

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, ) ORDER DENYING MOTION TO STRIKE  
Inc., Denver, Colorado, failed to ) PORTIONS OF POST-HEARING BRIEF  
pay intrastate access 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: February 10, 2012

BY THE HEARING OFFICER:

On February 27, 2009, a Formal Complaint was filed with the Nebraska Public Service Commission ("Commission") by Orbitcom, Inc., ("Orbitcom") Sioux Falls, South Dakota, against AT&T Communications of the Midwest, Inc., ("AT&T") Denver, Colorado. The Formal Complaint was docketed by the Commission as Application No. FC-1332. On April 30, 2009, AT&T filed a Formal Complaint against OrbitCom, which was docketed as Application No. FC-1335. On May 1, 2009, AT&T filed a Motion to Consolidate the above-captioned proceedings pursuant to Commission Rules of Procedure, the motion was granted by the Commission in an order issued on May 12, 2009.

An initial hearing was held on September 16, 2009. The Commission issued an order with its findings and conclusions on November 10, 2009. On December 10, 2010, AT&T filed a petition for review of the Commission's decision 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 in the above-captioned docket and remanding the proceeding back to the Commission to conduct a review of OrbitCom's access rates pursuant to *Neb. Rev. Stat.* § 86-140.

On March 25, 2011, OrbitCom filed an appeal of the District Court's decisions with the Nebraska Court of Appeals. Subsequently, on May 25, 2011, OrbitCom filed a motion to withdraw its appeal with the Court of Appeals. The Court of Appeals granted OrbitCom's motion and dismissed the appeal on June 13, 2011.

Therefore, pursuant to the District Court's February 24, 2011, Order, the above-captioned matter was remanded to the Commission for further proceedings.

A second hearing was held on December 20, 2011. On January 17, 2012, I entered an order establishing the deadline to file proposed orders and post-hearing briefs on January 27, 2012.

On February 2, 2012, AT&T filed a Motion to Strike Portions of the OrbitCom Post-Hearing Brief. AT&T requested portions of OrbitCom's brief dealing with the filed rate doctrine and the burden of proof be stricken, arguing they were previously disposed of by the District Court or the Commission, and OrbitCom's inclusion of a prayer for attorney's fees also be stricken, as it was not pled.

OrbitCom filed a response to AT&T's Motion to Strike on February 3, 2012, arguing the motion was an attempt by AT&T to file a post-hearing reply brief responding to OrbitCom's arguments in its brief. OrbitCom urged dismissal of the Motion.

Post-Hearing briefs are advocacy filings containing legal and factual arguments in support of each party's case in a proceeding. The Commission is not bound by the strict rules of evidence and is typically liberal in its allowance of evidence, but is especially so in regards to arguments and advocacy made by parties. Therefore, I find that AT&T's motion is denied, and the Commission will give the arguments contained in OrbitCom's brief the weight they deserve.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Motion to Strike of AT&T Communications of the Midwest, Inc., be, and is hereby, denied.

MADE AND ENTERED in Lincoln, Nebraska, on this 10<sup>th</sup> day of February, 2012.

BY:

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Tim Schram  
HEARING OFFICER

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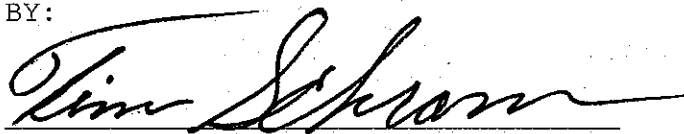
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