

**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 MOTION TO COMPEL AND MOTION TO RESET HEARING DATE
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MCI Communications Services, Inc. d/b/a Verizon Business Services and Teleconnect Long Distance Services & Systems Company d/b/a Telecom*USA (referred to collectively as “Verizon”) move the Commission to order OrbitCom, Inc. (“OrbitCom”) to fully respond to Verizon’s Data Request 048 regarding the production of certain call detail records (“CDRs”). Verizon further requests that the hearing date of September 9, 2009 be vacated and reset to a later date after OrbitCom produces the requested CDRs and after Verizon has had a reasonable opportunity to review the requested information. Finally, Verizon requests that it be permitted to supplement its prefiled direct testimony of Leslie Freet that was filed on August 7, 2009, if necessary, to address any new information that Verizon learns through its examination of the CDRs.

Verizon issued Data Request 048 on July 8, 2009. Since then, the undersigned has had numerous telephonic meet and confer sessions with OrbitCom’s counsel, Meredith Moore, and exchanged multiple correspondence regarding Verizon’s request for CDRs. However, OrbitCom has still not provided a full, complete and satisfactory

response. While OrbitCom's responses to other data requests have also been unsatisfactory, Verizon's motion is narrowly limited to a single data request, which seeks information that is central to the issues in this proceeding.

ARGUMENT

1. Section 3.4 of VP Telecom (OrbitCom) Tariff No. 1 states:

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). (Emphasis supplied.)

2. Verizon has repeatedly requested Call Detail Records ("CDRs") from OrbitCom since February 2008 in order to demonstrate whether OrbitCom was correctly identifying intrastate and interstate calls, and applying the correct jurisdictional rate to switched access traffic that it billed Verizon. (See the following exhibits attached Direct Testimony of Leslie Freet filed August 7, 2009: Exhibit LF-3, February 19, 2008 e-mail; Exhibit LF-5, March 4, 2008 e-mail; Exhibit LF-6, July 11, 2008 e-mail; and Exhibit LF-7, July 11, 2008 e-mail.) Verizon made a formal request for CDRs during the discovery process, by asking a specific, narrowly data request that is described below.

3. The CDRs that Verizon has repeatedly requested over the past 18 months are the best, most reliable evidence of the jurisdiction of the traffic at issue. Through its complaint, OrbitCom seeks payment of its invoiced charges, and it has the burden of proving that its charges are valid. However, it has steadfastly refused to produce the

information needed to support its position. Its refusal to provide the requested call detail records precludes Verizon from presenting a full and fair defense and showing that OrbitCom's billed charges are not accurate and have resulted in overcharges to Verizon.¹ The CDRs that Verizon has requested will determine whether OrbitCom had sufficient call detail to determine the correct jurisdiction of originating and terminating access minutes that it billed Verizon and verify whether OrbitCom's invoices to Verizon are accurate.

4. The Call Detail Records that Verizon seeks are industry standard. As a UNE-P provider, OrbitCom has an agreement with Qwest, the operator of the underlying local exchange network in South Dakota, pursuant to which Qwest provides OrbitCom "usage information necessary for [OrbitCom] to bill for InterLATA and IntraLATA Exchange Access to the toll carrier These Exchange Access records will be provided as Category 11 EMI records."² The agreement states further that "Qwest will provide daily usage feed records" which are commonly referred to as "DUF" records, and that "Daily usage feed records will be provided as Category 01 or Category 10 EMI records."³ OrbitCom has admitted that, during the period covered by Verizon's data request, OrbitCom obtains "call data (EMI records) supplied by Qwest, and that it receives DUF records from Qwest.

5. On July 8, 2009, Verizon issued Data Request No. 048, which requested:

¹ Call detail records are clearly relevant. In this proceeding, Verizon has explained its objections to the amounts it has been charged. OrbitCom does not follow the procedures set forth in VP Telecom Tariff No. 1 to properly identify the jurisdiction of switched access traffic. Instead, OrbitCom arbitrarily categorizes an unreasonably high percentage of the traffic to be "intrastate" and assesses its higher intrastate access charges, which are approximately 10 times higher than the amounts it bills for interstate service, on those calls.

² Qwest Local Services Platform Agreement ("QLSPA"), entered into by OrbitCom on December 14, 2006, § 2.3.2.

³ *Id.* at §§ 2.3.3 and 2.3.4.

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 8080SD0222.⁴

6. In response to this data request, OrbitCom refused to provide Verizon any of the requested call detail records. A copy of OrbitCom's Objection and response is attached hereto as Exhibit 1.

6. OrbitCom subsequently provided (on a confidential basis), a "pdf" file that purported to contain "a sampling of call detail information" for three days. This information, provided on August 5, 2009, in partial response to Verizon's Data Request 048 was incomplete in material respects. In addition, the information was not presented in a usable format that would permit Verizon to perform any meaningful analysis.

7. In particular, the "call detail" did not include the full ten-digit telephone numbers associated with the calls. This is because OrbitCom removed the last four digits for all of the calls contained in the original (EMI or DUF) call detail records before providing the sample data to Verizon. Without that essential information (the full 10-digit number) Verizon is not able to compare the sample data with its own switch records. Such a comparison would enable Verizon to check usage totals and the jurisdiction of billed access traffic with data about the same calls that is available through its own switch

⁴ The "BAN" or Billing Account Numbers refer to the two Verizon entities that are parties to this proceeding. Although the parties' billing dispute extends back to mid-2007, Verizon limited its request to CDRs for traffic that OrbitCom billed in only in the most recent months. This is because OrbitCom has asserted that CDRs for earlier periods were "purged" or it otherwise does not have the information.

records. Verizon frequently conducts such comparisons to resolve billing questions and disputes.

8. The reasons why Verizon requires CDRs to include the full 10-digits of telephone numbers are straightforward. Because OrbitCom is a UNE-P provider, all of the telephone numbers associated with its end users are assigned in industry data bases (the LERG, or Local Exchange Routing Guide) to Qwest's end offices, and are identified as residing in those switches.⁵ There is no publicly available information that allows Verizon, as an interexchange carrier, to distinguish between (a) a telephone number assigned in LERG to Qwest for use by its own end users, and (b) a telephone number assigned to OrbitCom, or to any other UNE-P provider whose customers may be served through the same Qwest local end office. Rather, all traffic that originates in the Qwest-owned local switch and that reaches Verizon's long distance network is indistinguishable. Verizon has no way of knowing whether the call originated from a Qwest subscriber, an OrbitCom end user, or from any other end user served by that switch. As a long distance provider, Verizon obtains certain call records from the local network provider, in this case Qwest, but those records do not differentiate between calls that are originated by, or routed to, end users that subscribe to individual UNE-P providers. Thus, Verizon's records do not enable it to distinguish between an interexchange call (a) that is originated by a Qwest end user and is routed through Qwest's switch and (b) one that is originated by an OrbitCom end user and is routed through Qwest's switch.

9. The only way in which Verizon may examine OrbitCom specific-traffic and compare it with its own switch records is by reviewing the last four digits of the

⁵ If OrbitCom instead were a facilities-based provider with its own switches, telephone numbers would be assigned to and associated with its switches, and Verizon would not require this additional detail.

telephone number (which would identify the number as being assigned to OrbitCom). This would enable Verizon to distinguish OrbitCom-specific traffic from all other traffic that passes through Qwest's switches and is routed to or from Verizon's long distance network. Thus, OrbitCom's act of stripping off the last four digits from call records in the sample data it provided Verizon prevented Verizon from conducting any meaningful comparison of OrbitCom's data with its own internal network records.

9. OrbitCom has also objected to providing the call detail records it receives from Qwest on the grounds that the DUF files contain information about both Verizon and other carriers. This is correct, but that is not a reasonable basis for refusing to provide call detail record information that is specific to Verizon. CDR files are received from Qwest in an electronic format, and Verizon understands that Verizon-specific records may be easily separated from other carriers' records by limiting the carrier identification code ("CIC") field to Verizon CICs (555 and 222). In fact, other local exchange carriers provide Verizon call detail information that only pertains to Verizon Business on a regular basis without any difficulty. OrbitCom has not provided any valid explanation why it cannot perform a basic sorting function that many other carriers are routinely capable of performing. Indeed, it would appear that OrbitCom must, at some point, segregate the call detail records by individual carriers in order to be able to bills them individually. Moreover, sorting the call records in this manner is a far simpler and less labor-intensive task than removing the last four digits from each call record, as OrbitCom has done.

10. OrbitCom has also refused to provide CDRs on the basis of unspecified "CPNI concerns." This, too, is an invalid basis for refusing to respond to Verizon's

reasonable data request. Under applicable CPNI statutes and rules, telecommunications carriers routinely exchange call detail information without violating any customers' privacy rights. For example, under federal law, a carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use that information only for such purpose, and shall not use such information for its own marketing efforts.⁶ In addition, nothing in the federal Telecommunications Act prohibits a telecommunications carrier from using, disclosing, or permitting access to CPNI obtained from its customers, either directly or indirectly through its agents to initiate, render, bill, and collect for telecommunications services.⁷ Verizon's request for CDRs is consistent with, and does not conflict with, any of these requirements. In addition, Verizon and OrbitCom have entered into a confidentiality agreement in this proceeding, which addresses how confidential information may be used only in this proceeding. The confidentiality agreement restricts access to certain individuals, and prohibits its use for marketing or other competitive purposes. None of the Verizon employees that have signed, and are thus subject to, the confidentiality agreement are involved in any sales or marketing activity, and are not in a position to use the call data records requested for any improper competitive purpose. Thus, there are ample protections in place to preserve all of OrbitCom's legitimate confidentiality concerns.

11. As demonstrated above, Verizon's request for a limited set of call detail records is reasonable. The records it seeks contain information that is necessary to a fair

⁶ 47 U.S.C. § 222(b).

⁷ 47 U.S.C. § 222(d)(1).

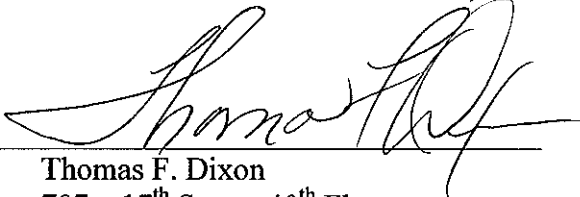
resolution of this proceeding. Verizon seeks CDRs that do not have any Verizon-related data redacted, or otherwise modified or manipulated.

WHEREFORE, Verizon requests this motion be granted, that OrbitCom be compelled to respond fully, completely and promptly to Verizon Data Request 048, and that OrbitCom be ordered to provide the requested CDRs, in manner so that they are not redacted, otherwise modified or manipulated.

Verizon also requests that because of OrbitCom's failure to provide the requested CDRs, and the delays that have occurred as a result, the hearing be vacated and reset to a later date in order to allow Verizon to receive and fully analyze the CDRs. Finally, Verizon requests that it be permitted to supplement its direct testimony, if necessary, after it has had a reasonable opportunity to review the requested CDRs.

Dated: August 20, 2009

MCI COMMUNICATIONS SERVICES, INC.

By: 

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VERIFICATION

I, LESLIE FREET, being over the age of eighteen do declare and state under penalty of perjury that the factual statements made in Verizon's Motion to Compel and Motion to Reset Hearing dated August 20, 2009, as well as in my Direct Testimony filed in this docket on August 7, 2009, are true and accurate to my best of my knowledge and belief.

Dated: August 20, 2009



Leslie Freet

EXHIBIT 1

To

Motion to Compel

August 20, 2009

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.**
- (g) **OrbitCom is in a position where it acts as its own IXC. In addition to selling the customer local phone service, OrbitCom offers packages of long distance services with its contracts. OrbitCom's commercial agreement with Qwest**

requires that OrbitCom choose both the PIC and the LPIC for the customer and enter them into Qwest's system. OrbitCom fulfills its obligations to the customer and to Qwest by contracting for wholesale long distance services from carriers. These services are billed in bulk to OrbitCom who then bills the customer. Under these circumstances, if OrbitCom uses one carrier for the PIC and a different carrier for the LPIC in South Dakota, the carrier used for the LPIC will see very nearly all of the originating traffic from OrbitCom end users as Intrastate, since the state and the LATA are identical with the exception of a few border towns. If Verizon is chosen as the LPIC only, virtually 100% of the originating traffic will be intrastate. For terminating traffic and for originating traffic where a carrier such as Verizon is used for both the PIC and the LPIC, OrbitCom applies a default 32/68 PIU --32 interstate 68 intrastate—to these calls as allowed for in its tariff. It has developed this 32/68 PIU from call patterns and experience.

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 - 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 IXC for that element. As a 100% UNEP provider, Orbitcom is entitled to bill only elements that it actually provides to Verizon Business depending on whether the traffic is direct routed, tandem routed or routed through a remote end office.

We are amending our initial dispute to reflect this methodology. For the end offices which Orbitcom is billing VZB for, VZB has DEOT's with 86.8% of these end offices. This traffic is direct routed. The remaining 13.2% of billed traffic would be tandem routed, unless routed through a remote end office. We have rerated Orbitcom's billed Local Switching minutes of usage with a weighted aggregate which is determined by whether the traffic is DEOT routed, Tandem Routed or Host/Remote Routed to determine which elements are applicable. All individual elements excluding Local Switching billed prior to the 7/12/07 invoice cycle are disputed at 100% because these elements are included in the weighted aggregate rate. The total amount now disputed is \$283,207.41. Please review the attached dispute and contact me if you have any questions.

Also, when might we expect the CDR's I requested for following BAN's 8080SD0222, 8080SD0555, 915AWD0222 and 915AWD0555 that support the 12/12/07 invoices?

Can you also provide an explanation for the PIU shift that occurred on the 7/07 invoice? We were being billed consistently a PIU of 34% prior to 7/07 and then it dropped to less than 1%. How does Orbitcom calculate PIU?

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

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 20th day of August, 2009, upon the following:

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terri.labriebaker@state.sd.us

Meredith A. Moore

CUTLER & DONAHOE, LLP

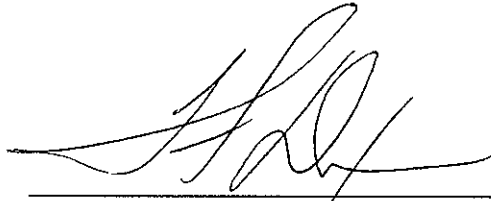
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