

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

IN THE MATTER OF THE COMPLAINT)	TC08-135
OF ORBITCOM, INC. AGAINST VERIZON)	
BUSINESS NETWORK SERVICES, INC.)	ANSWER TO
FOR UNPAID ACCESS CHARGES)	COMPLAINT

MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”), by and through its undersigned counsel of record, and pursuant to A.R.S.D. 20:10:01:09,¹ hereby files its answer to the above-referenced complaint filed by Orbitcom, Inc. (“Orbitcom”) on or about November 19, 2008.

ANSWER TO MATERIAL ALLEGATIONS IN THE COMPLAINT

Paragraph 1. No response is necessary to the statement that Orbitcom is bringing this action. Verizon asserts that “Verizon Business Network Services, Inc.” is not a legal entity, and that MCI Communications Services, Inc. d/b/a Verizon Business Services is the correct legal name for the interexchange carrier (“IXC”) that provides long distance service in South Dakota. Based on information and belief, Verizon denies that Orbitcom has filed a state tariff in South Dakota. Verizon denies further that it has failed to pay Orbitcom amounts properly invoiced for the provision of telephone access services in South Dakota. Verizon denies that the complaint was properly filed pursuant to A.R.S.D. 20:10:01:07.01, because that rule governs the content of a “consumer complaint,” and a “consumer complaint” is defined in A.R.S.D. 20:10:01:01.01 as “any complaint other than a complaint filed by a telecommunications company, ” which is what Orbitcom purports to be.

¹On December 5, 2008, counsel for Orbitcom consented to a 14-day extension of time within which Verizon was to answer the complaint. Accordingly, this answer is timely filed.

Paragraph 2. Verizon has no knowledge or sufficient information to form a belief as to the truth of allegations about Orbitcom's legal status or business contained in this paragraph, and therefore denies same. No response is necessary to the statement about Orbitcom's contact information.

Paragraph 3. Verizon denies the allegations in this paragraph as they pertain to Verizon Business Network Services, Inc., which does not exist. Verizon asserts that 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 is authorized to transact business in South Dakota. For purposes of this proceeding, Verizon's legal counsel are:

David A. Gerdes
May, Adam, Gerdes & Thompson LLP
503 South Pierre Street
P.O. Box 160
Pierre, SD 57501-0160
Telephone: (605) 224-8803
Facsimile: (605) 224-6289
dag@magt.com

and

Thomas F. Dixon
Assistant General Counsel
Verizon
707 – 17th Street, #4000
Denver, CO 80202
Telephone: (303) 390-6206
Facsimile: (303) 390-6333
thomas.f.dixon@verizon.com

Paragraph 4. Verizon has no knowledge or sufficient information to form a belief as to the truth of allegations about Orbitcom's business contained in this paragraph, and therefore denies same.

Paragraph 5. Based on information and belief, Verizon denies that Orbitcom has filed with the Commission a tariff that establishes its rates for intrastate switched access. Verizon asserts that on two occasions, it asked Orbitcom to provide it with copies of its intrastate and interstate switched access tariffs. Orbitcom ignored the requests as to any interstate tariff and declined to provide any of its intrastate tariffs, but told Verizon its tariffs were on file with state Public Utilities Commissions and that Verizon could obtain copies from those agencies. Verizon asserts that it subsequently obtained a copy of Tariff No. 1 for “VP Telecom, Inc.” The cover sheet for that company’s tariff shows a business address of 1701 N. Louise Ave., Sioux Falls, SD 57107, which is the same address shown as Orbitcom’s business address in paragraph 2 of the complaint. Verizon asserts, however, that despite its efforts, it has not obtained a tariff in the name of Orbitcom, and on that basis denies that Orbitcom has filed with the Commission a tariff which establishes its rate for switched access service in South Dakota.

Paragraph 6. Verizon denies the allegations in this paragraph as they pertain to Verizon Business Network Services, Inc., which does not exist. Verizon asserts that MCI Communications Services, Inc. d/b/a Verizon Business Services is an interexchange carrier that provides long distance service. It denies that Verizon Business Network Services or MCI Communications Services, Inc. d/b/a Verizon Business Services acquired MCI Worldcom in approximately July 2006.

Paragraph 7. Verizon admits that Orbitcom provides originating switched access service to Verizon for certain, but not all, customers who selected Verizon as their interexchange carrier. Based on information and belief, Verizon denies that Orbitcom has effective interstate and intrastate tariffs to provide switched access services in South Dakota, and therefore denies that Orbitcom provided it services pursuant to the terms of its tariffs.

Paragraph 8. Verizon denies allegations in this paragraph relating to its corporate name and acquisition. Verizon admits that Orbitcom has sent it bills, but denies that Orbitcom has filed a tariff with the Commission or that it has billed Verizon in accordance with its purported tariff.

Paragraph 9. Verizon admits that in February 2008, it began disputing bills issued to it by Orbitcom, requested that Orbitcom issue credits for amounts that Orbitcom had improperly billed it and that Verizon had overpaid, and ceased making some payments until those disputes could be resolved and the appropriate credits were issued. Verizon does not understand the allegation that Orbitcom's statements "included intrastate and switched access charges," and therefore denies same. Verizon asserts that it has made some payments, and thus denies that it has not paid Orbitcom all of the amounts shown on the CABS invoices included in Exhibit 1 to the Complaint. To the extent the CABS statements in Exhibit 1 to the Complaint include charges for interstate service and the complaint seeks payment for such charges, Verizon asserts that this Commission lacks the jurisdiction to address those allegations. Verizon asserts further that Orbitcom has inaccurately and improperly classified interstate traffic as intrastate traffic, and therefore has not properly billed such calls. Verizon also asserts that this Commission lacks the jurisdiction to address allegations with respect to such interstate traffic. Accordingly, Verizon denies that it owes Orbitcom the amounts shown on the invoices included in Exhibit 1 to the Complaint, and denies that any interest, fees or penalties are owed.

Paragraph 10. To the extent the invoices include charges for interstate services and interstate traffic that Orbitcom inaccurately and improperly classified as intrastate services and intrastate traffic, Verizon asserts that this Commission lacks the jurisdiction to address those allegations. Verizon asserts that it has made numerous requests that Orbitcom provide it with

appropriate documentation to support the validity of its switched access charges, and that Orbitcom has refused to do so. Verizon denies the remaining allegations in this paragraph.

Paragraph 11. To the extent the invoices include charges for interstate services and interstate traffic that Orbitcom has inaccurately and improperly classified as intrastate services and intrastate traffic, Verizon asserts that this Commission lacks the jurisdiction to address those allegations. To the extent this paragraph sets forth a legal conclusion, no response is necessary. Verizon denies the allegations in this paragraph.

Paragraph 12. Verizon incorporates by reference its answers to paragraphs 1 through 11 of the complaint.

Paragraph 13. For the reasons set forth in paragraph 5 above, based on information and belief, Verizon Business denies that Orbitcom has filed a tariff with the Commission in South Dakota pursuant to state regulations. To the extent this paragraph sets forth a legal conclusion, no response is necessary.

Paragraph 14. Verizon denies the allegations in this paragraph.

Paragraph 15. To the extent this paragraph sets forth a legal conclusion, no response is necessary. Verizon denies the remaining allegations in this paragraph.

Paragraph 16. Verizon incorporates by reference its answers to paragraphs 1 through 15 of the complaint.

Paragraph 17. Verizon admits that Orbitcom provided access services and that Verizon collects fees from its customers for providing long distance service. To the extent the allegation addresses payment for interstate service and interstate traffic that Orbitcom inaccurately and improperly classified as intrastate service and intrastate traffic, Verizon asserts that this Commission lacks the jurisdiction to address those allegations. Verizon asserts that Orbitcom

has not honored Verizon's requests that Orbitcom provide it with appropriate documentation to support the validity of its switched access charges. Verizon denies the remaining allegations in this paragraph.

Paragraph 18. To the extent this paragraph sets forth a legal conclusion, no response is necessary. Verizon denies the remaining allegations in this paragraph.

Paragraph 19. To the extent this paragraph sets forth a legal conclusion, no response is necessary. Verizon denies the remaining allegations in this paragraph.

Paragraphs 1 through 4, on page 4: To the extent Orbitcom seeks relief with respect to charges for interstate services and interstate traffic that Orbitcom inaccurately and improperly classified and billed as intrastate services or traffic, Verizon asserts that this Commission lacks the jurisdiction to address those allegations. Verizon denies that Orbitcom is entitled to any of the relief requested.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. The complaint should be dismissed because the named defendant does not exist.

Second Affirmative Defense

2. The complaint fails to state a claim upon which relief may be granted.

Third Affirmative Defense

3. The Commission lacks jurisdiction to adjudicate disputes over charges for interstate telecommunications services.

Fourth Affirmative Defense

4. Orbitcom has inaccurately classified interstate traffic as intrastate traffic and improperly assessed intrastate charges on such interstate traffic. The Commission lacks jurisdiction to grant any relief with respect to such interstate traffic.

Fifth Affirmative Defense

5. Based on information and belief, Orbitcom has not filed an intrastate switched access tariff with the Commission as required by S.D.C.L. 49-31-19 and A.R.S.D. 20:10:27:06 and 20:10:27:07 and, therefore, has no legal authority under which to bill Verizon for intrastate switched access service in South Dakota.

Sixth Affirmative Defense

6. To the extent Orbitcom purports to provide service pursuant to Tariff No. 1 of VP Telecom, Inc., Verizon alleges, on information and belief, that Orbitcom has not obtained the necessary authorization to do so.

Seventh Affirmative Defense

7. To the extent Orbitcom purports to provide service pursuant to Tariff No. 1 of VP Telecom, Inc., it has failed to comply with the provisions of that tariff.

Eighth Affirmative Defense

8. To the extent Orbitcom purports to provide service pursuant to Tariff No. 1 of VP Telecom, Inc., it has failed to comply with the provisions of that tariff that govern the manner in which the jurisdiction of switched access traffic is to be determined, and therefore is not entitled to any relief.

Ninth Affirmative Defense

9. Orbitcom is not entitled to any relief because it failed to evaluate call detail available from the switches used to provide switched access service to determine the jurisdiction of originating and terminating access minutes of use and to render bills consistent with that call detail.

Tenth Affirmative Defense

10. Orbitcom is not entitled to any relief because it has improperly manipulated and failed to accurately apply appropriate Percent Interstate Usage (“PIU”) factors to switched access traffic for which it has billed Verizon.

Eleventh Affirmative Defense

11. Orbitcom is not entitled to any relief because it has failed to provide appropriate documentation to validate the jurisdictional nature of traffic for which it has submitted invoices to Verizon.

Twelfth Affirmative Defense

12. Orbitcom is not entitled to any relief because it failed to investigate the merits of Verizon’s billing disputes and to resolve them in good faith.

Thirteenth Affirmative Defense

13. Verizon has paid Orbitcom some of the amounts shown on the CABS invoices included in Exhibit 1 to the Complaint and, thus, Orbitcom is not entitled to recover those amounts in this proceeding.

Fourteenth Affirmative Defense

14. Orbitcom’s claims are barred in whole or in part by waiver, estoppel and/or unclean hands.

Fifteenth Affirmative Defense

15. The Commission is not authorized to award attorneys' fees and expenses or other costs in a complaint proceeding.

VERIZON'S COUNTER-CLAIM

1. Orbitcom has failed to properly identify the jurisdiction of certain switched access traffic for which it has billed Verizon.
2. Orbitcom has improperly billed Verizon for certain switched access traffic and Verizon has paid Orbitcom amounts in excess of that which Orbitcom is legally entitled to collect.
3. Orbitcom has improperly retained the amounts Verizon has overpaid, and Orbitcom has refused to refund or credit the amounts that Verizon has overpaid it.

WHEREFORE, Verizon requests judgment against Plaintiff for amounts that Orbitcom has improperly collected, withheld, refused to refund and/or credit to Verizon's account, plus interest; adjudication that Orbitcom take nothing by its complaint and that it therefore be dismissed; and for such other and further relief as this Commission deems just and reasonable.

Dated this 22nd day of December, 2008.

MAY, ADAM, GERDES & THOMPSON

BY: 

David A. Gerdes
May, Adam, Gerdes & Thompson LLP
503 South Pierre Street
P.O. Box 160
Pierre, SD 57501-0160
Telephone: (605) 224-8803
Facsimile: (605) 224-6289
dag@magt.com

CERTIFICATE OF SERVICE

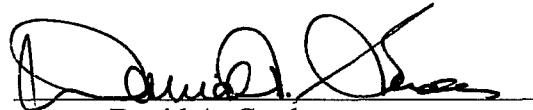
David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 22nd day of December, 2008, he filed electronically and served by e-mail thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
patty.vangerpen@state.sd.us

Karen E Cremer
Staff Attorney
South Dakota Public Utilities Commission
karen.cremer@state.sd.us

Terri Labrie Baker
Staff Analyst
South Dakota Public Utilities Commission
terri.labriebaker@state.sd.us

Meredith A. Moore
Cutler & Donahoe
meredithm@cutlerlawfirm.com

A handwritten signature in black ink, appearing to read "David A. Gerdes", written over a horizontal line.

David A. Gerdes