

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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, ) ORDER GRANTING MOTION TO  
South Dakota, failed to ) CONSOLIDATE  
negotiate Intrastate Access )  
Charges and that OrbitCom's )  
tariffed Intrastate Switched )  
Access Rates are unfair and )  
unreasonable. ) Entered: May 12, 2009

BY THE COMMISSION:

On April 30, 2009, AT&T Communications of the Midwest, Inc. ("AT&T") filed the above-captioned Formal Complaint against OrbitCom, Inc. ("OrbitCom") with the Nebraska Public Service Commission ("Commission"). On February 27, 2009, OrbitCom filed a Formal Complaint against AT&T with the Commission, which is currently pending as Application No. FC-1332.<sup>1</sup> On May 1, 2009, AT&T filed a Motion to Consolidate the above-captioned proceeding with Application No. FC-1332, pursuant to Commission Rule of Procedure 018.08, citing that the two Formal Complaints are factually and legally related.<sup>2</sup> On May 5, 2009, OrbitCom filed an Opposition to AT&T's Motion to Consolidate stating that granting Consolidation would impede the progress of OrbitCom's Formal Complaint in Application No. FC-1332 by causing significant delays that would prejudice OrbitCom. AT&T filed a Response to the Opposition to the Motion to Consolidate on May 9, 2009.

O P I N I O N

Commission Rules and Regulations allow for two dockets that are factually and legally related to be heard on a consolidated record. AT&T initially filed the above-captioned Formal Complaint as Counterclaims in its Answer to OrbitCom's Formal Complaint in Application No. FC-1332.<sup>3</sup> Subsequently, on April 14, 2009, the Commission entered an order dismissing AT&T's

<sup>1</sup> See Application No. FC-1332, *In the Matter of the Formal Complaint of Orbitcom, Inc., Sioux Falls, South Dakota, seeking a determination that AT&T Communications of the Midwest, Inc., Denver, Colorado, failed to pay intrastate access charges billed by Orbitcom in accordance with Orbitcom's intrastate switched access tariff.* Pending.

<sup>2</sup> Neb. Admin. Code, Title 291, Ch. 1 § 018.08 (1992).

<sup>3</sup> See Application No. FC-1332, *In the Matter of the Formal Complaint of Orbitcom, Inc., Sioux Falls, South Dakota, seeking a determination that AT&T Communications of the Midwest, Inc., Denver, Colorado, failed to pay intrastate access charges billed by Orbitcom in accordance with Orbitcom's intrastate switched access tariff.* Answer and Counterclaim of AT&T Communications of the Midwest, Inc. (March 31, 2009).

Counterclaim, finding Counterclaims in Answers to Formal Complaints are not contemplated under the Commission's Rules of Procedure.<sup>4</sup> AT&T refiled the claims in the above-captioned docket. OrbitCom's Formal Complaint, Application No. FC-1332, contains allegations against AT&T for failure to pay OrbitCom's tariffed access rates and AT&T's Formal Complaint in the above-captioned Application contains allegations that OrbitCom's access rates are not fair and reasonable. Clearly the two dockets are related in subject matter, both legally and factually.

Therefore, after examination of all the filings and motions in the current proceeding and Application No. FC-1332, we find that AT&T's Motion to Consolidate Application No. FC-1335 with Application No. FC-1332 to be heard on a consolidated record should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Motion to Consolidate filed by AT&T Communications of the Midwest, Inc. in the above-captioned proceeding be, and it is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska, this 12<sup>th</sup> day of May, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Harold K. Vop*

*Frank E. Landis*  
Chairman

*Paul Johnson*

ATTEST:

*Aune C. Buefle*

*Michelle*

Executive Director

*Tom Schram*

//s// Frank E. Landis

<sup>4</sup> See Application No. FC-1332, *In the Matter of the Formal Complaint of Orbitcom, Inc., Sioux Falls, South Dakota, seeking a determination that AT&T Communications of the Midwest, Inc., Denver, Colorado, failed to pay intrastate access charges billed by Orbitcom in accordance with Orbitcom's intrastate switched access tariff.* Order Granting Motion to Dismiss Counterclaim. (April 14, 2009).