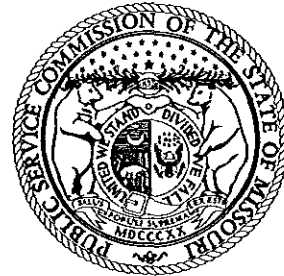


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Notice of *Ex Parte* Contact

TO: Records Department: All Parties in Case No. **TO-99-227**

FROM: Chairman Sheila Lumpe *SL*
Vice Chair M. Dianne Drainer *MD*
Commissioner Harold Crumpton
Commissioner Connie Murray *CM*
Commissioner Robert Schemenauer *RS*



DATE: April 19, 1999

On **April 15, 1999**, each of us received a facsimile from **David E. Scott, of Birch Telecom**. The Commission is currently considering the same issues as to those set out in this document in Case No. **TO-99-227**. The Commission is bound by the same *ex parte* rule as a court of law.

Pursuant to 4 CSR 240-4.020(4) it is improper for any person to attempt to sway the judgement of the Commission by undertaking, directly or indirectly, outside the hearing process, to bring pressure or influence to bear upon the Commission, or the Regulatory Law Judge assigned to the proceeding.

Whenever such contact might occur 4 CSR 240-4.020(a) states: as *ex parte* communications (either oral or written) may occur inadvertently, any member of the Commission or Regulatory Law Judge who received the communication shall immediately prepare a written report concerning the communication and submit it to the Chair and each member of the Commission. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

This case is not a contested case because the Commission does not have the ultimate decision making authority but rather will be making a recommendation to the Federal Communications Commission. However, the Commission has decided to follow contested case procedures in this proceeding. Therefore, out of an abundance of caution, we think it is appropriate to submit this notice of *ex parte* contact pursuant to the standards set out in the rules cited above. This will ensure that any party to this case will have notice of the attached information and a full and fair opportunity to respond to the comments contained therein.

cc: Executive Director
Secretary/Chief Regulatory Law Judge
General Counsel



el parte

The information in this fax is confidential. If you are not the intended recipient of this fax, please contact the sender.

To: Commissioner Sheila Lumpe

Fax: 573-526-7341

From: David E. Scott

Number of Pages: 3 (Including Cover Sheet)

Date: April 15, 1999

2020 Baltimore Avenue
Kansas City, Missouri 64108
Phone: 816-300-3000 Fax: 816-300-3291



April 15, 1999

Commissioner Sheila Lumpe
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Dear Commissioner Lumpe:

On April 5 I wrote to let you know about a problem that Birch Telecom was having in seeking to provide facilities-based local telephone service to its customer base using unbundled network elements through multiplexed serving arrangements provided under our interconnection agreement with Southwestern Bell Telephone Company (SWBT). We had been experiencing a failure rate of 77% of all facilities provided by SWBT under those arrangements, which led to intermittent dial tone outages for our customers. Based on the work of the engineering staff of both Birch and SWBT at that time, we believed the problems had been isolated to SWBT's network.

SWBT worked closely with Birch to take remedial action to correct the circuit failures, but the problems persisted. After extensive searches for the "needle in the haystack" by Birch and SWBT engineers, the problem was isolated to a failure of the Birch and SWBT networks to synchronize their timing with one another. The direct cause of the timing problem was a manufacturing flaw in equipment within the Birch's network, for which our vendor has acknowledged responsibility and is providing a correction.

I wanted you to know that when we escalated this problem to SWBT's managers, SWBT acted quickly and diligently to help determine and resolve the underlying problem. SWBT's management team responded on short notice to discuss ways to resolve the problem, and their engineering staff worked closely with ours to rectify it. We have criticized SWBT when we think its policy positions or operational performance warrant it, but also want to acknowledge it for a job well done. In this situation SWBT did all that we could ask of it, and its team deserves credit for that good work.

While we were pleased with SWBT's efforts to join with us to isolate and correct this problem, it still is important to keep in mind that the timing problem was indirectly the result of the more complex serving arrangement that is required when we are not physically collocated with SWBT. Because of the extremely high costs of physical collocation in Missouri, we must limit the points of physical collocation with SWBT. Yet Birch desires to bring the benefits of competition to more than just the largest customers in concentrated business districts. To provide service to the entire city, and not

just to big businesses in downtown areas, we must use these multiplexed arrangements. We therefore still hope, and ask for your assistance, to reduce the costs of collocation to reasonable levels that will not require us to use these more complex and inherently more problematic serving arrangements. I fear that as long as these unusual and complex serving arrangements are necessary, and despite the best efforts of Birch Telecom and SWBT, customers will continue to be subjected to unacceptable levels of service.

Sincerely yours,



David E. Scott
President and Chief Executive Officer

Cc: Jeanne Hatfield, SBC Communications, Inc

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PUBLIC SERVICE COMMISSION