

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 8th  
day of June, 2000.

Joint Petition of Birch Telecom of	)	
Missouri, Inc. for a Generic Proceeding	)	
to Establish a Southwestern Bell Telephone	)	<u>Case No. TT-2000-513</u>
Company Collocation Tariff Before the	)	
Missouri Public Service Commission	)	

ORDER DISMISSING PETITION AND CLOSING CASE

On February 22, 2000, Birch Telecom of Missouri, Inc., Rhythms Links, Inc., Nextlink Missouri, Inc., McLeodUSA Telecommunications Services, Inc. and IP Communications Corporation of the Southwest (Applicants) filed a pleading requesting that the Commission establish a generic proceeding to establish a Southwestern Bell Telephone Company (SWBT) collocation tariff. Applicants allege that SWBT has current practices of using individual case basis pricing, making unilateral determinations of intervals for the return of price quotes, providing inconsistent provision intervals for collocation, providing different types of collocation, and being ambiguous about the terms upon which collocation is provided. Applicants believe that these practices all constitute significant barriers to competitive entry in Missouri. Applicants contend that SWBT's lack of a collocation tariff prevents the Commission from determining whether SWBT is offering collocation in a nondiscriminatory fashion. Applicants assert that the Federal

Communications Commission (FCC) "has invited state commissions to adopt collocation tariffs." Applicants argue that having a collocation tariff would allow other carriers to adopt the same terms. Applicants contend that SWBT's failure to adopt a collocation tariff is a violation of "the SBC-Ameritech Merger Conditions<sup>1</sup>." Applicants also contend that SWBT must file a collocation tariff in order to obtain authority to offer interLATA service in Missouri. Applicants express concerns that SWBT's affiliate, SBC Advanced Solutions, Inc. (ASI), will be able to negotiate collocation terms more advantageous than Applicants were (or will be) able to obtain. Finally, Applicants argue that a generic proceeding to establish a SWBT collocation tariff is in the public interest.

On March 23, 2000, SWBT filed a motion to dismiss and response to Applicants' filing. SWBT points out that four of the five applicants already have interconnection agreements with SWBT that include collocation provisions. SWBT states that Applicants do not and cannot cite any FCC order that requires SWBT to file a tariff containing collocation provisions. SWBT cites the arbitration order in Case Nos. TO-97-40 and TO-97-67 (the SWBT/AT&T arbitration) in which the Commission held that "terms, conditions and guidelines [for collocation] can be set forth by tariff or incorporated in the Interconnection Agreement." SWBT counters Applicants' argument that having a collocation tariff would allow other carriers to adopt the same terms by pointing out that the

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<sup>1</sup> Applicants do not explain where these conditions are to be found, or what authority this Commission has to enforce them.

collocation terms in its interconnection agreements can be adopted pursuant to Section 252(i) of the Telecommunications Act of 1996 (the Act). SWBT asserts that the interconnection agreements it has with four of the Applicants contain dispute resolution procedures, and those provisions should be followed if those four Applicants have concerns with the collocation provisions in their interconnection agreements. SWBT answers Applicants concerns about ASI by stating that the ASI/SWBT interconnection agreement: A) is consistent with the Commission's decision in the SWBT/AT&T arbitration; B) contains price quote and construction terms identical to those contained in interconnection agreements with other CLECs, including Applicants; and C) is available in its entirety to any CLEC that chooses to adopt it. SWBT states that it intends to file a "Missouri 271 Agreement" (M2A)<sup>2</sup> that, if approved by the Commission, will constitute a standard offer containing statewide average pricing and collocation terms and conditions.

On April 3, 2000, Birch Telecom of Missouri, Inc. and Rhythms Links, Inc. (Birch and Rhythms) filed a response to SWBT's motion to dismiss and response. Birch and Rhythms mostly re-argue the points that Applicants raised in their petition. Birch and Rhythms express incredulity that SWBT opposes Applicants' petition, since SWBT has collocation tariffs in Texas and Kansas. Birch and Rhythms make vague allegations that ASI must have received favorable treatment, but do not

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<sup>2</sup> In a subsequent pleading filed on June 7, 2000, SWBT stated that it intends to make the M2A filing in the very near future.

offer any grounds for these allegations. In footnote 4, Birch and Rhythms note that "Birch is pursuing this complaint to provide more certainty to determine how to proceed...." This case is not a complaint; Applicants couched it as a petition to require SWBT to offer a collocation tariff. As a result, the question for the Commission is whether Applicants have demonstrated a need to establish a generic proceeding to establish a SWBT collocation tariff.

On April 13, 2000, SWBT replied to the response of Birch and Rhythms, and a response of IP Communications Corporation of the Southwest. SWBT initially notes certain filing defects in these responses<sup>3</sup>. SWBT asserts that the response of Birch and Rhythms does not remedy what SWBT views as the underlying flaw in Applicants' petition: that there is no anticompetitive problem that needs to be fixed. SWBT states that it is even permitting Rhythms to place collocation orders even though it does not yet have an interconnection agreement with SWBT. SWBT appended to its pleading a copy of its current collocation appendix, which it claims addresses the points Birch and Rhythms raise with respect to an older collocation appendix.

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<sup>3</sup> SWBT alleges that the April 3, 2000, pleading filed by Birch and Rhythms was not properly submitted by an attorney licensed to practice in Missouri. However, the copy filed with the Commission bears a signature of Kara A. Gilmore, and Ms. Gilmore's Missouri bar number, so it appears that SWBT's concerns with the filing are not well founded. SWBT also refers to a response filed by IP Communications Corporation of the Southwest, but the Commission's records do not indicate that such a response was accepted for filing in this case.

On May 9, 2000, Birch, Rhythms, and IP Communications Corporation of the Southwest filed a motion for interim relief in which they requested that the Commission require SWBT to offer collocation on the same terms and conditions as it uses in Texas and Oklahoma. On May 18, 2000, SWBT filed a pleading opposing the request for interim relief. On May 30, 2000, Staff filed a pleading in which it supported the request for interim relief. On June 7, 2000, SWBT filed a reply to Staff's response supporting Applicants' request for interim relief.

Applicants and SWBT agree that the Act, as well as decisions of the FCC, require SWBT to provide collocation on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Applicants and SWBT also agree that the Commission has jurisdiction over contractual and regulatory issues relating to collocation. The Commission concurs on both of these points. Applicants and SWBT most strongly disagree on whether the Act imposes on SWBT "an obligation to file a collocation tariff." The Commission notes that Applicants cited no specific authority for their position that a tariff is required<sup>4</sup>. The Commission finds that the current practice of negotiating or adopting interconnection (including collocation) terms by agreement, and arbitration if necessary, rather than by tariff is consistent with

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<sup>4</sup> Applicants in their petition, and Birch and Rhythms in their April 3, 2000, response, make statements such as "the concept of a collocation tariff is consistent with" FCC orders and the Act, and "the FCC has invited state Commissions to adopt collocation tariffs." They do not cite any authority for the claim that there is a requirement to file a collocation tariff that this Commission must enforce.

Congress' intent in drafting the Act, consistent with the FCC's rules and orders implementing the Act, and consistent with the public interest. The Commission will dismiss Applicants' petition<sup>5</sup>. However, the Commission does expect SWBT to offer its M2A "in the very near future," and the Commission will address the collocation pricing, and terms and conditions in the M2A.

**IT IS THEREFORE ORDERED:**

1. That the petition to establish a generic proceeding to establish a Southwestern Bell Telephone Company collocation tariff filed on February 22, 2000, by Birch Telecom of Missouri, Inc., Rhythms Links, Inc., Nextlink Missouri, Inc., McLeodUSA Telecommunications Services, Inc. and IP Communications Corporation of the Southwest is dismissed.
2. That this order shall become effective on June 20, 2000.
3. That this case may be closed on June 21, 2000.

**BY THE COMMISSION**

(S E A L)



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

Lumpe, Ch., Drainer, Murray, and Simmons, CC., concur  
Schemenauer, C., dissents

Mills, Deputy Chief Regulatory Law Judge

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<sup>5</sup> Because the Commission is dismissing the petition and declining to require SWBT to implement a collocation tariff, certain later filings such as applications to intervene and a motion for interim relief are moot and will not be addressed.

**RECEIVED**  
JUN 08 2000

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PUBLIC SERVICE COMMISSION