

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Formal	)	Application No. FC-1332
Complaint of Orbitcom, Inc.,	)	
Sioux Falls, South Dakota,	)	
seeking a determination that	)	
AT&T Communications of the	)	
Midwest, Inc., Denver, Colorado,	)	ORDER GRANTING JOINT MOTION
failed to pay intrastate access	)	AND VACATING PREVIOUS ORDERS
charges billed by Orbitcom in	)	
accordance with OrbitCom's	)	
intrastate switched access	)	
tariff.	)	
In the Matter of the Formal	)	Application No. FC-1335
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.	)	Entered: October 1, 2013

BY THE COMMISSION:

On February 27, 2009, a Formal Complaint was filed with the Nebraska Public Service Commission ("Commission") by OrbitCom, Inc., ("OrbitCom"), against AT&T Communications of the Midwest, Inc., ("AT&T"). The Formal Complaint was docketed by the Commission as Application No. FC-1332. AT&T filed an Answer to FC-1332 on March 31, 2009.

On April 30, 2009, AT&T filed the above-captioned Formal Complaint against OrbitCom, which was docketed as Application No. FC-1335. On May 12, 2009, the Commission, upon the motion of AT&T, consolidated the above-captioned proceedings. OrbitCom filed its Answer and Affirmative Defenses in Application No. FC-1335 on May 15, 2009.

The first hearing in this matter was held on September 16, 2009. The Commission issued an order on November 10, 2009. On December 10, 2010, AT&T filed an appeal of the Commission's November 10, 2009, order with the District Court of Lancaster County.

On February 24, 2011, the District Court issued an order on the appeal, reversing the Commission's findings and remanding it back to the Commission for further proceedings.<sup>1</sup>

On March 25, 2011, OrbitCom filed an appeal of the 2011 District Court Order with the Nebraska Court of Appeals. Subsequently, on May 25, 2011, OrbitCom filed a Motion to Withdraw its appeal with the Court of Appeals which was granted by the Court on June 13, 2011.

Pursuant to the 2011 District Court Order, the above-captioned matter was remanded to the Commission for further proceedings. A second hearing was held by the Commission on December 20, 2011.

On February 28, 2013, the Commission issued an Order on Remand. On March 28, 2012, AT&T filed an appeal of the Commission's Order on Remand with the District Court of Lancaster County. On April 11, 2013, the District Court issued an Order in the appeal making findings on certain issues and ordering the Commission to provide verification of certain items.<sup>2</sup>

On May 7, 2013, the Commission entered a Supplemental Order on Remand pursuant to the District Court Order.

AT&T and OrbitCom have now entered into a formal settlement that resolves all issues raised in the above-captioned complaints FC-1332 and FC-1335.

On September 6, 2013, AT&T, OrbitCom, and the Commission filed a Stipulation and Motion to Vacate and Remand with the District Court. On September 9, 2013, the District Court entered an Order vacating the April 11, 2013, District Court Order, remanding the proceeding back to the Commission for further proceedings consistent with the Stipulation, and dismissing the appeal.

On September 25, 2013, pursuant to the Stipulation and the September 9, 2013, District Court Order, OrbitCom and AT&T filed a Joint Motion to Vacate requesting the Commission vacate its February 28, 2013, and May 7, 2013, orders. Upon entry of such an order by the Commission, AT&T and OrbitCom will file Motions

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<sup>1</sup> *AT&T of the Midwest v Nebraska Public Service Commission, et al*, Docket CI 09-4787, Order (February 24, 2011).

<sup>2</sup> *AT&T Communications of the Midwest, Inc. v Nebraska Public Service Commission, et al*, Docket CI 12-1225, Order (April 11, 2013).

to Dismiss the above-captioned Formal Complaints, Applications FC-1332 and FC-1335, with the Commission.

Being fully advised in the premises, and pursuant to the Stipulation and September 9, 2013, District Court Order, the Commission finds that our February 28, 2013, and May 7, 2013, orders in the above-captioned applications should be vacated.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission, pursuant to the September 9, 2013, District Court Order, and the Stipulation entered by OrbitCom, Inc., AT&T Communications of the Midwest, and the Commission, that our February 28, 2013, and May 7, 2013, orders in the above-captioned applications be, and are hereby, vacated.

MADE AND ENTERED at Lincoln, Nebraska, this 1<sup>st</sup> day of October, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

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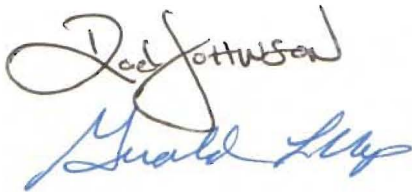

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NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair  


ATTEST:

  
Executive Director

//s//Anne C. Boyle  
//s//Frank E. Landis