

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. C-4238/PI-157
Public Service Commission, on)
its own motion, seeking to)
investigate unfiled)
agreements for Intrastate) ORDER CLOSING INVESTIGATION
Switched Access Services at)
rates other than those)
contained in a carrier's)
tariff on file with the)
Commission.)
Entered: August 31, 2010

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

On January 10, 2010, the Commission opened the above-captioned docket to investigate agreements and/or contracts between carriers operating in Nebraska, not filed with the Commission, to provide intrastate access services at rates, terms and conditions, other than those contained in a carrier's official tariff filed with the Commission.

During the hearing on the formal complaint between Orbitcom, Inc. (Orbitcom) and AT&T Communications of the Midwest, Inc. (AT&T)¹, the Commission received testimony regarding an unfiled or "non-tariffed" agreement between Orbitcom and AT&T. The Commission further received evidence that other such agreements exist and are operational in Nebraska. These agreements are purportedly kept confidential from the Commission, as well as other competing carriers in the market.

The Commission ordered that a data request be sent to all local exchange and interexchange carriers operating in Nebraska seeking information regarding unfiled agreements for intrastate access services at rates, terms and conditions other than those contained in tariffs filed with the Commission. On February 22, 2010, data requests were sent to local and interexchange carriers in Nebraska. Responses were due on or before March 31, 2010.

¹ See Application No. FC-1332, *In the Matter of the Formal Complaint of OrbitCom, Inc., Sioux Falls, South Dakota, seeking a determination that AT&T Communications of the Midwest, Inc., Denver, Colorado, failed to pay intrastate access charges billed by OrbitCom in accordance with OrbitCom's intrastate switched access tariff & Application No. FC-1335, In the Matter of the Formal Complaint of AT&T Communications of the Midwest, Inc., Denver, Colorado, seeking a determination that OrbitCom, Inc., Sioux Falls, South Dakota, failed to negotiate Intrastate Access Charges and that OrbitCom's tariffed Intrastate Switched Access Rates are unfair and unreasonable*, Order, (November 10, 2009).

Based on the comments and information received in response to the Commission's February 22, 2010, data request, the Commission finds that there is confusion and disagreement regarding Commission policy and requirements in Nebraska regarding access agreements and contracts for services outside of a carrier's filed tariff. The Commission finds that a rulemaking proceeding addressing tariff filings and agreements/contracts for tariffed services outside of a tariff would be in the public interest. Accordingly, the Commission will initiate a rulemaking to address the issues raised in the above-captioned investigation. The Commission finds that the investigation in Docket C-4238/PI-157 should be closed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the investigation in Docket C-4238/PI-157 be, and it is hereby, closed.

MADE AND ENTERED at Lincoln, Nebraska, this 31st day of August, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-4238/PI-157

Page 2

Based on the comments and information received in response to the Commission's February 22, 2010, data request, the Commission finds that there is confusion and disagreement regarding Commission policy and requirements in Nebraska regarding access agreements and contracts for services outside of a carrier's filed tariff. The Commission finds that a rulemaking proceeding addressing tariff filings and agreements/contracts for tariffed services outside of a tariff would be in the public interest. Accordingly, the Commission will initiate a rulemaking to address the issues raised in the above-captioned investigation. The Commission finds that the investigation in Docket C-4238/PI-157 should be closed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the investigation in Docket C-4238/PI-157 be, and it is hereby, closed.

MADE AND ENTERED at Lincoln, Nebraska, this 31st day of August, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



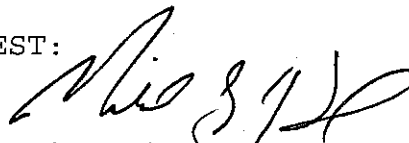
//s// Frank E. Landis

//s// Gerald L. Vap

Chairman



ATTEST:



Executive Director