BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate unfiled agreements for Intrastate Switched Access Services at rates other than those contained in a carrier's tariff on file with the Commission.	)	Application No. C-4238 PI-157 ORDER OPENING DOCKET January 20, 2010

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

Local exchange carriers operating in Nebraska that provide intrastate access services are required to file tariffs with the Nebraska Public Service Commission (Commission), setting forth the rates, terms and conditions under which intrastate access service is provided. The Commission on its own motion, opens this docket to investigate agreements and/or contracts between carriers operating in Nebraska, not filed with the Commission, to provide intrastate access services at rates, terms and conditions, other than those contained in a carrier's official tariff filed with the Commission.

During the hearing on Formal Complaints between Orbitcom, Inc. (Orbitcom) and AT&T Communications of the Midwest, Inc. (AT&T)[1], the Commission received testimony regarding an unfiled or "non-tariffed" agreement in which Orbitcom had been providing intrastate access services to AT&T at rates lower than those contained in Orbitcom's tariff on file with the Commission. During the course of the hearing the Commission received further evidence that other such agreements exist and are operational in Nebraska. These agreements are purportedly kept confidential from the Commission, as well as, other competing carriers in the market. The Commission took note of these unfiled agreements in the Docket FC-1332/FC-1335 Order stating,

> The Commission has serious concerns regarding the existence of agreements between carriers that are not filed with the Commission

[1] *See* Docket 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* & Docket FC-1335, *In the Matter of the Formal 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,* Order, (November 10, 2009).

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> and contain rates that are not made available to all competitors in the marketplace. ... The Commission is concerned such agreements are discriminatory and anti-competitive and contrary to both Federal and State regulatory policy. The Commission, therefore, intends to open an investigation to closely scrutinize unfiled, off-tariff agreements between carriers in Nebraska and examine the affect of such agreements on regulatory policy, competition, and the telecommunications marketplace.

The Commission finds that a data request shall be sent to all local exchange and interexchange carriers operating in Nebraska seeking information regarding unfiled agreements for intrastate access services at rates, terms and conditions other than those contained in tariffs filed with the Commission.

The Commission hereby opens this investigation to gather information on unfiled, non-tariffed agreements between carriers operating in Nebraska under which intrastate access services are provided at rates, terms and conditions other than those contained in tariffs on file with the Commission. The Commission's investigation will include, but not be limited to, an examination of the implications of such agreements on regulatory policy, competition, and the Nebraska telecommunications marketplace.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a public investigation is hereby opened as captioned above.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of January, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

//s// Frank E. Landis
//s// Gerald L. Vap

Executive Director

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