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 PRE-FILED TESTIMONY SUPPLEMENTAL REBUTTAL MICHAEL POWERS

SUPPLEMENTAL REBUTTAL TESTIMONY OF MICHAEL POWERS

ON BEHALF OF ORBITCOM, INC.

Q. Please state your name, employer and business address.

A. My name is Michael Powers. I am the Vice-President and Chief Financial Officer of OrbitCom, Inc. ("OrbitCom"), formerly known as VP Telecom, Inc. My business address is 1701 North Louise Avenue, Sioux Falls, South Dakota, 57107.

Q. You have previously provided testimony in this matter?

A. Yes, that is correct.

Q. What is the purpose of your testimony in this supplemental rebuttal response?

A. My purpose is to address certain items and issues brought up in the supplemental testimony of Leslie Freet filed on behalf of Verizon. The first issue will be that of the CIC 222 records, the second will be that of the PIU calculation, and the third issue will be that of the tandem switching charges.

Q. What is the issue with the CIC 222 that you reference?

EXHIBIT 3

A. There are really two sub-issues here. The production of the information and the results of the production.

Q. What is the issue with the production of the information?

A. **Initially,** the information was not provided to Verizon on CIC 222 as the CIC 222 carries less than 30% of OrbitCom's terminating traffic, and working within the time frame and technical constraints at hand, OrbitCom produced three week days worth of CDR's for the CIC 555 carrying the majority of the Verizon traffic that OrbitCom bills. In the discussions leading up to the filing of Verizon's Motion to Compel, the records for CIC 222, to the best of my knowledge, were not specifically addressed. My understanding was that the issue related to the records for CIC 555 as that was the information produced. My understanding from the Commission's Order on the Motion to Compel was that OrbitCom was to provide Verizon with the full 10 digit ANIs for the CDR's that it had already produced in response to the discovery request, plus two additional days worth of CDR's for a weekend. We quickly put that information together. The full ten digit ANI records were sent to Counsel to send to Verizon the same day as the hearing August 25, 2009. The additional two days were sent two days later on August 27, 2009.[1] It was the belief of OrbitCom and their counsel that the order compelling production had been fully complied with at that point. Verizon made a number of clarifying requests through their counsel Tom Dixon about the CDR's in the next few days following the receipt of them on August 25, and OrbitCom answered their questions promptly and accurately.

[1] I also sent Mr. Dixon a letter (attached MP3-28) indicating why OrbitCom feared providing full ten digit ANIs to Verizon

Q **In addition to complying with the Order and answering any follow up questions from Verizon, did you do anything else you thought might help to resolve these matters before the commission?**

A Yes.

Q **Would you describe what else you did voluntarily?**

A. As I said earlier, almost immediately following our transmittal of the full 10 digit CDR's to Verizon on August 25, we started to receive clarifying questions, which we answered, I believe to their satisfaction, as the questions ceased after a few days. However, when I received word that OrbitCom had been successful in separating Verizon's EMI records from the daily usage files sent to us by Qwest, which contains all access records for all customers, I sent a letter to Mr. Dixon on August 31, 2009 asking him if Verizon would still like to have them in addition to the CDR's we had already sent. (Exhibit MP3-28). I would like to point out that this offer was voluntary on OrbitCom's part. We had already provided the CDR's in fulfillment of the Order to Compel.

At this point I would like to clarify the difference between EMI formatted records sent to OrbitCom by Qwest and CDR's underlying OrbitCom's bills to Verizon. Since these very bills that Orbitcom sends to Verizon and Verizon refuses to pay are the source of this action before the Commission, I believe clarification of this issue is important.

EMI records are created by the LEC telephone switches that handle the phone calls transmitted through them. Every switch that the call goes through may contribute something to the same EMI record depending on what the switch is programmed to do. A simple example is the switch that the call originates through will contribute the originating ANI and start time. The switch that sends the call to the terminating party

will contribute the terminating ANI and the end time. There may be multiple records created for each call, to be combined into one by the LEC data center. In this case the LEC is Qwest. The Qwest data center collects all this information from every switch in its system on a daily basis and assembles it into final EMI records and puts the ones relating to OrbitCom's OCN into an electronic file for our use. The same EMI record may get sent to more than one telephone company, and in fact it is almost guaranteed that it will go to at least two for access billing, the originating LEC or CLEC, and the terminating LEC or CLEC, since they are both entitled to bill for their part in providing access. There are also many "categories" of EMI records, depending on what they are intended to be used for. Qwest furnishes OrbitCom with Category 11-01-01 and 11-01-25 records for access billing.

OrbitCom takes the EMI records from Qwest and inputs them into the billing system we use. The billing system extracts the pertinent data, rates it, and creates an access bill. As has been pointed out, the EMI record is 210 characters long. It also is divided into dozens of different fields, each field designed to provide certain information. For example, originating phone number, start time, etc. To create a bill for access, or anything else for that matter, only a few of the fields are needed. For the sake of efficiency, the billing system we use was designed to pull the information from the fields it needs, rate that information, and assemble the product into a bill. The system does not create CDR's, that is, call detail reports, when it does the billing. Even for a small company like OrbitCom, the Daily Usage Files contain tens of thousands of records so by not sorting them into CDR's, it saves a lot of processing time and capacity.

When a carrier such as Verizon does want CDR's, the system must work through the files again and pull the actual records used to generate the bills. This process runs very slowly and uses a lot of processing capacity, which is then unavailable for other necessary billing functions. Personally, I am not happy about that nor am trying to make excuses, merely explaining what we are working with here.

However, once the CDR's are extracted, they provide the underlying detail of the data used to generate an access bill. Added together, the call detail records will verify the number of minutes billed for access and whether they were interstate or intrastate.

I felt that this clarification was necessary considering some of the incredulous calculations brought forth by Ms Freet in her supplemental testimony in what is apparently a desperate attempt to justify Verizon's conduct regarding their claims that OrbitCom is billing traffic that is not properly jurisdictionalized, and to continue unlawfully withholding payment for access services, thereby harming OrbitCom and the telephone industry in general in South Dakota as well as the consumers.

OrbitCom is only accountable for what it has billed Verizon. What we have billed them is validated by the CDR's furnished. Verizon has not even disputed this fact since receiving the CDR's. In fact Ms Freet admits the accuracy of the CDR's in her Exhibit, LF-32 and LF-33. OrbitCom's CDRs are also confirmed as accurate by simply comparing them to the raw data on the EMI/DUF records. For example, on June 24, 2009, there were 8080 records on the EMI/DUF file. The CDRs produced 8071 records, a difference of less than 1%! Other days are equally similar. See Exhibits MP3-29 and MP3-30.

To continue with my answer about sending the EMI records to Verizon, now that we had them, I offered to send them to Verizon since they had repeatedly said that was the format they could work with to validate the jurisdiction of the call records used to create the bills in dispute. I even sent Mr. Dixon a letter describing how we calculated the PIUs. See Exhibit MP3-31. I had mistakenly assumed that proving out the truth would facilitate a satisfactory conclusion to their claims for all parties involved. However, now that the CDR's have validated the bills, and the EMI records have validated the CDR's, Verizon's tactics have evolved to yet another level of the proverbial "Whack a Mole" game.

The very first time OrbitCom heard from Verizon about of any issue with CIC 222 records was on a telephone call between Mr. Dixon, Ms. Moore, and Mr. Mastel on late Tuesday, September 29, over a month after we had fulfilled the Commission's order to compel and only a few days before Verizon's supplemental testimony was to filed about the call records. OrbitCom immediately went to work putting those records together. This is not simply "pushing a button but involves an extensive, labor and computer intensive amount of work. As I explained earlier, the billing system we use does not generally use or for that matter need a record such as this. Therefore, a report in this format does not exist and must be created by OrbitCom personnel. Once that report was completed it was forwarded on to Counsel and then to Verizon's attorney[2]. If Verizon had wanted it earlier, they merely had to ask. In addition, it appears the main reason Verizon wanted the CDR's was to feed the ANI's into their system. The CIC 222 records

[2] It should be noted that OrbitCom sought confirmation from Verizon that it would not use this issue in its testimony. Verizon assured OrbitCom it would not use it. Therefore, OrbitCom is compelled to once again address non-issues in its testimony.

go to the same OrbitCom ANI's as the CIC 555 records. Therefore, they already had these CIC 222 ANIs.

Q. What do the CIC 222 Records show?

A. When OrbitCom provided the CIC 222 records to Verizon, OrbitCom personnel also sent an accompanying e-mail that set out the PIU, calculated according to industry standard, applicable to the traffic shown in the records. The records showed a Percentage Interstate Usage (PIU) of 22%, 21%, 25%, 34%, and 21% for the EMI records for the 5 days and 25%, 23%, 27%, 37%, and 23% for the CDR s produced from those 5 days. Please see Exhibits MP3-29 and MP3-30 which show the number of calls and the breakdown of 800, interstate, and intrastate calls.

Q. There is a difference in the number of calls between the EMI records and the CDRs. Would you please explain that difference?

A. The EMI record is raw data from Qwest. It contains all of the calls. Once this data is entered into the billing system some calls drop out due to missing information like a missing code or a missing CIC. If that information is missing, the call record cannot be billed. Therefore, the billing system removes that data. This is common and is typically 0%-4% of the calls. Even a visual inspection of the EMI records when imported into a format such as Excel with the fields labeled will show that a few of them are missing the NPA-NXX or other critical information and cannot be billed.

Q. What PIU does OrbitCom use in its South Dakota Access Services Tariff?

A. OrbitCom uses a 32% PIU which as it turns out is actually higher and more beneficial to the IXCs than the actual PIU. That PIU usage is described in Section 3.4 of the OrbitCom South Dakota Switched Access Services Tariff.

Q. Would you please describe when OrbitCom applies a PIU?

A. Pursuant to the tariff, OrbitCom only applies a PIU to unknown traffic. When jurisdictional billing is used, that traffic has a known jurisdiction and is not subject to PIU computations. Remember, the PIU is assigning a Percent of Interstate Usage to a certain set of calls; not all of the calls categories. 8XX traffic usually uses a different PIU.

Q. When OrbitCom uses a PIU, how is it determined what PIU to use?

A. OrbitCom's Tariff, Section 3.4 provides the answer. OrbitCom can use either a PIU it developed or a PIU supplied by the Customer, in this case Verizon. If OrbitCom uses a Customer supplied PIU, that PIU needs to be updated quarterly as indicated in Section 3.4.4 of the Tariff.

Q. Did Verizon supply OrbitCom with a PIU it wanted OrbitCom to use for its billings?

A. Not really. It didn't supply OrbitCom with a PIU until August 21, 2008 (MP2-21).

Q. Did OrbitCom apply that Verizon supplied PIU?

A. Not we didn't because it was not supported by any documentation. We asked for supporting documentation as required by the Tariff (Section 3.4.5) but did not receive anything in return. Verizon claims that they sent an email which none of us received but even that email does not comply with Section 3.4.5. In addition, Verizon wanted us to apply this PIU going backward which is a violation of the tariff and would be applying our tariff in a discriminatory manner. Even if they had complied with the tariff (which they clearly did not) we could not have done what they asked us to do without violating our own tariff.

Q. How well did the EMI records you sent Verizon match up to the CDR's for the same days?

A. When we add up the total number of records and minutes of use contained in the EMI raw records and compare that with the number of records and the number of minutes of use contained within the CDRs produced for Verizon, the records are within 1% of each other. OrbitCom provided these records in reverse of the normal order to Verizon. The raw record or EMI is produced first. We have nothing to do with producing that record. Once that is entered into the billing system, a CDR can be pulled. The final product is the actual access service bill which had been prepared before Verizon submitted its data request. In this case, Verizon received the final product, the bill, first, the CDR second, and the raw data third. It would be almost impossible to manipulate the data in reverse order. More significantly, OrbitCom has no reason to do this given that the PIU which applied to Verizon's traffic is actually more beneficial than the actual PIU shown in the records disclosed to Verizon through the discovery process.

Q. In Leslie Freet's supplemental testimony, she provides additional call records and attributes those calls to OrbitCom. Have you reviewed those records?

A. Yes, I have.

Q. What can you tell us about those records?

A. They are not calls that Orbitcom billed Verizon. Therefore, I cannot see on what basis Verizon could possibly hold OrbitCom accountable for them, or why the Commission would give them any consideration This is probably all that needs to be said about those calls, but of course, I can't help myself so I will offer additional comments. Hopefully they contain some educational and entertainment value.

Q. Do you know where these calls records came from?

A. According to Ms. Freet's testimony, they are Verizon switch call records. They do not say what type of switch records. It would be unusual for a switch like those used by IXC's to produce records in the same EMI format as Qwest's local switches. They usually use BAF (Belcore Automatic Messaging Accounting Format) or AMA (Automatic Messaging Accounting) formats, which have some similarities but are definitely different formats according to industry standards. They could also be records generated by the SS7 (signaling System 7) signaling platform. In any event, they would require some manipulation to "overlay" them into the EMI record layout and subsequently the EMI records provided by OrbitCom to Verizon. I cannot confirm that they are Verizon switch records as Verizon has not produced any source document like an EMI/DUF that OrbitCom has produced for its records that supports this spreadsheet. We have requested this information from Verizon but have been told that the person who prepared the spreadsheet is on vacation.

Q. Have you compared the records to OrbitCom's records?

A. Yes, I have. First, some background. Verizon indicated to us on several occasions that the switch records they have do not give the OCN of the individual providers. Ms. Freet's testimony also supports this statement (See Footnote 4 to Ms. Freet's testimony). Their records only reflect the OCN of the ILEC where those calls were transferred to Verizon's network. My research shows that this is probably a choice on Verizon's part. The EMI record travels with the phone call because it contains the destination number and other information needed by switches along the way. The less fields a switch has to look at, the more efficiently it operates. According to the instructions issued by ATIS

(Alliance for Telecommunications Industry Solutions) and detailed out on page 5 of Exhibit LF-32, the appropriate Qwest switch puts the OCN of the ULEC (OrbitCom) on the Category 11-01-01 EMI record in the originating or terminating field. Examination of the EMI records sent to OrbitCom by Qwest shows that OrbitCom's OCN of 8080 is always included in the record in the proper place. The records sent with Ms. Freet's supplemental testimony show mostly the Qwest OCN of 9631 as the terminating or originating OCN. OrbitCom's OCN of 8080 is not shown on any of these records. So now Verizon wants to calculate a PIU using a method where OrbitCom calls are mixed with Qwest calls, when in fact all calls show up as Qwest's OCN or some other company's OCN and OrbitCom's OCN doesn't show up at all. In fact, some of these calls do not even have an OrbitCom ANI associated with the originating or terminating number! Some of these calls are indicated by an OCN believed to belong to PrairieWave/Knology (OCN 4256), Cellco Partnership d/b/a Verizon Wireless (OCN 6006), PrairieWave/Knology (OCN 7024), Midcontinent (OCN 7076), McLeod (OCN 7393), AT&T (OCN 7421), and Qwest (OCN 9631). Most of these non-matched records are not tied to OrbitCom by OCN or ANI. Again, none of these non-matched records were provided to OrbitCom by Qwest on the EMI/DUF files. For the most part, why should they be? They are not OrbitCom's records.

Q. Do you have an opinion as to the value and validity of using these records in computing an OrbitCom PIU?

A. Yes, I do. These records simply cannot be used to compute an OrbitCom PIU with Verizon. They are not contained in any billing from OrbitCom to Verizon, and do not include an OCN or any other identifier tying them to OrbitCom. These calls are either

fictitious or selected from records belonging to another carrier, such as Qwest. To use these records would not only provide an incorrect PIU, it would be improper as it would be using other companies calls to compute a PIU for your own benefit.

Q. Why can't these records be used to compute an OrbitCom/Verizon PIU?

A. First of all, OrbitCom bills all calls by actual jurisdiction if possible. If jurisdiction is unknown then OrbitCom must use other data to calculate the PIU for unknown traffic. At this point, the easiest method is to use the PIU of the known jurisdiction records and apply it to the unknown. Many of the calls clearly are not OrbitCom customer originated or terminated, but belong to other LECs. Therefore, it would not only be improper but a violation of the tariff and industry standards to use these calls to compute a PIU. Now if Verizon wants to provide us the records in the proper format when they claim OrbitCom customers are an originating and/or terminating party, and Verizon allows OrbitCom to bill access to Verizon for these calls, and finally Verizon pays for access services for the calls, these call records could be used for a PIU calculation[3]. However, the OrbitCom access bill to Verizon could only go up because of the additional calls. Let us look at Ms Freet's conclusions about this matter on the bottom of page 12 and the top of page 13 and her confidential Exhibit LF-34 that she mentions in support of her arguments. In her Exhibit LF-34 she adds 57,080 minutes of interstate usage and 5,102 minutes of intrastate usage to the actual totals billed by OrbitCom. Her math shows that this would raise the PIU to 58%, quite a difference from the 91% they originally told us it was (Exhibit MP2-21). She states on the bottom of page 12 in her testimony that "these figures (meaning

[3] OrbitCom would also require Verizon to sign a Release and Indemnity Agreement covering the billing of these records prior to processing them.

her PIU's) are much higher than the percentage of interstate usage that OrbitCom applied in the invoices it issued to Verizon's 555 CIC for the June 2009 billing." The flaw in her argument is that the calls billed by OrbitCom in June of 2009 were billed by actual jurisdiction, there was no PIU applied to the invoices, except to the small percentage of calls that were jurisdiction unknown according to the EMI records[4]. So to close the loop on her methodology accurately, we would simply have to bill the additional 57,080 minutes of interstate access at the current rate of $.006 per minute resulting in an addition $342.00 and the 5,102 additional intrastate minutes at the current rate of approximately $.06 per minute, raising the bill another $306.00. Since these numbers are calculated off a five day sample, the monthly bill would rise by over $3000.00. As I said earlier, send us the records and we will bill them. Somehow, I have the feeling that is not going to satisfy Verizon either.

Q. Do you have an opinion as to how or why there is such a variance in the call records?

A. Not really. OrbitCom cannot bill records it does not have, or does not know about. I have not seen any source documents for the spreadsheets provided by Ms. Freet. I do know that that a single telephone call can generate several records. For example, technicians tell me that many seven SS7 records are generated for each call. Each switch generates a record when a call goes through it. Verizon admits that the calls on their spreadsheets came from many different switches-at least two or more for each call, there is a possibility of many more records than phone calls.

[4] Keep in mind that PIU is only applied to unknown jurisdiction calls. When the jurisdiction is known, such as when the billing is jurisdictionally based, the known jurisdictions use the known jurisdiction for the call, not a PIU.

Q. Do you have an opinion about Ms. Freet's calculation of a PIU between OrbitCom and Verizon?

A. Yes. Ms. Freet's calculation is based on erroneous and unreliable information. Verizon admitted in its responses to interrogatories that it uses all of Qwest's South Dakota traffic to compute its PIU's. See answers to Interrogatories, Question 12 attached as Ex. MP3-32. This is supported by Ms. Freet's Supplemental Testimony. OrbitCom uses only OrbitCom traffic as is proper, more accurate, clearly more reliable, and supportable. In fact, in my previous rebuttal testimony in Exhibit MP2-18, (which I attach here again for convenience) I showed that OrbitCom's PIU calculated to 31.1% to 34.7%. These PIU's were calculated prior to this dispute when OrbitCom used another IXC for 100% of its long distance traffic. When OrbitCom implemented jurisdictional billing with Verizon, the same PIUs showed in traffic patterns. OrbitCom can demonstrate, based on past and current records, that its PIU of 32% is extremely accurate. OrbitCom's customer base by type has not changed significantly in all of its years of operation. Our customers are small town 1-3 line business customers. Therefore, a PIU of 32% is accurate for the entire timeframe of this action.

Additionally, Verizon's usage of all South Dakota Qwest traffic to determine a PIU is not reliable, accurate as to OrbitCom, nor fair to any carrier other than Qwest. OrbitCom does not have customers such as Citi, First Premier, Wells Fargo, E'Surance, or Total Card whose main operations involve a call center handling calls from around the country. Common sense would tell you those types of calls would tend to skew a PIU to the interstate side. After all, there are many more customers and/or callers from outside of

South Dakota in North America than there are within South Dakota. Since OrbitCom has none of this type of customer, these calls should not be included in a PIU calculation.

Q. Let us now turn to the Direct End Office Trunk ("DEOT") issue. Do you agree with Ms. Freet's testimony that Verizon has DEOTs to Qwest and therefore OrbitCom cannot properly charge for tandem switching?

A. No, I do not. First let me say OrbitCom is not Qwest. OrbitCom leases the tandem switching function of the switch from Qwest through its QLSP and SGAT agreements. Qwest is contractually obligated not to bill IXCs for these switching functions. Verizon's called are obviously being originated and terminated on OrbitCom ANIs and thus OrbitCom is allowed to charge for the switching of these calls. Therefore, OrbitCom is either actually providing the switching. The FCC ruled in its Eighth Report and Order that a CLEC that serves its own end users (as opposed to end users) (Paragraph 9)[5] is allowed to charge the functional equivalent of all of the rate elements applicable since it is actually providing those services. (Paragraph 13)[6]. That ruling also contained language addressing a multiple tandem switch issue and stated that CLECs could only charge for services that they actually provide. (Paragraph 21)[7]. Because OrbitCom is

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[5] See Eighth Report and Order and Fifth Order on Reconsideration, *In the Matter of Access Charge Reform of Access Charges Imposed By Competitive Local Exchange Carriers ("Eighth Report and Order")*, 19 F.C.C.R. 9108, 9112, ¶9, 19 FCC Rcd 9108, 32 Communications Reg. 533 (stating: "Specifically, we clarify that a competitive LEC is entitled to charge the full benchmark rate if it provides an IXC with access to the competitive LEC's own end-users.").

[6] See Eighth Report and Order, 19 F.C.C.R. at 9114, ¶13 (stating: "When a competitive LEC originates or terminates traffic to its own end-users, it is providing the functional equivalent of those services, even if the call is routed from the competitive LEC to the IXC through an incumbent LEC tandem.").

[7] See Eighth Report and Order, 19 F.C.C.R. at 9118-9119, ¶21 (stating: "As noted by AT&T and MCI, our long-standing policy with respect to incumbent LECs is that they should charge only for those services that they provide. Under this policy, if an incumbent LEC switch is capable of performing both tandem and end office functions, the

actually providing either all of the access service elements or the functional equivalent of them to its own end users, it is allowed to charge all of the elements of the bill for that service. A copy of the Eighth Report and Order was attached as Exhibit MP2-14 to my previous testimony. Although the FCC order only applies to interstate calls, the same issues are present in intrastate calls. Therefore, OrbitCom believes the same ruling should apply to those intrastate calls.

Q. Do you have any additional support that establishes that OrbitCom provides the Access switching functions to Verizon?

A. Yes, I do. In the QLSP Agreement parts previously referenced as MP2-15, OrbitCom is granted the exclusive rights for those ANIs and loops leased to charge all Switching (note capital S) which switching includes the access elements. See Paragraph 1.1.1. As defined in the OrbitCom Tariff in §15, Access services contains either A) Direct Connect, or B) Tandem Connect. The same provisions are in the Verizon SD CLEC Tariff (MP2-16). Since the Qwest QLSP Agreement between Qwest and OrbitCom provides that Qwest will not bill for access services and that OrbitCom exclusively can bill those services, and access services are defined as either direct or tandem connect, then it is clear that any direct connect or tandem connect charges between any IXC and OrbitCom are the exclusive property of OrbitCom. Verizon has no DEOT to OrbitCom. If they do not wish to pay a tandem switching charges to OrbitCom for OrbitCom destined or originated calls, under the OrbitCom tariff and the Qwest QLSP Agreement, the direct

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applicable switching rate should reflect only the function(s) actually provided to the IXC. We believe that a similar policy should apply to competitive LECs.").

connect ordering, charges, and fees are the exclusive right of OrbitCom. Just as they would be to Verizon's own CLEC in South Dakota under its SD CLEC Access Tariff

Q. In Ms. Freet's testimony, she indicates the EMI records provided by OrbitCom to Verizon indicate "98.3% of all records are direct routed with the remaining 1.7% run through the tandem switch. Do you agree with that statement?

A. Partially. I would agree that the DUF/EMI records do show a large percentage of the calls routed through a direct connect. However, that is only a partial side to the story. When OrbitCom examined these records closer, it found that all IXC OrbitCom bound traffic, whether Verizon or any of the other 50-55 carriers shown in the records had a carrier specific percentage of direct routed traffic. Carriers with less than 30 calls per month, and even local carriers like Midcontinent and PrairieWave/Knology, are shown as having a direct connect to all of the Qwest end offices. I contacted these carriers to ask about the existence of direct connections. In doing so, OrbitCom discovered that they do not have direct end office trunks to Qwest. PrairieWave/Knology has indicated they only exchange non-local traffic with Qwest at the tandem; local traffic is exchanged a local point of presence. OrbitCom's experience in this industry and its contacts with other similarly situated carriers has demonstrated that this field in the DUF/EMI record is notoriously inaccurate. This is proof positive that statement is true.

Q. Is there any other basis for you doubting this 98.3% figure?

A. Yes, there is. Verizon's own exhibit refutes this. Ms. Freet provided us with Exhibit LF-28 (without the grey shading) which shows the volumes of traffic to each South Dakota Qwest end office and the percentage of that traffic that runs through a DEOT. Note that in both Cavour (CAVRSDCORS1) and Hill City (HLCYSDCORS1) there is no traffic

through a DEOT. However, when reviewing the DUF/EMI records, there are calls routed direct as indicated in field 51. These are inconsistent. One of them has to be incorrect.

Q. Do you find anything further troubling about Exhibit LF-28?

A. Yes, I do. When I compare Exhibit 28 which is Verizon traffic from/to Qwest end offices with the percent of that traffic routed through a DEOT, I see that 0% of the Hill City traffic is routed through a DEOT despite the fact that a total of 719,023 minutes of use were documented. However, when I compare Exhibit LF-28 with the new Exhibit LF-42, I see that all of the traffic (486,043 minutes) was direct routed. Why would a business savy company like Verizon not have a DEOT for 700,000+ minutes and have a DEOT for 486,000 minutes? Again, it seems inconsistent. Additionally, Qwest shows 1300 access lines in Hill City. That's seems to be a very high number (approximately 10 hours per day) of long distance usage per access line. Another comparison would be Belle Fourche which has 1529 lines and 66,949 MOUs shown on LF-28. More lines, but less than 1/10 of the minutes. Madison, South Dakota has 2443 lines, but only 75,142 MOUs. Twice the lines, but 1/10 the MOUs.

Q. What are you asking of the Commission here today?

A. OrbitCom is asking the Commission to affirm its Access Service Tariff and the application of the tariff. This can be established by relying upon actual data produced by OrbitCom which clearly shows that its PIU is accurate and has been calculated pursuant to the terms of its tariffs. OrbitCom asks that this Commission reject Verizon's spreadsheets because it has failed to provide a sufficient and reliable foundation for these documents. Rather it has relied upon averages and other unreliable and erroneous information in support of its position. OrbitCom also requests that this Commission

validate its practice of billing the full benchmark rate, which includes the tandem switching element. Based upon the established FCC rulings and precedent, OrbitCom's contract with Qwest, and OrbitCom's South Dakota Access Services Tariff, Verizon actually receives tandem switching or its functional equivalent. Verizon has no DEOTs to OrbitCom, and Qwest has clearly granted to OrbitCom via a valid contract, the right to bill all access elements including direct connections. The evidence does more than suggest that Verizon in all likelihood, does not have DEOTs by definition to all Qwest South Dakota end offices. Therefore, Verizon owes OrbitCom the entire amount of its outstanding access service bills, that amount being $651,812.79, plus interest as prescribed in OrbitCom's Tariff of 1.5% per month pre-and post-order.

Q. Is there any other order OrbitCom is requesting?

A. Yes. OrbitCom requests a finding that Verizon is in violation of the South Dakota Public Utilities Commission Rules and Regulations for its use of self-help and should not use self-help in the future for any disputes with any LEC. Further, any disputes filed by Verizon with any LEC concerning access services should be filed as per industry standard. That means by billing date, by BAN (Billing Account Number) by rate element, and amount on that billing date and BAN. Disputes should not be filed as a blended dispute such as "Tandem/DEOT/Interstate or Intrastate" dispute. Finally, OrbitCom requests that the relief sought by Verizon in its counterclaims be denied.

Q. Do you have anything further?

A. I would just like to say "Thank You" to the Commission and the Staff for their work on this matter. I realize that this is pretty esoteric material, but your attention shows that you understand how important it is to both OrbitCom as a LEC and Verizon as an IXC.

Q. Does this conclude your testimony?

A. For now, yes, it does.

EXHIBIT
MP2-18

CONFIDENTIAL

VP TELECOM

ACCOUNT NO. - 0204557207 VPE2

USAGE CHARGES

	CALLS	
LINK CALLING CARD DOMESTIC	1,326	
LINK CALLING CARD OFFSHORE	1	
LINK CALLING CARD DIRECTORY ASSISTANCE	2	
LINK CALLING CARD OPERATOR ASSISTANCE	98	
LINK CALLING CARD INTERNATIONAL	1	
INBOUND PIN DOMESTIC INTERSTATE	43	
INBOUND PIN DOMESTIC INTRASTATE	31	
ACC DIRECT SWITCHED OUTBOUND INTERSTATE	35,834	33.7%
ACC DIRECT SWITCHED OUTBOUND INTRASTATE	70,418	66.3%
ACC DIRECT SWITCHED OUTBOUND OFFSHORE	86	
ACC DIRECT SWITCHED OUTBOUND DIRECTORY ASSISTANCE	346	
ACC DIRECT SWITCHED OUTBOUND INTERNATIONAL	213	
ACC DIRECT SWITCHED INBOUND INTERSTATE	34,121	33.1%
ACC DIRECT SWITCHED INBOUND INTRASTATE	68,723	66.9%
ACC DIRECT SWITCHED INBOUND OFFSHORE	51	
ACC DIRECT SWITCHED INBOUND CANADIAN ORIGINATION	216	

VP TELECOM

ACCOUNT NO. - 0204557207 VPE2

USAGE CHARGES

	CALLS	
LINK CALLING CARD DOMESTIC	1,229	
LINK CALLING CARD OFFSHORE	1	
LINK CALLING CARD DIRECTORY ASSISTANCE	4	
LINK CALLING CARD OPERATOR ASSISTANCE	76	
INBOUND PIN DOMESTIC INTERSTATE	72	
INBOUND PIN DOMESTIC INTRASTATE	41	
ACC DIRECT SWITCHED OUTBOUND INTERSTATE	32,116	34.7
ACC DIRECT SWITCHED OUTBOUND INTRASTATE	60,313	65.
ACC DIRECT SWITCHED OUTBOUND OFFSHORE	100	
ACC DIRECT SWITCHED OUTBOUND DIRECTORY ASSISTANCE	382	
ACC DIRECT SWITCHED OUTBOUND INTERNATIONAL	155	
ACC DIRECT SWITCHED INBOUND INTERSTATE	27,931	31.5
ACC DIRECT SWITCHED INBOUND INTRASTATE	60,711	68.5
ACC DIRECT SWITCHED INBOUND OFFSHORE	109	
ACC DIRECT SWITCHED INBOUND CANADIAN ORIGINATION	170	
ACCESS DIRECT UNE-P SUB-CIC INTERSTATE	42,308	

MP3-28

CONFIDENTIAL

ORBITCOM INC.

Local Telephone - Long Distance and Internet Services

August 31, 2009

Mr. Thomas F. Dixon
MCI
707 17th Street, Suite 4200
Littleton, CO

RE: OrbitCom Access Fee Dispute

Dear Mr. Dixon,

OrbitCom was able to find a local programmer to separate the Verizon/MCI records out of the daily usage files for the dates that we provided you with CDR's out of our CABS billing system.

If Verizon would find these DUF records easier to analyze than the CDR's sent, we will forward them to you. I have been told that they are in the original EMI format.

By way of explanation about OrbitCom's initial reluctance to send the complete phone numbers, we are aware of Verizon ignoring the FCC rules about using CPNI information for competitive marketing purposes as the attached article describing the US Appeals Court decision shows. Please understand that I am not trying to taint this communication by bringing this up, I am merely explaining our hesitancy.

Please let me know if you would like these raw DUF records sent and where to send them.

Sincerely,

Michael C. Powers, CFO
OrbitCom, Inc.

1701 N. Louise Dr. • Sioux Falls, SD 57107 • Phone 605.977.6900 • Fax 605.373.9355

IP Business News - August 31, 2009 - www.ipbusinessmag.com

FCC Wins Two Appeals Court Decisions in Three Days

By Danny Adams

Over the last several years, the D C Circuit has been the U S Court of Appeals preferred forum for those seeking to get court reversals of FCC decisions Although historically friendly to the FCC, from the mid-1990s forward the D C. Circuit became increasingly hostile to the agency and its decisions This makes it more interesting that within the space of three days the FCC defeated challenges to its policies brought before the D C Circuit by two of its most prominent regulatees – Verizon and the National Cable & Telecommunications Association

Both cases are related to the use and protection of customer information In the Verizon case, the Court upheld the FCC's ruling against the Verizon "retention marketing" program which used competitors' requests for number porting to target winback efforts In the NCTA case, the FCC upheld the agency's decision to require "opt in" from customers before their personal data can be disclosed to contractors and third party marketing partners For more detail on each of these court rulings, keep reading

First, on February 10, 2009, the D C. Circuit upheld the FCC's June 23, 2008, ruling against Verizon's "retention marketing program" that used number porting requests from other carriers to target winback efforts. The DC Circuit rejected all of Verizon's arguments, including claims (1) that the FCC misread Section 222(b) of the Communications Act regarding the treatment of confidential information by carriers, (2) that two of the carriers who brought the matter to the FCC (Comcast and Bright House Networks) are not "common carriers" protected by Section 222(b), and (3) that the FCC ruling violates Verizon's First Amendment rights

The FCC's June 23 Order concluded that Verizon violated Section 222(b) of the Telecom Act with a "retention marketing plan" that targeted winback efforts using local service requests (LSRs) from other carriers for transfers of telephone numbers away from Verizon and to competing carriers Three competitors – Time Warner Cable, Comcast Corporation and Bright House Networks – brought a complaint against Verizon at the FCC, arguing that Verizon's use of the number transfer information was improper and in violation of the Communications Act

The FCC staff first issued a ruling in Verizon's favor, concluding that the information was not "received by Verizon for purposes of providing services" Instead, the FCC staff concluded that Verizon received the information for the purpose of transferring services away to other providers and that was not within the scope of the law The full FCC decision on June 23 reversed the staff and concluded that Verizon's plan was in violation of the Act The D C Circuit ruling upholds the June 23 decision against Verizon issued by the full FCC

The Court first upheld the FCC's reading of Section 222(b). As a threshold question, it agreed with the FCC that "advance notice of a carrier change that one carrier is required to submit to another is carrier 'proprietary information' under section 222(b)." Having agreed with the FCC that the information at issue was within the reach of Section 222(b), the Court then reviewed the language of the statute to determine if it barred Verizon's actions The Court concluded that the statute is ambiguous, and that the FCC's interpretation is reasonable It found that Verizon's reading of the law would produce an "anomalous" result because Verizon's interpretation would protect both resellers and purchasers of UNEs from Verizon, but not facilities based competitors whose only contact with Verizon is number porting Since that is contrary to the Telecom Act's goal of encouraging facilities based competition, the Court found the FCC reading of Section 222(b) to be legally reasonable

The Court also agreed with the FCC and rejected Verizon's claim that two of the complaining parties – Comcast and Bright House – are not common carriers The companies both stated that they are carriers, had state CPCNs and entered into interconnection agreements with Verizon These were viewed, in combination, as reasonable evidence of common carrier status Consequently, those companies were within the scope of Section 222

Finally, the Court rejected Verizon's First Amendment argument It applied the "commercial speech" test and agreed that the FCC has a "substantial interest" in the issue it was addressing and that the FCC ruling is "designed carefully" to meet the goal. Agreeing that Verizon "is disabled only from using an opportunity placed in its hands by a technological necessity", the Court found

no "serious constitutional difficulty" in the FCC's actions barring Verizon's use of the information

The NCTA case, decided on February 13, 2009, also raised a First Amendment challenge to the FCC's regulations, in that case relating to disclosure of "customer proprietary network information " The CPNI rules have had a somewhat tortured history with the courts. In 1999, the 10th Circuit overturned FCC rules requiring a customer to "opt in" to give consent for disclosure of data to any entity outside the business relationship Under those rules CPNI could not be shared without an affirmative "opt in" approval from the customer agreeing to disclosure The 10th Circuit ruled in 1999 that the FCC opt in rule was an unconstitutional restriction on the carrier's right to speak with its customers In that case, then, the First Amendment argument succeeded

As a result of the 1999 10th Circuit ruling, the FCC modified its rules to rely on an "opt out" approach for CPNI disclosure, meaning that customers were deemed to have consented unless they affirmatively "opted out" of having their data shared This opt out approach was applied to disclosure to carrier affiliate companies and to joint venture partners and third party contractors However, in 2005 the FCC was asked to consider more stringent rules, and in 2007 it modified the CPNI rules again Those changes restored the "opt in" approach for disclosure to third parties such as joint venturers and independent contractors The NCTA challenged the new opt in requirement before the D C Circuit, raising the First Amendment argument that had succeeded with the 10th Circuit in 1999

The FCC adopted its 2007 opt in rules under Section 222 of the Communications Act The D C Circuit disagreed with the 1999 10th Circuit decision by stating that the Tenth Circuit "doubted whether [the government's] interest could be deemed 'substantial'" enough to meet the test for restrictions on commercial speech. "We do not share the Tenth Circuit's doubt " The Court went on to explain that it views protection of consumer credit information and privacy to be a "substantial interest" of the government Throughout the discussion, the Court returned several times to the theme that the NCTA did not challenge the constitutionality of Section 222 itself, just the FCC rules In the Court's view, if Section 222 is constitutional, and the opt out method is constitutional, there is virtually no room left to argue that the opt in requirement is not constitutional as well. The D C Circuit also rejected arguments that the FCC failed to explain the reasons underlying its decision to modify its rules and reinstate the opt in requirement for some disclosures Because carriers have less control over data when it is disclosed to third parties than when it is disclosed to their own affiliates, the Court concluded it is reasonable to allow opt out for affiliate disclosures but require opt in for third party disclosures

Finally, a faithful reader has pointed out that in a recent column I referred to Commissioner Susan Tate, when her name is actually Deborah. I apologize to the Commissioner and thank my faithful reader for pointing out the error IP

Danny E Adams currently serves as managing partner of Kelley Drye & Warren's Tysons Corner office and is a member of the firm's Executive Committee. He is a member of the bar in Virginia, District of Columbia and Arizona.

« < 1 > »

MP3-29

CONFIDENTIAL

222 RECORDS CDR

The PIU (Percent Interstate Usage) was calculated as per industry std (intra + inter =X. Inter/X= PIU,

062409
Total calls = 8071
Intrastate = 2331
Interstate = 762 **PIU 25%**
800 calls = 4325
Unknown = 653

062509
Total calls = 7567
Intrastate = 2392
Interstate = 726 **PIU 23%**
800 calls = 4196
Unknown = 252
N = 1

062709
Total calls = 3981
Intrastate = 496
Interstate = 180 **PIU 27%**
800 calls = 3270
Unknown = 35

062809
Total Calls = 2961
Intrastate = 219
Interstate = 126 **PIU 37%**
800 calls = 2587
Unknown = 29

062909
Total calls = 7725
Intrastate = 2725
Interstate = 831 **PIU 23%**
800 calls = 3906
Unknown = 263

MP3-30

CONFIDENTIAL

222 RECORDS EMI

The PIU (Percent Interstate Usage) was calculated as per industry std (intra + inter =X. Inter/X= PIU,

062409
Total calls = 8080
Intrastate = 2336
Interstate = 655 **PIU 22%**
Unknown = 5089

062509
Total calls = 7595
Intrastate = 2372
Interstate = 629 **PIU 21%**
Unknown = 4593
N = 1

062709
Total calls = 3978
Intrastate = 495
Interstate = 164 **PIU 25%**
Unknown = 3319

062809
Total calls = 2959
Intrastate = 219
Interstate = 111 **PIU 34%**
Unknown = 2629

062909
Total calls = 7747
Intrastate = 2708
Interstate = 740 **PIU 21%**
Unknown = 4299

MP3-31

CONFIDENTIAL

ORBITCOM INC.
Local Telephone - Long Distance and Internet Services

September 1, 2009

Mr. Thomas F. Dixon
MCI
707 17th Street, Suite 4200
Littleton, CO

RE: OrbitCom Access Fee Dispute

Dear Mr. Dixon:

By now you have received the records referred to in yesterdays email and letter. From what I know about it, the number of records will not match exactly because some of the raw records are unbillable for any number of reasons, but the difference is a very small percentage.

I am attaching the PIU analysis we did at OrbitCom for Verizon's July and August 2009 billings for South Dakota. These were attached to my rebuttal testimony. These totals were taken directly off the invoices, also attached to my testimony. The billing for June usage is on the invoices dated July 12 and the billing for July usage is on the invoices dated August 12. If Verizon's analysis shows any significant difference please let me know and we will investigate immediately.

It may be helpful for you to know that OrbitCom is willing to negotiate a credit to Verizon regarding the 5% PIU we used for terminating and 8XX service during the period it was used. While we know we can control the originating PIU by use of the LPIC only for a carrier, but when Leslie pointed out during one of our phone calls that would not make the terminating PIU 5%, I agreed with her and I apologized for overlooking that fact when the PIU's were set.

Thank you for your attention to this matter. If I can do anything else to move this matter toward a fair and equitable agreement between our two companies, please do not hesitate to let counsel know.

Sincerely,

Michael C Powers, CFO
OrbitCom, Inc.

Verizon Access minutes of use - South Dakota Only

		Originating DDD minutes recorded by jurisdiction				Terminating minutes recorded by jurisdiction				Minutes not recorded by jurisdiction		
BAN #	Bill Date	Intrastate	Interstate	Totals	PIU	Intrastate	Interstate	Totals	PIU	DDD	Terminating	8XX
8080SD0222	7/12/2009	3510	3442	6952		98245	27263	125508		0	26524	92950
8080SD0555	7/12/2009	249561	69730	319291		80243	49879	130122		247	5606	70293
	Totals	253071	73172	326243	0.2243	178488	77142	255630	0.3018	247	32130	163243
8080SD0222	8/12/2009	3973	4269	8242		108830	32517	141347		0	12496	99367
8080SD0555	8/12/2009	249656	100370	350026		90408	60637	151045		218	6401	70175
	Totals	253629	104639	358268	0.2921	199238	93154	292392	0.3186	218	18897	169542

MP3-32

CONFIDENTIAL

ORBITCOM INTERROGATORY 12: Explain how the PIU factor identified in response to Interrogatory No. 10 above was calculated. Identify the time frame which Verizon used in calculating the PIU factor identified above.

RESPONSE: Because OrbitCom's UNE-P traffic is not distinguishable from other interexchange traffic that originates from or is terminated to the ILEC that operates the end office switch (in this case Qwest) through which OrbitCom's end users are served, Verizon uses all traffic for the Bell Operating Company in a state (Qwest) as a proxy when calculating PIU factors for UNE-P traffic. The set of calls that originated from or terminated to Qwest end users in South Dakota via Feature Group D connections, and for which Qwest could not identify the jurisdiction of the calls on its own, was used as the denominator in the PIU calculations. The numerator was the further subset of these calls that was of interstate jurisdiction. Call data from the first quarter of 2008 was used, as this was the time frame on which Verizon's PIU factors on file with Qwest in August 2008 were based.

Respondent: Robin Fishbein