

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)	REMAND PLANNING CONFERENCE
Midwest, Inc., Denver, Colorado,)	ORDER AND NOTICE OF HEARING
failed to 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: September 23, 2011

BY THE HEARING OFFICER:

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. On April 30, 2009, AT&T filed a Formal Complaint against OrbitCom with the Commission, 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.

A Hearing was held on September 16, 2009. The Commission issued an order with its findings and conclusions on November 10, 2009. On December 10, 2009, AT&T filed an appeal 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 under *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.

An initial conference was held on the remanded review on August 25, 2011. At that conference certain legal questions on the scope of the original appeal, the scope of the District Court's remand order and procedure for the ordered §86-140 review were raised. The Hearing Officer entered an order on August 29, 2011, setting deadlines for brief submission on the raised issues and scheduling oral arguments before the Commission. Oral arguments were held before the Commission on September 14, 2011.

On September 20, 2011, the Commission entered an order with its findings and conclusions on the legal and procedural issues raised and argued by the parties. The Commission found a second evidentiary proceeding is necessary to comply with the District Court's remand order directing the Commission to conduct an §86-140 review.

Planning Conference

A second planning conference was held in the above-captioned dockets on September 21, 2011, at 1:00 p.m. in the Commission Niobrara Conference Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska, and via telephone conference with representatives of the Parties and the Commission. The following persons were present at the conference: for AT&T, Loel Brooks of Brooks, Pansing Brooks, PC, LLO; for OrbitCom, Troy Kirk of Rembolt Ludtke, LLP; and for the Commission, Commissioner Tim Schram, Nichole Mulcahy, Legal Counsel for the Commission and Gene Hand, Director of the Commission's Communications Department. Participating via telephone, counsel for AT&T Leo J. Bub and for OrbitCom, Pat Mastel.

As a result of the planning conference, several issues were decided. Therefore, this order serves to memorialize those decisions and to provide a timeline for proceeding in this docket.

Deadlines

Deadlines for various events were established and are set forth in Appendix A.

Consent and Waiver

Prior to the planning conference AT&T was apprised that one of the attorneys for OrbitCom, Mark Fahlson, of Rembolt Ludtke, LLP, is also representing Commissioners, Jerry Vap and Rod Johnson on a matter not related to their duties as Commissioners. The matter is still pending in the Nebraska Court of the Appeals. At the planning conference, counsel for AT&T orally consented and agreed to waive any objections to the participation of Commissioners Vap and Johnson in the proceedings in the above-captioned docket.

Discovery

In its September 20, 2011 Order, the Commission found that discovery shall be allowed by parties in §86-140 review proceedings, however, due to the timeline established under §86-140, discovery shall be limited as directed by the Hearing Officer. Therefore, all parties shall be limited to written discovery. No party shall seek depositions or other oral form of discovery without express permission of the Hearing Officer. Each party shall be limited to thirty-five (35) discovery requests, with each question, subquestion or subpart being considered one request. Further, the scope of discovery shall be limited to the costs and revenues of OrbitCom's provisioning of intrastate access services.

Service

All parties shall file all documents on all parties of record. All parties shall file all documents in electronic format via email with paper copies sent via mail to follow.

Hearing

A Hearing in Application Nos. FC-1332 and FC-1335 will be held on Tuesday, **December 20, 2011**, at 10:00 a.m. in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska, continuing to December 21, 2011 at 10:00, if necessary.

Hearing Fee/Accommodations

The parties have agreed to arrange for a court reporter for the hearing on this matter. Therefore, the hearing fee of one hundred twenty-five dollars (\$125.00) for each half-day should be waived consistent with Commission policy.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Commission at (402) 471-0213 (TDD) or the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the deadlines and requirements established in this order and attached hereto are hereby adopted.

IT IS FURTHER ORDERED that a hearing in Application Nos. FC-1332 and FC-1335 will be held on Tuesday, **December 20, 2011**, at 10:00 a.m. in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska, continuing to December 21, 2011 at 10:00, if necessary.

MADE AND ENTERED in Lincoln, Nebraska, on this 23rd day of September, 2011.

BY:

Tim Schram
HEARING OFFICER

APPENDIX A

PROCEDURAL SCHEDULE

<u>DAY</u>	<u>DATE</u>	<u>EVENT</u>
Wednesday	October 19	OrbitCom Direct Testimony filed
Tuesday	September 25	AT&T Discovery Requests filed
Tuesday	November 1	Objections to Discovery Requests filed
Friday	November 4	Oral Arguments on Motions to Compel Discovery (if necessary)
Monday	November 14	OrbitCom Responses to AT&T Discovery Requests filed
Monday	November 21	AT&T Direct Testimony Filed
Wednesday	November 30	OrbitCom Discovery Requests filed (if necessary)
Friday	December 2	Objections to Discovery Requests filed
Tuesday	December 6	Oral Arguments on Motions to Compel Discovery (if necessary)
Tuesday	December 13	AT&T Responses to Discovery Requests filed (if necessary)
Friday	December 16	Rebuttal Testimony
Monday	December 19	Deadline to file Pre-hearing Motions
Tuesday	December 20	Hearing (commencing at 10 a.m.)
Wednesday	December 21	Hearing (if necessary, commencing at 10 a.m.)

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