

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,) ORDER GRANTING MOTION TO
Colorado, failed to pay) DISMISS COUNTERCLAIM
intrastate access charges)
billed by Orbitcom in)
accordance with Orbitcom's)
intrastate switched access)
tariff.) Entered: April 14, 2009

BY THE COMMISSION:

On February 27, 2009, OrbitCom, Inc. ("OrbitCom") filed the above-captioned Formal Complaint against AT&T Communications of the Midwest, Inc. ("AT&T") with the Nebraska Public Service Commission ("Commission"). AT&T filed its Answer and Counterclaim on March 31, 2009. On April 7, 2009, OrbitCom filed a Motion to Dismiss the Counterclaim filed by AT&T.

O P I N I O N

Commission Rules and Regulations contain the requirements for responses allowed by Respondent's to Formal Complaints filed before the Commission. Commission Rules of Procedure regarding responsive pleadings to Formal Complaints state as follows: "An answer to a formal complaint shall be filed and shall admit or deny each material allegation of the formal complaint. The answer shall set forth any affirmative defense which the defense may assert."¹ Clearly, Counterclaims, as was filed by AT&T with its March 31, 2009, Answer are not contemplated by Rule 005.08 or any other of the Commission's Rules of Procedure.

In the event circumstances arise whereby any carrier has grievances with another party under the jurisdiction of the Commission, that carrier is free to petition the Commission to investigate such circumstances or to file a Formal Complaint pursuant to Commission Rules of Procedure.²

Therefore, after examination of all the filings and motions in the current proceeding, we find that OrbitCom's Motion to Dismiss AT&T's Counterclaim should be granted.

¹ Neb. Admin. Code, Title 291, Ch. 1 § 005.08 (1992).

² Neb. Admin. Code, Title 291, Ch. 1 § 005.05 (1992).

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Motion to Dismiss Counterclaim filed by OrbitCom, Inc. in the above-captioned proceeding be, and it is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of April, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

O R D E R

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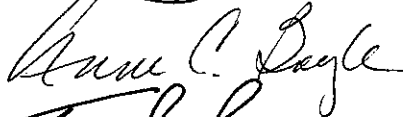
COMMISSIONERS CONCURRING:


Chairman

ATTEST:



Executive Director



//s// Frank E. Landis