

**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 CORRECTED 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. Since February 2008, Verizon has repeatedly requested Call Detail Records ("CDRs") from OrbitCom in order to verify 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.) Following the filing of the complaint herein, Verizon made a formal request for CDRs during the discovery process, by asking a specific, narrowly-tailored 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 switched access 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 demonstrate that its bills are accurate. 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 help 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.

¹ Call detail records are clearly relevant to the current dispute. In this proceeding, Verizon has explained its objections to the amounts it has been charged. Its testimony shows that 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.

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

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.

7. 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.

8. 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.

9. The reason why Verizon requires CDRs to include the full 10-digits of telephone numbers is 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.

10. 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 and had 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.

11. 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 bill 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.

12. 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 they 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.

13. As demonstrated above, Verizon's request for a limited set of call detail records is reasonable, whereas OrbitCom's objections for producing the information are not. The records Verizon seeks contain information that is necessary to a fair resolution

⁶ 47 U.S.C. § 222(b).

⁷ 47 U.S.C. § 222(d)(1).

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 the manner requested and 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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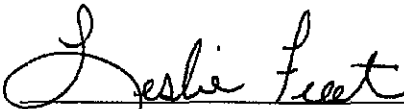
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VERIFICATION

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