meet point option that will be used; 2) the Carrier(s) that will render the bill(s); 3) the Carrier(s) to whom payment should be remitted; and 4) the Carrier(s) that will provide the bill inquiry function. The Company shall provide such notification at the time orders are placed for Access Service. Additionally, the Company shall provide this notice in writing 30 days in advance of any changes in the arrangement.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.2 Billing and Collection of Charges (Cont.)

2.5.2.7 Ordering, Rating and Billing of Access Services Where More Than One Exchange Carrier is Involved (Cont.)

The Company will handle the ordering, rating and billing of Access Services under this tariff where more than one Exchange Carrier is involved in the provision of Access Services, as follows:

- (1) The Company must receive an order for Feature Group D (FGD) Switched Access Service, as defined herein, ordered to the Company's Local Switching Center through a switch operated by another Exchange Carrier.
- (2) In addition, for FGD Switched Access Service ordered to the Company's Local Switching Center through a switch operated by another Exchange Carrier with whom the Company has an agreement, the Customer may be required to submit an order as specified by the Exchange Carrier which operates the switch.
- (3) Separate bills will be rendered by the Exchange Carrier for FGD access service.
- (4) Rating and Billing of Service: Each company will provide its portion of access service based on the regulations, rates and charges contained in its respective Access Service tariff, subject to the following rules, as appropriate:
 - (a) The application of non-distance sensitive rate elements varies according to the rate structure and the location of the facilities involved:
 - (i) when rates and charges are listed on a per minute basis, the Company's rates and charges will apply to traffic originating from the Customer's Premises and terminating at the End User's premises, and vice versa.

EXHIBIT

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ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.3 Advance Payments

To safeguard its interests, the Company may require in its sole discretion require a Customer to make an Advance Payment before services and facilities are furnished. The Advance Payment will not exceed an amount equal to the Non-Recurring Charge(s) and one month's estimated usage charges for the service. In addition, where special construction is involved, the Advance Payment may also include an amount equal to the estimated Non-Recurring charges for the special construction and Recurring Charges (if any) for a period to be set by agreement between the Company and the Customer. The Advance Payment will be credited to the Customer's initial bill. The advanced payment is due 10 business days following the date the Company confirms acceptance of the order, or on the application date, whichever is late. If the advance payment is not received by such payment date, the order may be cancelled. When the Customer cancels an access service request, the order will be withdrawn. Any advanced payment made will not be credited or refunded.

2.5.4 Deposits

2.5.4.1 Before the service is furnished to a Customer whose credit has not been duly established, the Company may at its sole discretion require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:

(a) an amount in excess of two and one-half twelfths of the estimated charge for the service for the ensuing twelve months; or

2.5.4.2 In the Company's sole discretion, a deposit may be required in addition to an advance payment.

2.5.4.3 The Company shall pay interest on a deposit at the rate of seven (7) percent per annum. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to the customer by deducting such interest from the amount of the next bill for service following the accrual date.

2.5.4.4 The charges set forth in this tariff for contemplate installations made in normal locations and under normal working conditions. Any installations to be made under other circumstances are subject to additional charges.

2.5.4.5 When a service is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option return the deposit or credit the Customer's account.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.5 Refusal and Discontinuance of Service

- 2.5.5.1 Upon nonpayment of any regulated amounts owing to the Company, the Company may, by giving requisite prior written notice to the Customer discontinue or suspend service without incurring any liability.
- 2.5.5.2 Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- 2.5.5.3 Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- 2.5.5.4 Upon any governmental prohibition, or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- 2.5.5.5 Upon the Company's discontinuance of service to the Customer under Section 2.5.5.1 or 2.5.5.2 above, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable.
- 2.5.5.6 When Access Service is provided by more than one Company, the companies involved in providing the joint service may individually or collectively deny service to a Customer for nonpayment. Where the Company(s) affected by the nonpayment is incapable of effecting discontinuance of service without cooperation from the other joint providers of Switched Access Service, such other Company(s) will, if technically feasible, assist in denying the joint service to the Customer. Service denial for such joint service will only include calls originating or terminating within, or transiting, the operating territory of the Company initiating the service denial for nonpayment. When more than one of the joint providers must deny service to effectuate termination for nonpayment, in cases where a conflict exists in the applicable tariff provisions, the tariff regulations of the company whose Local Switching Center serves the Customer shall apply for joint service discontinuance.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.5 Refusal and Discontinuance of Service (Cont.)

2.5.5.7 The Company may discontinue the furnishings of any and/or all service(s) to a Customer, without incurring any liability:

2.5.5.7.1 Immediately and without notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services. The Company may discontinue service pursuant to this sub-section 2.5.5.7.1 (a-f), if

- (a) The Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of Common Carrier communications services or its planned use of service(s); or
- (b) The Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Common Carrier communications services, or its planned use of the Company's service(s); or
- (c) The Customer states that it will not comply with a request of the Company for security for the payment for service(s) in accordance with Section 2.5.4.1 above; or
- (d) The Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's other Common Carrier communications services to which the Customer either subscribes or had subscribed or used; or
- (e) The Customer uses service to transmit a message, locate a person or otherwise give or obtain information without payment for the service; or
- (f) The Customer uses, or attempts or use, service with the intent to void the payment, either in whole or in part, of the tariffed charges for the service by:
 - (1) Using or attempting to use service by rearranging, tampering with, or making connections to the Company's service not authorized by this tariff; or
 - (2) Using tricks, schemes, false or invalid numbers, false credit devices, electronic devices; or
 - (3) Any other fraudulent means or devices; or

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.5 Payment Arrangements (Cont.)

2.5.5 Refusal and Discontinuance of Service (Cont.)

2.5.5.7 (Cont.)

2.5.5.7.2 Immediately upon written notice to the Customer of any sum thirty (30) days past due;

2.5.5.7.3 Immediately upon written notice to the Customer, after failure of the Customer to comply with a request made by the Company for security for the payment of service in accordance with Section 2.5.4.1, above; or

2.5.5.7.4 Seven (7) days after sending the Customer written notice of noncompliance with any provision of this tariff if the noncompliance is not corrected within that seven (7) day period. The discontinuance of service(s) by the Company pursuant to this Section does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance.

2.5.5.8 In the event the Company incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Company, the customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

2.5.6 Cancellation of Application for Service

2.5.6.1 Applications for service are noncancellable unless the Company otherwise agrees. Where the Company permits the Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except as may be specified in this Section and Section 3.2.3.

2.5.6.2 Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the company that would have been chargeable to the Customer had service begun.

2.5.6.3 The special charges described in 2.5.6.1 through 2.5.6.2 will be calculated and applied on a case-by-case basis.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.6 Allowances for Interruptions in Service

Interruptions in service which are not due to the negligence of or noncompliance with the provisions of this tariff by, the Customer or the operation or malfunction of the facilities, power, or equipment provided by the Customer, will be credited to the Customer as set forth in 2.6.1 for the part of the service that the interruption affects.

2.6.1 Credit for Interruptions

2.6.1.1 A credit allowance will be made when an interruption occurs because of a failure of any component furnished by the Company under this tariff. An interruption period begins when the Customer reports a service, facility or circuit, to be interrupted and releases it for testing and repair. An interruption period ends when the service, facility, or circuit is operative. If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.

2.6.1.2 For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro-rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.

2.6.1.3 For Switched Access Service, no credit will be allowed for an interruption of less than 24 hours. After the first 24 hour period, a credit equal to 1/30 of the Direct Connect facilities charges will be applied to each interruption which is in excess of twelve hours and up to 24 hours.

2.6.2 Limitations on Allowances

No credit allowance will be made for:

- (a) interruptions due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer, Authorized User, Joint-User, or other Common Carrier providing service connected to the service of Company;
- (b) interruptions due to the negligence of any person other than the Company, including, but not limited to, the Customer or other Common Carriers connected to the Company's facilities;
- (c) interruptions due to the failure or malfunction of non-Company equipment;
- (d) interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- (e) interruptions of service during a period in which the Customer continues to use the service on an impaired basis;

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.6 Allowances for Interruptions in Service (Cont.)

2.6.2 Limitations on Allowances (Cont.)

(f) interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;

(g) interruption of service due to circumstances or causes beyond the control of the Company.

2.6.2.1 Use of Alternative Service Provided by the Company: Should the Customer elect to use an alternative service provided by the Company during the period that a service is interrupted, the Customer must pay the tariffed rates and charges for the alternative service used.

2.6.3 Cancellation For Service Interruption

Cancellation or termination for service interruption is permitted only if any circuit experiences a single continuous outage of 8 hours or more or cumulative service credits equaling 16 hours in a continuous 12-month period. The right to cancel service under this provision applies only to the single circuit which has been subject to the outage or cumulative service credits.

2.7 Cancellation of Service

2.7.1 If a Customer cancels services before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 2.6.1 above), the Customer agrees to pay to the Company the following sums which shall become due and owing as of the effective date of the cancellation or termination and shall be payable within the period set forth in Section 2.5.2: all costs, fees, and expenses reasonably incurred in connection with 1) all Non-Recurring Charges reasonably expended by Company to establish service to Customer, plus 2) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus 3) all Recurring Charges specified in the applicable tariff for the balance of the then current term.

The terms and conditions specified in Section 3.2.3 will apply for cancellation of an Access Service Request.

2.8 Transfers and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent Company or affiliate of the Company (b) pursuant to any sale or transfer of substantially all the assets of the Company; or pursuant to any financing, merger or reorganization of the Company.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.9 Notices and Communications

2.9.1 The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.

2.9.2 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that the Company may designate a separate address, on each bill for service, to which the Customer shall mail payment on that bill.

2.9.3 All notices or other communications required to be given pursuant to this tariff shall be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following deposit of the notice, communication, or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.

2.9.4 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

2.10 Billing Name and Address

Billing Name and Address (BNA) provides the billing name and address of an end user who has an Automatic Number Identification recorded by the customer (interexchange carriers, operator service providers, enhanced service providers and any other provider of interstate telecommunications services) for telecommunications services rendered by the customer to its end user. The receipt of this information will allow the customer to provide its own billing to end users who may not have established a formal relationship with the customer.

BNA is provided for the sole purpose of permitting the Customer to bill its telephonic communications services to its end users and may not be resold or used for any other purpose, including marketing activity such as market surveys or direct marketing by mail or by telephone. The Customer may not use BNA information to bill for merchandise, gift certificates, catalogs or other services or products.

ACCESS SERVICES

2. REGULATIONS (Cont.)

2.10 Billing Name and Address (Cont.)

2.10.1 Undertaking of the Company

- A) All requests for information will be by facsimile.
- B) The Company will specify the format in which requests are to be submitted.
- C) The BNA information will be provided for the calling number furnished to the extent a billing name and address exists in the Company's records. BNA information will not be provided for those end users who have requested that their BNA not be disclosed for collect and bill to third party calls.
- D) The Company will provide the most current BNA information resident in its data base. Due to normal end user account activity, there may be instances where the BNA information provided is not the BNA that was applicable at the time the message originated.

2.10.2 Obligations of the Customer

- A) With each order for BNA Service, the customer shall identify the authorized individual, the address, and or the facsimile to receive the BNA information.
- B) The customer shall institute adequate internal procedure to insure the BNA information, including that related to "confidential" non-published and non-listed telephone numbers, is used only for the purpose set forth in this Tariff and that BNA information is available only to those customers personnel or agents with a need to know the information.
- C) The customer shall not publicize or represent to others that the Company jointly participates with the customer in the development of the customer's end user records accounts, databases or market data, records files and databases or other systems it assembles through the use of BNA Service.

2.10.3 Usage Rates

Billing Name and Address (BNA) Customers will be assessed a per record rate for each BNA record requested. This rate is billed to the customer on a monthly basis. The BNA per record rate applies regardless of whether the requested telephone number is available in the Telephone Company's information database.

2.10.3.1 Per Request Rate: \$0.75

ACCESS SERVICES

3. ORDERING OPTIONS FOR SWITCHED ACCESS SERVICE

3.1 **General:** This section sets forth the regulations and order related charges for Access Service Requests (ASR) for Switched Access Service, as defined in this tariff. These charges are in addition to other applicable charges set forth in other sections of this tariff.

3.1.1 **Ordering Conditions:** All services offered under this tariff will be ordered using an ASR. The format and terms of the ASR will be as specified in the industry Access Service Order Guidelines, unless otherwise specified herein. A Customer may order any number of services of the same type and between the same Premises on a single ASR. All details for services for a particular order must be identical.

The Customer shall provide all information necessary for the Company to provide and bill for the requested service. When placing an order for Access Service, the Customer shall provide the following minimum information:

- a. Customer name and Premise(s) address(es);
- b. Billing name and address (when different from Customer name and address)
- c. Customer contact name(s) and telephone number(s) for the following provisioning activities: order negotiation, order confirmation, interactive design, installation and billing.

The order date (Application Date) is the date on which the Company receives a firm commitment and sufficient information from the Customer to allow processing of the ASR. The Customer is advised of the critical events in the provisioning process, the Application Date, the Plant Test Date and the Service Commencement Date, at the time the Company gives the Customer a Firm Order Confirmation (FOC). The FOC is forwarded to the Customer within 2 business days after the date on which all information needed to process the ASR has been received by the Company.

3.1.2 **Provision of Other Services:** Unless otherwise specified herein, all services offered under this tariff shall be ordered with an ASR. With the agreement of the Company, other services may subsequently be added to the ASR at any time, up to and including the service date for the Access Service. When added subsequently, charges for a Design Change as set forth in Section 7.4.2 will apply when an engineering review is required.

Additional Engineering is not an ordering option, but will be applied to an ASR when the Company determines that Additional Engineering is necessary to accommodate a Customer request. Additional Engineering will be provided by the Company at the request of the Customer only when a Customer requests additional technical information after the Company has already provided the technical information included on the Design Layout Report as set forth herein. The Customer will be notified when Additional Engineering is required, and will be furnished with a written statement setting forth the justification for the Additional Engineering as well as an estimate of the charges. If the Customer agrees to the Additional Engineering, a firm order will be established. If the Customer does not want the service or facilities after being notified by the Company that Additional Engineering is required, the Customer may cancel the order and no charges will apply. Once a firm order has been established, the total charge to the Customer for the Additional Engineering may not exceed the original estimated amount by more than 10 percent.

ACCESS SERVICES

3. ORDERING OPTIONS FOR SWITCHED ACCESS SERVICE (Cont.)

3.2 Access Order

An ASR is required by the Company to provide a Customer Switched Access Service, as described herein. An ASR will be required for each new similar service arrangement or group of common circuits.

When a Customer requests new or additional Switched Access Service, one or more ASR's may be required. The number of orders required is dependent on the type of services and/or facilities being requested.

When placing an order for either Direct Connect Service or Tandem Connect Service, as described in Sections 5.2.3.1.1 and 5.2.3.1.2, respectively, the Customer shall provide all standard ASR ordering information as specified in industry guidelines. The Customer will also be required to provide this information to order additional service for an existing service type. For new Customers ordering Tandem Connect Service, the Customer will only be required to complete an ASR for installation of new service.

3.2.1 Access Service Date Intervals: Access Service is provided with one of the following Service Date intervals:

- Standard Interval
- Negotiated Interval

The Company will specify a FOC and the Service Commencement Date contingent on the ASR being complete as received. To the extent the Access Service can be made available with reasonable effort, the Company will provide the Access Service in accordance with the Customer's requested interval, subject to the following conditions:

3.2.1.1 Standard Interval: The Standard Interval for Switched Access Service will be 10 business days from the Application Date. This interval only applies to standard service offerings for a Customer which is at locations where there are pre-existing facilities to the Customer Premises. Access Services provided under the Standard Interval will be installed during Company business hours.

ACCESS SERVICES

3. ORDERING OPTIONS FOR SWITCHED ACCESS SERVICE (Cont.)

3.2 Access Order (Cont.)

3.2.1 Access Service Date Intervals (Cont.)

3.2.1.2 Negotiated Interval: The Company will negotiate a Service Date interval with the Customer when:

- 1) The Customer requests a Service Date before or beyond the applicable Standard Interval Service Date; or
- 2) There is no existing facility connecting the Customer Premises with the Company; or
- 3) The Customer requests a service that is not considered by the Company to be a standard service offering (for example, if Additional Engineering is required to complete the order); or
- 4) The Company determines that Access Service cannot be installed within the Standard Interval.

The Company will offer a Service Date based on the type and quantity of Access Services the Customer has requested. The Negotiated Interval may not exceed by more than six months the Standard Interval Service Date, or, when there is no Standard Interval, the Company offered Service Date.

All services for which rates are applied on an Individual Case Basis are provided with a Negotiated Interval.

3.2.2 Access Service Request Modifications: The Customer may request a modification of its ASR prior to the Service Commencement Date. All modifications must be in writing using the industry ASR process. The Company, in its sole discretion, may accept a verbal modification from the Customer. The Company will make every effort to accommodate a requested modification when it is able to do so with the normal work force assigned to complete such an order within normal business hours. Charges for access service order modification will apply as set forth below, on a per occurrence basis.

Any increase in the number of Switched Access Service lines, Trunks, Direct Connect transport facilities, Out of Band Signaling connections or any change in engineering or functionality of a service will be treated as a new ASR with a new Service Date interval.

ACCESS SERVICES

3. ORDERING OPTIONS FOR SWITCHED ACCESS SERVICE (Cont.)

3.2 Access Order (Cont.)

3.2.2 Access Service Request Modifications (Cont.):

3.2.2.1 Service Commencement Date Changes: ASR service dates for the installation of new services or rearrangement of existing services may be changed, but the new service date may not exceed the original Service Commencement Date by more than 30 calendar days. When, for any reason, the Customer indicates that service cannot be accepted for a period not to exceed 30 calendar days, and the Company accordingly delays the start of service, a Service Date Change Charge will apply. In addition, when the Customer submits a request for a Service Date Change that is less than five business days from the date of notification by the Customer, a Service Date Change Charge and an Expedite Charge will apply. No Expedite Charge will apply if the Customer requests a Service Date Change that is more than 5 business days from the date of request by the Customer but earlier than the original requested Service Commencement Date.

If the Customer requested service date is more than 30 calendar days after the original service date, the order will be cancelled by the Company on the 31st day. Appropriate cancellation charges will be applied. If the Customer still requires the service, the Customer must place a new ASR with the Company.

The Service Date Change Charge will apply on a per order, per occurrence basis for each service date changed. The applicable charges are set forth in Section 6.4.2.

3.2.2.2 Design Change Charge: The Customer may request a Design Change to the service ordered. A Design Change is any change to an ASR which requires Engineering Review. An Engineering Review is a review by Company personnel of the service ordered and the requested changes to determine what change(s) in the design, if any, are necessary to meet the Customer's request. Design Changes include such changes as the addition or deletion of optional features or functions, a change in the type of Transport Termination (Switched Access only) or type of Channel interface. Any other changes are not considered Design Changes for purpose of this subsection and will require issuance of a new ASR and the cancellation of the original ASR with appropriate cancellation charges applied.

The Design Change Charge will apply on a per order, per occurrence basis, for each order requiring a Design Change. The applicable charges, as set forth in Section 6.4.2, are in addition to any Service Date Change Charges that may apply.

ACCESS SERVICES

3. ORDERING OPTIONS FOR SWITCHED ACCESS SERVICE (Cont.)

3.2 Access Order (Cont.)

3.2.2 Access Service Request Modifications (Cont.):

3.2.2.3 Expedited Order Charge: When placing an Access Order for service(s) for which a Standard Interval exists, a Customer may request a Service Commencement Date that is earlier than the Standard Interval Service Date, in which case an Expedite Charge will apply. The Expedite Charge will not apply if the new Service Commencement Date is more than five days from the date of the request to the Company of the expedited order request. The request for an earlier service date may be received from the Customer prior to its issuance of an ASR, or after the ASR has been issued but prior to the service date. The Company has the exclusive right to accept or deny the Expedite Order request. However if, upon reviewing availability of equipment and scheduled work load, the Company agrees to provide service on an expedited basis and the Customer accepts the Company's proposal, an Expedite Charge will apply.

If the Company is subsequently unable to meet an agreed upon expedited service date, then the Expedite Charge will not apply.

In the event the Company provides service on an expedited basis on the Customer's request, and the Customer delays service or is not ready for delivery of service at the time of installation, a Service Date Change Charge will apply in addition to the Expedite Charge.

In the event that the Customer cancels an expedite request, the Expedite Charge will be added to any applicable Cancellation Charge specified herein.

In the event that the Customer requests a Service Date Change after the Company has received the original expedite request, the Expedite Charge will still apply.

An Expedite Charge will not be applied to orders expedited for Company reasons.

If costs other than additional administrative expenses are to be incurred when the Access Order is expedited, the regulations and charges for Special Construction as set forth in this tariff will apply.

The Expedited Order Charge will apply on a per order, per occurrence basis, as specified in Section 6.4.2.

ACCESS SERVICES

3. ORDERING OPTIONS FOR SWITCHED ACCESS SERVICE (Cont.)

3.2 Access Order (Cont.)

3.2.3 Cancellation of an Access Service Request: A Customer may cancel an ASR for the installation of Switched Access Service at any time prior to notification by the Company that service is available for the Customer's use. The cancellation date is the date the Company receives written or verbal notice from the Customer that the order is to be cancelled. The verbal notice must be followed by written confirmation within 10 days. A Customer may negotiate an extension of a service date of an ASR for installation of new services or rearrangement of existing service, in which case a Service Date Change Charge will apply. However, the new service date cannot exceed the originally established service date by more than 30 calendar days. On the 31st day beyond the original service date, the ASR will be cancelled and the appropriate Cancellation Charge will be applied.

Except as stated herein, Cancellation Charges will apply as specified in Section 6.4.3.

If the cancellation occurs prior to the Company's receiving the ASR, no charges shall apply.

Cancellation Charges for Expedited Orders will be applied for any order cancelled from the Application Date forward.

If the Company misses a service date for a Standard or Negotiated Interval Access Order by more than 30 days due to circumstances such as acts of God, governmental requirements, work stoppages and civil commotions, the Company shall not be liable for such delay and the Customer may cancel the ASR without incurring cancellation charges.

3.2.4 Minimum Period of Service: The minimum period for which Access Service is provided and for which charges are applicable is one month.

3.2.4.1 The following changes will be treated as a discontinuance of the existing service and a request for installation of a new service. All associated Non-Recurring Charges will apply for the new service, and a new minimum period will be established:

- (1) A change in the identity of the Customer of record;
- (2) A move by the Customer to a different building;
- (3) A change in type of service;
- (4) A change in Switched Access Service Interface (i.e., DS1 or DS3);
- (5) A change in Switched Access Service Traffic Type;

ACCESS SERVICES

3. ORDERING OPTIONS FOR SWITCHED ACCESS SERVICE (Cont.)

3.2 Access Order (Cont.)

3.2.4 Minimum Period of Service (Cont.):

3.2.4.2 When Access Service is disconnected prior to the expiration of the minimum period, charges are applicable for the balance of the minimum period. The Minimum Period Charge for monthly billed services will be determined as follows:

For Switched Access Service, the charge for a month or fraction thereof is the applicable minimum monthly charge for the capacity made available to the Customer.

All applicable Non-Recurring Charges for the service will be billed in addition to the Minimum Period Charge.

4. RESERVED FOR FUTURE USE

ACCESS SERVICES

4. RESERVED FOR FUTURE USE (Cont.)

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE

5.1 General

Switched Access Service, which is available to Customers for their use in furnishing their services to End Users, provides a two-point communications path between a Customer's Premises and an End User's Premises. It provides for the use of common terminating, switching and transport facilities. Switched Access Service provides the ability to originate calls from an End User's Premises to a Customer's Premises, and to terminate calls from a Customer's Premises location to an End User's Premises.

Rates and charges are set forth in Section 6.4. The application of rates for Switched Access Service is described in Section 6.2.

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.2 Provision and Description of Switched Access Service Arrangements

Switched Access Service is provided in the following service type:

5.2.1 Feature Group D (FGD) Access

FGD Access, which is available to all Customers, is provisioned at the DS1 level and provides trunk-side access to Company Local Switching Center switches, with an associated uniform 10XXX Access Code for the Customer's use in originating and terminating communications. Basic FGD service will be provided with Multi-Frequency In Band Signaling (SS7 is also available as a Common Switching Option for Feature Group D). In addition, Conventional Signaling for direct Carrier Trunk groups is available at the Customer's option. End Users of the Customer's service may also originate calls to certain FGD Access Customers without dialing the 10XXX Access Code if the End User is presubscribed, as described herein.

The Access Code for FGD switching is a uniform Access Code of the form 10XXX. A single Access Code will be the assigned number of all FGD access provided to the Customer by the Company. No Access Code is required for calls to a Customer over FGD Switched Access Service if the End User's telephone exchange service is arranged for Presubscription to that Customer, as set forth herein.

Where no Access Code is required, the number dialed by the Customer's End User shall be a seven or ten digit number for calls in the North American Numbering Plan (NANP), except for 00- dialed calls which are routed to the predesignated Customer. For international calls outside the NANP, a seven to twelve digit number may be dialed. The form of the numbers dialed by the Customer's End User is NXX-XXXX, 0 or 1 + NXX-XXXX, NPA + NXX-XXXX, 0 or 1 + NPA + NXX-XXXX, and, when the Local Switching Center is equipped for International Direct Distance Dialing (IDDD), 01 + CC + NN or 011 + CC + NN.

When the 10XXX Access Code is used, FGD switching also provides for dialing the digit 0 for access to the Customer's operator, 911 for access to the Company's emergency service, or the end-of-dialing digit (#) for cut-through access to the Customer's Premises.

In addition, End Users may originate calls by dialing the 950-XXXX Access Code specific to a particular Interexchange Carrier, provided that the Interexchange Carrier has subscribed to the Company's Feature Group D with 950 Access Common Switching Optional Feature. If the End User is presubscribed to that Interexchange Carrier, no Access Code is necessary.

5.2.2 Manner of Provision

Trunks used for Switched Access Service may be configured for one-way (either originating only or terminating only) or for two-way directionality. It is the Customer's responsibility to order a sufficient number of trunks of each type in order to meet its desired grade of service objective. At the Customer's request, the Company will assist the Customer in sizing Switched Access Trunk groups.

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.2 Provision and Description of Switched Access Service Arrangements (Cont.)

5.2.3 Rate Categories

The following rate categories apply to Switched Access Service:

- A. Direct Connect
- B. Tandem Connect
- C. 800 Data Base Access Service
- D. Toll Free 8YY Transit Traffic Service
- E. Optional Features

5.2.3.1 Except as stated as follows, Tandem Connect Service is provided in conjunction with the tandem provider serving the area. Charges are computed in accordance with Section 2.5.2.7 preceding (Ordering, Rating, and Billing of Access Services where more than one Exchange Telephone Company is involved).

5.2.3.1.1 Direct Connect

The Company will provide Direct Connect between the Customer's Premises and the Company's Local Switching Center switch(es). This transmission path is Dedicated to the use of a single Customer. DS1 and DS3 facilities are available for Direct Connect Service. A DS1 facility is capable of transmitting electrical signals at a nominal 1.544 Mbps, with the capability to channelize up to 24 voice frequency transmission paths. A DS3 facility is capable of transmitting electrical signals at a nominal 44.736 Mbps, with the capability to channelize up to 672 voice-frequency transmission paths. For DS3 facilities, if the Company is required to install additional fiber optic equipment for the benefit of the Customer, then the Customer has the option to choose either an optical or electrical interface.

Direct Connect Service is provided using one of the following architectures:

The Company will provide Direct Connect between the Customer's Premises and the Company's Local Switching Center switch(es) when the end office switch serving the end-user customer is fully owned by the Company. The transmission path is dedicated to the use of a single Customer. DS1 and DS3 facilities are available for Direct Connect Service. A DS1 facility is capable of transmitting electrical signals at a nominal rate of 1.544 Mbps, with the capability to channelize up to 24 voice frequency transmission paths.

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.2 Provision and Description of Switched Access Service Arrangements (Cont.)

5.2.3 Rate Categories (Cont.)

5.2.3.1 (Cont.)

5.2.3.1.1 Direct Connect (Cont.):

The Company will provide Direct Connect between the Customer's Premises and the ILEC's local switch when the local switch and the facilities are leased by the Company from the ILEC in conjunction with a UNE-P platform service. The Company will bill the Direct Connect rates when the ILEC's Category 11 Daily Usage Feed Records indicate that the call was routed directly from the Customers premises to the ILEC switch serving the end user customer without routing through the tandem.

5.2.3.1.2 Tandem Connect

Tandem Connect consists of circuits from the Customer's tandem provider to the Company's Local Switching Center.

Tandem Connect service is provided using one of the following architectures:

When the end office switch serving the end-user customer is fully owned by the Company, the Tandem Connect service will be provided and billed in conjunction with the tandem provider serving the area. In this instance, charges are computed in accordance with Section 2.5.2.7 preceding (Ordering, Rating, and Billing of Access Services where more than one Exchange Telephone Company is involved).

When the end office switch serving the end-user customer is leased on a UNE-P basis by the Company from the ILEC serving the area, Tandem Connect will be provided and billed entirely by MCIm. The Company will bill the Tandem Connect rate when the ILEC's Category 11 Daily Usage Feed Records indicate that the call was routed through the ILEC's tandem.

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.2 Provision and Description of Switched Access Service Arrangements (Cont.)

5.2.3 Rate Categories

5.2.3.1 (Cont.)

5.2.3.1.3 800 Data Base Access Service

800 Data Base Access Service is a service offering utilizing originating Trunk side Switched Access Service. When an 8XX + NXX + XXXX call is originated by an End User, the Company will perform Customer identification based on screening of the full ten-digits of the 8XX number to determine the Customer location to which the call is to be routed.

The 800 Data Base charge, which consists of a single, fixed rate element, applies on a per query basis.

5.2.3.1.4 Toll Free 8YY Transit Traffic Service

Toll Free 8YY Transit Traffic Service is an access service in which the Company transports Toll Free traffic originated by a third party that is not an end user or other user of the Company's local exchange or exchange access service through its wire center to an Interexchange Carrier Customer. The connection to the interexchange carrier can be either directly via a Direct End Office Trunk (DEOT) from the Company's switch to the IXC or indirectly via an ILEC tandem switch. In addition to the 800 Database Access Service described in Section 5.2.3.1.3 above, this service provides for the use of the Tandem Switching, Tandem Termination, and Tandem Transport facilities of the Company. In a Toll Free 8YY Transit Traffic Service call, the Company will charge only for 800 Data Base Access Service Basic Query, the tandem switching, common multiplexing and the tandem transport (termination and facility) functionalities. No charges for the carrier common line charge, the local switching charge nor the end office port charge are incorporated into the rate. The rates for Toll Free 8YY Transit Traffic Service set forth in Section 6.4.4.3 are usage sensitive. Records exchange, rating, and billing for Toll Free 8YY Transit Traffic Service is subject to the provisions of the Multiple Exchange Carrier Access Billing Guidelines (MECAB).

To the extent the Company jointly provides Toll Free 8YY Transit Traffic Service in conjunction with a third-party carrier that will bill Interexchange Carrier Customers of that third-party carrier's switched access service, pursuant to that third-party carrier's tariff or other authority, for that third party carrier's portion of the total service, the Company and third-party carrier(s) will enter into a billing agreement with all billing carriers which is consistent with the provisions contained in MECAB. Toll Free 8YY Transit Traffic Service calls routed to an Incumbent Local Exchange Carrier's (ILEC) Tandem Switching facility will conform to the LATA restrictions as defined both in said ILEC's switched access tariff and in MECAB.

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.2 Provision and Description of Switched Access Service Arrangements (Cont.)

5.2.3 Rate Categories

5.2.3.1 (Cont.)

5.2.3.1.5 Switched Access Service Optional Feature

5.2.3.1.5.1 Nonchargeable Optional Features

Where transmission facilities permit, the Company will, at the option of the Customer, provide the following non-chargeable optional feature, as described in Section 5.5.1, in association with Switched Access Service.

(a) Supervisory Signaling

5.2.3.1.5.2 Chargeable Optional Features

Where transmission facilities permit, the Company will, at the option of the Customer, provide the following chargeable optional features, as described in Section 5.5.2, in association with Switched Access Service.

(a) 800 Data Base Access Service Basic Query
(b) Signaling Transfer Point Access

5.2.3.1.5.3 Feature Group D Optional Features

Following are the various optional features that are available in lieu of, or in addition to, the standard features provided with Feature Group D. Optional features are provided as Common Switching Optional Features as described in Section 5.5.3.1.

5.2.3.1.4.3.1 Common Switching Optional Features:

At the Customer's option, the following standard features are available at the rates specified in Section 6.4.7.1:

- a) Alternate Traffic Routing
- b) Automatic Number Identification (ANI)
- c) Cut-Through
- d) Service Class Routing
- e) Feature Group D with 950 Access
- f) Signaling System Seven (SS7)
- g) Basic Initial Address Message Delivery
- h) Called Directory Number Delivery
- i) Flexible Automatic Number Identification Delivery

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.2 Provision and Description of Switched Access Service Arrangements (Cont.)

- 5.2.4 Billing Validation Service: The Company shall arrange to have its billing validation data stored in one of the existing Line Information Databases (LIDB). It will be the responsibility of the Customer to identify this database through established industry procedures and to query the billing validation data in the LIDB. Based on the received query information, the LIDB will respond with an SS7 formatted confirmation of validity or denial for the requested billing option. Access to LIDB provides Customers with potential toll fraud detection.

The LIDB will contain a record for every working line number and Billed Number Group served by the Company.

The Company will update the LIDB information on a daily basis.

LIDB service is provided on an on-line, call-by-call basis. Company data accessed from the LIDB shall remain the sole property of the Company and may not be stored or reproduced by the Customer for any reason.

The Company will have procedures in place to deactivate billing validation data in the event that it is being used fraudulently.

- 5.2.5 Design Layout Report: At the request of the Customer, the Company will provide to the Customer the makeup of the facilities and services provided from the Customer's Premises to the first point of switching. This information will be provided in the form of a Design Layout Report. The Design Layout Report will be provided to the Customer at no charge.
- 5.2.6 Acceptance Testing: At no additional charge, the Company will, at the Customer's request, cooperatively test, at the time of installation, the following parameters: loss, C-notched noise, C-message noise, 3-tone slope, d.c. continuity and operational signaling.
- 5.2.7 Ordering Options and Conditions: Access Service is ordered under the Access Order provisions set forth in Section 3.2. Also included in that section are other charges which may be associated with ordering Switched Access Service.
- 5.2.8 Competitive Pricing Arrangements: Competitive pricing arrangements for Local Transport-Entrance Facilities and Local Transport-Direct Trunked Transport can be furnished to meet the communication needs of specific customers on a case by case basis under individual contract.

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.3 Obligations of Company

In addition to the obligations of the Company set forth in other sections of this tariff, the Company has certain other obligations concerning the provision of Switched Access Service. These obligations are as follows:

5.3.1 Network Management

The Company will administer its Network to ensure the provision of acceptable service levels to all telecommunications users of the Company's Network Services. Generally, service levels are considered acceptable only when both End Users and Customers are able to establish connections with little or no delay encountered within the Company Network. The Company reserves the right to apply protective controls, (i.e., those actions, such as call gapping, which selectively cancel the completion of traffic), over any traffic carried over its Network, including that associated with a Customer's Switched Access Service. Generally, such protective measures would only be taken as a result of occurrences such as failure or overload of Company or Customer facilities, natural disasters, mass calling or national security demands. The Customer will notify the Company of anticipated peaked services as stated below. Based on the information provided, the Company will work cooperatively with the Customer to determine the appropriate level of control. In the event that the protective controls applied by the Company result in the complete loss of service by the Customer, the Customer will be granted a credit allowance for service interruption as set forth in 2.6.

When a Customer uses the Company's facilities to offer services for which a substantial call volume or peaked service is expected during a short period of time, the Customer must notify the Company at least 24 hours in advance of each peak period. For events scheduled during weekends or holidays, the Company must be notified no later than 5:00 p.m. local time the prior business day. Notification should include the nature, time, duration, and frequency of the event, an estimated call volume, and the NPA NXX and line number(s) to be used. On the basis of the information provided, the Company may invoke network management controls if required to reduce the probability of excessive Network congestion. The Company will work cooperatively with the Customer to determine the appropriate level of such control. Failure to provide prescribed notification may result in Customer caused Network congestion, which could result in discontinuance of service under Section 5.5 and/or damages under Section 2.1.4.

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.4 Obligations of the Customer

In addition to obligations specified elsewhere in this tariff, the Customer has certain specific obligations pertaining to the use of Switched Access Service, as follows:

5.4.1 Report Requirements: When a Customer orders Switched Access Service for both interstate and intrastate use, the Customer is responsible for providing Jurisdictional Reports as set forth in Section 2.3.3 preceding. Charges will be apportioned in accordance with those reports. The method to be used for determining the intrastate charges is set forth therein.

5.4.2 Supervisory Signaling: The Customer's facilities at the premises of the ordering Customer shall provide the necessary On-Hook, Off-Hook answer and disconnect supervision.

5.4.3 Design of Switched Access Services: It is the Customer's responsibility to assure that sufficient Access Services have been ordered to handle its traffic.

5.5 Switched Access Optional Features: Following are descriptions of the various optional features that are available in lieu of, or in addition to, the standard features provided with the Feature Groups for Switched Access Service.

5.5.1 Nonchargeable Optional Feature

(a) Supervisory Signaling: Where the transmission parameters permit, and where signaling conversion is required by the Customer to meet its signaling capability, the Customer may order an optional supervisory signaling arrangement in the form of Multi-frequency (MF) Signaling for each transmission path.

5.5.2 Chargeable Optional Features

(a) 800 Data Base Access Service: The Customer will be charged a per query charge based on a query of the 8XX-NXX-XXXX dialed and/or delivered to the Customer in conjunction with 800 Data Base Access Service.

(b) Signaling Transfer Point Access: The Customer will be charged a per mile charge and a per port charge for access to a specialized switch which provides SS7 network access and performs SS7 messaging routing and screening. If a Customer is connected to a third party SS7 service provider, an additional charge, as specified in Section 6.4.5.2 will apply.

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.5 Switched Access Optional Features (Cont.):

5.5.3 Feature Group D Optional Features

5.5.3.1 Common Switching Optional Features

a) Alternate Traffic Routing: This option provides the capability of directing originating traffic from a Local Switching Center to a direct access Trunk group, with additional traffic overflowing to the access tandem Trunk group and then to a Customer designated Premises. Multiple Customer Premises Alternate Routing is also available where originating traffic from a Local Switching Center is directed via a Trunk group to a Customer designated Premises until that group is fully loaded, and then additional originating traffic from the same Local Switching Center or access tandem is delivered via a different Trunk group to a second Customer designated Premise. The Customer shall specify the last Trunk CCS desired for the high use group.

b) Automatic Number Identification (ANI): This option provides the automatic in-band transmission signaling of a seven or ten digit number and information digits to the Customer's Premises for calls originating in the LATA for the identification of the calling station. The ANI feature is a Local Switching Center software function which is associated on a call-by-call basis with: 1) all individual transmission paths in a trunk group routed directly between a Local Switching Center and a Customer's Premises; or where technically feasible, 2) all individual transmission paths in a Trunk group between a Local Switching Center and an Access Tandem, and a Trunk group between an Access Tandem and a Customer's Premises.

The ten-digit ANI telephone number is only available with Feature Group D. The ten digit ANI telephone number consists of the Numbering Plan Area (NPA) plus the seven digit ANI telephone number. The ten-digit ANI telephone number will be transmitted on all calls except those identified as multi-party line or ANI failure, in which case only the NPA will be transmitted.

c) Cut-Through: This option allows End Users of the Customer to reach the Customer's Premises by using the end of dialing digit (#) at the end of the dialing sequence. The Company will not record any other dialed digits for these calls.

d) Service Class Routing: This option provides the capability of directing originating traffic from a Local Switching Center to a Trunk group to a Customer designated Premises, based on the line class of service and service prefix indicator. A domestic Interexchange Carrier may not order more than four different routes per Local Switching Center or Access Tandem. An international Interexchange Carrier may order up to four additional routes.

ACCESS SERVICES

5. SWITCHED ACCESS SERVICE (Cont.)

5.5 Switched Access Optional Features (Cont.):

5.5.3 Feature Group D Optional Features (Cont.)

5.5.3.1 Common Switching Optional Features (Cont.)

- e) Feature Group D with 950 Access: This option provides for the routing of originating calls, dialed using a 950-10XX or 950-1XXX Access Code, to the FGD Customer using FGD signaling protocols and technical specifications. The Customer is responsible for distinguishing between standard FGD calls and 950-dialed calls delivered over the same trunks.
- f) Signaling System Seven (SS7): This option provides out of band transmission of SS7 protocol signaling information between the Local Switching Center switching system and the Customer's designated Premises. Prior to installation of any SS7 circuits, the Customer must agree to participate in SS7 certification testing. The Company will provide a testing plan to the Customer, and reserves the right to deny SS7 connectivity if the Customer's circuits do not meet the testing requirements.
- g) Basic Initial Address Message Delivery: This option permits the following optional SS7 signaling call setup parameters: User Service Information, Called Party Number, Calling Party Number, Charge Number, Originating Line Information, Transit Network Selection, Carrier Selection, Service Code and Access Transport.
- h) Called Directory Number Delivery: This option provides the Customer with the telephone number to which the call was directed. The seven or ten digit number is provided as part of the in-band transmission with MF signaling. The Called Directory Number Delivery feature is associated on a call-by-call basis with all individual transmission paths in a Trunk group routed from an Access Tandem or the originating Local Switching Center. This option is available except when FGD is provided with 950 access or Cut-Through features.
- i) Flexible Automatic Number Identification Delivery: This feature is a network enhancement to ANI. The feature is available on inbound signaling or in the Originating Line Information Parameter in the Basic Initial Address Message Delivery optional feature for SS7 signaling. Flexible ANI will provide additional values for Information Indicator (II) digits that are associated with various classes of service not associated with the standard ANI digits. This feature may only be used in conjunction with ANI. The following Information Indicator codes are available: Confinement/Detention Facility; Outward Wide Area Telecommunications Service; Cellular Service; Private Pay Station; and, Access for Private Virtual Networks.

ACCESS SERVICES

6. SWITCHED ACCESS RATES

This section contains the specific regulations governing the rates and charges that apply for Switched Access Services:

6.1 Description of Rates and Charges: There are two types of rates and charges that apply to Switched Access Service. These are usage rates and Non-Recurring Charges.

6.1.1 Usage Rates: Usage rates are rates that are applied on a per access minute or per query basis. Usage rates are accumulated over a monthly period.

6.1.2 Non-Recurring Charges: Non-Recurring charges are one time charges that apply for a specific work activity (i.e., installation of new service or change to an existing service).

6.1.2.1 Installation of Service: Non-Recurring charges apply to each Switched Access Service installed. The charge is applied per line or Trunk.

6.2 Application of Rates

6.2.1 Direct Connect: The Direct Connect rate is assessed on a per minute of use basis. The rate will vary based on whether the traffic is originating or terminating.

The Tandem Overflow rates will apply, based on the option chosen, for all Direct Connect usage which overflows to the Access Tandem.

Rates and charges for Direct Connect and Tandem Overflow are set forth in Section 6.4.4.1.

6.2.2 Tandem Connect: The Tandem Connect rate is assessed on a per minute of use basis and is applicable to all tandem routed Switched Access Service minutes of use. The rate will vary based on whether the traffic is originating or terminating. Rates and charges for Tandem Connect are set forth in Section 6.4.4.2.

6.2.3 Toll Free 8YY Transit Traffic Service: The Toll Free 8YY Transit Traffic Service rates are assessed on a per minute of use basis. If the 8YY call is delivered to the IXC over DEOTs, the Toll Free 8YY Direct Transit Minute of Use Rate will apply. If the call is instead delivered to the IXC indirectly via another LEC tandem, Toll Free 8YY Indirect Transit Minute of Use Rate will apply. These charges incorporate only the tandem switching, and appropriate portions of common multiplexing and tandem transport functionalities into the rate. Additionally, the 800 Data Base Basic Query Charge identified in Sections 6.2.4 and 6.4.5.1 will apply on a per query basis.

6.2.4 800 Data Base Access Service Basic Query Charge: The 800 Data Base Access Service Basic Query Charge applies for the identification of the interexchange carrier to whom a specific 800 number is to be delivered. This charge is assessed on a per query basis.

ACCESS SERVICES

6. SWITCHED ACCESS RATES (Cont.)

6.3 Billing of Access Minutes: When recording originating calls over FGD with multifrequency address signaling, usage measurement begins when the first wink supervisory signal is forwarded from the Customer's facilities. The measurement of originating call usage over FGD ends when the originating FGD entry switch receives disconnect supervision from either the originating End User's Local Switching Center (indicating that the originating End User has disconnected), or the Customer's facilities, whichever is recognized first by the entry switch.

For terminating calls over FGD with multifrequency address signaling, the measurement of access minutes begins when a seizure signal is received from the Carrier's Trunk group at the Point of Presence within the LATA. The measurement of terminating call usage over FGD ends when a disconnect signal is received, indicating that either the originating or terminating user has disconnected.

When recording originating calls over FGD with SS7 signaling, usage measurement begins with the transmission of the initial address message by the switch for direct Trunk groups and with the receipt of an exit message by the switch for tandem Trunk groups. The measurement of originating FGD usage ends when the entry switch receives or sends a release message, whichever occurs first.

For terminating calls over FGD with SS7 signaling, the measurement of access minutes begins when the terminating recording switch receives the initial address message from the terminating End User. On directly routed Trunk groups or on tandem routed Trunk groups, the Company switch receives the initial address message and sends the indication to the Customer in the form of an answer message. The measurement of terminating FGD call usage ends when the entry switch receives or sends a release message, whichever occurs first.

ACCESS SERVICES

6. SWITCHED ACCESS RATES (Cont.)

6.4 Rates and Charges

6.4.1 Service Implementation

A. Installation Charge (Per Trunk)

| | |
|-------------|-------------|
| <u>DS-1</u> | <u>DS-3</u> |
| N/A | N/A |

6.4.2 Change Charges (per order)

Per Occurrence

| | |
|--------------------|----------|
| A. Service Date | \$0.00 |
| B. Design Changes | \$0.00 |
| C. Expedite Charge | \$215.00 |

6.4.3 Cancellation Charges (Per Order) \$0.00

6.4.4 Switched Access

6.4.4.1 Direct Connect Charges:

| | | |
|--|--------------|------------|
| <u>Direct Connect:</u> | Originating: | \$0.051711 |
| | Terminating: | \$0.051711 |
| <u>Direct Connect - Tandem Overflow:</u> | Originating: | \$0.059954 |
| | Terminating: | \$0.059954 |

6.4.4.2 Tandem Connect Charges:

| | | |
|-------------------------|--------------|------------|
| <u>Tandem Overflow:</u> | Originating: | \$0.059954 |
| | Terminating: | \$0.059954 |

6.4.4.3 Toll Free 8YY Transit Traffic Service*

| | |
|--------------------------------------|------------|
| Per Direct Transit Minute of Use:* | \$0.007855 |
| Per Indirect Transit Minute of Use:* | \$0.008009 |

* This is a blended rate comprised of the following ILEC rate elements at the time of this filing. The Direct Transit Minute of Use rate includes: Tandem Switching, one-half of the Transport Termination rate, one mile of Transport Facility, and one-half of the Common Multiplexer rate. The Indirect Transit Minute of Use rate includes: Tandem Switching, Transport Termination, two miles of Transport Facility, and the Common Multiplexer rate.

Issued: 4/22/08

Effective: 6/15/08

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ACCESS SERVICES

6. SWITCHED ACCESS RATES (Cont.)

6.4 Rates and Charges

6.4.5 Chargeable Optional Features

6.4.5.1 800 Data Base Access Service Basic Query

Per Query: \$0.003312

6.4.5.2 Signaling Transfer Point Access

| Monthly Per Mile ICB | Non-Recurring Per Port ICB | Via Third Party ICB |
|----------------------------|----------------------------------|------------------------|
|----------------------------|----------------------------------|------------------------|

6.4.6 Nonchargeable Optional Features

Supervisory Signaling: \$0.00

6.4.7 Feature Group D Optional Features

6.4.7.1 Common Switching Optional Features

| | |
|---|--------|
| Alternate Traffic Routing | \$0.00 |
| Automatic Number Identification | \$0.00 |
| Cut-Through | \$0.00 |
| Service Class Routing | \$0.00 |
| Feature Group D with 950 Access | \$0.00 |
| Signaling System Seven (SS7) | \$0.00 |
| Basic Initial Address Message Delivery | \$0.00 |
| Called Directory Number Delivery | \$0.00 |
| Flexible Automatic Number Identification Delivery | \$0.00 |

6.5 Special Construction

6.5.1 Basis for Rates and Charges

Rates and charges for Switched Access Special Construction are to be determined on an Individual Case Basis (ICB).

Issued: 4/22/08

Effective: 6/15/08

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EXHIBIT

MP2-17

Switched Access Services

Section 3 – Obligations Of The Customer (Continued)

3.3 Claims

With respect to any Service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

3.3.1 any loss, destruction or damage to property of the Company or any third party, or the death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer or User or their employees, agents, representatives or invitees;

3.3.2 any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer or User, including without limitation, use of the Company's Services and facilities in a manner not contemplated by the agreement between Customer and the Company; or

3.3.3 any claim of any nature whatsoever brought by a User with respect to any matter for which the Company would not be directly liable to the Customer under the terms of the applicable Company Tariff.

3.4 Jurisdictional Reporting

When the Company receives sufficient call detail to determine the jurisdiction of some or all originating and terminating access minutes of use (MOU), the Company will use that call detail to render bills for those MOU and will not use PIU factors. When the Company receives insufficient call detail to determine the jurisdiction of some or all originating and terminating access MOU, the Company will apply PIU factor(s) provided by the Customer or developed by the company to those minutes for which the Company does not have sufficient call detail. PIU factor(s) must be provided in whole numbers and will be used by the Company to apportion use and/or charges between interstate and intrastate jurisdictions until Customer provides an update to its' PIU factor(s).

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Effective: _____

Issued By:

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Sioux Falls, SD 57107
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OrbitCom, Inc.

Tariff No. 1

State of South Dakota
Issued: August 6, 200

Original Page No. 21.1
Effective: March 21, 2007

Switched Access Services

Section 3 – Obligations Of The Customer (Continued)

3.4.1 Originating Access: Originating Access Minutes may be based on traffic originating at the State, LATA or local Switching Center level, provided that the traffic being measured is only traffic originating from the Company's Local Switching Center(s). The Customer must provide the Company with a projected PIU factor on a quarterly basis as specified below. Originating Access Minutes will be measured as follows, based on type of access:

Issued: _____

Effective: _____

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Switched Access Services

Section 3 – Obligations Of The Customer (Continued)

3.4 Jurisdictional Reporting (Continued)

3.4.1.1 For Feature group D Switched Access Services, as defined in Section 14.2.1, where the Company can determine jurisdiction by its call detail, the projected PIU will be developed by the Company on a quarterly basis by dividing the measured interstate originating minutes by the total Originating Access Minutes.

3.4.1.2 For Feature Group D with 950 Access as defined in Section 14.2.1, the Customer must provide the Company with a projected PIU factor by supplying the Company with an interstate percentage of Originating Access Minutes.

3.4.1.3 For 500, 700, 800, calling card and operator Service access, the Customer must provide the Company with a projected PIU factor for each type of access. The Customer who provides a PIU factor shall supply the Company with an interstate percentage of Originating Access Minutes.

3.4.1.4 If no PIU for originating minutes is submitted as specified herein, then the projected PIU will be set on a default basis of 32 percent interstate traffic and 68 percent intrastate traffic.

3.4.2 Terminating Access: For Feature Group D Switched Access Services, the Customer must provide the Company with a projected PIU factor by supplying the Company with an interstate percentage of Terminating Access Minutes on a quarterly basis, as described in Section 3.4.4 below. If no projected PIU factor is submitted by the Customer, then the projected PIU will be set on a default basis.

3.4.3 Except where the Company measured access minutes are used as set forth in 3.4.1 above, the Customer reported projected PIU factor as set forth above will be used until the Customer reports a different projected PIU factor, as set forth below. The revised report will serve as the basis for future billing and will be effective on the next bill date.

Issued: _____

Effective: _____

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Switched Access Services

Section 3 – Obligations Of The Customer (Continued)

3.4 Jurisdictional Reporting (Continued)

3.4.4 Effective on the first day of January, April, July and October of each year the Customer shall update its interstate and intrastate jurisdictional report. The Customer shall forward to the Company, to be received no later than 15 days after the first day of such month, a revised report showing the interstate and intrastate percentage of use for the past three months ending the last day of December, March, June and September, respectively, for each Service arranged for interstate use, based solely on the traffic originating from or terminating to the Company Local Switching Center. The revised report will serve as the basis for the next three months billing and will be effective on the bill date for that Service. If the Customer does not supply the reports for those Services where reports are needed, the Company will assume the percentage to be the same as that provided previously. For those cases in which a quarterly report has never been received from the Customer, the Company will assume the percentages to be the same as those provided in the Access Service Request.

3.4.5 Jurisdictional Reports Verification: For Switched Access Service, if a billing dispute arises or the Commission questions the project PIU factor, the Customer will provide the data used to determine the projected PIU factor. The Customer will supply the data within 30 days of the Company request.

The Customer shall keep records of call detail from which the percentage a interstate and intrastate use can be ascertained and, upon request of the Company shall make the records available for inspection as reasonably necessary for purposes of verification of the percentages. The Company reserves the right to conduct an audit at any time during the year. The Customer, at its own expense, has the right to retain an independent auditing firm.

Issued: _____

Effective: _____

Issued By:

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EXHIBIT

MP2-18

VP TELECOM

ACCOUNT NO. - 0204557207 VPE2

USAGE CHARGES

| | CALLS |
|---|--------|
| LINK CALLING CARD DOMESTIC | 1,326 |
| LINK CALLING CARD OFFSHORE | 1 |
| LINK CALLING CARD DIRECTORY ASSISTANCE | 2 |
| LINK CALLING CARD OPERATOR ASSISTANCE | 98 |
| LINK CALLING CARD INTERNATIONAL | 1 |
| INBOUND PIN DOMESTIC INTERSTATE | 43 |
| INBOUND PIN DOMESTIC INTRASTATE | 31 |
| ACC DIRECT SWITCHED OUTBOUND INTERSTATE | 35,834 |
| ACC DIRECT SWITCHED OUTBOUND INTRASTATE | 70,418 |
| ACC DIRECT SWITCHED OUTBOUND OFFSHORE | 86 |
| ACC DIRECT SWITCHED OUTBOUND DIRECTORY ASSISTANCE | 346 |
| ACC DIRECT SWITCHED OUTBOUND INTERNATIONAL | 213 |
| ACC DIRECT SWITCHED INBOUND INTERSTATE | 34,121 |
| ACC DIRECT SWITCHED INBOUND INTRASTATE | 68,723 |
| ACC DIRECT SWITCHED INBOUND OFFSHORE | 51 |
| ACC DIRECT SWITCHED INBOUND CANADIAN ORIGINATION | 216 |

33.7%
66.3%

33.1%
66.9%

VP TELECOM

ACCOUNT NO. - 0204557207 VPE2

USAGE CHARGES

| | CALLS |
|---|--------|
| LINK CALLING CARD DOMESTIC | 1,229 |
| LINK CALLING CARD OFFSHORE | 1 |
| LINK CALLING CARD DIRECTORY ASSISTANCE | 4 |
| LINK CALLING CARD OPERATOR ASSISTANCE | 76 |
| INBOUND PIN DOMESTIC INTERSTATE | 72 |
| INBOUND PIN DOMESTIC INTRASTATE | 41 |
| ACC DIRECT SWITCHED OUTBOUND INTERSTATE | 32,116 |
| ACC DIRECT SWITCHED OUTBOUND INTRASTATE | 60,313 |
| ACC DIRECT SWITCHED OUTBOUND OFFSHORE | 100 |
| ACC DIRECT SWITCHED OUTBOUND DIRECTORY ASSISTANCE | 382 |
| ACC DIRECT SWITCHED OUTBOUND INTERNATIONAL | 155 |
| ACC DIRECT SWITCHED INBOUND INTERSTATE | 27,931 |
| ACC DIRECT SWITCHED INBOUND INTRASTATE | 60,711 |
| ACC DIRECT SWITCHED INBOUND OFFSHORE | 109 |
| ACC DIRECT SWITCHED INBOUND CANADIAN ORIGINATION | 170 |
| ACCESS DIRECT UNE-P SUB-CIC INTERSTATE | 42,308 |

34.7

65

31.5

68.5

EXHIBIT

MP2-19

Verizon Access minutes of use - South Dakota Only

| BAN # | Bill Date | Originating DDD minutes recorded by jurisdiction | | | | Terminating minutes recorded by jurisdiction | | | | Minutes not recorded by jurisdiction | | |
|------------|-----------|--|------------|--------|--------|--|------------|--------|--------|--------------------------------------|-------------|--------|
| | | Intrastate | Interstate | Totals | PIU | Intrastate | Interstate | Totals | PIU | DDD | Terminating | 8XX |
| 8080SD0222 | 7/12/2009 | 3510 | 3442 | 6952 | | 98245 | 27263 | 125508 | | 0 | 26524 | 92950 |
| 8080SD0555 | 7/12/2009 | 249561 | 69730 | 319291 | | 80243 | 49879 | 130122 | | 247 | 5606 | 70293 |
| | Totals | 253071 | 73172 | 326243 | 0.2243 | 178488 | 77142 | 255630 | 0.3018 | 247 | 32130 | 163243 |
| 8080SD0222 | 8/12/2009 | 3973 | 4269 | 8242 | | 108830 | 32517 | 141347 | | 0 | 12496 | 99367 |
| 8080SD0555 | 8/12/2009 | 249656 | 100370 | 350026 | | 90408 | 60637 | 151045 | | 218 | 6401 | 70175 |
| | Totals | 253629 | 104639 | 358268 | 0.2921 | 199238 | 93154 | 292392 | 0.3186 | 218 | 18897 | 169542 |

CONFIDENTIAL

EXHIBIT

MP2-22

CONFIDENTIAL

| | 555 Network | 222 Network |
|-------------|---------------------|---|
| End Office | LEC TSC Code | LEC TSC Code |
| ABRSDCODS0 | AL133834 | AL141647 |
| ARTNSDCORS1 | AL114945 | AL113135 |
| BLFRSDCORS1 | AL116363 | AL135723 |
| BLHKSDCERS1 | AL116363 | AL135723 |
| CAVRSDCORS1 | AL144263 | AL131275 |
| CHBLSDCORS1 | AL135772 | AL142559 |
| CLMNSDCORS1 | AL130259 | AL113124 |
| DDWSDCORS1 | AL116363 | AL135723 |
| DESMDCORS1 | AL144263 | AL131275 |
| ELPNDCORS1 | AL114938 | AL131861 |
| FLNDCORS1 | AL130259 | AL113124 |
| FTRSDCERS1 | AL135772 | AL142559 |
| HLCYSDCORS1 | AL116363 | AL135723 |
| HRBGSDCORS1 | AL114945 | AL113135 |
| HURNSDCODS1 | AL143130 | AL114916 |
| IRQSSDCORS1 | AL144263 | AL131275 |
| LEADSDCORS1 | AL116363 | AL135723 |
| MDSNSDCERS1 | AL114945 | AL113135 |
| MLBNSDCORS1 | AL141500 | AL141796 |
| MLLRSDCORS1 | AL144263 | AL131275 |
| MTCHSDCODS1 | AL133975 | AL131236 |
| ORVLMNORRS8 | AL135991 | AL133775 |
| PIRRSDCODS6 | AL135772 | AL142559 |
| RDFSDCORS1 | AL129156 | AL141778 |
| RPCYSDCODS1 | AL116363 | AL135723 |
| RPVYSDCORS1 | AL116363 | AL135723 |
| SPRFSDCORS1 | AL116363 | AL135723 |
| STRGSDCORS1 | AL116363 | AL135723 |
| SXCYIADTDS1 | AL131605 | AL105019 |
| SXFLSDCODS2 | AL139326 | AL117400 |
| SXFLSDPSDS0 | AOBJIS2200001/CH 27 | MC.SIO.T1.SIO.337, MC.SIO.T1.SIO.338, MC.SIO.T1.SIO.339 |
| SXFLSDSERS1 | AL114945 | AL113135 |
| SXFLSDSWDS0 | AL124745 | AL141801 |
| TEA SDCORS1 | AL114945 | AL113135 |
| TMLKSDCORS2 | | AL142384 |

VLNTNENWDS0
VOLGSDCORS1
VRMLSDCODS0
WHWSDCORS1
WRWKSDCORS1
WTTWSDCODS0
YNTNSDCODS1

| | |
|----------|----------|
| AL142898 | AL143225 |
| AL130259 | AL113124 |
| AL144318 | AL133754 |
| AL116363 | AL135723 |
| AL116363 | AL135723 |
| AL129156 | AL141778 |
| AL114938 | AL131861 |

CONFIDENTIAL

EXHIBIT

MP2-23

Michael Powers

*JAKE'S NEXT REVIEW
COMPLETE*

From: Brad Vanleur [bvanleur@orbitcominc.net]
Sent: Thursday, April 09, 2009 8:17 AM
To: 'Michael Powers'; pmastel@orbitcominc.net
Subject: FW: Updated Dispute Report - Orbitcom PIU
Attachments: Orbitcom PIU Disp Report.xls

*filed - DAY of
our conference
call AND when
Verizon had
reached the
original dispute
amt.*

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]
Sent: Thursday, April 09, 2009 7:48 AM
To: bvanleur@orbitcominc.net; Penny Petersen
Cc: Freet, Leslie L; Severy, Richard; Moore, Jaque A (Jake)
Subject: Updated Dispute Report - Orbitcom PIU

Brad,

I have attached an updated dispute report with calculations through the March 2009 invoice cycle for Verizon Business's dispute of Orbitcom's billed PIU. The total amount disputed for PIU \$1,691,571.81.

This dispute is separate from the Interstate rate dispute Verizon Business already has on file with Orbitcom. This dispute supersedes the previous dispute for the months of 7/07 through 6/08 as it incorporates the rate dispute into the calculations. This dispute totals \$278,168.80.

If you have any questions regarding the calculation, please contact me.

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

| <u>Inv D</u> | <u>Group of Jur I</u> | <u>ITA</u> | <u>ITE</u> | <u>TOTAL MOU</u> | <u>PIU</u> |
|--------------|-------------------------|--------------|--------------|------------------|------------|
| | <u>Group of R Typ I</u> | <u>Use Q</u> | <u>Use Q</u> | | |
| 6/12/2007 | Local Switching | 613,273 | 315,205 | 928,478 | 33.95% |
| 7/12/2007 | Local Switching | 1,088,814 | 57,773 | 1,146,587 | 5.04% |
| 8/12/2007 | Local Switching | 1,576,633 | 84,069 | 1,660,702 | 5.06% |
| 9/12/2007 | Local Switching | 2,032,954 | 108,979 | 2,141,933 | 5.09% |
| 10/12/2007 | Local Switching | 1,825,210 | 98,933 | 1,924,143 | 5.14% |
| 11/12/2007 | Local Switching | 2,081,156 | 112,659 | 2,193,815 | 5.14% |
| 12/12/2007 | Local Switching | 1,808,044 | 98,048 | 1,906,092 | 5.14% |
| 1/12/2008 | Local Switching | 1,700,584 | 92,332 | 1,792,916 | 5.15% |
| 2/12/2008 | Local Switching | 2,131,258 | 115,187 | 2,246,445 | 5.13% |
| 3/12/2008 | Local Switching | 2,057,851 | 111,250 | 2,169,101 | 5.13% |
| 4/12/2008 | Local Switching | 2,236,538 | 121,605 | 2,358,143 | 5.16% |
| 5/12/2008 | Local Switching | 2,246,804 | 122,306 | 2,369,110 | 5.16% |
| 6/12/2008 | Local Switching | 2,342,474 | 127,911 | 2,470,385 | 5.18% |
| 7/12/2008 | Local Switching | 2,492,634 | 138,164 | 2,630,798 | 5.25% |
| 8/12/2008 | Local Switching | 1,875,804 | 887,169 | 2,762,973 | 32.11% |
| 9/12/2008 | Local Switching | 1,740,567 | 819,966 | 2,560,533 | 32.02% |
| 10/12/2008 | Local Switching | 1,836,166 | 868,707 | 2,704,873 | 32.12% |
| 11/12/2008 | Local Switching | 1,963,563 | 928,700 | 2,892,263 | 32.11% |
| 12/12/2008 | Local Switching | 1,587,458 | 751,643 | 2,339,101 | 32.13% |
| 1/12/2009 | Local Switching | 1,854,987 | 879,664 | 2,734,651 | 32.17% |
| 2/12/2009 | Local Switching | 1,953,074 | 932,003 | 2,885,077 | 32.30% |
| 3/12/2009 | Local Switching | 1,814,648 | 858,039 | 2,672,687 | 32.10% |

| | | | | | | | | | | | | | | | | |
|------------------|-------------|----------------|-----------|-------------|------------|------------|------------|----------------|------------|------------|--------------|-------------|-------------|-------------|--------------|----------------|
| 7/12/2007 Total | 7,633,485 | \$66,322.83 | 57,785 | \$347.00 | 0.06091291 | 0.06060627 | 1,146,587 | \$66,569.83 | 263,715 | 882,872 | \$16,083.66 | \$300.30 | \$1,766.99 | \$648.78 | \$2,616.08 | \$47,990.10 |
| 8/12/2007 Total | 10,873,382 | \$95,586.78 | 84,069 | \$505.00 | 0.06062716 | 0.06060697 | 1,660,702 | \$96,091.78 | 381,961 | 1,278,741 | \$23,187.24 | \$434.96 | \$2,659.29 | \$794.86 | \$3,789.10 | \$89,146.45 |
| 9/12/2007 Total | 14,055,872 | \$123,605.79 | 109,007 | \$654.00 | 0.06076189 | 0.06060116 | 2,141,933 | \$124,159.79 | 492,845 | 1,649,288 | \$29,929.09 | \$561.00 | \$3,300.91 | \$1,025.18 | \$4,887.08 | \$89,343.82 |
| 10/12/2007 Total | 12,821,572 | \$110,888.53 | 98,973 | \$534.00 | 0.06076388 | 0.06060408 | 1,924,143 | \$111,482.53 | 442,553 | 1,481,590 | \$28,866.79 | \$503.98 | \$2,966.27 | \$920.94 | \$4,390.17 | \$80,206.57 |
| 11/12/2007 Total | 14,351,008 | \$126,343.01 | 112,716 | \$677.00 | 0.06071096 | 0.06060928 | 2,193,815 | \$127,926.01 | 594,577 | 1,689,238 | \$30,833.39 | \$674.59 | \$3,360.86 | \$1,050.01 | \$5,005.46 | \$91,367.16 |
| 12/12/2007 Total | 12,473,533 | \$109,452.95 | 98,100 | \$588.90 | 0.06053668 | 0.06060624 | 1,908,082 | \$110,941.85 | 438,401 | 1,467,691 | \$28,539.34 | \$499.23 | \$2,937.66 | \$912.30 | \$4,348.98 | \$79,153.52 |
| 1/12/2008 Total | 11,725,883 | \$102,794.81 | 92,448 | \$554.86 | 0.06044685 | 0.06060940 | 1,792,916 | \$103,349.47 | 412,371 | 1,380,545 | \$24,926.43 | \$468.59 | \$2,763.04 | \$855.13 | \$4,090.76 | \$74,332.28 |
| 2/12/2008 Total | 14,705,988 | \$128,982.99 | 115,383 | \$692.20 | 0.06052434 | 0.06060538 | 2,246,445 | \$129,685.19 | 518,682 | 1,729,783 | \$31,271.86 | \$588.37 | \$3,461.97 | \$1,075.20 | \$5,125.54 | \$93,287.79 |
| 3/12/2008 Total | 2,063,959 | \$123,484.16 | 111,574 | \$668.60 | 0.06000637 | 0.06060989 | 2,169,101 | \$124,152.76 | 498,893 | 1,670,208 | \$29,936.77 | \$568.11 | \$3,342.78 | \$1,038.18 | \$4,945.07 | \$89,266.92 |
| 4/12/2008 Total | 2,239,076 | \$134,195.43 | 121,745 | \$736.25 | 0.06000141 | 0.06060510 | 2,358,143 | \$134,925.68 | 542,373 | 1,815,770 | \$32,543.14 | \$617.63 | \$3,634.11 | \$1,128.66 | \$5,386.39 | \$97,002.15 |
| 5/12/2008 Total | 2,248,620 | \$134,803.81 | 122,402 | \$734.40 | 0.05999803 | 0.06060461 | 2,369,110 | \$135,638.21 | 544,896 | 1,824,215 | \$32,692.64 | \$620.60 | \$3,651.01 | \$1,133.91 | \$5,405.42 | \$97,440.15 |
| 6/12/2008 Total | 2,343,874 | \$140,540.00 | 127,987 | \$768.47 | 0.05999640 | 0.06060785 | 2,470,385 | \$141,308.47 | 568,189 | 1,902,196 | \$34,089.27 | \$647.02 | \$3,807.08 | \$1,182.38 | \$5,636.49 | \$101,682.72 |
| 7/12/2008 Total | 2,494,542 | \$149,589.06 | 138,268 | \$829.66 | 0.06000041 | 0.06060489 | 2,630,788 | \$160,388.72 | 605,084 | 2,025,714 | \$36,305.26 | \$689.04 | \$4,054.29 | \$1,269.16 | \$6,002.49 | \$108,080.97 |
| 8/12/2008 Total | 1,875,828 | \$112,548.25 | 87,189 | \$5,323.20 | 0.06000001 | 0.06060021 | 2,762,973 | \$117,871.45 | 635,484 | 2,127,489 | \$38,129.03 | \$723.66 | \$4,257.88 | \$1,322.42 | \$6,304.06 | \$73,438.36 |
| 9/12/2008 Total | 1,740,609 | \$104,434.01 | 819,965 | \$4,920.24 | 0.05999999 | 0.06060054 | 2,560,533 | \$109,354.25 | 588,923 | 1,971,610 | \$35,335.36 | \$670.63 | \$3,946.01 | \$1,225.53 | \$5,842.17 | \$68,176.73 |
| 10/12/2008 Total | 1,838,232 | \$110,169.96 | 868,707 | \$5,212.44 | 0.06000000 | 0.06060023 | 2,704,873 | \$115,382.40 | 622,121 | 2,082,752 | \$37,327.26 | \$708.44 | \$4,168.45 | \$1,284.61 | \$6,171.50 | \$71,883.65 |
| 11/12/2008 Total | 1,963,569 | \$117,813.79 | 928,700 | \$5,672.37 | 0.06000001 | 0.06060018 | 2,892,263 | \$123,386.16 | 685,220 | 2,227,043 | \$39,913.23 | \$757.52 | \$4,457.23 | \$1,384.30 | \$6,599.05 | \$76,873.87 |
| 12/12/2008 Total | 1,587,476 | \$95,247.48 | 751,643 | \$4,610.02 | 0.06000000 | 0.06060022 | 2,339,101 | \$99,787.50 | 537,993 | 1,801,108 | \$32,279.59 | \$612.64 | \$3,604.76 | \$1,119.55 | \$5,336.95 | \$62,140.98 |
| 1/12/2009 Total | 1,855,101 | \$111,299.21 | 879,664 | \$5,278.13 | 0.05999999 | 0.06060017 | 2,734,651 | \$116,577.34 | 628,970 | 2,105,681 | \$37,738.18 | \$716.24 | \$4,214.34 | \$1,306.87 | \$6,239.44 | \$72,599.72 |
| 2/12/2009 Total | 1,996,460 | \$117,183.07 | 995,239 | \$6,274.73 | 0.05999930 | 0.06073252 | 2,885,077 | \$123,457.80 | 663,668 | 2,221,509 | \$39,813.60 | \$766.64 | \$4,446.16 | \$1,380.88 | \$6,582.66 | \$77,061.54 |
| 3/12/2009 Total | 1,829,956 | \$108,944.55 | 865,243 | \$5,237.41 | 0.06003619 | 0.06061093 | 2,672,687 | \$114,181.96 | 614,718 | 2,057,969 | \$36,905.33 | \$700.01 | \$4,118.85 | \$1,279.21 | \$6,098.06 | \$71,178.57 |
| Grand Total | 124,446,885 | \$2,424,116.27 | 8,386,787 | \$50,672.88 | | | 48,562,328 | \$2,474,789.16 | 11,169,335 | 37,382,993 | \$672,416.42 | \$12,718.05 | \$74,838.82 | \$23,243.04 | \$110,800.82 | \$1,691,571.81 |

| <u>Element</u> | <u>Qwest Rates</u> |
|----------------------------|--------------------|
| Common Trunk Port | 0.00074700 |
| Local Switching | 0.00197400 |
| Tandem Facility Over 50 | 0.00001500 |
| Tandem Termination Over 50 | 0.00024000 |
| Common MUX | 0.00003600 |
| Tandem Switching | 0.00254500 |

| | |
|--|------------|
| DEOT Routed Traffic-Includes Local Switching & Common Trunk Port | 0.00272100 |
| Host Remote Traffic-Includes Local Switching, Tandem Facility and Termination | 0.00222900 |
| Tandem Routed Traffic- Includes Common Trunk Port, Local Switching, Tandem Facility and Termination, Common MUX, and Tandem Switching | 0.00555700 |

EXHIBIT

MP2-24

*Jake's Revised
PIU dispute*

Michael Powers

From: Moore, Jaque A (Jake) [jaque.moore@verizonbusiness.com]
Sent: Friday, September 12, 2008 10:21 AM
To: bvanleur@orbitcominc.net; ppetersen@orbitcominc.net; mpowers@orbitcominc.net
Cc: Freet, Leslie L; Moore, Jaque A (Jake)
Subject: RE: Dispute Notification-Orbitcom Invalid PIU
Attachments: Orbitcom PIU Disp Report.xls

*Notice Discrepancy
L105
in minutes*

Brad,

I am amending the disputed amount from \$1,118,218.40 to \$1,191,656.76. The previous attachment's grand total in column R did not have the dispute for the 8/12/08 invoice cycle included. Please replace the previous attachment with the file attached on this email. Let me know if you have any questions.

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

From: Moore, Jaque A (Jake)
Sent: Friday, September 12, 2008 9:41 AM
To: 'bvanleur@orbitcominc.net'; 'ppetersen@orbitcominc.net'; 'mpowers@orbitcominc.net'
Cc: Freet, Leslie L; Moore, Jaque A (Jake)
Subject: Dispute Notification-Orbitcom Invalid PIU

Brad,

Verizon Business disputes Orbitcom's billed PIU of 5% from the 7/12/07 invoice cycle through the 8/12/08 invoice cycle. The total amount disputed is \$1,118,218.40. I have attached a file breaking down the dispute by month. The PIU cited in the dispute of 77% is the actual PIU of all traffic for the end offices that Orbitcom bills Verizon Business for. The billed MOU's were re-jurisdictionalized utilizing this PIU and then rerated using either the Intrastate billed cost per minute or Qwest's Interstate aggregate rates for direct routed traffic, tandem routed traffic, or host remote routed traffic. These aggregate Interstate rates can be found on the third tab of the attachment.

This dispute is separate from the Interstate rate dispute Verizon Business already has on file with Orbitcom. This dispute supersedes the previous dispute for the months of 7/07 through present as it incorporates the rate dispute into the calculations.

Please review the attached and notify us of Orbitcom's response.

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

8/13/2009

| Year | Month | Day | Account | Balance | Debit | Credit | Balance | Debit | Credit | Balance | Debit | Credit | Balance | Debit | Credit | Balance | Debit | Credit | | |
|-------------|-------|-----|---------|-------------|----------------|------------|-----------|-------------|------------|------------|----------------|--------|-----------|------------|--------------|------------|-------------|-------------|-------------|----------------|
| 7/12/2007 | Total | | | 7,533,485 | \$86,322.83 | 0.00001291 | 57,788 | \$347.00 | 0.00000627 | 1,148,587 | \$68,669.83 | | 283,718 | 852,872 | \$18,043.86 | \$305.30 | \$1,748.90 | \$544.78 | \$2,819.88 | \$49,890.19 |
| 8/12/2007 | Total | | | 10,873,382 | \$98,588.78 | 0.00042716 | 84,989 | \$866.00 | 0.00000887 | 1,050,702 | \$98,091.78 | | 381,961 | 1,278,761 | \$23,157.34 | \$434.98 | \$2,558.29 | \$794.85 | \$3,789.10 | \$89,146.48 |
| 9/12/2007 | Total | | | 14,055,672 | \$123,505.79 | 0.00075189 | 109,007 | \$854.00 | 0.00000116 | 2,141,933 | \$124,169.79 | | 492,646 | 1,649,288 | \$29,929.09 | \$861.00 | \$3,300.91 | \$1,023.18 | \$4,887.08 | \$89,343.62 |
| 10/12/2007 | Total | | | 12,821,672 | \$110,868.53 | 0.00075385 | 88,973 | \$894.00 | 0.00000468 | 1,924,143 | \$111,482.83 | | 442,653 | 1,481,890 | \$28,898.79 | \$903.98 | \$2,986.27 | \$920.84 | \$4,390.17 | \$80,208.57 |
| 11/12/2007 | Total | | | 14,381,808 | \$128,349.01 | 0.00071088 | 112,715 | \$877.00 | 0.00000928 | 2,183,616 | \$127,828.01 | | 604,677 | 1,689,238 | \$30,483.89 | \$874.59 | \$3,296.96 | \$1,060.01 | \$5,006.46 | \$91,387.16 |
| 12/12/2007 | Total | | | 12,473,333 | \$109,452.85 | 0.00053688 | 88,100 | \$588.00 | 0.00000824 | 1,906,082 | \$110,041.85 | | 438,401 | 1,467,891 | \$28,539.34 | \$896.23 | \$2,937.46 | \$912.30 | \$4,348.86 | \$79,113.82 |
| 1/12/2008 | Total | | | 11,725,963 | \$102,794.81 | 0.00044686 | 82,448 | \$564.88 | 0.00000940 | 1,795,918 | \$103,349.47 | | 812,371 | 1,380,646 | \$28,826.43 | \$888.99 | \$2,763.04 | \$868.13 | \$4,090.78 | \$74,332.28 |
| 2/12/2008 | Total | | | 14,706,988 | \$128,982.99 | 0.00052434 | 115,383 | \$892.20 | 0.00000838 | 2,246,445 | \$128,685.19 | | 816,682 | 1,729,783 | \$31,271.86 | \$888.37 | \$3,461.97 | \$1,073.20 | \$5,125.54 | \$83,287.79 |
| 3/12/2008 | Total | | | 2,063,959 | \$123,484.16 | 0.00000637 | 111,674 | \$866.89 | 0.00000889 | 2,168,101 | \$124,162.78 | | 498,893 | 1,670,208 | \$29,936.77 | \$868.11 | \$3,342.78 | \$1,038.18 | \$4,849.07 | \$89,266.92 |
| 4/12/2008 | Total | | | 2,239,078 | \$134,195.43 | 0.00000141 | 121,745 | \$730.25 | 0.00000510 | 2,388,143 | \$134,925.68 | | 542,373 | 1,615,770 | \$32,543.14 | \$817.83 | \$3,634.11 | \$1,128.68 | \$5,380.29 | \$97,002.16 |
| 5/12/2008 | Total | | | 2,248,829 | \$134,803.81 | 0.00088803 | 122,402 | \$734.40 | 0.00000481 | 2,389,119 | \$135,238.21 | | 644,898 | 1,824,216 | \$32,892.84 | \$826.80 | \$3,681.01 | \$1,133.91 | \$5,406.42 | \$97,440.16 |
| 6/12/2008 | Total | | | 2,343,374 | \$140,640.90 | 0.00089940 | 127,887 | \$768.47 | 0.00000785 | 2,470,385 | \$141,208.47 | | 688,189 | 1,902,199 | \$34,089.27 | \$847.82 | \$3,807.08 | \$1,181.38 | \$6,838.49 | \$101,582.72 |
| 7/12/2008 | Total | | | 2,494,342 | \$149,539.08 | 0.00000041 | 138,388 | \$828.68 | 0.00000489 | 2,830,788 | \$160,388.72 | | 695,084 | 2,025,714 | \$34,386.26 | \$869.04 | \$4,054.29 | \$1,269.18 | \$6,802.48 | \$108,080.97 |
| 8/12/2008 | Total | | | 1,875,328 | \$112,548.25 | 0.00000001 | 87,169 | \$5,323.20 | 0.00000021 | 2,762,973 | \$117,871.45 | | 636,484 | 2,127,489 | \$34,129.03 | \$723.66 | \$4,267.88 | \$1,322.42 | \$6,304.06 | \$73,438.36 |
| Grand Total | | | | 111,637,482 | \$1,859,024.20 | | 2,277,625 | \$13,867.64 | | 29,773,143 | \$1,672,691.74 | | 6,847,823 | 22,925,320 | \$374,974.88 | \$7,074.20 | \$41,626.06 | \$12,827.69 | \$61,827.02 | \$1,191,664.76 |

| <u>Inv D</u> | <u>Group of Jur I</u> | <u>ITA</u> | <u>ITE</u> | <u>TOTAL MOU</u> | <u>PIU</u> |
|--------------|-------------------------|--------------|--------------|------------------|------------|
| | <u>Group of R Typ I</u> | <u>Use Q</u> | <u>Use Q</u> | | |
| 6/12/2007 | Local Switching | 613,273 | 315,205 | 928,478 | 33.95% |
| 7/12/2007 | Local Switching | 1,088,814 | 57,773 | 1,146,587 | 5.04% |
| 8/12/2007 | Local Switching | 1,576,633 | 84,069 | 1,660,702 | 5.06% |
| 9/12/2007 | Local Switching | 2,032,954 | 108,979 | 2,141,933 | 5.09% |
| 10/12/2007 | Local Switching | 1,825,210 | 98,933 | 1,924,143 | 5.14% |
| 11/12/2007 | Local Switching | 2,081,156 | 112,659 | 2,193,815 | 5.14% |
| 12/12/2007 | Local Switching | 1,808,044 | 98,048 | 1,906,092 | 5.14% |
| 1/12/2008 | Local Switching | 1,700,584 | 92,332 | 1,792,916 | 5.15% |
| 2/12/2008 | Local Switching | 2,131,258 | 115,187 | 2,246,445 | 5.13% |
| 3/12/2008 | Local Switching | 2,057,851 | 111,250 | 2,169,101 | 5.13% |
| 4/12/2008 | Local Switching | 2,236,538 | 121,605 | 2,358,143 | 5.16% |
| 5/12/2008 | Local Switching | 2,246,804 | 122,306 | 2,369,110 | 5.16% |
| 6/12/2008 | Local Switching | 2,342,474 | 127,911 | 2,470,385 | 5.18% |

| <u>Element</u> | <u>Qwest Rates</u> |
|--|--------------------|
| Common Trunk Port | 0.00074700 |
| Local Switching | 0.00197400 |
| Tandem Facility Over 50 | 0.00001500 |
| Tandem Termination Over 50 | 0.00024000 |
| Common MUX | 0.00003600 |
| Tandem Switching | 0.00254500 |
| | |
| DEOT Routed Traffic-Includes Local Switching & Common Trunk Port | 0.00272100 |
| Host Remote Traffic-Includes Local Switching, Tandem Facility and Termination | 0.00222900 |
| Tandem Routed Traffic- Includes Common Trunk Port, Local Switching, Tandem Facility and Termination, Common MUX, and Tandem Switching | 0.00555700 |

| | | | | |
|------------------|------------|--------------|-------------|--------------|
| Total | 4,479,812 | \$13,786.22 | \$644.37 | \$13,218.88 |
| Total | 1,668,038 | \$16,417.89 | \$611.16 | \$14,806.83 |
| Total | 1,601,280 | \$14,898.36 | \$189.43 | \$13,638.83 |
| Total | 1,812,818 | \$16,889.87 | \$672.83 | \$16,018.84 |
| Total | 1,691,290 | \$16,851.81 | \$629.86 | \$16,021.85 |
| Total | 2,118,091 | \$19,674.19 | \$790.86 | \$18,787.83 |
| Total | 2,067,880 | \$19,047.50 | \$768.33 | \$18,279.87 |
| Total | 1,928,223 | \$17,238.29 | \$717.00 | \$17,008.29 |
| Total | 2,109,452 | \$19,384.14 | \$780.46 | \$18,813.89 |
| Total | 1,881,842 | \$14,612.19 | \$467.75 | \$14,224.44 |
| Total | 1,428,348 | \$13,325.82 | \$350.89 | \$12,882.83 |
| Total | 1,387,120 | \$12,806.37 | \$316.02 | \$12,281.38 |
| Total | 1,324,400 | \$12,296.52 | \$483.37 | \$11,797.15 |
| Total | 1,594,818 | \$14,220.76 | \$571.88 | \$13,648.87 |
| Total | 1,864,184 | \$17,183.64 | \$688.83 | \$16,497.58 |
| Total | 2,244,201 | \$20,855.86 | \$827.01 | \$19,828.84 |
| Total | 1,878,393 | \$17,476.27 | \$702.86 | \$16,773.72 |
| Total | 2,828,886 | \$18,874.28 | \$780.42 | \$18,113.86 |
| 7/12/2007 Total | 67,785 | \$347.13 | \$138.44 | \$207.69 |
| 8/12/2007 Total | 84,669 | \$604.86 | \$202.77 | \$382.08 |
| 9/12/2007 Total | 108,807 | \$684.37 | \$262.83 | \$391.44 |
| 10/12/2007 Total | 98,873 | \$684.17 | \$238.82 | \$366.56 |
| 11/12/2007 Total | 112,716 | \$676.67 | \$271.80 | \$404.77 |
| 12/12/2007 Total | 98,100 | \$688.80 | \$238.33 | \$462.87 |
| 1/12/2008 Total | 82,448 | \$684.86 | \$222.28 | \$332.81 |
| Grand Total | 32,286,496 | \$296,534.58 | \$13,327.17 | \$283,207.41 |

| Element | Qwest Rates |
|----------------------------|--------------------|
| Common Trunk Port | 0.00074700 |
| Local Switching | 0.00197400 |
| Tandem Facility Over 50 | 0.00001500 |
| Tandem Termination Over 50 | 0.00024000 |
| Common MUX | 0.00003600 |
| Tandem Switching | 0.00254500 |

UNE-P Qwest Aggregate Rate

| | |
|--|------------|
| DEOT Routed Traffic-Includes Local Switching | 0.00197400 |
| Host Remote Traffic-Includes Local Switching, Tandem Facility and Termination | 0.00222900 |
| Tandem Routed Traffic- Includes Common Trunk Port, Local Switching, Tandem Facility and Termination, Common MUX, and Tandem Switching | 0.00555700 |

EXHIBIT

MP2-25

June 16, 2008

VIA CERTIFIED U.S. MAIL

NOTICE OF NONCOMPLIANCE

Dear Leslie Freet:

This correspondence is intended to respond to the electronic mail messages from Jacque Moore which have been exchanged with Orbitcom personnel since February 19, 2008. The purpose of Mr. Moore's messages was allegedly to give notice of a dispute concerning interstate minutes of use billed by Orbitcom. Mr. Moore states that Verizon "disput[es] Orbitcom's Interstate rates for being non-compliant with the FCC's 7th Order by exceeding the ILEC benchmark." The initial electronic message indicates that Verizon's dispute totals \$268,935.55, which amount relates back to January 2006. Mr. Moore later indicates that Verizon is withholding payment for both interstate and intrastate until the total amount of the dispute is withheld or until Orbitcom provides to Verizon a credit in the amount of \$284,460.36.

It is clear from Mr. Moore's message that Verizon does not dispute the entire amount of the invoices billed from January 2006 to the present. In fact, no where does Mr. Moore indicate that the dispute relates to intrastate traffic. Further, Mr. Moore's supposed dispute in no way separates the interstate and intrastate traffic amounts billed to Verizon. Under these circumstances, by withholding the entire amount of recently billed invoices, specifically February, May, and June 2008, Verizon has withheld amounts not in dispute. Orbitcom's calculations show that Verizon has withheld \$405,453.85 in intrastate charges to date. The interstate amount billed since January 2006 is \$135,537.80. This is the only amount that Orbitcom will consider at this time as "disputed", although Orbitcom in no way agrees that Verizon's dispute of this amount is valid.

The total billed amount for February, May, and June 2008 is \$407,648.97. Verizon has failed to pay any portion of this amount. Accordingly, Verizon must pay Orbitcom \$405,453.85, which represents the undisputed and unpaid portions of the February, May, and June 2008 invoices. If Orbitcom does not receive payment of \$405,453.85 after 30 calendar days from the date of this notice, Orbitcom will:

1. Refuse additional applications for service and/or refuse to complete any pending orders for service, and/or
2. Discontinue the provision of service to Verizon.

Further, Verizon must provide specific information concerning amounts in dispute before its claim will be considered a "good faith dispute" and the disputed amounts can be withheld. Accordingly, when responding to Orbitcom, Verizon should include the information required by this section, including, at a minimum, the specific line items on the bill being disputed, the specific amount of the dispute associated with interstate and/or intrastate charges, and a detailed description of the basis for the disputed amounts. Orbitcom wishes to make it clear that until this information is provided, Orbitcom believes that Verizon has not submitted a "good faith dispute" for any of the amounts allegedly in dispute. Accordingly, Orbitcom reserves the right to take further action depending on Verizon's response to this correspondence and request for further detail.

If you wish to discuss this matter, please contact me at (605)977-6900. However, please be advised that this notice will not be satisfied until Verizon pays the undisputed amount of the February, May, and June 2008 invoices of \$405,453.85.

Additionally, Orbitcom requests that Verizon contact it for purposes of establishing a contract for services so that we can formally establish the terms of the relationship between Orbitcom and Verizon.

Sincerely,

Penny Petersen

Cc: Brad Vanleur, President of Orbitcom, Inc.

Cc: Michael Powers, Vice President of Orbitcom, Inc.