

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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|----------------------------------|---|-----------------------------|
| 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 |) | ORDER SCHEDULING SECOND |
| Midwest, Inc., Denver, Colorado, |) | REMAND PLANNING CONFERENCE |
| 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 14, 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") 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 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, 2010, 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.

Parties had an initial planning meeting on August 25, 2011, at 10:00 a.m. in the Commission Niobrara Conference Room, 300 The Atrium, 1200 N Street, Lincoln; Nebraska. At the conference the following legal questions were raised:

- 1) The scope of AT&T's appeal to the District Court filed on December 10, 2010, including whether the Commission prior to any further proceedings should direct AT&T to pay OrbitCom the outstanding balance for access services billed pursuant to OrbitCom's intrastate switched access tariff;
- 2) The scope of the remand ordered by the District Court in its order of February 24, 2011, including whether an evidentiary proceeding before the Commission is necessary or desirable; and
- 3) In the event the Commission determines an evidentiary proceeding is required pursuant to the February 24, 2011 remand order from the District Court, the structure for such review within the procedural framework established by the Commission's order in Docket C-4145/NUSF-74/PI-147.

The Hearing Officer determined that briefs on these issues would be necessary and full Commission participation required in making a determination on the issues. AT&T requested an opportunity to present oral argument to the Commission on the issues to be briefed.

The Hearing Officer issued an order on August 29, 2011, setting a deadline to submit briefs on the issues outlined above of September 7, 2011. Oral arguments were held before the Commission on September 14, 2011, in the Commission Hearing Room 300 The Atrium, 1200 N Street, Lincoln, Nebraska.

Upon review of the matter, I am of the opinion and find that in the event it is necessary, a second planning conference to determine a procedural schedule in the above-captioned matter, should be scheduled on **Wednesday, September 21, 2011, at 1:00 p.m.**, in the Commission Niobrara Conference Room, 300 The Atrium Building, 1200 N Street, Lincoln, Nebraska.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that a second planning conference in the above-captioned matter be, and it is hereby, scheduled for **Wednesday, September 21, 2011, at 1:00 p.m.**, as provided herein.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of September, 2011.

BY:

Tim Schram
HEARING OFFICER

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O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that a second planning conference in the above-captioned matter be, and it is hereby, scheduled for **Wednesday, September 21, 2011, at 1:00 p.m.**, as provided herein.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of September, 2011.

BY:



Tim Schram
HEARING OFFICER