

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

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| IN THE MATTER OF THE PETITION |) | |
| OF ORBITCOM, INC. FOR |) | |
| AMENDMENT AND APPROVAL |) | Docket No. TC08-128 |
| OF ITS INTRASTATE TARIFF |) | |
| |) | |
| |) | |

**PETITION FOR INTERVENTION BY AT&T COMMUNICATIONS OF THE
MIDWEST, INC., ON PETITION OF ORBITCOM, INC FOR AMENDMENT
AND APPROVAL OF ITS INTRASTATE TARIFF**

Pursuant to ARSD Sec. 20:10:01:15.02, AT&T Communications of the Midwest, Inc., (“AT&T”) petitions for leave to intervene in the above captioned proceeding. In its Petition filed on November 12, 2008, Orbitcom, Inc. (“Orbitcom”) requests that it be permitted to mirror the intrastate switched access rates applied by “similarly situated CLECs” and also that it be exempted from Commission’s regulation that requires a telecommunications company to develop “intrastate switched access rates based on company-specific costs.” ARSD 20:10:27:11 and 20:10:27:12.

If approved, Orbitcom’s request would result in an increase in its intrastate switched access rate which exceeds 98%, from \$.0578 to \$.115. Orbitcom has provided no information to substantiate the basis for this increase other than to refer to “similarly situated” CLECs— however, Orbitcom provides no information to explain why it should be considered similarly situated to such CLECs nor does it identify such CLECs.

In addition, ARSD 20:10:27:11 places the burden on Orbitcom to establish that it lacks the necessary financial, technical or managerial resources to determine the costs behind its switched access rates based on company-specific costs or that the cost of such an exercise outweighs any benefit to consumers or customers of Orbitcom services. In its

Petition, Orbitcom indicates that it lacks the resources to develop this information, but does not meet the requirements of the Commission's rules.

As an interexchange carrier, AT&T is required to pay intrastate switched access fees to local exchange carriers, such as Orbitcom, for toll calls that originate and terminate in the state. The amount paid by AT&T for switched access calls is a significant cost component in its provision of interexchange services. Thus, AT&T has a substantial financial interest in ensuring that access fees are reasonable, accurate and consistent with the public interest. AT&T has participated in other similar dockets and has consistently advocated that it will not object to a local exchange carrier's switched access rate setting so long as they remain at or below Qwest's rates. Here, Orbitcom's proposed rates would greatly exceed those of Qwest. As such, granting a waiver to Orbitcom of the Commission's rule that requires company-specific, cost-based switched access rates and allowing it to charge switch access rates of \$0.115 would inevitably have an adverse impact on AT&T and its customers.

AT&T does not have control over who the local end user chooses as its exchange carrier and so AT&T is thus subjected to costs driven by the choice of the consumer. Unbeknownst to the consumer, his act of choosing Orbitcom over the incumbent Qwest in the same location, significantly increases the switched access fees which AT&T must pay to provide service to that consumer. If continued unchecked, the unsubstantiated establishment of such rates and charges necessarily would have an impact on AT&T's business in South Dakota, how it serves its customers in South Dakota, and how it continues to provide competitive services to the citizens of this state.

AT&T has a strong and substantiated interest in ensuring that CLEC and LEC switched access rates remain at or below the current Qwest rate.

WHEREFORE AT&T requests that it be granted intervention status in this proceeding.

Respectfully submitted this 21st day of November, 2008.

OLINGER, LOVALD, MCCAHERN & REIMERS, PC

/s/ filed electronically

William M. Van Camp

PO Box 66

Pierre, SD 57501

Telephone: (605) 224-8851

Attorneys for AT&T Communications of the Midwest, Inc.

CERTIFICATE OF SERVICE

William M. Van Camp hereby certifies that on the 21st day of November 2008, he electronically filed, a true and correct copy of the Petition for Intervention by AT&T Communications of the Midwest, Inc., to the Petition of Orbitcom, Inc., for an Exemption in the above-captioned action to the following at their last known email addresses, and by U. S. Mail, first-class postage thereon prepaid, a true and correct copy of the above-referenced document to Meredith Moore as counsel for Orbitcom, Inc.:

Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 E Capitol
Pierre SD 57501
patty.vangerpen@state.sd.us

Karen E. Cremer
Staff Attorney
SD Public Utilities Commission
500 E Capitol
Pierre SD 57501
karen.cremer@state.sd.us

Jon Thurber
Staff Analyst
SD Public Utilities Commission
500 E Capitol
Pierre SD 57501
jon.thurber@state.sd.us

Meredith Moore
Attorney at Law
Cutler & Donahoe LLP
100 No. Phillips Avenue 9th Floor
Sioux Falls SD 57104-6725
meredithm@cutlerlawfirm.com

/s/ filed electronically
William M. Van Camp
Olinger, Lovald, McCahren, and Reimers P.C.
PO Box 66
Pierre, South Dakota 57501