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June 17, 2009

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**VIA EMAIL TO [PATTY.VANGERPEN@STATE.SD.US](mailto:PATTY.VANGERPEN@STATE.SD.US)**

Ms. Patricia Van Gerpen  
South Dakota Public Utilities Commission  
Capitol Building, 1st Floor  
500 East Capitol Avenue  
Pierre, SD 57501-5070

RE: *TC08-135*

*In the Matter of the Complaint of Orbitcom, Inc. Against Verizon Business Network  
Services, Inc. for Unpaid Access Charges*

Dear Ms. Van Gerpen:

Enclosed for filing in the above matter, please find the Amended Complaint. Thank you for your assistance. Should you have any questions or concerns, please do not hesitate to contact me.

Best regards.

Sincerely,

CUTLER & DONAHOE, LLP



Meredith A. Moore  
For the Firm

MAM/cmc  
Enclosure

**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

**AMENDED COMPLAINT**

COMES NOW OrbitCom, Inc., by and through its undersigned counsel of record, and for its Complaint against MCI Communications Services, Inc. d/b/a Verizon Business Services and Teleconnect Long Distance Services & Systems Company d/b/a Telecom\*USA, hereby states and alleges:

**NATURE OF THE CASE**

1. OrbitCom, Inc. ("OrbitCom") brings this action seeking recovery on an account because of the failure of MCI Communications Services, Inc. d/b/a Verizon Business Services and Teleconnect Long Distance Services & Systems Company d/b/a Telecom\*USA (collectively referred to as "Verizon") to pay OrbitCom the amounts invoiced pursuant to its state tariff for the provisioning of telephone access services. This Complaint is filed pursuant to A.R.S.D. 20:10:01:02.03 and SDCL Chapter 49-13.

**THE PARTIES**

2. OrbitCom is a corporation organized and existing under the laws of the State of South Dakota, with its principal place of business in Sioux Falls, South Dakota. OrbitCom is a competitive local exchange carrier ("CLEC") engaged in the provisioning of telephone exchange service in the State of South Dakota pursuant to a certificate of convenience and necessity

granted by the South Dakota Public Utilities Commission (the "Commission"). OrbitCom provides local originating and terminating and switched access services. The address and relevant telephone and facsimile numbers for OrbitCom are:

Brad Van Leur, President  
OrbitCom, Inc.  
1701 North Louise Avenue  
Sioux Falls, SD 57107  
Telephone: (605) 977-6900

3. Upon information and belief, MCI Communications Services, Inc. d/b/a Verizon Business Services is a corporation organized and existing under the laws of the State of Delaware and one which has been authorized to transact business in the State of South Dakota. Teleconnect Long Distance Services & Systems Company d/b/a Telecom\*USA is a corporation organized and existing under the laws of the State of Iowa and one which has been authorized to transact business in the State of South Dakota. In this matter, both corporations are represented by:

David A. Gerdes  
May, Adam, Gerdes & Thompson LLP  
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Pierre, SD 57501-0160  
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-and-

Thomas F. Dixon  
Assistant General Counsel  
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[thomas.f.dixon@verizon.com](mailto:thomas.f.dixon@verizon.com)

## FACTUAL BACKGROUND

4. Complainant OrbitCom is a CLEC that provides telephone and other services through wires to the businesses of its customers. Complainant also provides originating and terminating and access services to long distance companies, which services allow long distance companies to transmit long distance calls even though they do not own or lease the telephone lines that connect the customer to which the long distance call is directed.

5. OrbitCom has filed with this Commission a tariff which establishes its rate for intrastate switched access. OrbitCom's tariff was originally issued on August 6, 2002, in the name of VP Telecom, Inc. This same tariff has remained in effect to the present.

6. Respondent Verizon is an interexchange carrier ("IXC") that provides long distance service in South Dakota.

7. OrbitCom provides originating access services to Verizon for those customers who selected Verizon as their interexchange carrier. Verizon utilized the access services provided by OrbitCom pursuant to the terms of its tariffs.

8. OrbitCom has billed Verizon in the name of MCI Worldcom on a monthly basis for use of its service in accordance with the applicable rates set forth in its tariff filed with this Commission.

9. In approximately February 2008, Verizon ceased making payment on OrbitCom's billing statements which statements included tariffed charges for intrastate traffic despite continuing to use OrbitCom's facilities to access OrbitCom customers. Attached hereto as Exhibit 1 is an itemization of those charges for intrastate traffic for which OrbitCom has billed Verizon since February 2008 and for which Verizon has failed and refused, and continues to fail and refuse to pay OrbitCom. The total amounts due and owing from Verizon to OrbitCom for

said intrastate traffic as of the date of this Complaint are also subject to applicable interest, fees and penalties.

10. Verizon has failed and refused, and continues to fail and refuse to pay the charges set out in OrbitCom's billing statements although demand for said payments has been made by OrbitCom. As a result of such failure, Verizon is indebted to OrbitCom in those amounts set forth in Exhibit 1, plus applicable interest, fees and penalties.

11. Verizon has knowingly and unlawfully refused to pay OrbitCom's invoices.

**FIRST CAUSE OF ACTION  
BREACH OF CONTRACT**

12. OrbitCom re-alleges paragraphs 1 through 11 above and incorporates them as if set forth fully herein.

13. Pursuant to state regulations, OrbitCom has filed a tariff with this Commission, which tariff has the force and effect of law, the terms of which constitute a valid and binding contract.

14. OrbitCom has invoiced Verizon pursuant to rates as set forth in its state tariff as outlined above.

15. Defendant has failed and refused to pay those amounts invoiced to it by OrbitCom, thus constituting a breach of the applicable tariff and therefore a breach of contract.

**SECOND CAUSE OF ACTION  
UNJUST ENRICHMENT**

16. OrbitCom re-alleges Paragraphs 1 through 15 above and incorporates them as if set forth fully herein.

17. OrbitCom provided access services for the Defendant through the origination and termination of long distance calls. Such services conferred a benefit upon Verizon because

Verizon was able to collect fees from its customers for providing long distance service. Verizon has not paid OrbitCom for providing such services.

18. It would be inequitable for Verizon to retain the benefit of the services provided by OrbitCom without properly compensating OrbitCom for the value of the services provided.

19. Pursuant to the equitable doctrines of quantum meruit and unjust enrichment, OrbitCom is entitled to payment from OrbitCom for the amount of the invoices.

WHEREFORE, Plaintiff requests judgment against Defendant as follows:

1. For those sums as set forth in Exhibit 1, plus applicable interest, fees and penalties, and any unpaid amounts to date of hearing.
2. For pre-judgment interest, post-judgment interest, and the costs of this action, including attorneys' fees and expenses.
3. For expedited relief given the significant impact of Verizon's continued refusal to pay upon OrbitCom.
4. For such other and further relief as this Commission deems just and equitable.

Dated this 17<sup>th</sup> day of June, 2009.

CUTLER & DONAHOE, LLP  
Attorneys at Law

  
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Sioux Falls, SD 57104-6725  
Telephone: (605) 335-4950  
[meredithm@cutlerfirm.com](mailto:meredithm@cutlerfirm.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 17th day of June, 2009, upon the following:

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

## EXHIBIT 1

### INTRASTATE AMOUNTS INVOICED TO MCI COMMUNICATIONS SERVICES, INC. DBA VERIZON BUSINESS SERVICES AND TELECONNECT LONG DISTANCE SERVICES & SYSTEMS COMPANY D/B/A TELECOM\*USA

	BAN #	Intrastate Charges
South Dakota	8080SD0222	\$87,741.88
South Dakota	8080SD0555	\$393,653.71
South Dakota	8080SD0987	\$0.25

South Dakota Total	\$481,395.84
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\*Amounts identified above reflect those amounts invoiced to and not paid by Verizon for intrastate charges from February 2008 through March 2009