

**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 TESTIMONY

DIRECT TESTIMONY OF LESLIE FREET

**ON BEHALF OF
MCI COMMUNICATIONS SERVICES, INC.
D/B/A VERIZON BUSINESS SERVICES AND
TELECONNECT LONG DISTANCE SERVICES & SYSTEMS COMPANY
D/B/A TELECOM*USA**

**(CERTAIN EXHIBITS TO THIS TESTIMONY HAVE BEEN FILED AS
CONFIDENTIAL, BUT NONE OF THE TESTIMONY IS CONFIDENTIAL)**

August 7, 2009

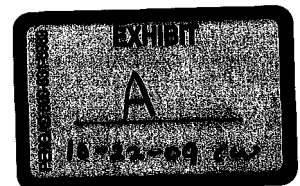


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LIST OF EXHIBITS

LF-1	Email from Jaque Moore to Penny Petersen dated April 3, 2007
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LF-3	Email from Jaque Moore to Penny Petersen dated February 19, 2008
LF-4	Excerpts from OrbitCom Invoice to MCI dated August 12, 2008
LF-5	Email from Jaque Moore to Penny Petersen dated March 4, 2008
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LF-9	Email from Penny Petersen to Jaque Moore dated March 4, 2008
LF-10	OrbitCom Response to Verizon Data Request 051

- LF-11** OrbitCom Response to Verizon Data Request 048
- LF-12** Email from Jaque Moore to Penny Petersen dated February 14, 2008
- LF-13** Email from Jaque Moore to Penny Petersen dated May 8, 2008
- LF-14** **CONFIDENTIAL** Email from Jaque Moore to bvanleur dated September 12, 2008 with confidential spreadsheets
- LF-15** Email from Richard Severy to Meredith Moore dated April 22, 2009
- LF-16** Email from Penny Petersen to Jaque Moore dated September 12, 2008
- LF-17** Email from Jaque Moore to Penny Petersen dated September 17, 2008
- LF-18** Email from Penny Petersen to Jaque Moore dated September 24, 2008
- LF-19** Email from Penny Petersen to Jaque Moore dated February 15, 2008
- LF-20** Email from Jaque Moore to Penny Petersen dated March 4, 2008
- LF-21** Email from Leslie Freet to Penny Petersen dated July 7, 2008
- LF-22** **CONFIDENTIAL** Spreadsheet with OrbitCom PIUs 6/12/07-3/12/09
- LF-23** **CONFIDENTIAL** Spreadsheet with MCI PIUs 1Q07-2Q09
- LF-24** Excerpts from OrbitCom Invoice to MCI dated April 12, 2008
- LF-25** **CONFIDENTIAL** Email from Robin Fishbein to ppetersen dated August 21, 2008, with MCI PIU factors
- LF-26** Email from Robin Fishbein to Penny Petersen dated August 21, 2008
- LF-27** Verizon Business DEOTS in South Dakota
- LF-28** **CONFIDENTIAL** Spreadsheet with percent of traffic routed over DEOTS

1 Business operates nationwide, my group handles bills from more than 500
2 different service providers.

3
4 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

5 A. I hold a Bachelor of Science Degree in Hotel and Restaurant Administration with
6 a Minor in Business Administration from Oklahoma State University.

7
8 **Q. PLEASE DESCRIBE YOUR RELEVANT TELECOMMUNICATIONS
9 WORK EXPERIENCE.**

10 A. I began my career at Verizon Business (formerly MCI) in March of 1996 as a
11 Specialist in the Carrier Cost department. During my 13 years at Verizon
12 Business I have held a variety of positions with numerous responsibilities,
13 generally relating to "Telco Cost," which refers to the costs Verizon Business
14 incurs for various access and other communication services that other local
15 exchange carriers provide to and charge Verizon Business. My responsibilities
16 have included the payment and reconciliation of invoices submitted by other
17 communication companies, system requirement and audit development, financial
18 planning and analysis of Telco Cost, and financial reporting. In my current
19 position as the Group Manager of the Tulsa Carrier Cost department, I manage the
20 audit, payment and financial analysis for the domestic Telco Line Costs expense
21 stream covering more than 500 individual vendors nationwide. In addition, I
22 negotiate and resolve billing disputes and lead the technical analysis of major
23 incumbent local exchange carrier ("ILEC") tariff filings and pricing proposals.

1 **Q. HAVE YOU PARTICIPATED IN PROCEEDINGS BEFORE ANY STATE**
2 **REGULATORY COMMISSION?**

3 **A. I recently participated in a mediation process at the California Public Utilities**
4 **Commission.**

5
6 **II. SUMMARY OF POSITION**

7
8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 The purpose of my testimony is to urge the Commission to dismiss the complaint
10 filed by OrbitCom, Inc. (“OrbitCom”) against Verizon Business and grant the
11 counterclaim filed by Verizon Business against OrbitCom. In support of that, I
12 will respond to the claim of OrbitCom that Verizon Business owes it certain
13 amounts for intrastate switched access services provided by OrbitCom in South
14 Dakota. I will explain that OrbitCom has not billed Verizon in accordance with
15 its intrastate tariff. In particular, I will explain that OrbitCom has inaccurately
16 classified many interstate calls as intrastate calls and, as a result, did not bill
17 Verizon the correct rates for those calls. To put this in perspective, the rate that
18 OrbitCom bills Verizon for intrastate “local switching” in South Dakota
19 (approximately \$0.06 per minute) is roughly ten times higher than the amount
20 OrbitCom currently bills Verizon for interstate local switching (approximately
21 (\$0.006 per minute). Accordingly, an inaccurate determination of a call’s
22 jurisdiction has enormous financial implications. OrbitCom’s invoices also
23 include charges for a “tandem switching” service that OrbitCom does not actually

1 provide to Verizon. It is improper and unreasonable for OrbitCom to demand
2 payment for a service that it does not provide.

3
4 I will discuss the background of Verizon's billing disputes, Verizon's repeated
5 efforts to obtain information that would validate the accuracy of OrbitCom's
6 invoices, and OrbitCom's persistent failure or refusal to provide any
7 documentation to justify or to validate its invoices. Because OrbitCom billed
8 Verizon for rates that were jurisdictionally inapplicable, it has overcharged
9 Verizon substantial amounts.¹ I will explain that Verizon has paid OrbitCom
10 more than it was entitled to. As of June 2009, OrbitCom owes Verizon Business
11 at least \$197,263.17 that it improperly billed Verizon due to its improper
12 jurisdictionalization of traffic. I will also show that OrbitCom's invoices do not
13 specify charges by individual rate elements. For this reason, it is not possible to
14 determine the amount of overcharges that resulted from OrbitCom's inclusion of
15 charges for "tandem switching" in the line item identified only as "local
16 switching." Once the Commission requires OrbitCom to issue corrected bills that
17 remove inappropriate charges for "tandem switching," the amount of overcharges
18 for this rate element can be determined fairly easily. As I discuss these matters, I
19 will also respond to some of the points made by OrbitCom's witness, Mr. Powers,
20 in his direct testimony.

¹ Verizon Business has separate claims that the charges OrbitCom has invoiced for purportedly interstate switched access services in South Dakota have been improper. Those claims are not at issue in this proceeding. Verizon has instead raised them in a federal court action that OrbitCom recently initiated. When I discuss OrbitCom's invoiced charges for interstate service in this proceeding, I am not conceding that those charges were proper. Instead, I am merely reporting the amount of those charges to show that *even if* OrbitCom's interstate charges were proper, OrbitCom would still have overcharged Verizon a substantial amount by invoicing intrastate charges on traffic that was not jurisdictionally intrastate.

1 exchange carrier that terminates the call. While there may be some exceptions,
2 telephone calls that originate in one state and terminate in another are generally
3 classified as interstate, and are subject to regulation by the Federal
4 Communications Commission (“FCC”). Calls that originate and terminate within
5 the same state are usually considered intrastate, and are generally subject to
6 regulation by the appropriate state agency, in this instance, the state Public
7 Utilities Commission.

8
9 **Q. DOES ORBITCOM SEND VERIZON BUSINESS BILLS FOR SWITCHED**
10 **ACCESS SERVICE?**

11 **A.** Yes. OrbitCom is a competitive local exchange carrier, or “CLEC.” To the best
12 of my knowledge, OrbitCom does not own or operate its own facilities. Instead, it
13 purchases telecommunications services from Qwest Corporation (“Qwest”), the
14 incumbent local exchange carrier, or “ILEC,” in the areas in which OrbitCom
15 provides local exchange service, and resells those services to its end users.
16 OrbitCom has entered into an interconnection agreement with Qwest (referred to
17 by Qwest as a “SGAT,” or Statement of Generally Available Terms) and a Qwest
18 Local Services Platform Agreement (“QLSP”), through which OrbitCom leases
19 network elements on an unbundled basis, commonly referred to as “UNE-P,” or
20 the unbundled network element platform. As a UNE-P provider, OrbitCom may
21 charge interexchange carriers for switched access service that is provided by
22 OrbitCom, in accordance with applicable rules.

1 **IV. BACKGROUND OF BILLING DISPUTES**

2
3 **Q. HAS VERIZON BUSINESS OBJECTED TO ANY OF ORBITCOM'S**
4 **ACCESS CHARGES?**

5 A. Yes. Before explaining our specific objections to OrbitCom's billing practices
6 and invoices, I would like to describe the efforts Verizon took to evaluate and
7 resolve our concerns with the invoices that OrbitCom sent to us. In 2007, my
8 group began auditing OrbitCom's switched access bills, both in and outside of
9 South Dakota. This proved to be a very difficult and, ultimately, unsatisfactory
10 process. One of the first steps Verizon takes in conducting an audit is to obtain
11 the carrier's applicable tariffs.

12
13 **Q. DOES ORBITCOM HAVE A SWITCHED ACCESS TARIFF IN SOUTH**
14 **DAKOTA?**

15 A. This has been difficult to confirm. In March 2007, a member of my audit staff,
16 Jaque Moore, asked OrbitCom for information regarding its interstate access
17 tariff. After receiving no response, Mr. Moore sent a follow-up e-mail message
18 on April 3, 2007, asking: "Does OrbitCom have an Interstate tariff filed with the
19 FCC governing switched access? If so, can you provide a copy or a link?" He
20 also asked whether OrbitCom had filed intrastate tariffs with the appropriate state
21 PUCs governing switched access. OrbitCom avoided Mr. Moore's inquires about
22 an interstate tariff. Rather than provide the information requested about its
23 intrastate tariffs, OrbitCom's representative, Ms. Penny Petersen, merely replied

1 that "All of our tariffs are filed in each state at the PUC's office. You can obtain
2 copies of them there." See Exhibit LF-1.

3
4 Verizon subsequently attempted through other means to obtain a copy of a tariff
5 in the name of OrbitCom, but was unable to do so. This is because, as we
6 subsequently learned, the tariff that OrbitCom claims it operates under states on
7 the cover page:

8 "Schedule of Rates, Rules and Regulations
9 Governing Access Services
10 Provided in the State of South Dakota

11
12 OFFERED BY

13
14 VP TELECOM, INC."

15
16 See Exhibit LF-2. The cover page also contains the following statement: "This
17 tariff contains the descriptions, regulations, and rates applicable to furnishing of
18 Service and facilities for access Services within the State of South Dakota by VP
19 Telecom, Inc. This tariff is on file with the South Dakota Public Utilities
20 Commission." The tariff is designated "VP Telecom, Inc. Tariff No. 1." In
21 Section 1 of the tariff (Definition of Terms), "Company" is identified as "VP
22 Telecom, Inc., the issuer of this Tariff."

23
24 Verizon has since learned that, after filing its tariff, VP Telecom, Inc. changed its
25 name to OrbitCom. However, I have not seen any documents showing that
26 OrbitCom has filed a tariff in its name with the Commission, that VP Telecom
27 Tariff No. 1 was amended to state explicitly that OrbitCom was now the

1 “Company” offering service under the tariff, or that OrbitCom requested approval
2 to offer service under VP Telecom’s tariff. During discovery in this proceeding,
3 OrbitCom explained that it had notified the Commission of its name change.
4 However, during our initial review of OrbitCom’s invoices, and in response to our
5 specific requests to OrbitCom for copies of its state tariffs, OrbitCom failed to
6 make mention of the name of the tariff it purported to operate under. *See* Exhibit
7 LF-1.

8
9 During the same period, Verizon also attempted to obtain a copy of OrbitCom’s
10 interstate access tariff, but we were similarly unsuccessful in these efforts.
11 Accordingly, on February 19, 2008, a member of my staff sent a follow-up e-mail
12 message to OrbitCom, stating: “I have not even been able to find a filed copy of
13 OrbitCom’s Switched Access Interstate Tariff. If you have a copy of a filed
14 Interstate tariff or a link, please provide one.” *See* Exhibit LF-3. OrbitCom did
15 not respond to this request either. The reason for this became clear much later:
16 OrbitCom did not even file an interstate switched access tariff with the FCC until
17 a year later (and not until after it filed its initial complaint in this case); that tariff
18 became effective on February 9, 2009. Due to OrbitCom’s lack of cooperation
19 and candor with respect to its purported interstate and intrastate tariffs, Verizon
20 has been uncertain as to the status and sufficiency of the tariffs that OrbitCom
21 relies on to support its access charge billings.

1 **Q. DID VERIZON BUSINESS ATTEMPT TO RESOLVE ITS CONCERNS**
2 **WITH ORBITCOM'S BILLINGS IN AN INFORMAL MANNER?**

3 **A. Yes. Verizon Business routinely performs billing audits, and if we have questions**
4 **or concerns, we try to resolve those concerns on an informal basis. A standard**
5 **procedure in any such review is to ask the carrier for documentation to verify that**
6 **the charges included in its bills are valid and accurate. The information that is**
7 **commonly requested and is generally the most useful for this purpose is call detail**
8 **records, or CDRs. Among other things, these records provide information about**
9 **the origination and termination of calls. This permits one to verify the proper**
10 **jurisdiction of the traffic. This is crucial information because local exchange**
11 **carriers often charge different rates for intrastate and interstate access services.**
12 **This is certainly true with respect to OrbitCom, which invoices charges for**
13 **intrastate switched access in South Dakota that are much higher than the charges**
14 **it bills for interstate access service.² One of the principal disputes between**
15 **Verizon and OrbitCom has been the manner in which OrbitCom determined the**
16 **jurisdiction of switched access calls. Accordingly, Verizon requested information**
17 **that would confirm whether or not OrbitCom was properly identifying the**
18 **jurisdiction of access traffic and billing the correct rates, that is, assessing**
19 **intrastate charges only on intrastate access traffic.**

20

² See Exhibit LF-4. These excerpts from OrbitCom's August 12, 2008 invoice show the widely disparate rates that OrbitCom bills Verizon for intrastate "local switching" service (both originating and terminating) and interstate local switching (both originating and terminating). Actual usage figures are confidential, and are redacted in the exhibit.

1 To assist in our analysis of OrbitCom's bills, Verizon Business asked OrbitCom
2 on numerous occasions to provide us with CDRs. These requests were made both
3 orally and in writing. For example, on February 14, 2008, Verizon asked
4 OrbitCom to provide CDRs that supported the invoices it had issued on December
5 12, 2007. We reiterated this request on February 19, 2008. *See Exhibit LF-3.* On
6 that same day, Verizon asked OrbitCom to explain a shift in the jurisdictional mix
7 of traffic that had appeared for the first time on OrbitCom's July 7, 2007 invoice.
8 On March 4, 2008, Verizon asked OrbitCom to report on the status of its response
9 to Verizon's prior request that OrbitCom provide it with CDRs that supported
10 earlier invoices. *See Exhibit LF-5.* The two companies held several conference
11 calls in July and August 2008, during which I renewed Verizon's request for
12 CDRs. I told OrbitCom's personnel that if they produced CDRs that alleviated
13 Verizon's concerns and demonstrated that its billings were accurate, Verizon
14 would pay any outstanding amounts owed. Following one such discussion on
15 July 11, 2008, I sent OrbitCom an e-mail message, asking for a 3-day sample of
16 call detail records that supported OrbitCom's June 2008 invoices. I explained that
17 this data would enable Verizon to determine if OrbitCom was billing the
18 jurisdiction accurately. *See Exhibit LF-6.* When I received no response, Verizon
19 reiterated its request for CDRs on July 15, 2008 (*see Exhibit LF-7*), and again
20 during conference calls with OrbitCom on July 30 and August 21 of last year.
21
22 Despite these numerous requests, OrbitCom refused and has failed -- even to this
23 day -- to provide any call detail records to demonstrate that it was correctly

1 identifying the jurisdiction of switched access calls and applying the correct
2 jurisdictional rates.³

3
4 **Q. DOES ORBITCOM HAVE THE CALL DETAIL INFORMATION THAT**
5 **VERIZON REQUESTED?**

6 A. Yes. As a UNE-P provider, OrbitCom obtains from Qwest call detail information
7 on a daily basis. In its response to one of Verizon's data requests, OrbitCom
8 admitted that it obtains call data, referred to as "EMI records" (or Electronic
9 Message Interface records), from its switching company. See Exhibit LF-8. In
10 South Dakota, that company is Qwest. These EMI records are sometimes referred
11 to also as "Daily Usage Feeds." Qwest provides CLECs with this usage
12 information pursuant to its Local Services Platform Agreement (Attachment 2, §§
13 2.3.1 – 2.3.4). Verizon Business's own CLEC, MCImetro Access Transmission
14 Services LLC, is also a UNE-P provider and customer of Qwest, and obtains EMI
15 records through its similar contractual arrangements with Qwest. Based on its
16 experience, Verizon knows that these call records contain the type of information
17 that we need to verify the accuracy of another carrier's invoices.

18

³ Two days ago, on August 5, as I was completing my testimony, OrbitCom forwarded to Verizon, not CDRs in standard industry format, but several spreadsheets prepared by OrbitCom employees that purport to contain "a sampling of call detail information from three days in June 2009." Verizon has not had an opportunity to review this material. I reserve the right to supplement my testimony once we are able to do so.

1 **Q. DID ORBITCOM PROVIDE ANY REASONABLE EXPLANATION FOR**
2 **ITS REPEATED REFUSALS TO PROVIDE THE INFORMATION**
3 **REQUESTED?**

4 A. No, it did not. On some occasions, OrbitCom's personnel simply ignored our
5 requests. At other times, OrbitCom's excuses for not providing the requested
6 information varied. Verizon's requests for supporting documentation have been
7 limited and narrow in scope, and thus should not be considered "burdensome."
8 As I have stated, we requested call detail information that was fairly current, and
9 that would support recent invoices. For example, in July 2008, we specifically
10 limited our request to a 3-day sample of CDRs. Because EMI records are
11 provided in a standard electronic format, furnishing the data should be fairly easy.
12 In my experience, a number of local exchange carriers have provided Verizon
13 Business with this type of CDR information in order to resolve questions about
14 their bills.

15
16 Initially, OrbitCom's representative, Ms. Penny Petersen, stated that the company
17 does not get call records. Rather, OrbitCom stated, "They are sent directly to our
18 third party billing vendor and then purged from their system." See Exhibit LF-9.
19 Assuming that this statement is accurate, a business practice of immediately
20 deleting billing records would be highly unusual. Carriers are often required to
21 maintain billing data for a lengthier period of time, in order to be able to respond
22 to billing inquiries, audits or questions from regulatory agencies or, perhaps, tax
23 authorities. For example, the FCC requires carriers to retain for a period of 18

1 months all records necessary to provide billing information associated with a call,
2 including the name, address and telephone number of the caller; the telephone
3 number called; and the date, time and length of the call. *See* 47 C.F.R. § 42.6.
4 Data needed to support reports to the FCC on completed payphone calls must be
5 maintained by carriers for a much longer period. In addition, as I will discuss
6 later, the VP Telecom No. 1 tariff under which OrbitCom claims to have provided
7 the disputed service requires OrbitCom to investigate the merits of billing
8 disputes and, as this case shows, to do so can be difficult or impossible without
9 appropriate billing records. Due to the existence of such record-retention
10 requirements, I am surprised by Ms. Petersen's statement that OrbitCom kept no
11 records itself and permitted its billing agent to destroy records so quickly.

12
13 OrbitCom has told Verizon that it ceased using its third party billing company in
14 March 2009, and that it implemented a new process for determining the
15 jurisdiction of access traffic. *See* Exhibit LF-10. So, to verify the accuracy of
16 recent invoices, Verizon asked OrbitCom in discovery to "provide a five-day
17 sample of Call Detail Records or other call detail information that demonstrates
18 that OrbitCom correctly determined the jurisdiction of the calls covered by the
19 invoices" issued during the previous two months. As before, this request was
20 narrow and focused, and provided OrbitCom with some flexibility in terms of the
21 information it could produce. Nevertheless, OrbitCom declined to provide any of
22 the information. For the first time, it objected that the request was "vague" and
23 that the "records do not exist in the format Verizon has requested." *See* Exhibit

1 LF-11. These contentions seemed disingenuous, in light of our prior discussions
2 about Verizon's desire to obtain CDRs and because EMI records, CDRs and DUF
3 records are produced by Qwest using a common industry format, and the
4 terminology used to describe the records provided by Qwest have a common
5 understanding within the industry.

6
7 On other occasions, OrbitCom has balked at providing Verizon with CDRs on the
8 theory that they are "proprietary." While I am not an attorney, I would point out
9 that, while there are some restrictions imposed on the disclosure of Customer
10 Proprietary Network Information, Section 222 (b) of the federal
11 Telecommunications Act provides an exception to such rules to permit the
12 exchange of information between communications carriers. Carriers often
13 exchange CDRs when there are valid business reasons for doing so, and we do so
14 without violating a carrier's "proprietary" rights or a customer's legitimate
15 privacy rights. My auditing group is not involved in the marketing of Verizon
16 Business services nor do we share any carrier's billing information with
17 individuals employed in a marketing or sales organization. In addition, because
18 the traffic at issue includes long distance calls placed by individuals that are
19 directly or indirectly customers of Verizon Business's long distance services,
20 there is even less of an argument that providing CDRs to Verizon would
21 somehow breach a customer's legitimate expectation of privacy.

1 **Q. HAS VERIZON BUSINESS DISPUTED ORBITCOM'S ACCESS**
2 **CHARGE BILLS?**

3 A. Yes. As I have explained, Verizon Business attempted on numerous occasions to
4 obtain the information we need to verify the accuracy of OrbitCom's invoices.
5 Obviously, if some of the access traffic was, in fact, interstate, those calls should
6 not have been billed at intrastate rates. As I have also explained, OrbitCom was
7 not cooperative in this regard, and did not provide the information needed to
8 demonstrate that it had properly billed Verizon. Verizon prefers to resolve any
9 billing disputes in an informal manner, but because we were frustrated in our
10 efforts to resolve our concerns with OrbitCom's bills in an informal, non-
11 adversarial manner, Verizon was compelled to begin disputing OrbitCom's
12 invoices.

13
14 Verizon submitted its first formal dispute of OrbitCom's invoices for interstate
15 access services on February 14, 2008. *See* Exhibit LF-12. Verizon updated its
16 dispute on February 19 and again on May 8, 2008. *See* Exhibits LF-3 and LF-13.
17 During the first nine months of 2008, we met with and continued to request from
18 OrbitCom information that would validate its charges and the manner in which it
19 determined the jurisdiction of traffic. On July 11, 2008, I followed up on one
20 such discussion by explaining in an e-mail message that Verizon had issues with
21 both OrbitCom's interstate access charges and the PIU (percentage of interstate
22 use) factors reflected in its bills. *See* Exhibit LF-6. This latter concern was
23 potentially significant: OrbitCom's invoices during prior periods reflected a 5%

1 PIU, which meant that OrbitCom was billing 95% of the access traffic as
2 “intrastate” and charging Verizon its higher intrastate rates. This had the effect of
3 inflating the charges we were billed. This practice also appeared suspect because
4 the jurisdictional mix applied to our bills by OrbitCom was way out of line with
5 Verizon’s experience and the nature of our long distance traffic in South Dakota.
6 This was a primary reason why Verizon wanted to examine the underlying traffic
7 data and why we asked OrbitCom to provide it.

8
9 Because we continued to have no success in resolving our concerns, Verizon
10 notified OrbitCom’s executives on September 12, 2008, that Verizon was
11 disputing OrbitCom’s bills, citing the fact that OrbitCom had billed a “PIU of
12 [only] 5% from the 7/12/07 invoice cycle through the 8/12/08 invoice cycle.” See
13 CONFIDENTIAL Exhibit LF-14. In that communication, we explained the basis
14 for our dispute and specified the amounts at issue. To support our claim, we
15 provided several spreadsheets that showed how Verizon had calculated the
16 amounts that should have been billed had OrbitCom properly assigned traffic to
17 the correct jurisdiction; for interstate traffic, Verizon applied the FCC’s
18 benchmark rate for CLEC switched access service provided pursuant to a valid
19 tariff. We included all of the key assumptions used in our analysis. In addition,
20 the various amounts were stated separately for each month covered by the dispute.

21
22 Since then, Verizon has reiterated and updated its billing disputes with OrbitCom
23 on a periodic basis. For example, on April 9, 2009, Verizon provided OrbitCom

1 with an updated dispute report, including amounts at issue through the March
2 2009 billing cycle. At OrbitCom's request, Verizon supplemented that dispute
3 report by revising the spreadsheets, clarifying certain details (such as column
4 headings) and breaking out disputed amounts by individual billing account
5 number ("BAN"), jurisdiction and issue. This information was furnished to
6 OrbitCom on April 22, and a further updated dispute report was provided on June
7 16, 2009.⁴ Those reports also set forth the methodology Verizon used to calculate
8 the disputed amounts, as well as the amounts Verizon believes should have been
9 charged had OrbitCom assigned the correct jurisdiction to the traffic. While
10 Verizon's billing disputes with OrbitCom cover a range of issues, including some
11 that do not involve intrastate switched access services in South Dakota, Verizon's
12 disputes in South Dakota are detailed and specific.

13
14 **Q. HAS ORBITCOM SERIOUSLY CONSIDERED VERIZON'S DISPUTES?**

15 **A.** No. On the contrary, OrbitCom has summarily rejected each of Verizon's
16 disputes without addressing the substance or merits of our position. For example,
17 within 24 hours after Verizon submitted a detailed dispute of several months of
18 OrbitCom's charges on September 12, 2008, OrbitCom denied the dispute.
19 Without addressing the specifics or merits of Verizon's submission, OrbitCom's
20 employee, Penny Petersen, stated in an e-mail:

21 "This dispute is denied for the following reason.
22

⁴ See Exhibit LF-15. The spreadsheets provided as part of Verizon's dispute reports are not included in this exhibit because they also address disputes involving interstate charges and billing issues in other states, that are not at issue in this proceeding. However, the detailed spreadsheets were provided to OrbitCom on the dates indicated.

1 Please see page 30 of Orbitcom, Inc's. Intrastate Tariff.
2

3 **Section 4.8 Disputed Bills**

4 The customer may dispute a bill only by written notice to the Company.
5 Written dispute must be received by the company within 60 days of the
6 payment due date. If a written dispute is not received by the Company
7 within 60 days of the payment date, the bill statement shall be deemed to
8 be correct and considered due and payable in full by the Customer."
9

10 *See Exhibit LF-16.* On September 17, 2008, Verizon issued a response, rejecting
11 OrbitCom's denial of our earlier dispute, and explaining further why OrbitCom's
12 billing procedures were not in compliance with its tariff. *See Exhibit LF-17.*
13 OrbitCom again denied the dispute, solely on the basis that it was "outside of the
14 allowable dispute timeframe." *See Exhibit LF-18.* OrbitCom's reaction to these
15 formal dispute reports was similar to its practice of summarily rejecting Verizon's
16 earlier disputes of OrbitCom's charges for interstate access service. For example,
17 on February 15, 2008, Ms. Petersen of OrbitCom dismissed Verizon's dispute
18 letter issued the previous day, stating simply that "we can not accept disputes that
19 are outside of the 90 day window." *See Exhibit LF-19.* This excuse for ignoring
20 our dispute was particularly puzzling. OrbitCom did not explain the source of this
21 so-called "90-day window," or provide any justification for its policy. At the
22 time, OrbitCom did not have an interstate tariff that governed its provision of
23 interstate access service. (As I mentioned earlier, OrbitCom did not even file an
24 interstate tariff with the FCC until the following year.) Thus, there was not any
25 legal or other foundation for OrbitCom's arbitrary business practice of simply
26 cutting off disputes on the theory of untimeliness without giving the disputes any
27 consideration whatsoever.
28

1 In his direct testimony, Mr. Powers echoes the sole reason given by OrbitCom for
2 failing to consider the substance of Verizon's disputes regarding OrbitCom's
3 intrastate access charges. At page 3 of his direct testimony (line 18), Mr. Powers
4 alludes to the fact that Verizon's disputes included a recalculation of the amounts
5 that Verizon believed should have been billed based on its analysis of OrbitCom's
6 invoices (although he characterizes this as "retroactively adjusted billings"), but
7 he does not address the substance or merits of Verizon's objections to OrbitCom's
8 billing practices. Instead, Mr. Powers simply states that Verizon's position "was
9 contrary to OrbitCom's tariff." He refers to Section 4.8 of VP Telecom Tariff No.
10 1, "where", he says, "it says disputes must be filed with [sic] 60 days of a due date
11 and after that 60 days, the bill is deemed correct and considered due and payable
12 in full." Powers Direct Testimony at 3 (lines 20-22).

13
14 **Q. WAS ORBITCOM'S REFUSAL TO ADDRESS THE MERITS OF**
15 **VERIZON'S COMPLAINTS ABOUT ORBITCOM'S CHARGES AND**
16 **BILLING PRACTICES REASONABLE?**

17 **A.** For a number of reasons, no. In the first place, OrbitCom's current insistence on
18 rigid adherence to "its" tariff should be evaluated against the backdrop of
19 OrbitCom's lack of cooperation in making its tariffs available at a time when
20 Verizon first sought to obtain them. Having declined to make its tariffs available
21 when asked, it is not reasonable or fair for OrbitCom to insist that Verizon be
22 forced to comply with tariff provisions that are associated with another carrier's
23 name, and that OrbitCom failed to disclose to Verizon.

1 In addition, OrbitCom's position -- that access customers should invoke formal
2 dispute processes early on -- is contrary to the approach taken by a number of
3 carriers and preferred by many regulators, namely, that companies should try to
4 resolve issues informally before invoking formal dispute escalation processes and
5 pursuing litigation. Inter-carrier bills are lengthy and often complex. Reviewing
6 and auditing bills and researching issues can be a time-consuming process.

7 Carriers often have questions, and they try to get them answered and resolved
8 through business-to-business discussions, which may take time. If, as OrbitCom
9 suggests, a carrier must file a formal dispute and invoke formal dispute resolution
10 procedures within 60 days after an invoice is due in order to preserve its rights,
11 carriers will be compelled -- before they even begin to examine the bills -- to
12 routinely file disputes and initiate a formal review process, rather than try to work
13 through any issues in the orderly course of business. Once formal dispute
14 processes commence and potential litigation is looming, parties often become less
15 flexible, their positions harden and cooperation diminishes. In my opinion,
16 forcing carriers to initiate disputes is not an efficient or appropriate means of
17 addressing and resolving billing issues which, in reality, are not uncommon in the
18 communications industry.

19
20 While OrbitCom has invoked the dispute provision in VP Telecom Tariff No. 1 as
21 an excuse for not considering Verizon's billing disputes, OrbitCom itself did not
22 follow the terms of that tariff. Section 4.2.1 of VP Telecom Tariff No. 1 states
23 that charges are due and payable 30 days after the date an invoice is mailed to the

1 customer. Section 4.8 of the tariff states that "Written dispute must be received
2 by the company within 60 days of the payment due date." Verizon's objections to
3 OrbitCom's bills were explained through e-mail exchanges as well as telephone
4 calls, and each such e-mail message constitutes a "written" dispute. In his
5 testimony, Mr. Powers acknowledged the on-going nature of the billing disputes,
6 as indicated by his reference to Verizon's submission of PIU factors in August of
7 2008 "after the disputes were filed." Powers direct testimony at 6 (line 14). To
8 the extent the tariff provisions referenced above apply to each individual dispute
9 notification provided by Verizon, a dispute filed within 90 days after an invoice is
10 mailed is timely. Each of Verizon's periodic dispute reports encompassed, among
11 other things, all invoices that were issued within the preceding 90 days.

12 Accordingly, it was inappropriate, and inconsistent with "its" tariff, for OrbitCom
13 to completely disregard Verizon's disputes on the grounds of untimeliness,
14 because Verizon's disputes, at a minimum, encompassed all invoices issued
15 within the previous 90 days, and were also relevant to any future invoices that
16 OrbitCom planned to send.

17
18 OrbitCom also ignored another provision of the tariff it purports to rely on. The
19 second paragraph of section 4.8 states that

20 "The Company, upon receiving a written dispute will investigate
21 the merits of the dispute. Upon completion of its investigation, the
22 Company will provide written notice to the customer regarding the
23 disposition of the claim, i.e., resolved in favor of the Customer or
24 resolved in favor of the Company."
25
26

1 It is apparent from the timing and substance of OrbitCom's communications
2 denying Verizon's disputes that it failed to conduct any meaningful investigation
3 of the merits of Verizon's contentions. Our dispute issued on February 14, 2008,
4 was denied the following day in a terse, two-sentence message. See Exhibit LF-
5 19. Verizon's dispute of OrbitCom's intrastate charges issued on September 12,
6 2008, was rejected the very same day, solely on grounds of timeliness. See
7 Exhibit LF-16. OrbitCom's subsequent denial of Verizon's appeal of this
8 rejection again cited only the timeliness issue. See Exhibit LF-18. In none of
9 these instances could it be said that OrbitCom fairly and fully "investigate[d] the
10 merits of the dispute." OrbitCom provided no indication that it had reviewed the
11 substance of Verizon's claims, including the financial and other details provided
12 in the spreadsheets that accompanied the disputes. Even after OrbitCom filed its
13 complaint, Verizon continued to dispute charges that it believed were billed
14 improperly. OrbitCom did not respond to the dispute issued by Verizon on April
15 22. Verizon provided an updated dispute report on June 16, 2009. OrbitCom
16 denied the dispute the same day, citing two reasons: "We are billing
17 jurisdictionally" and "[y]our spreadsheets ... are completely devoid of relevant
18 material." Verizon responded to each of the points the following day, but
19 OrbitCom denied the dispute again in a one-line message that contained no
20 substantive explanation. Thus, in neither instance did OrbitCom "investigate the
21 merits of the dispute [and u]pon completion of its investigation, ... provide
22 written notice to the customer regarding the disposition of the claim."
23

1 Mr. Powers states at page 4 of his direct testimony (at lines 6-7) that a carrier
2 must follow the dispute procedures outlined in the billing carrier's tariff. I
3 assume he would agree that the billing carrier must also follow its own tariff.
4 However, as I have explained, OrbitCom has not followed those procedures with
5 respect to its handling of Verizon's billing disputes.

6

7 **Q. IF AN INTEREXCHANGE CARRIER HAS A BILLING DISPUTE WITH**
8 **ORBITCOM, MAY THE CARRIER WITHHOLD PAYMENT?**

9 A. Yes. An interexchange carrier is not prohibited from withholding payment if
10 there is a legitimate billing dispute. Section 4.8 of VP Telecom Tariff No. 1
11 specifically addresses circumstances in which a customer has withheld payments
12 of disputed amounts. The third bulleted paragraph of that section states that "If
13 the dispute is resolved in favor of the customer and the customer has withheld the
14 disputed amount, no credits or penalties will apply." In addition, the preceding
15 paragraph addresses the applicability of late payment charges when a dispute is
16 resolved in favor of the Company "and the customer has withheld the disputed
17 amount." Presumably, the carrier would not have included language in its tariff
18 that addresses the withholding of disputed amounts if an access customer is
19 forbidden from withholding disputed amounts.

20

1 Q. MR. POWERS STATES THAT "WE WERE TOLD WE WOULD NEED
2 TO DISCUSS NEGOTIATING A CONTRACT WITH ANOTHER
3 VERIZON REPRESENTATIVE ... BEFORE VERIZON WOULD AGREE
4 TO PAY ITS INVOICES FROM ORBITCOM." (Powers Direct Testimony
5 at 5, lines 2-4). PLEASE RESPOND.

6 A. Mr. Powers is wrong, and he offers no evidence to substantiate his claim. At no
7 time did Verizon tie a commitment to pay outstanding invoices to the negotiation
8 of a contract for switched access service. In fact, it was OrbitCom, not Verizon
9 Business, that interjected the subject of a potential contract into our discussions.
10 Last year, two OrbitCom employees (other than Mr. Powers) initiated requests to
11 enter into a switched access agreement with Verizon. On March 4, 2008, Ms.
12 Penny Petersen stated in an e-mail "I would like to setup a switched access
13 agreement between Verizon and Orbitcom so that we can avoid further disputes."
14 Mr. Moore responded for Verizon by stating "I do not handle
15 contracts/agreements. I will have to look into this." See Exhibit LF-20. In a
16 letter to me dated June 16, 2008, Ms. Petersen stated: "Orbitcom requests that
17 Verizon contact it for purposes of establishing a contract for services so that we
18 can formally establish the terms of the relationship between Orbitcom and
19 Verizon." Similarly, Mr. Brad VanLeur sent me an e-mail on July 7, 2008, in
20 which he stated "We would like to have an Agreement with Verizon in regards to
21 Switched Access Charges. Is there someone you could give us as a contact to
22 negotiate a Switched Access Agreement?" I responded to Mr. VanLeur the same
23 day, informing him that "Mike Maxwell would be your contact to negotiate a

1 Switched Access Agreement with Verizon Business,” and providing him with
2 contact information for Mr. Maxwell. See Exhibit LF-21. The following week,
3 Ms. Petersen sent me an e-mail reiterating that “Orbitcom would like to extend an
4 offer to Verizon to negotiate a switched access agreement.” I responded on July
5 15, by informing her that “I have previously provided a Verizon Business contact
6 for negotiating a switched access agreement.”

7
8 While I know that such a discussion later took place, I am confident that no one
9 within Verizon Business ever stated that we would not resolve the billing issues
10 unless the companies negotiated an agreement for the provision of switched
11 access services. My group is responsible for handling billing issues, not contract
12 negotiations, and we merely directed OrbitCom to the individual who has that
13 responsibility. There is no reason we would have threatened to link our efforts to
14 resolve a billing dispute to a separate matter in which we had no role or
15 involvement. Mr. Powers is completely misinformed about what actually
16 transpired.

1 **V. VERIZON'S SPECIFIC OBJECTIONS TO ORBITCOM'S BILLS FOR**
2 **SWITCHED ACCESS SERVICE IN SOUTH DAKOTA**
3

4 **Q. PLEASE SUMMARIZE VERIZON'S COMPLAINTS REGARDING**
5 **ORBITCOM'S CHARGES FOR SWITCHED ACCESS SERVICE IN**
6 **SOUTH DAKOTA.**

7 A. OrbitCom's billing practices and the content and presentation of its invoices have
8 changed over time. However, Verizon has two principal objections to the
9 amounts it has been charged. OrbitCom does not bill in accordance with VP
10 Telecom Tariff No. 1 in two key respects. First, OrbitCom does not properly
11 identify the jurisdiction of switched access traffic. Rather than follow the
12 procedures set forth in that tariff, OrbitCom arbitrarily categorizes an
13 unreasonably high percentage of the traffic to be "intrastate" and assesses its
14 higher intrastate access charges on those calls. As a result, it is not billing
15 Verizon the correct rates.

16
17 Second, OrbitCom is charging Verizon for a "tandem switching" service that it
18 does not provide. This problem is less easy to identify because, since April 2008,
19 OrbitCom's invoices typically include only a single rate element, labeled "local
20 switching." The rate for "local switching" shown on the invoices is higher than
21 the rate specified in VP Telecom Tariff No. 1. This is because OrbitCom appears
22 to be consolidating charges for all access rate elements into the single charge for
23 "local switching," including a charge for "tandem switching" that it does not
24 provide to Verizon. Its bills are improperly inflated for this reason, as well.

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A. OrbitCom's Failure to Accurately Determine the Jurisdiction of Switched Access Traffic and Charge the Correct Jurisdictional Rates

Q. WHAT DOES THE VP TELECOM TARIFF STATE ABOUT THE MANNER IN WHICH THE JURISDICTION OF SWITCHED ACCESS TRAFFIC IS TO BE DETERMINED?

A. Mr. Powers characterizes the applicable tariff provision at a very high level (Powers direct testimony at 6, lines 5-6; and 8, lines 6-11) and, as a result, glosses over critical requirements. To provide a basis for my discussion, I will quote the entire language of section 3.4 of VP Telecom Tariff No. 1:

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).

There are several other related provisions in the tariff. For example, section 3.4.1.4 states: "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."

1 Q. HAS ORBITCOM COMPLIED WITH THESE TARIFF
2 REQUIREMENTS?

3 A. No, it has not. The key principle is in the first sentence: *“When the Company*
4 *receives sufficient call detail to determine the jurisdiction... the Company will use*
5 *that call detail to render bills* for those MOU and will not use PIU factors.”
6 (Emphasis added.) As I explained earlier, as a UNE-P provider, OrbitCom
7 receives electronic call detail records from Qwest in standard EMI format. These
8 records provide the information necessary to determine the jurisdiction of most
9 originating and terminating switched access traffic that is handled by Qwest’s
10 switches. For whatever reason, however, neither OrbitCom nor its billing agent
11 used the call detail records in their possession to determine the jurisdiction of
12 access traffic and render bills to Verizon. Thus, OrbitCom has not complied with
13 the core provision of this tariff. As I have explained, Verizon has repeatedly
14 sought to obtain the relevant call records from OrbitCom to verify the accuracy of
15 its bills, but OrbitCom has repeatedly refused to provide that information.

16
17 Q. HOW DO ORBITCOM’S INVOICES ALLOCATE TRAFFIC BETWEEN
18 THE INTRASTATE AND INTERSTATE JURISDICTIONS?

19 A. OrbitCom’s invoices do not on their face state how the company allocates traffic
20 between jurisdictions. However, Verizon was able to determine the jurisdictional
21 split by analyzing the bills and reviewing the amounts of traffic that were billed
22 either at the interstate or intrastate rates that OrbitCom appeared to be applying.
23 Verizon attached to its April 9, 2009 dispute letter a spreadsheet that set forth the

1 percentages of traffic volumes (minutes of use) that OrbitCom classified and
2 billed as “interstate” on the invoices it issued to Verizon from June 2007 through
3 March 2009. *See* CONFIDENTIAL Exhibit LF-22. The June 2007 invoice
4 allocated 33.95% of the switched access traffic to the interstate jurisdiction, and
5 billed the remaining traffic as intrastate. Between July 12, 2007 and July 12,
6 2008, OrbitCom’s invoices treated between 5.04% and 5.25% of the traffic as
7 interstate, meaning that it charged Verizon intrastate access rates on between 94 –
8 95% of the traffic each month over that 13-month period. Beginning with
9 invoices issued in August 2008, OrbitCom began billing approximately 32% of
10 the traffic at apparently interstate rates, and the remainder at intrastate rates.

11
12 **Q. DID MR. POWERS PROVIDE A REASONABLE JUSTIFICATION FOR**
13 **THIS ALLOCATION OF TRAFFIC?**

14
15 **A.** No. Mr. Powers addresses this issue on pages 6 and 8 of his direct testimony. He
16 states that OrbitCom “can use actual jurisdiction if possible,” and describes three
17 options that he says OrbitCom may “choose from” to determine the jurisdiction of
18 access traffic. His analysis is overly-simplistic, and mis-states the applicable
19 tariff language I quoted above. The tariff states that “When the Company
20 receives sufficient call detail” it “will use” that information to render a bill. This
21 is not merely an “option” that OrbitCom is free to disregard. Mr. Powers ignores
22 the fact that OrbitCom actually receives call detail records from Qwest but did not
23 use that data to identify the actual jurisdiction of the traffic and render bills
24 accordingly. Thus, Mr. Powers’ statement about what “options” OrbitCom may

1 “choose from” “when the jurisdiction of a call *cannot* be determined” (direct
2 testimony at 8, lines 6-8) (emphasis added) misses the point. OrbitCom must use
3 the call detail that is available to determine jurisdiction; only if that call detail is
4 “insufficient” may the company resort to alternative means.

5
6 Mr. Powers asserts that OrbitCom “used a PIU that it calculated that best
7 represented the actual traffic pattern.” Powers direct testimony at 6, lines 7-8.
8 However, the methodology described by Mr. Powers does not conform to the
9 procedure that VP Telecom Tariff No. 1 sets forth for developing a PIU factor.
10 Section 3.4.1.1 explains that for Feature Group D switched access service, “where
11 the Company can determine jurisdiction by its call detail, the projected PIU will
12 be developed by the Company on a quarterly basis *by dividing the measured*
13 *interstate originating minutes by the total Originating Access Minutes.*”
14 (Emphasis added.)⁵ Mr. Powers’ explanation does not indicate that OrbitCom
15 followed this procedure by including “measured” traffic in the numerator and
16 performing the specific calculation described in the tariff. OrbitCom has not
17 provided any documentation to support its calculation of the PIU factor it selected
18 – especially one as low as 5%. Nor has it provided any documentation to
19 demonstrate that the factor was, in fact, based on “existing traffic patterns,” as he
20 claims.

21

⁵ Mr. Powers also does not state that OrbitCom performed this calculation on a quarterly basis, as the tariff requires. Because Verizon has been challenging OrbitCom’s bills and requesting call detail since early 2008, OrbitCom has been on notice that the jurisdictional nature of “measured originating minutes” was at issue. Accordingly, OrbitCom should have been retaining the relevant call detail, both to be able to respond to Verizon’s dispute, as well as to support any quarterly calculation of a PIU that it made.

1 Even if it were correct that OrbitCom developed PIU factors based on its
2 customers' calling patterns (a fact that OrbitCom has not proven), that would not
3 have any bearing on the jurisdiction of interexchange traffic that is delivered to
4 OrbitCom's end users and for which OrbitCom bills Verizon terminating switched
5 access rates. Such long distance traffic can be originated by an end user
6 anywhere in the country (or world), and is transported by the long distance carrier
7 that is selected by the calling party. The calling patterns of OrbitCom's customers
8 have nothing to do with the jurisdiction of calls they receive (i.e., terminating
9 traffic). Nevertheless, OrbitCom assigned the same low percentage of interstate
10 usage, about 5%, to all terminating access traffic it billed Verizon from July 2007
11 through July 2008. There was no reasonable basis for this billing practice, and it
12 cannot be justified based on the only rationale that OrbitCom has presented.

13
14 The fact that all of OrbitCom's invoices issued between August 12, 2008 and
15 March 2009 reflected a jurisdictional split of roughly 32 percent interstate and 68
16 percent intrastate (*see* CONFIDENTIAL Exhibit LF-22) suggests that OrbitCom
17 simply applied the "default" PIU factor (referenced in section 3.4.1.4 of VP
18 Telecom Tariff No. 1) to all of the traffic, as opposed to relying on actual call
19 detail or a calculation that "was computed using existing traffic patterns," as
20 claimed by Mr. Powers. During discovery, OrbitCom admitted that "where a
21 carrier such as Verizon is used for both the PIC and the LPIC, OrbitCom applies a
22 default 32/68 PIU – 32 interstate 68 intrastate – to these calls..." *See* OrbitCom's
23 responses to Verizon Data Requests 52 (k) and 47 (g).

1

2 **Q. WAS IT APPROPRIATE FOR ORBITCOM TO APPLY A DEFAULT**
3 **“PIU FACTOR” TO VERIZON’S TRAFFIC?**

4 A. No. Section 3.4 of VP Telecom Tariff No. 1 states that PIU factors will be
5 applied “[w]hen the Company receives insufficient call detail to determine the
6 jurisdiction” of originating or terminating traffic. As a UNE-P provider,
7 OrbitCom receives sufficient information from Qwest to enable it to determine
8 the jurisdiction of most originating and terminating switched access traffic.
9 Accordingly, it was not necessary for OrbitCom to rely on PIU factors, even if it
10 could demonstrate that the factors it chose to use are reliable and verifiable.
11 Based on my experience reviewing numerous carrier access bills, most local
12 exchange carriers do not usually apply PIU factors to traffic that can be measured
13 and for which jurisdiction can be identified. Thus, OrbitCom’s approach is very
14 unusual.

15

16 **Q. WHY DOES VERIZON OBJECT TO THE JURISDICTIONAL MIX OF**
17 **TRAFFIC REFLECTED ON ORBITCOM’S INVOICES?**

18 A. Our primary objection is that OrbitCom did not assign jurisdiction and bill traffic
19 based on actual call detail records. That information is the best determinant of a
20 call’s jurisdiction, and it is the information that is supposed to be used in the first
21 instance, according to VP Telecom Tariff No. 1. OrbitCom did not use that
22 information, however, when preparing invoices, and it has refused to provide
23 Verizon with any call detail records to verify the accuracy of its bills. In addition,

1 the jurisdictional split reflected on OrbitCom's invoices varied over time in an
2 inconsistent and seemingly arbitrary manner. Finally, the allocation of traffic to
3 the interstate and intrastate jurisdictions reflected on OrbitCom's bills to Verizon
4 was suspect in light of Verizon's experience and the nature of our long distance
5 traffic in South Dakota.

6
7 **Q. PLEASE EXPLAIN WHY VERIZON BELIEVES THE JURISDICTIONAL**
8 **ASSIGNMENT OF TRAFFIC SHOULD HAVE BEEN DIFFERENT THAN**
9 **THE JURISDICTIONAL MIX ORBITCOM USED FOR BILLING**
10 **PURPOSES.**

11 **A.** As part of its long distance operations, Verizon Business terminates traffic in
12 South Dakota to local end office switches that are identified in the LERG (the
13 industry's Local Exchange Carrier Routing Guide) as belonging to Qwest. In
14 addition, interexchange traffic is delivered to Verizon from those same Qwest end
15 offices. As a UNE-P provider, all of OrbitCom's traffic is routed through
16 Qwest's local exchange switches in South Dakota. From Verizon's perspective as
17 an interexchange service provider, OrbitCom's UNE-P traffic is not
18 distinguishable from other interexchange traffic that originates from or is
19 terminated to Qwest end office switches through which OrbitCom's end users are
20 served. OrbitCom has not provided Verizon with any information to specifically
21 identify its end users, so Verizon has no basis for presuming that the long distance

1 calling patterns of OrbitCom's end users vary dramatically from that of other
2 local customers served by Qwest's switches.⁶

3
4 During my group's audit of OrbitCom's invoices, we discovered that, over a 13-
5 month period, OrbitCom billed 95% of the switched access traffic as "intrastate,"
6 and only 5% as interstate. This was remarkably different than the traffic patterns
7 that Verizon normally experiences in our long distance network. So, as part of
8 our investigation, we attempted to compare the jurisdictional mix reflected on
9 OrbitCom's invoices with Verizon's own records. Verizon periodically analyzes
10 the jurisdiction of its switched access traffic in order to develop PIU factors that it
11 provides to local exchange carriers. When doing so, we use all traffic for a Bell
12 Operating Company in a state, which in South Dakota is Qwest, as a proxy when
13 calculating PIU factors for UNE-P traffic. This is because, as I have stated,
14 OrbitCom's traffic is not distinguishable from other interexchange traffic carried
15 over Qwest's end office switches.

16
17 Based on the information available to him, Jaque Moore of my staff determined
18 that, at the time he was initially auditing OrbitCom's invoices, approximately
19 77% of Verizon's interexchange traffic in South Dakota was interstate, and only
20 23% was intrastate. Verizon used this figure in the various dispute reports that we

⁶ Mr. Powers states that "[d]uring discussions, Verizon employees indicated verbally that they tracked OrbitCom only calls." Powers direct testimony at 8, lines 19-21, and 9, lines 1-2. This is not correct. Neither I nor anyone in my group made such a statement, nor is there anything in Verizon's dispute notices that supports such an inference. In fact, it is precisely because Verizon does not have any visibility into, and cannot identify, OrbitCom-specific traffic that we have been so interested in obtaining call detail records that contain the information that would enable Verizon to audit the accuracy of OrbitCom's invoices.

1 presented to OrbitCom. Because OrbitCom had not provided any call detail
2 records to verify the accuracy of its own jurisdictional allocation of traffic,
3 Verizon disputed OrbitCom's bills, and asserted that the traffic should be re-rated
4 in a manner that was more closely aligned with the actual jurisdiction of traffic, as
5 Verizon understood it to be based on our own traffic records. Verizon's dispute
6 reports contained calculations that applied OrbitCom's intrastate rates to the
7 amount of traffic that Verizon believed to be properly intrastate, and applied
8 OrbitCom's apparent interstate rates to the amount of traffic that Verizon believed
9 was properly interstate. Rather than try to refute the accuracy of Verizon's
10 calculations, OrbitCom has merely objected to the fact that we performed them
11 using the assumptions we provided.

12
13 Verizon has prepared a more detailed analysis of the jurisdiction of its switched
14 access traffic in South Dakota during 2007, 2008 and 2009, and presented it to
15 OrbitCom during the discovery process. *See* Verizon's response to OrbitCom
16 Interrogatory 13. CONFIDENTIAL Exhibit LF-23 contains a chart that was
17 included as part of that response. That analysis was based on a review of data for
18 Feature Group D originating and terminating traffic that passed between Qwest's
19 local switches in South Dakota and Verizon's long distance network. The results
20 indicate the percentages of interstate traffic that Verizon would have shown at the
21 time based on all originating traffic and all terminating traffic. The information
22 presented in that document confirms the reasonableness of the 77 percent

1 jurisdictional allocator that Verizon has used in its discussions and dispute
2 notifications.

3
4 In my opinion, the methodology Verizon has proposed to resolve the billing
5 dispute is more reasonable than OrbitCom's practice, which appears to be to
6 discard EMI records rather than use them to generate bills, and to use instead PIU
7 factors that are not based on measured minutes. I have told OrbitCom officials
8 that if they produce call detail records to verify the accuracy of their invoices,
9 Verizon will pay the billed amounts. As an alternative, Verizon has proposed to
10 resolve the billing dispute in the manner I described to determine the correct
11 jurisdiction of the switched access traffic, as well as any amounts owed, or credits
12 due. OrbitCom has refused to pursue either approach.

13
14 **Q. MR. POWERS SUGGESTS, AT PAGE 7 OF HIS DIRECT TESTIMONY,**
15 **THAT ORBITCOM'S USE OF A 5% PIU FACTOR WAS JUSTIFIED**
16 **BECAUSE ORBITCOM CHOOSES THE PIC AND LPIC FOR ITS END**
17 **USERS. HOW DO YOU RESPOND?**

18 **A.** The point he is trying to make is difficult to follow. OrbitCom apparently selects,
19 on behalf of its end users, one or more long distance companies to carry its
20 customers' interLATA and intraLATA interexchange traffic. It refers to the first
21 as a primary interexchange carrier (or "PIC"), and to the latter as an IntraLATA
22 Primary Interexchange Carrier (or "LPIC"). Because of this, OrbitCom claims to

1 know the jurisdictional nature of the traffic that it sends to these carriers. It has
2 not, however, provided any evidence to support this.

3
4 In discovery, OrbitCom stated that since July 1, 2002, "MCI [Verizon] has been
5 considered as a PIC and LPIC each and every month in South Dakota." However,
6 OrbitCom declined to state in which months it actually selected Verizon as a PIC
7 or LPIC, or both, and in which months it directed its customers' interexchange
8 traffic to Verizon's long distance network.⁷ Accordingly, there is no evidentiary
9 basis for OrbitCom's apparent claim that its application of a 5% PIU factor to all
10 of Verizon's traffic during the period July 2007 through July 2008 was justified
11 based on its choice of interexchange carriers. (This is separate from the point I
12 have already made that OrbitCom failed to use actual call detail to determine the
13 jurisdiction of access traffic.) If OrbitCom selected Verizon as both the PIC and
14 LPIC in a given month, as its statement quoted above implies, the 5% PIU it used
15 obviously understated the amount of interstate traffic that was delivered to
16 Verizon. Rather, the jurisdictional mix should have been closer to the 77%/23%
17 interstate/intrastate split that is representative of Verizon's interexchange traffic in
18 South Dakota, and that formed the basis of Verizon's dispute. On the other hand,
19 if OrbitCom selected different interexchange carriers as the PIC and LPIC over
20 time, then the "PIU factor" should have varied over time, as well. OrbitCom's
21 approach also does not take into account normal fluctuations in usage patterns,

⁷ See OrbitCom Response to Verizon Data Request 52 (d). On page 8, lines 11-12 of his testimony, Mr. Powers suggests that "if Verizon is chosen as the LPIC only, virtually 100% of the traffic will be intrastate." Because OrbitCom did not provide the information requested by Verizon in discovery, there is no basis for evaluating, or crediting, this claim. In any event, his statement would only apply to a portion of the overall switched access traffic.

1 which are common in the communications industry. Instead, OrbitCom applied
2 the same 5% PIU factor for 13 months in a row, after which it used a constant
3 32% PIU factor for at least the next eight 8 months.

4
5 There is another fundamental problem with OrbitCom's stated rationale.
6 Regardless of which interexchange carrier or carriers are chosen by OrbitCom or
7 its end users to transport interexchange calls that are originated by OrbitCom's
8 end users, that decision has no bearing on interexchange calls that are terminated
9 to those same end users. OrbitCom has no role in deciding how, or by which
10 carrier, interexchange calls are terminated to its customers. OrbitCom, however,
11 applied the same 5% PIU factor to terminating, as well as originating traffic. It
12 had no reasonable basis for doing so, and the rationale presented by Mr. Powers
13 does not justify this billing practice as it relates to terminating traffic. Similarly,
14 OrbitCom applied the same 5% PIU factor to toll-free traffic, such as 800-type
15 calls, even though the 800 service provider, and not the originating local exchange
16 carrier, selects the interexchange carrier that handles the long distance portion of a
17 toll-free call. *See* Exhibit LF-24. Consequently, OrbitCom's choice of a PIC or
18 LPIC is irrelevant to the jurisdictional nature of all of the toll-free calls placed by
19 its end user customers. Accordingly, there was no justification for OrbitCom's
20 practice of applying a 5% PIU factor to toll-free traffic either.

21

1 Q. DOES VP TELECOM TARIFF 1 ALLOW AN ACCESS CUSTOMER TO
2 SUBMIT PIU FACTORS FOR USE BY THE BILLING CARRIER?

3 A. Yes. I have explained that, under VP Telecom Tariff No. 1, when the billing
4 carrier has sufficient call detail, it is to use that information to determine the
5 jurisdiction of traffic and render a bill. Only when the company does not receive
6 sufficient call detail may it use, as a fall-back, PIU factors. Section 3.4 of the
7 tariff states that, in that situation, “the Company will apply PIU factor(s) provided
8 by the Customer or developed by the company to those minutes for which the
9 Company does not have sufficient call detail.”

10

11 Mr. Powers testifies (at 8, lines 16-17) that OrbitCom “only uses a Customer
12 provided PIU when that Customer provided PIU is documented as to its accuracy
13 and then only going forward.” However, that policy is not consistent with the
14 language of VP Telecom Tariff No. 1, section 3.4.5. That section states that “if a
15 billing dispute arises or the Commission questions the project [PIU] factor, the
16 Customer will provide the data used to determine the projected PIU factor.” It
17 does not state, as Mr. Powers suggests, that an interexchange carrier must first
18 provide documentation to validate the accuracy of its reported PIU factors before
19 it will be used by the billing carrier for purposes of assigning jurisdiction to traffic
20 that cannot be measured or identified.

21

1 Q. DID ORBITCOM REFUSE TO APPLY PIU FACTORS PROVIDED BY
2 VERIZON?

3 A. Yes. On August 21, 2008, Verizon provided OrbitCom PIU factors that were to
4 be applied for all of Verizon Business's interexchange carrier affiliates. *See*
5 CONFIDENTIAL Exhibit LF-25.⁸ The PIUs were to be applied to all traffic for
6 which OrbitCom was unable to determine the jurisdiction based on the call
7 information itself. Consistent with standard industry practice (and with VP
8 Telecom Tariff No. 1), the PIU factors were intended for use only on
9 unmeasurable or unidentifiable traffic in South Dakota. Because Verizon knew
10 that OrbitCom obtained the necessary EMI records from Qwest to determine the
11 jurisdiction of most access traffic, Verizon's expectation was that the PIU factors
12 would only be applied to a subset of traffic for which such information was not
13 available. The factors that Verizon provided were the same that Verizon had on
14 file with Qwest for South Dakota during the same time period.

15
16 Although VP Telecom Tariff No. 1 provides for the use of customer-provided
17 PIU factors when sufficient call detail is not available, OrbitCom has not, to this
18 date, applied the PIU factors that Verizon furnished. Nor did OrbitCom follow
19 the procedures in section 3.4.5 of VP Telecom Tariff to the extent it had concerns
20 about Verizon's filed factors. On August 21, 2008, Penny Petersen asked
21 Verizon's representative, Mr. Robin Fishbein, in a one-sentence message to

⁸ Mr. Powers' statement that Verizon "refused to provide ... even the name of the person who came up with the PIU" (direct testimony at 8, lines 21-22) makes no sense. As shown in CONFIDENTIAL Exhibit LF-25, Mr. Robin Fishbein provided the PIU factors directly to OrbitCom, and he did not do so in an anonymous manner.

1 explain how the PIU factors were determined. Mr. Fishbein responded
2 immediately in an e-mail message, asking for clarification: "I'm not sure in what
3 direction you'd like me to focus my response. Could you please elaborate? Is it
4 that you are asking how we determine PIU factors for a UNE-P provider?" See
5 Exhibit LF-26. Verizon did not receive any follow-up communication from Ms.
6 Petersen regarding this issue.⁹ Nevertheless, we do know that OrbitCom has not
7 applied the PIU factors that Verizon provided.

8
9 **B. The "Tandem Switching" Issue**

10
11 **Q. PLEASE DESCRIBE VERIZON'S COMPLAINT RELATING TO**
12 **ORBITCOM'S BILLING OF CHARGES FOR "TANDEM SWITCHING."**

13 A. Mr. Powers states that "OrbitCom is entitled to charge and be paid for tandem
14 switching." Powers direct testimony, at 10 (line13). This is incorrect for several
15 reasons, most notably because OrbitCom does not provide Verizon a tandem
16 switching service. Moreover, with minor exception, since April 2008, OrbitCom
17 has not billed Verizon discrete charges for tandem switching. Instead, it lumps all
18 of its rate elements together, and bills Verizon \$0.06 per minute under a single bill
19 line item called "local switching."

20

⁹ Mr. Powers makes several vague references to discussions, Verizon's provision of "several different PIUs" "on several occasions," and verbal representations about Verizon's "track[ing] of ... calls" (direct testimony at 8, line 18 through page 9, line 2). These statements are so cryptic and non-specific that I am not able to respond more completely than I have in my testimony. Moreover, I am not aware that Mr. Powers was directly involved in any communications relating to Verizon's submission of PIU factors. This issue is, in any event, of minor importance because, as I have explained, PIU factors were only to be used in those limited circumstances in which OrbitCom lacks sufficient call detail to determine the jurisdiction of originating and terminating switched access traffic.

1 Q. PLEASE EXPLAIN HOW INTEREXCHANGE TRAFFIC IS ROUTED TO
2 OR FROM VERIZON'S LONG DISTANCE NETWORK IN SOUTH
3 DAKOTA?

4 A. Verizon receives and sends large amounts of interexchange traffic to and from
5 Qwest in South Dakota. Although I am not involved in network engineering, my
6 understanding is that Verizon configures its network and access arrangements
7 based, in part, on the volumes of traffic that originate from or terminate to
8 different local exchanges. One service that is available to Verizon from Qwest is
9 tandem-switched transport. When Verizon uses tandem-switched transport,
10 Verizon can deliver traffic to, or receive traffic from, a Qwest tandem switch that
11 serves multiple end office switches. The traffic then also passes over a tandem-
12 switched communications facility, which is a high-capacity communications line,
13 between the tandem switch and the end office.

14
15 Another service that Qwest offers to Verizon and other interexchange carriers is
16 direct end-office trunking. When Verizon uses direct end-office trunking,
17 Verizon can deliver traffic to, or receive traffic from, a Qwest end office directly.
18 Traffic originated or terminated through a direct end-office trunking arrangement
19 is never switched by a tandem switch or routed over any tandem-switched facility.
20 When traffic volumes warrant, Verizon often orders direct end-office trunks (or
21 "DEOTs") between its network and specific end offices. Doing so avoids the
22 higher costs that many local exchange carriers often charge for tandem switching,

1 and there may be certain efficiencies, because the traffic passes through one less
2 switch.

3

4 From Verizon's perspective as an interexchange carrier, traffic that originates or
5 terminates from Qwest's end users is indistinguishable from traffic that originates
6 or terminates from OrbitCom's end users because OrbitCom provides service
7 using Qwest's network equipment, rather than its own. Accordingly, Verizon
8 configures its access arrangements in the manner I described based on the
9 characteristics of traffic that passes through Qwest's local network facilities. In
10 South Dakota, Verizon has direct end-office connections into most end offices
11 that originate or terminate traffic for which OrbitCom bills Verizon. Exhibit LF-
12 27 contains a list, by industry Common Language Location Identifier ("CLLI")
13 code, of those end offices to which Verizon is connected via DEOTs.¹⁰ Verizon
14 ordered those DEOTs directly from Qwest, which installed them, so there was no
15 need for Verizon to separately order redundant facilities from OrbitCom, even if
16 OrbitCom had the legal authority to direct how an interexchange carrier connects
17 to Qwest's network.

18

19 By comparing usage data included in OrbitCom's invoices for July 2008 with
20 information provided by Verizon's traffic engineering organization, my group
21 confirmed that in some of these end offices 100% of the traffic is carried over

¹⁰ Mr. Powers makes vague accusations about Verizon's inability or refusal to provide this type of information. Powers direct testimony at 9, lines 16-18. I am not aware of any request, including through interrogatories issued in this proceeding, that OrbitCom has made for this data and, in any event, Verizon is presenting the information here.

1 DEOTs. In many other end offices, all but a small fraction of the traffic was
2 routed over DEOTs. Overall, my group determined that 88 percent of the traffic
3 billed by OrbitCom in South Dakota had been routed over direct end-office trunks
4 between Qwest's network and Verizon's. Only the small remaining amount was
5 routed through a Qwest tandem switch. See CONFIDENTIAL Exhibit LF-28.
6 My understanding is that the EMI records that a UNE-P provider, such as
7 OrbitCom, receives from Qwest on a daily basis indicate whether a call was
8 switched through the tandem. Had OrbitCom produced the call detail records
9 requested by Verizon, these would have confirmed the relatively small amounts of
10 tandem-switched traffic and the corollary fact that most of the access traffic was
11 routed directly to or from Qwest's end offices via DEOTs. OrbitCom should not
12 be able to impose charges for tandem switching when it refuses to provide the call
13 detail records that would show whether or not the calls were tandem-switched.

14
15 **Q. WHAT DOES VP TELECOM TARIFF NO. 1 STATE ABOUT TANDEM**
16 **SWITCHING SERVICE?**

17 **A.** Section 14.2.3.3 of that tariff describes a capability defined as "Tandem
18 Connect." According to that provision, "Tandem Connect consists of circuits
19 from the point of interconnection with Customer's tandem provider to the
20 Company's Local Switching Center. This Tandem Connect rate category is
21 comprised of a Minutes of Use (MOU) based End-Office switching and tandem
22 switched transport charges." Section 14.2.3.1 of VP Telecom Tariff No. 1 states,

1 in pertinent part, that “Tandem Connect Service is provided in conjunction with
2 the tandem provider serving the area.”

3
4 It appears to me that this tariff description is similar to the definition of “tandem-
5 switched transport” in the Commission’s rules. As I read the definition contained
6 in South Dakota Administrative Rule 20:10:29:01 (37), tandem switched transport
7 involves traffic “that is switched at a tandem switch” between the serving wire
8 center and the end office or between a carrier’s office that contains the tandem
9 switching equipment and provides the tandem switching functionality. As I
10 further understand the Commission’s rules, “tandem switching” is one of the two
11 rate elements that make up the charge for tandem-switched transport. *See* South
12 Dakota Administrative Rule 20:10:29:16.03.

13
14 **Q. DOES ORBITCOM PROVIDE TANDEM CONNECT SERVICE, AS**
15 **DEFINED IN VP TELECOM TARIFF NO. 1?**

16
17 **A.** No. In some end offices, 100 percent of the traffic that OrbitCom has billed
18 Verizon is carried over DEOTs. Overall, about 88% of the traffic billed by
19 OrbitCom in South Dakota is routed over DEOTs between Qwest’s end offices
20 and Verizon’s interexchange network. None of that traffic is routed over “circuits
21 from the point of interconnection with [Verizon’s] tandem provider to the
22 Company’s Local Switching Center.” The traffic that travels over direct end-
23 office trunks is not tandem switched. There is no “tandem provider” involved in
24 handling that traffic. OrbitCom does not perform tandem switching, either in fact
25 or as described in the tariff.

1 **Q. HAS MR. POWERS JUSTIFIED ORBITCOM'S PRACTICE OF BILLING**
2 **VERIZON TANDEM SWITCHING CHARGES?**

3 A. No, he has not. On page 10 of his testimony (lines 1-7), Mr. Powers offers an
4 analogy to a truck lease, and argues that because OrbitCom leases certain
5 facilities under its commercial agreements with Qwest, "I can charge customers
6 for the use" of those facilities. The basic flaw with this argument is that
7 OrbitCom is not using tandem-switching facilities or providing any tandem
8 switching functionality in connection with the vast majority of traffic for which it
9 has imposed tandem switching charges on Verizon. It is not reasonable to charge
10 customers for "the use" of tandem switching facilities that the company does not,
11 in fact, use to provide service. To use Mr. Powers' analogy, OrbitCom may have
12 leased several trucks (called "local switching," "loop" and "tandem switching")
13 from a third party, but it did not use the "tandem switching" vehicle to carry
14 Verizon's traffic. Accordingly, it should not be permitted to charge Verizon for
15 the service it did not provide.

16
17 Mr. Powers claims (at 9, lines 18-23) that, as a UNE-P provider, OrbitCom has
18 the right to direct Qwest how to handle and route traffic through its network, but
19 he does not provide any documentation to support these assertions. Regardless of
20 what those commercial agreements might show, OrbitCom has not demonstrated
21 that it actually provides a tandem switching service to Verizon for which it is
22 entitled to be compensated. Mr. Powers' suggestion that OrbitCom has the
23 authority to direct Qwest how to route traffic to and from Verizon's network

1 assumes that Qwest would actually implement different, multiple routing
2 arrangements for similar traffic carried between its switching facilities and an
3 interexchange carrier's network. His suggestion also seems presumptuous, as it
4 implies that OrbitCom might dictate routing arrangements that are less efficient or
5 unnecessarily more costly than the DEOT facilities that Verizon currently has in
6 place.

7

8 **Q. WHAT HAS ORBITCOM CHARGED VERIZON FOR TANDEM**
9 **SWITCHING?**

10 A. This is difficult to say with precision because, with minor exceptions,¹¹ beginning
11 with the April 2008 invoices, OrbitCom has not included a discrete line item for
12 "tandem switching" on its bills. Instead, the sections of its invoices that purport
13 to contain charges for intrastate switched access service contain a single rate
14 element labeled "Local Switching." Separate charges are applied to "originating"
15 and "terminating" traffic, but the rate shown for each is the same, \$0.06 per
16 minute. See Exhibit LF-4.

17

18 This rate is different than the rate for "local switching" shown in the rate tables of
19 VP Telecom Tariff No. 1. Section 15.1.3.4.1 of that tariff contains the rates for
20 "Local Switching Feature Groups B & D." The local switching rates for
21 "originating" and "terminating" traffic are the same, \$0.008610 per access minute
22 of use. Thus, the rate for "local switching" shown on OrbitCom's invoices is

¹¹ OrbitCom has continued to include charges for tandem switching on some of the invoices it periodically issues to Telecom*USA, one of the two Verizon entities that is a party to this proceeding. However, those amounts are small and of minor importance.

1 almost seven times higher than the rate specified in the tariff. The rates for
2 “Tandem Switching” and “Tandem Transport” are set forth in section 15.1.3.4.3
3 of the tariff. The charge for “Tandem Switching” is \$0.007700 for both
4 originating and terminating traffic. “Tandem Transport” rates include a usage and
5 mileage component. The tariff also includes rates for Carrier Common Line
6 service.

7
8 It appears that, for billing purposes, OrbitCom has combined several rate elements
9 together and billed Verizon a single rate for “local switching.” OrbitCom’s
10 invoices do not break out and identify separately the individual rate elements for
11 which it is demanding payment. Nor do the invoices show that OrbitCom charged
12 the specific rates for individual rate elements that are contained in the tariff.

13 These are additional reasons why it is challenging to audit OrbitCom’s invoices.

14 It may be possible to “back in” to the amounts that OrbitCom included for tandem
15 switching on its bills, but OrbitCom has not provided sufficient detail to allow my
16 group to make those calculations.

17
18 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

19 **A.** OrbitCom is not entitled to bill Verizon for “tandem switching” on the
20 overwhelming majority of traffic at issue. However, OrbitCom’s invoices to
21 Verizon have included, and continue to contain, charges for tandem switching,
22 even if they are not clearly stated. Before Verizon became aware that OrbitCom’s
23 invoices included charges for a purported tandem-switching service that

1 OrbitCom did not provide, Verizon paid some of those invoiced charges.
2 Accordingly, the Commission should direct OrbitCom to provide Verizon with
3 refunds or credits for the amounts that Verizon did not owe and that it improperly
4 paid. To calculate these amounts will require OrbitCom to provide more accurate
5 billing statements that align the charges for individual rate elements with those
6 contained in its tariff. The Commission should also direct OrbitCom to cease
7 imposing tandem switching charges prospectively, unless OrbitCom actually
8 provides Verizon with tandem switching service, as defined in VP Telecom Tariff
9 No. 1.

10
11 **VI. CONCLUSION**

12
13 **Q. IN PARAGRAPH 9 OF ITS AMENDED COMPLAINT, ORBITCOM**
14 **ALLEGES THAT VERIZON HAS REFUSED TO PAY ORBITCOM'S**
15 **INVOICES SINCE FEBRUARY 2008. IS THIS CORRECT?**

16 **A.** No. Between April 9, 2008 and January 2, 2009, Verizon issued OrbitCom seven
17 separate checks for payment of multiple invoices rendered by OrbitCom in South
18 Dakota. OrbitCom cashed each of these checks. The total amount of those
19 payments was \$214,271.78. Exhibit LF-29 contains copies of those checks. Even
20 if its complaint were meritorious (which it is not), OrbitCom would not be entitled
21 to recover these amounts that it has already been paid.

22

1 Q. **WHAT SHOULD THIS COMMISSION DO?**

2 A. As I have explained, OrbitCom has not complied with VP Telecom Tariff No. 1 in
3 several respects. OrbitCom has not properly determined the jurisdiction of
4 switched access traffic. As a result, it has not billed Verizon the correct
5 jurisdictional rates. OrbitCom's failure to use call detail (EMI) records that it
6 receives to determine the correct jurisdiction of traffic, and its use instead of
7 arbitrary, unsupported PIU factors, are unreasonable practices. Because
8 OrbitCom's intrastate switched access rates are about ten times higher than the
9 rates it bills for interstate switched access service, OrbitCom has billed Verizon
10 excessive amounts on all traffic that should properly have been classified as
11 interstate, but for which OrbitCom imposed intrastate rates. OrbitCom should not
12 be rewarded for failing to comply with its tariff, for failing to render accurate bills
13 and for engaging in unreasonable billing practices.

14
15 Through June 2009, Verizon has disputed \$749,716.68 in charges invoiced to
16 Verizon Business by OrbitCom. Verizon is willing to pay amounts that are
17 properly billed and owed, but OrbitCom has refused to adjust its bills, apply the
18 correct jurisdictional charges, and issue refunds or credits for amounts that
19 Verizon has overpaid. Because of OrbitCom's improper jurisdictionalization and
20 billing of access traffic, Verizon has demanded a refund for the disputed amounts
21 paid, and has refused to pay \$552,452.71 of OrbitCom's invoiced charges.
22 Taking into account the amounts that Verizon has not paid through June 2009,

1 OrbitCom owes Verizon at least \$197,263.97 that OrbitCom has improperly
2 billed, collected, and refused to refund or credit.

3

4 OrbitCom has not demonstrated it is entitled to any relief through its complaint.

5 Accordingly, the Commission should deny its complaint. Instead, the

6 Commission should order OrbitCom to pay Verizon the amounts described above.

7 In addition, the Commission should order OrbitCom to provide Verizon with

8 refunds or credits for the amounts that Verizon did not owe for a “tandem

9 switching” service that OrbitCom did not provide, and for which Verizon

10 improperly and unwittingly paid.

11

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 **A. Yes.**

14

EXHIBIT

LF - 1

From: Penny Petersen [ppetersen@svtv.com]
Sent: Tuesday, April 03, 2007 11:36 AM
To: Moore, Jaque A (Jake)
Subject: RE: Orbitcom Tariff Filings

Jaque,

All of our tariffs are filed in each state at the PUC's office. You can obtain copies of them there. Let me know if you have further questions.

Thanks,
Penny Petersen
Orbitcom, Inc.

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]
Sent: Tuesday, April 03, 2007 10:45 AM
To: ppetersen@svtv.com
Subject: Orbitcom Tariff Filings

Penny,

I spoke with you a few weeks ago regarding Orbitcom's tariff covering Interstate Switched Access traffic. I needed to get some clarification on this issue. Does Orbitcom have an Interstate tariff filed with the FCC governing switched access? If so, can you provide a copy or a link? Have they filed Intrastate tariffs with the appropriate state PUC's governing Switched Access.

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

EXHIBIT

LF - 2

VP Telecom, Inc.

Tariff No. 1
Original Page No. 1

State of South Dakota
Issued: August 6, 2002

Effective: August 6, 2002

Switched Access Services

Schedule of Rates, Rules and Regulations
Governing Access Services
Provided in the State of South Dakota

OFFERED BY

VP TELECOM, INC.

1701 N. Louise Ave.
Sioux Falls, S.D. 57107

This tariff contains the descriptions, regulations, and rates applicable to furnishing of Service and facilities for access Services within the State of South Dakota by VP Telecom, Inc. This tariff is on file with the South Dakota Public Utilities Commission and copies may also be inspected during normal business hours at the following location: 1701 N. Louise Ave., Sioux Falls, S.D. 57107. To receive Services under the tariff, you can call 1-866-834-7837.

Issued: _____

Effective: *10/28/2002*

Issued By:

Brad VanLeur, President
VP Telecom, Inc.
1701 N. Louise Ave.
Sioux Falls, SD 57107
605-977-6900

TC02-107

EXHIBIT

LF - 3

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 LXC 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)590-1896

EXHIBIT

LF - 4

909A - ORBITCOM

BAN
 Invoice
 Company Code
 Invoice Date
 ACNA

8080SD0222
 00023620
 909A
 Aug 12, 2008
 MCI

Switched Access Service
 Feature Group D

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

R:187 G:000 S:00000 F:00000

Explanation	Amount
Previous Balance	\$ 9,377.40
Adjustments	
Jul 14 CASH PAYMENT	9,377.40R
Balance Forward	\$ 9,377.40

Detail Of Current Charges

Explanation	Amount
SOUTH DAKOTA	
Usage Charges	
8080 - ORBITCOM	
IntraState - IntraLATA	
InterState - InterLATA	
Total Usage Charges	\$
Total Current Charges	\$

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

Total Due By 09/12/2008 \$

909A - ORBITCOM		BAN Invoice Company Code Invoice Date ACNA		8080SD0222 00023620 909A Aug 12, 2008 MCI	
Detail Of Usage Charges for Office ABRDSDCODS0 Office Switch Owner Company Code - 5145 Billing Period 07/01/2008 thru 07/31/2008 IntraState - IntraLATA					
Rate Category	Miles (if applicable)	Quantity	Billing Percent	Rate	Amount
SOUTH DAKOTA					
8080 - ORBITCOM					
LOCAL SWITCHING					
Originating - 07/01/2008 thru 07/31/2008		███		0.06000000	███
Terminating - 07/01/2008 thru 07/31/2008		███		0.06000000	███

R:167 6000 8:00000 P:000000

909A - ORBITCOM

BAN
 Invoice
 Company Code
 Invoice Date
 ACNA

8080SD0222
 00023620
 909A
 Aug 12, 2008
 MCI

Detail Of Usage Charges for Office ARTNSDCORS1
 Office Switch Owner Company Code - 5145
 Billing Period 07/01/2008 thru 07/31/2008
 InterState - InterLATA

Rate Category	Miles (if applicable)	Quantity	Billing Percent	Rate	Amount
SOUTH DAKOTA					
8080 - ORBITCOM					
LOCAL SWITCHING					
Originating - 07/01/2008 thru 07/31/2008				0.00600000	
Terminating - 07/01/2008 thru 07/31/2008				0.00600000	

R-187 6:00 \$:00000 P-00000

EXHIBIT

LF - 5

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

Penny,

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

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

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

EXHIBIT

LF - 6

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

Penny,

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

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

EXHIBIT

LF - 7

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

Penny,

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

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

EXHIBIT

LF - 8

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

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

RESPONSE:

- (a) OrbitCom uses the actual call data supplied by its switching company to determine the jurisdiction of the call.
- (b) The call data (EMI records) supplied by the switching company.
- (c) Calls made April 1, 2009 which calls were billed in May, 2009.
- (d) OrbitCom has been working for some time to test jurisdictional billing. It is a very labor intensive process to switch a carrier to this type of billing requiring the rebuilding of tables within the billing system and then repeating test billings to insure accuracy. It can take up to a year to convert a carrier. Other than test accounts, Orbitcom began billing the process of billing other carriers jurisdictionally at the same time as Verizon.
- (e) April 1 through April 30, 2009.
- (f) No.

EXHIBIT

LF - 9

From: Penny Petersen [mailto:ppetersen@svtv.com]
Sent: Tuesday, March 04, 2008 3:15 PM
To: Moore, Jaque A (Jake)
Subject: RE: Dispute Notification-Orbitcom Interstate Rates

We have a contract with Verizon for Long Distance, not switched access. I would like to setup a switched access agreement between Verizon and Orbitcom so that we can avoid further disputes. Can you send me a contract for this?

I do not get the cdr's. They are sent directly to our third party billing vendor and then purged from their system. We did not have the option to save them to disk.

Thanks,
Penny

EXHIBIT

LF – 10

Verizon 051: In an e-mail message from Penny Petersen to Jaque Moore dated February 20, 2008, Ms. Petersen stated: "Our call records are sent directly to a third party billing company." Please identify the third party billing company referred to by Ms. Petersen.

- a. State whether OrbitCom is still using the third party billing company referred to by Ms. Petersen.
- b. If the response to 51a is other than "yes," please state when OrbitCom ceased using that third party billing company.

OBJECTION AND RESPONSE: OrbitCom objects to this Request to the extent that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving this objection, see below.

- (a) No.
- (b) March 2009.

EXHIBIT

LF - 11

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

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

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

EXHIBIT

LF – 12

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

LF - 13

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]
Sent: Thursday, May 08, 2008 4:13 PM
To: Penny Petersen
Cc: Freet, Leslie L; Moore, Jaque A (Jake)
Subject: RE: Dispute Notification-Orbitcom Interstate Rates

.Penny,

I never received a response from my previous email. I am forwarding you an updated dispute report with calculations through the 4/12/08 invoice cycle. The total amount now disputed is \$284,460.36. We are currently withholding payment and will continue to do so until the total amount disputed is withheld or credited back the BANs.

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

**REDACTED
EXHIBIT**

LF-14

From: Moore, Jaque A (Jake)
Sent: Friday, September 12, 2008 8:21 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

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

REDACTED

<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	0.00003800
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

REDACTED

REDACTED

EXHIBIT

LF - 15

From: Severy, Richard
Sent: Wednesday, April 22, 2009 6:27 PM
To: 'Meredith Moore'; Pat Mastel
Subject: Verizon Business's Combined Dispute Report by BAN/OCN/State
Attachments: Orbitcom Comb Disp Final.xls

Meredith and Pat,

Attached is a revised and updated calculation of Verizon Business's dispute with Orbitcom. This analysis breaks down the PIU/rate dispute by BAN/OCN/State as you have requested. Jaque also added a summary page on the first tab that breaks down the total dispute by issue (PIU/Rate vs. Rate) and deducted vs. non-deducted amount. The total amount in dispute for both issues through the 4/09 invoice cycle is \$2,046,274.65.

Please let me know if you have any additional questions.

Richard Severy
richard.b.severy@verizonbusiness.com
Assistant General Counsel
Litigation and Regulatory

Verizon Business

Telephone: 415-228-1121
Fax: 415-228-1094

Verizon Business - global capability, personal accountability

From: Moore, Jaque A (Jake)
Sent: Tuesday, June 16, 2009 7:05 AM
To: Penny Petersen
Cc: bvanleur@orbitcominc.net; Freet, Leslie L; Severy, Richard; Merrick, Patrick H (Pat)
Subject: Dispute Notification - Orbitcom - Updated Dispute Report
Importance: High
Attachments: Orbitcom Comb Disp Final.xls

Penny,

I've attached an updated dispute report with totals through the May 2009 invoice cycle. The total amount in dispute is \$2,127,556.22.

Respectfully,

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

EXHIBIT

LF - 16

From: Penny Petersen [ppetersen@orbitcominc.net]
Sent: Friday, September 12, 2008 8:47 AM
To: Moore, Jaque A (Jake); bvanleur@orbitcominc.net; mpowers@orbitcominc.net
Cc: Freet, Leslie L
Subject: RE: Dispute Notification-Orbitcom Invalid PIU
Importance: High

Jaque,

This dispute is being denied for the following reason.

Please see page 30 of Orbitcom, Inc's. Intrastate Tariff.

Section 4.8 Disputed Bills

The customer may dispute a bill only by written notice to the Company. Written dispute must be received by the company within 60 days of the payment due date. If a written dispute is not received by the Company within 60 days of the payment date, the bill statement shall be deemed to be correct and considered due and payable in full by the Customer..

Thanks,

Penny Petersen
Orbitcom, Inc.
605-977-6900

Please Note - My Email Address Has Changed
ppetersen@orbitcominc.net

From: Moore, Jaque A (Jake) [mailto: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

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

EXHIBIT

LF - 17

From: Moore, Jaque A (Jake) [jaque.moore@verizonbusiness.com]
Sent: Wednesday, September 17, 2008 2:25 PM
To: Penny Petersen; bvankeur@orbitcominc.net; mpowers@orbitcominc.net
Cc: Freet, Leslie L; Moore, Jaque A (Jake)
Subject: RE: Dispute Notification-Orbitcom Invalid PIU

Penny,

Verizon Business rejects Orbitcom's denial of our PIU dispute. Orbitcom's tariffs state,

"When the Company, receives sufficient 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 detail."

By failing to perform either of the procedures cited above, Orbitcom has failed to be in compliance with its own tariffs. Verizon Business considers this dispute open and valid.

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

EXHIBIT

LF - 18

From: Penny Petersen [ppetersen@orbitcominc.net]
Sent: Wednesday, September 24, 2008 9:39 AM
To: Moore, Jaque A (Jake); bvanleur@orbitcominc.net; mpowers@orbitcominc.net
Cc: Freet, Leslie L
Subject: RE: Dispute Notification-Orbitcom.Invalid PIU

Jaque,

Orbitcom is denying this dispute since it is outside of the allowable dispute timeframe.

Section 4.8 Disputed Bills

The customer may dispute a bill only by written notice to the Company. Written dispute must be received by the company within 60 days of the payment due date. If a written dispute is not received by the Company within 60 days of the payment date, the bill statement shall be deemed to be correct and considered due and payable in full by the Customer.

Thanks,

Penny Petersen
Orbitcom, Inc.
605-977-6900

Please Note - My Email Address Has Changed
ppetersen@orbitcominc.net

From: Moore, Jaque A (Jake) [mailto:jaque.moore@verizonbusiness.com]
Sent: Wednesday, September 17, 2008 4:25 PM
To: Penny Petersen; bvanleur@orbitcominc.net; mpowers@orbitcominc.net
Cc: Freet, Leslie L; Moore, Jaque A (Jake)
Subject: RE: Dispute Notification-Orbitcom Invalid PIU

Penny,

Verizon Business rejects Orbitcom's denial of our PIU dispute. Orbitcom's tariffs state,

"When the Company, receives sufficient 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 detail."

By failing to perform either of the procedures cited above, Orbitcom has failed to be in compliance with its own tariffs. Verizon Business considers this dispute open and valid.

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

EXHIBIT

LF – 19

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

LF – 20

From: Moore, Jaque A (Jake)
Sent: Tuesday, March 04, 2008 2:11 PM
To: 'Penny Petersen'
Subject: RE: Dispute Notification-Orbitcom Interstate Rates

Penny,

The contract that Orbitcom has with Verizon for Long Distance does not apply to Switched Access traffic. These are two separate services. The two year dispute for \$283,207.41 is still valid.

I do not handle contracts/agreements. I will have to look into this.

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

From: Penny Petersen [mailto:ppetersen@svtv.com]
Sent: Tuesday, March 04, 2008 3:15 PM
To: Moore, Jaque A (Jake)
Subject: RE: Dispute Notification-Orbitcom Interstate Rates

We have a contract with Verizon for Long Distance, not switched access. I would like to setup a switched access agreement between Verizon and Orbitcom so that we can avoid further disputes. Can you send me a contract for this?

I do not get the cdr's. They are sent directly to our third party billing vendor and then purged from their system. We did not have the option to save them to disk.

Thanks,
Penny

EXHIBIT

LF - 21

From: Freet, Leslie L
Sent: Monday, July 07, 2008 3:02 PM
To: 'Brad VanLeur'; 'Penny Petersen'
Cc: Moore, Jaque A (Jake)
Subject: RE: Please Call Orbitcom

Brad,

Can you clarify from the note below if Orbitcom is denying the merit of the interstate access dispute or the process of withholding intrastate charges to convert a paid dispute to a deducted dispute or both? If so could you comment further on the basis for the denial of the claim?

Mike Maxwell would be your contact to negotiate a Switched Access Agreement with Verizon Business. I have provided his contact information below.

Mike Maxwell
mike.maxwell@verizonbusiness.com
703-886-2163

Thanks,
Leslie Freet
918-590-6800

**REDACTED
EXHIBIT**

LF-22

REDACTED

**REDACTED
EXHIBIT**

LF-23

REDACTED

EXHIBIT

LF – 24

909A.- ORBITCOM

BAN
Invoice
Company Code
Invoice Date
ACNA

8080SD0555
00022731
909A
Apr 12, 2008
WTL

Switched Access Service
Feature Group D

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

R-153 G:0:00 S:0:00:00 F:00:00:00

Explanation	Amount
Previous Balance	\$ [REDACTED]
Adjustments	
Apr 10 CASH PAYMENT	33,007.73
Balance Forward:	\$ [REDACTED]

Detail Of Current Charges

Explanation	Amount
SOUTH DAKOTA	
Usage Charges	
8080 - ORBITCOM	
IntraState - IntraLATA	[REDACTED]
InterState - InterLATA	[REDACTED]
Total Usage Charges	\$ [REDACTED]
Total Current Charges	\$ [REDACTED]

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

Total Due By 05/12/2008 \$ [REDACTED]

909A - ORBITCOM

BAN
 Invoice
 Company Code
 Invoice Date
 ACNA

8080SD0555
 00022731
 909A
 Apr 12, 2008
 WTL

Detail Of Statistics for Office ABRDSDCODS0
 Billing Period 03/01/2008 thru 03/31/2008
 IntraState - IntraLATA

Traffic Class	Recorded Messages	Recorded MOU	Factored Messages	Factored MOU	PIU	IPIL	PIL	PLU	Access Messages	Access MOU
SOUTH DAKOTA										
Originating DDD					5	0	100	0		
Originating 800					5	0	100	0		
Terminating					5	0	100	0		

R:163 G:000 S:00000 P:00000

**REDACTED
EXHIBIT**

LF-25

From: Fishbein, Robin O
Sent: Thursday, August 21, 2008 10:32 AM
To: ppetersen@orbitcominc.net
Cc: Quinn, Jeffrey M (Jeff); Moore, Jaque A (Jake); Freet, Leslie L
Subject: Verizon Business reporting factors updated 08/21/2008 (Orbitcom)

Penny,

Below please find updated PIU factors for use on Orbitcom's invoices to Verizon Business. Kindly indicate that you have received this information.

These factors are to be applied for all ACNAs that originate to or terminate from network CICs 0222 and 0555, and to all traffic for which you are unable to determine the jurisdiction based on the call information itself.

REDACTED

Robin Fishbein
Financial Planning & Analysis
Verizon Business
205 North Michigan Avenue, Suite 1100
Chicago, Illinois 60601
P: (312)260-3392 or v894-3392
F: (312)470-5573 or v894-5573
E: robin.fishbein@verizonbusiness.com

EXHIBIT

LF - 26

From: Fishbein, Robin O
Sent: Thursday, August 21, 2008 11:45 AM
To: 'Penny Petersen'
Cc: Quinn, Jeffrey M (Jeff); Moore, Jaque A (Jake); Freet, Leslie L; 'Brad VanLeur'; mpowers@orbitcominc.net
Subject: RE: Verizon Business reporting factors updated 08/21/2008 (Orbitcom)

Penny,

I'm not sure in what direction you'd like me to focus my response. Could you please elaborate? Is it that you are asking how we determine PIU factors for a UNE-P provider?

Thanks,
Robin

From: Penny Petersen [mailto:ppetersen@orbitcominc.net]
Sent: Thursday, August 21, 2008 1:29 PM
To: 'robin.fishbein'
Cc: 'Quinn, Jeffrey M (Jeff)'; 'Moore, Jaque A (Jake)'; 'Freet, Leslie L'; 'Brad VanLeur'; mpowers@orbitcominc.net
Subject: RE: Verizon Business reporting factors updated 08/21/2008 (Orbitcom)

Robin,

Please explain to me how these PIU factors were determined.

Thanks,

Penny Petersen
Orbitcom, Inc.
605-977-6900

Please Note - My Email Address Has Changed
ppetersen@orbitcominc.net

EXHIBIT

LF - 27

CLLI

ABRSDCODS0
ABRSDCODS0
ARTNSDCORS1
BLFRSDCORS1
BLHKSDCERS1
CAVRSDCORS1
CHBLSDCORS1
CLMNSDCORS1
DDWSDCORS1
DEMSDCORS1
ELPNSDCORS1
FLNSDCORS1
FTRSDCERS1
HLCYSDCORS1
HRBGSDCORS1
HURNSDCODS1
IRQSSDCORS1
LEADSDCORS1
MDSNSDCERS1
MLBNSDCORS1
MLLRSDCORS1
MTCHSDCODS1
PIRRSDCODS6
RDFSDCORS1
RPCYSDCODS1
RPVYSDCORS1
SPRFSDCORS1
STRGSDCORS1
SXFLSDCODS2
SXFLSDPDS0
SXFLSDSERS1
SXFLSDSWDS0
TEA SDCORS1
TMLKSDCORS2
VOLGSDCORS1
VRMLSDCODS0
WHWSDCORS1
WRWKSDCORS1
WTTWSDCODS0
YNTNSDCODS1

**REDACTED
EXHIBIT**

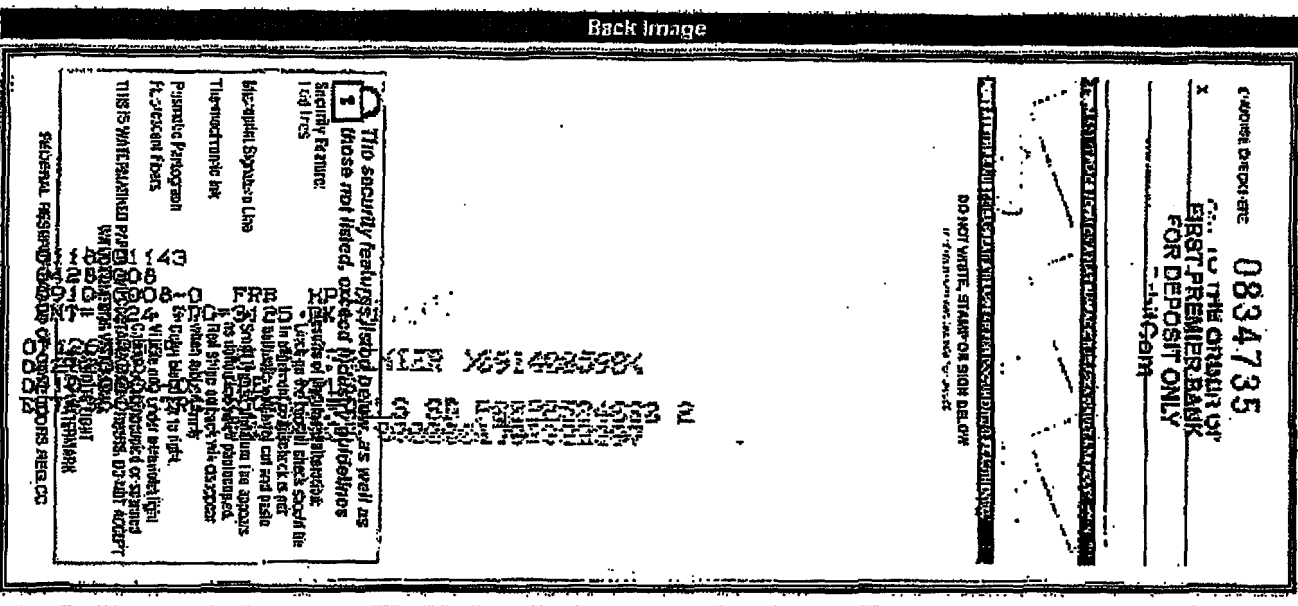
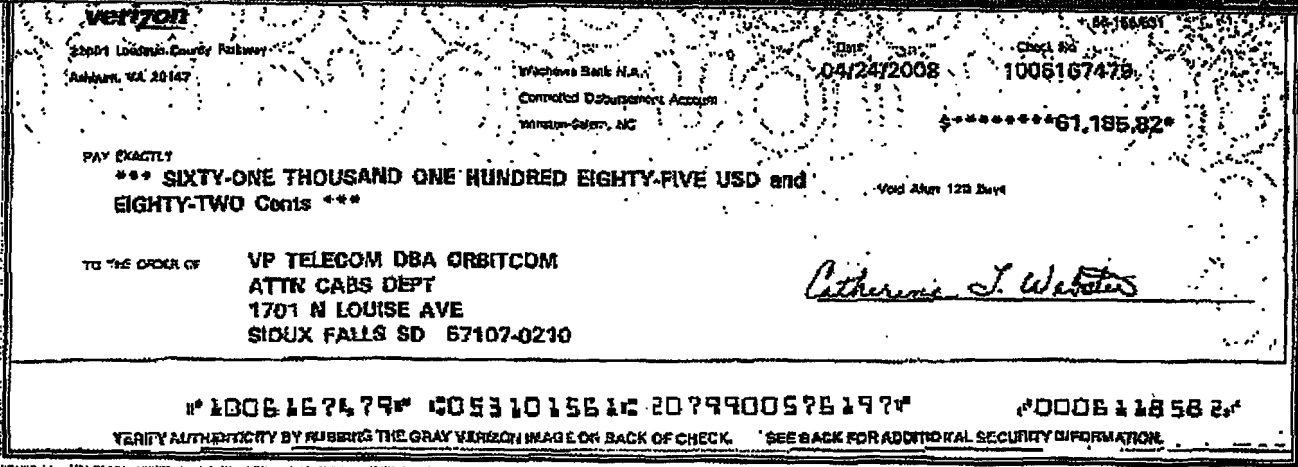
LF-28

REDACTED

EXHIBIT

LF – 29

Front Image:
 Zoom: 100%
 Rotate: None
 Back Image:
 Zoom: 100%
 Rotate: None
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Go Lin
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Both ▾

Front Image:

Zoom: 100% ▾

Rotate: None ▾

Back Image:

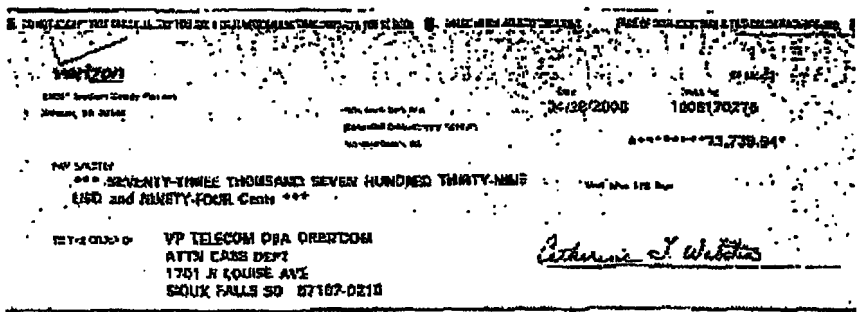
Zoom: 100% ▾

Rotate: None ▾

Reset

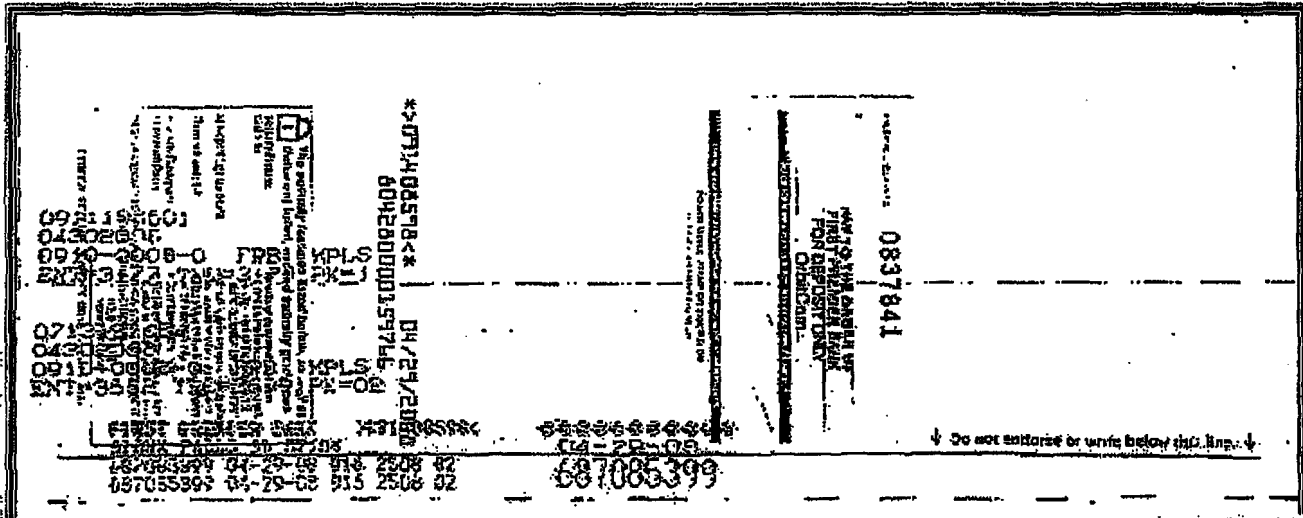
04/24/2008
 804280000359766
 This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

9002/62/40 1865904-1100
 PRL510000082408



1006170276 4:053615624 2079900576197* *0007373994*

Back Image



Done

Internet

Internet

start

(5) Internet Explorer

7:33 PM
Wednesday

Show Image: Both Front Back

Front Image: Zoom: 100% Rotate: None

Back Image: Zoom: 100% Rotate: None

091406576

01/01/2009

501294000037065

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

001406576 01/01/2009

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1151130

1007097238# 41053101561# 2079900576197#

1151130

1007097238# 41053101561# 2079900576197#

1151130

TO THE ORDER OF

WACHOVIA BANK

1007097238# 41053101561# 2079900576197#

1151130

1007097238# 41053101561# 2079900576197#

1151130

BACK IMAGE

1007097238# 41053101561# 2079900576197#

1151130

1007097238# 41053101561# 2079900576197#

1151130