

**Before the
PUBLIC UTILITIES COMMISSION
of the
STATE OF SOUTH DAKOTA**

In the Matter of Complaint of Orbitcom,)
Inc. against Global Crossing) **Docket No. TC08-005**
Telecommunications, Inc.)

STATE OF NEW YORK)
ss.:
COUNTY OF MONROE)

SEAN HERRICK, being duly sworn, deposes and says that:

1. I am Senior Manager, Cost of Access for Global Crossing Telecommunications, Inc. ("Global Crossing"). In this capacity, I am responsible for overseeing the audit function of Global Crossing's cost of access organization. This function consists of receiving the invoices from Global Crossing's access vendors, reviewing those invoices for accuracy, paying those invoices that are accurate and filing and prosecuting disputes where the invoices so warrant. Cost of access is the largest single cost that Global Crossing incurs. In 2007, for example, Global Crossing's total payments for access services amounted to \$1.2 billion and Global Crossing received access services from over 1,700 access vendors in the United States alone. Given the magnitude of this expense, it is critical that Global Crossing carefully review the access invoices that it receives and insure that only those invoices that are accurate be paid. Conversely, it is also critical that Global Crossing pay its access vendors. Because these vendors provide last-mile connectivity, Global Crossing cannot afford lengthy and ill-founded disputes with such vendors as it would risk termination of service. Thus, my role is to balance those responsibilities - to ensure that Global Crossing's access vendors are paid what they are owed and only what they are owed.

2. It is in this context that I submit this affidavit in support of Global Crossing's motion to dismiss Orbitcom's complaint. The basis for the motion, as I understand it, is that there is no legitimate dispute with respect to the *intrastate* access services. Any dispute between Global Crossing and Orbitcom relates to interstate services.

3. Orbitcom routinely invoices Global Crossing for access services. The invoices that Orbitcom provides are electronic. The invoices are delivered by account number, each month. There are 19 accounts and these are shown on the attachment to Orbitcom's complaint. As I explain below, the account numbers are correct, but the amounts attributed to the interstate and intrastate jurisdictions are completely inaccurate.

4. Each invoice shows amounts that are attributed by Orbitcom to the interstate and intrastate jurisdictions. Global Crossing has processed those invoices. It has paid those portions of the invoices denominated as intrastate. It has disputed those portions of the invoices that Orbitcom denominated as interstate. Attached as Confidential Exhibit 1 is a summary of the invoices, payments and disputes for January 2007 through January 2008. It shows as follows:

| | |
|---|--------------|
| Orbitcom billed amounts from January 2007 – January 2008 | \$559,676.14 |
| Payments for this period | \$310,656.38 |
| Disputes for this period | \$249,019.82 |

5. Attached hereto as Confidential Exhibit 2 are cancelled checks for the period above. The payments represented by the cancelled checks are summarized as a part of Confidential Exhibit 1.

6. Global Crossing disputed the interstate charges because Orbitcom does not have an interstate tariff on file with the Federal Communications Commission and Global

Crossing has not executed an agreement with Orbitcom permitting it to charge Global Crossing on some basis other than a tariff. I understand that in these circumstances, a competitive local exchange carrier ("CLEC") like Orbitcom simply cannot charge for interstate access.

7. The balance of this affidavit summarizes the documentary evidence and compares it to the account code information that Orbitcom displays in its attachment to its complaint. I am not asking the Commission merely to take my word as to what Global Crossing has done. I am asking the Commission to review the contemporaneous documentary evidence – invoices prepared by Orbitcom and sent contemporaneously to Global Crossing; and Global Crossing's contemporaneous disposition of those invoices, either payment or dispute. The documentary evidence shows, in my view, that Orbitcom's complaint is a fabrication. The amounts that Orbitcom shows on its attachment to the complaint – which was obviously prepared with an eye toward litigation – bear no resemblance to the contemporaneous documents. I note that nowhere in its complaint does Orbitcom explain how it derived these numbers; it provides no back-up documentation; and it does not even bother to acknowledge the significant payments made by Global Crossing.

8. For each one of Orbitcom's accounts, I am attaching the face page of the invoices as billed by Orbitcom, the disposition by Global Crossing, and where applicable, any disputes that Global Crossing took. As the documentation shows, Global Crossing paid **all** amounts billed by Orbitcom as **intrastate** (and indeed some that was billed as interstate) and **disputed** charges that were billed by Orbitcom as **interstate**. Thus,

Orbitcom's tally showing significant undisputed balances for intrastate services is simply belied by Orbitcom's own contemporaneous documentation.

9. The balance of this affidavit compares the amounts shown on Orbitcom's Exhibit A, with the contemporaneous documentation by account. For account 377CCD044, Orbitcom shows unpaid balances of \$645.13 for interstate services and \$200.09 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|------------|
| Billings of | \$1,261.15 |
| Payments(for intrastate services) | \$616.02 |
| Disputes (for interstate services) | \$645.13 |
| Unpaid balance (due to the disputes) | \$645.13 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 3. Global Crossing and Orbitcom agree that there is \$645.13 disputed and unpaid for interstate charges. Orbitcom's intrastate number, however, cannot be reconciled to its own invoices.

10. For account 8080SD0444, Orbitcom shows unpaid balances of \$5,908.19 for interstate services and \$105,984.07 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|--------------|
| Billings of | \$177,281.77 |
| Payments(for intrastate services) | \$74,454.71 |
| Disputes (for interstate services) | \$102,827.06 |
| Unpaid balance (due to the disputes) | \$102,827.06 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 4. The amount shown on Orbitcom's own invoices bear no resemblance to what it asserts is owing in its complaint.

11. For account 8080SDGLOB, Orbitcom shows unpaid balances of \$107.80 for interstate services and \$237.77 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|----------|
| Billings of | \$697.21 |
| Payments(for intrastate services) | \$518.83 |
| Disputes (for interstate services) | \$178.38 |
| Unpaid balance (due to the disputes) | \$178.38 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and dispsutes are annexed hereto as Confidential Exhibit 5. Again, the amount shown on Orbitcom's own invoices cannot be reconciled to the amounts shown in its complaint.

12. For account 910AID0444, Orbitcom shows unpaid balances of \$10,917.80 for interstate services and \$4,765.59 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|-------------|
| Billings of | \$44,905.43 |
| Payments(for intrastate services) | \$31,646.77 |
| Disputes (for interstate services) | \$13,258.66 |
| Unpaid balance (due to the disputes) | \$13,258.66 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and dispsutes are annexed hereto as Confidential Exhibit 6. Again, the amount

shown on Orbitcom's own invoices cannot be reconciled to the amounts shown in its complaint.

13. For account 910AIDGLOB, Orbitcom shows unpaid balances of \$46.21 for interstate services and \$114.84 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|----------|
| Billings of | \$464.86 |
| Payments(for intrastate services) | \$377.78 |
| Disputes (for interstate services) | \$87.08 |
| Unpaid balance (due to the disputes) | \$87.08 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 7. Again, the amount shown on Orbitcom's own invoices cannot be reconciled to the amounts shown in its complaint.

14. For account 911AMD0322, Orbitcom shows unpaid balances of \$2.93 for interstate services and \$0.00 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|---------|
| Billings of | \$52.87 |
| Payments(for intrastate services) | \$49.94 |
| Disputes (for interstate services) | \$2.93 |
| Unpaid balance (due to the disputes) | \$2.93 |
| Unpaid balance (due to the disputes) | \$87.08 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 8. For the \$2.93 balance on

this invoice, the parties agree that these are interstate charges. Unfortunately, this is the **only** account where this is the case.

15. For account 911AMD0444, Orbitcom shows unpaid balances of \$791.02 for interstate services and \$1,506.94 for intrastate services. The documentary evidence, to the

| | | |
|------------------|--------------------------------------|------------|
| contrary, shows: | Billings of | \$4,803.43 |
| | Payments(for intrastate services) | \$3,350.56 |
| | Disputes (for interstate services) | \$1,452.87 |
| | Unpaid balance (due to the disputes) | \$1,452.87 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 9. Again, the amount shown on Orbitcom's own invoices cannot be reconciled to the amounts shown in its complaint.

16. For account 911AMDGLOB, Orbitcom shows unpaid balances of \$2.78 for interstate services and \$1.22 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|---------|
| Billings of | \$14.48 |
| Payments(for intrastate services) | \$11.54 |
| Disputes (for interstate services) | \$3.00 |
| Unpaid balance (due to the disputes) | \$3.00 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 10. Again, the amount shown on Orbitcom's own invoices cannot be reconciled to the amounts shown in its complaint.

17. For account 912AOD0400, Orbitcom shows unpaid balances of \$1.84 for interstate services and \$1.13 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|--------|
| Billings of | \$9.22 |
| Payments(for intrastate services) | \$6.97 |
| Disputes (for interstate services) | \$2.25 |
| Unpaid balance (due to the disputes) | \$2.25 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 11. Again, the amount shown on Orbitcom's own invoices cannot be reconciled to the amounts shown in its complaint.

18. For account 912AOD0444, Orbitcom shows unpaid balances of \$453.78 for interstate services and \$1,220.97 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|------------|
| Billings of | \$3,501.05 |
| Payments(for intrastate services) | \$2,363.89 |
| Disputes (for interstate services) | \$1,137.16 |
| Unpaid balance (due to the disputes) | \$1,137.16 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 12. Again, the amount shown on Orbitcom's own invoices cannot be reconciled to the amounts shown in its complaint.

19. For account 913AED0244, Orbitcom shows unpaid balances of \$0.00 for interstate services and \$5.01 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|----------|
| Billings of | \$105.47 |
| Payments(for intrastate services) | \$100.46 |
| Disputes (for interstate services) | \$5.01 |
| Unpaid balance (due to the disputes) | \$5.01 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 13. The amount shown on Orbitcom's own invoices are exactly the opposite of what it asserts are owing in its complaint.

20. For account 913AED0444, Orbitcom shows unpaid balances of \$26,662.89 for interstate services and \$20,920.75 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|--------------|
| Billings of | \$126,616.85 |
| Payments(for intrastate services) | \$86,539.99 |
| Disputes (for interstate services) | \$40,076.86 |
| Unpaid balance (due to the disputes) | \$40,076.86 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 14. Again, the amount shown on Orbitcom's own invoices cannot be reconciled to the amounts shown in its complaint.

21. For account 913AEDGLOB, Orbitcom shows unpaid balances of \$11.81 for interstate services and \$41.69 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|----------|
| Billings of | \$154.51 |
| Payments(for intrastate services) | \$113.15 |
| Disputes (for interstate services) | \$41.36 |
| Unpaid balance (due to the disputes) | \$41.36 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 15. The amount shown on Orbitcom's own invoices ~~are~~ are virtually the opposite of what it asserts are owing in its complaint.

22. For account 914AND0444, Orbitcom shows unpaid balances of \$4,979.06 for interstate services and \$43,534.92 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|-------------|
| Billings of | \$87,586.30 |
| Payments(for intrastate services) | \$46,010.02 |
| Disputes (for interstate services) | \$41,576.28 |
| Unpaid balance (due to the disputes) | \$41,576.28 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 16. The amount shown on Orbitcom's own invoices ~~are~~ are virtually the opposite of what it asserts are owing in its complaint.

23. For account 914ANDGLOB, Orbitcom shows unpaid balances of \$3.72 for interstate services and \$2.58 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|---------|
| Billings of | \$15.16 |
| Payments(for intrastate services) | \$10.31 |
| Disputes (for interstate services) | \$4.85 |
| Unpaid balance (due to the disputes) | \$4.85 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 17. Again, the amount shown on Orbitcom's own invoices cannot be reconciled to the amounts shown in its complaint.

24. For account 915AWD0244, Orbitcom shows unpaid balances of \$6.12 for interstate services and \$46.76 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|---------|
| Billings of | \$88.89 |
| Payments(for intrastate services) | \$44.86 |
| Disputes (for interstate services) | \$44.03 |
| Unpaid balance (due to the disputes) | \$44.03 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 18. The amount shown on Orbitcom's own invoices are are virtually the opposite of what it asserts are owing in its complaint.

25. For account 915AWD0444, Orbitcom shows unpaid balances of \$5,152.70 for interstate services and \$48,261.12 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|--------------|
| Billings of | \$110,750.19 |
| Payments(for intrastate services) | \$63,467.57 |
| Disputes (for interstate services) | \$47,282.62 |
| Unpaid balance (due to the disputes) | \$47,282.62 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 19. The amount shown on Orbitcom's own invoices ~~are~~ are virtually the opposite of what it asserts are owing in its complaint.

28. For account 915AWDGLOB, Orbitcom shows unpaid balances of \$71.56 for interstate services and \$53.53 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|----------|
| Billings of | \$290.38 |
| Payments(for intrastate services) | \$219.03 |
| Disputes (for interstate services) | \$71.35 |
| Unpaid balance (due to the disputes) | \$71.35 |

The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 20. The parties virtually agree on the amount disputed and unpaid for interstate services but Orbitcom's amount allegedly due for intrastate services cannot be reconciled to its own invoices. The amount

shown on Orbitcom's own invoices ~~are~~ are virtually the opposite of what it asserts are owing in its complaint.


29. For account 955DXD0444, Orbitcom shows unpaid balances of \$313.23 for interstate services and \$143.78 for intrastate services. The documentary evidence, to the contrary, shows:

| | |
|--------------------------------------|------------|
| Billings of | \$1,076.92 |
| Payments(for intrastate services) | \$753.98 |
| Disputes (for interstate services) | \$322.94 |
| Unpaid balance (due to the disputes) | \$322.94 |

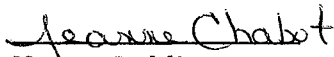
The face pages of the invoices for the period January 2007-January 2008, the payment history and disputes are annexed hereto as Confidential Exhibit 21. The parties virtually agree on the amount disputed and unpaid for interstate services but Orbitcom's amount allegedly due for intrastate services cannot be reconciled to its own invoices.

30. What the documentation – and critically, ***Orbitcom's own documentation contemporaneously issued to Global Crossing for the purpose of being paid*** – makes clear is that Global Crossing has paid ***all intrastate charges*** levied by Orbitcom. Conversely, it has disputed most of the charges denominated ***by Orbitcom as interstate***. I am not asking the Commission merely to take my word as to what Global Crossing has done. I am asking the Commission to review the contemporaneous documentary evidence – invoices prepared by Orbitcom and sent contemporaneously to Global Crossing; and Global Crossing's contemporaneous disposition of those invoices, either payment or dispute. The documentary evidence shows, in my view, that Orbitcom's complaint is a fabrication. The amounts that Orbitcom shows on its attachment to the complaint – which

was obviously prepared with an eye toward litigation – bear no resemblance to the contemporaneous documents. I note that nowhere in its complaint does Orbitcom explain how it derived these numbers; it provides no back-up documentation; and it does not even bother to acknowledge the significant payments made by Global Crossing.


Sean Herrick

Sworn to before me this
4th day of February, 2008


Notary Public

JEANNE CHABOT
Notary Public, State of New York ·
No. 01CH6034835
Qualified in Ontario County
Commission Expires December 20, 2009