

NEWMAN, COMLEY & RUTH

PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
MONROE BLUFF EXECUTIVE CENTER
601 MONROE STREET, SUITE 301
P.O. BOX 537
JEFFERSON CITY, MISSOURI 65102-0537
www.ncrpc.com

TELEPHONE: (573) 634-2266
FACSIMILE: (573) 636-3306

ROBERT K. ANGSTEAD
MARK W. COMLEY
CATHLEEN A. MARTIN
STEPHEN G. NEWMAN
JOHN A. RUTH
J. MATTHEW SHELLENBERGAR
ALICIA EMBLEY TURNER

June 9, 2003

FILED³

JUN 09 2003

Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Re: Birch Telecom of Missouri, Inc., AT&T Communications of the Southwest, Inc. and
TCG Kansas City, Inc. and TCG St. Louis, Inc. v.
Southwestern Bell Telephone, L.P. d/b/a SBC Missouri

Dear Judge Roberts:

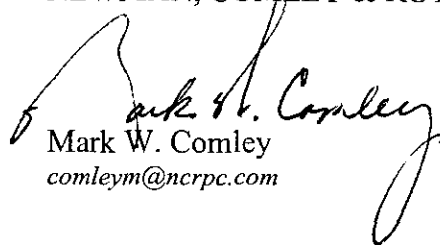
Enclosed please find for filing with the Commission an original and five copies of a
Complaint.

Please call me if there are any questions regarding this filing. Thank you very much.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Office of Public Counsel
General Counsel
Rose Mulvaney Henry
Rebecca B. DeCook
Katherine K. Mudge

BEFORE THE PUBLIC SERVICE COMMISSION

FILED³
JUN 09 2003

Missouri Public
Service Commission

BIRCH TELECOM OF)
MISSOURI, INC., AT&T)
COMMUNICATIONS)
OF THE SOUTHWEST, INC.,)
TCG KANSAS CITY, INC. AND)
TCG ST. LOUIS, INC.)
)
V.)
)
SOUTHWESTERN BELL)
TELEPHONE, L.P. D/B/A)
SBC MISSOURI)

Cause No. _____

COMPLAINT

COME NOW Birch Telecom of Missouri, Inc. ("Birch"), AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc. and TCG St. Louis, Inc. (collectively "AT&T") pursuant to Mo. Rev. Stat. §§ 386.250, 386.320, 386.330, 386.390, 386.400, 392.200.1 and .6, 392.230.3, 392.240.2, and .3, 392.400.6, and 392.480; Sections 251(c)(6) and 252(d)(1) of the federal Telecommunications Act of 1996,¹ 47 CFR 51.501-.09, and Missouri Public Service Commission ("Commission") Mo. Code Regs. Ann., tit. 4 §§ 240-2.070, and file this Complaint against Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC-M") for retroactively and on a going forward basis overcharging Birch and AT&T for power under SBC-M's Physical Collocation Tariff. Birch and AT&T respectfully request relief from the Missouri Public Service Commission ("Commission") to order SBC-M: (1) to charge power rates consistent with the definition of the rate element of DC Power Consumption on a per amp basis found in Section 20.5 of its Physical Collocation Tariff and Attachment 13 of AT&T's current

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered section of 15 and 47 U.S.C.) ("Act").

interconnection agreements for power consumed; and (2) to cease and desist its demand that Birch place disputed amounts related to this Complaint into an escrow account pending resolution. In support, AT&T and Birch would show the following:

I. Overview

Birch and AT&T (collectively “Complainants”) seek immediate relief from unlawful, abusive, and anti-competitive practices by SBC-M regarding power charges for collocation services. There are two disputes between SBC-M and Complainants addressed herein.

1. Under Sections 20.5 and 21.4 of SBC-M’s Physical Collocation Tariff and Attachment 13 of AT&T’s current interconnection agreements, as approved by the Commission, does SBC-M have the right to unilaterally charge for redundant power, retroactively and on a going forward basis, *in addition* to the power consumed for the collocation arrangement?

2. Does SBC-M have the right to demand that Birch place disputed amounts for the power charges in escrow before it can file this Complaint?²

Issue No. 1 Overview

The dispute regarding power consumption rates arose as a result of SBC-M invoices for ongoing power charges for Complainants’ collocation arrangements in Missouri. Commencing October 2002, SBC-M began assessing unauthorized charges for redundant power, in addition to the power the Complainants had consumed for their collocation arrangements in Missouri. The substantive dispute also arises for Birch, as SBC-M has issued an invoice to true-up amounts between the Missouri permanent

² To date, SBC has never made a comparable demand on AT&T, even though AT&T has disputed ongoing collocation power overcharges.

collocation power rates and the interim rates.³ Complainants submit that the answer to the Issue No. 1 is “no” for two reasons. *First* and foremost, the DC Power Consumption rate element and the power per amp rates approved by the Commission already include redundant power as part of the calculation of the rates and what is authorized under the Tariff. SBC-M is not entitled to charge Complainants for both the power arrangement and redundant power. Thus, SBC-M is overcharging tariffed power rates using an interpretation that is not supported under the Physical Collocation Tariff.⁴ *Second*, from an operational perspective, the manner in which the power is delivered to Complainants’ equipment underscores that SBC-M should not be allowed to charge for redundant power.

Issue No. 2 Overview

This dispute arose only recently when SBC-M demanded that Birch begin to place disputed amounts resulting from the collocation power overcharge dispute in an escrow account. SBC-M’s demand came notwithstanding an 8 month-standing business-to-business arrangement wherein Birch would not place disputed amounts in escrow. The answer to Issue No. 2 is likewise “no” for two reasons. *First*, SBC-M cannot invoke the escrow provisions in the Physical Collocation Tariff when SBC-M has no basis for its overcharges. SBC-M’s attempt to invoke any requirement for escrow based upon its unilateral and unsupported new interpretation of the Physical Collocation Tariff constitutes anticompetitive and abusive behavior. *Second*, SBC-M’s demand to Birch is

³ To date, SBC has not sent an invoice for true-up amounts for AT&T’s Missouri collocation arrangements.

⁴ The definition and rates for DC Power Consumption found in §§ 20.5 and 21.4, respectively in the Collocation Tariff, are identical to the definitions and rates in Attachment 13 (M2A Physical Collocation Appendix) in AT&T’s Current Interconnection Agreements. Any determination made with respect to the Physical Collocation Tariff will apply equally to the comparable provisions in Attachment 13 of AT&T’s Current Agreements.

applied inconsistently, thereby establishing discriminatory treatment, as AT&T has never been served with any demand for placement of disputed collocation power charges into an escrow account, even though AT&T has withheld disputed amounts for power overcharges.

Birch and SBC-M, and AT&T and SBC-M, individually and collectively, attempted to resolve the dispute. Even after an informal settlement conference in Texas to resolve the identical dispute identified in Issue No. 1, the parties remain at an impasse. In Texas, Birch and AT&T recently filed a complaint on the single issue of SBC-M's overcharge for power consumption.⁵ Consequently, Birch and AT&T seek Commission assistance to resolve the dispute to prohibit SBC-M from unilaterally and unlawfully charging Complainants in excess of the tariffed power nonrecurring and recurring rates in the Physical Collocation Tariff and making demand for placement of disputed monies in an escrow account when there is no basis for SBC-M's overcharge for power consumption.

II. The Parties

1. Birch Telecom of Missouri, Inc. is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of Missouri as a foreign corporation. Its principal Missouri offices are currently located at 2020 Baltimore Avenue, Kansas City, Missouri 64108. Birch is an authorized provider of

⁵ PUC Docket No. 27559, *Complaint of Birch Telecom of Texas, Ltd., L.L.P., AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications of Houston, Inc. Against Southwestern Bell Telephone, L.P. for Post-Interconnection Dispute Regarding Overcharges For Power Under SBC-Texas' Physical Collocation Tariff* (filed March 26, 2003) ("Texas Collocation Power Complaint"). The Texas proceeding does not include the escrow dispute, as the SBC-Texas Physical Collocation Tariff does not have any escrow provisions. Currently, a procedural schedule is set in the Texas proceeding with a hearing on the merits (via summary decision) on August 4, 2003.

intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. Birch is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission.

2. AT&T Communications of the Southwest, Inc. (“AT&T Communications”) is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of State of Delaware, authorized to do business in the State of Missouri as a foreign corporation. Its principal Missouri offices are currently located at 101 West McCarty, Suite 216, Jefferson City, Missouri 65101. AT&T Communications is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. AT&T Communications is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission.

3. TCG St. Louis, Inc. is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Delaware, authorized to do business in the State of Missouri as a foreign corporation. Its principal Missouri offices are currently located at 101 West McCarty, Suite 216, Jefferson City, Missouri 65101. TCG St. Louis, Inc. is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission.

4. TCG Kansas City, Inc. is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Delaware, authorized to do business in the State of Missouri as a foreign corporation. Its principal Missouri offices are currently located at 101 West McCarty, Suite 216, Jefferson City, Missouri 65101. TCG Kansas City is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission.

5. Collectively, AT&T currently provides telecommunications services to residential and business customers in Missouri.

6. All communications and pleadings in this case should be directed to:

Katherine K. Mudge
Smith, Majcher & Mudge, LLP
816 Congress Avenue, Suite 1270
Austin, Texas 78701
(512) 322-9068 (direct)
(512) 322-9020 (fax)
kmudge@reglaw.com

Rose Mulvany Henry
BIRCH TELECOM, Inc.
2020 Baltimore Avenue
Kansas City, Missouri 64108
(816) 300-3731 (voice)
(816) 300-3350 (fax)
rmulvany@birch.com

Rebecca B. DeCook
AT&T
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
(303) 298-6357 (direct)
(303) 298-6301 (fax)
decook@att.com

Mark W. Comley
Newman, Comley & Ruth, P.C.
601 Monroe Street, Suite 301
Jefferson City, Missouri 65102
(573) 634-2266 (voice)
(573-) 636-3306 (fax)
comleym@ncrpc.com

7. SBC-Missouri is a Texas limited partnership with its principal Missouri place of business located at One Bell Center, St. Louis, Missouri 63101. SBC-Missouri is an incumbent local exchange carrier (“ILEC”), as defined in Section 251(h) of the Act, and is a noncompetitive large local exchange carrier as defined by Mo. Rev. Stat. §§ 386.020, 392.361, and 392.245. SBC-M is the successor to Southwestern Bell Telephone Company (“SWBT”). Its address, telephone number, and facsimile number are:

One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-4300
(314) 247-0014 (fax)

III. Jurisdiction

8. The Commission has general jurisdiction over Birch, AT&T, and SBC-M as telecommunications companies and their telecommunications facilities, including pursuant to Mo. Rev. Stat. § 386.250, all powers necessary or proper to enable it to carry out fully and effectually all its regulatory purposes as provided in Section 386.040. The Commission has jurisdiction to pursue complaints regarding unlawful conduct by telecommunications companies, such as this Complaint against SBC-M, pursuant to Mo. Rev. Stat. §§ 386.310, 386.330, 386.390, 386.400, and 392.400.6. As described in greater detail below: (i) SBC-M has violated Mo. Rev. Stat. §§ 392.200.1 and 392.240.2

by attempting to impose charges greater than those allowed by the Physical Collocation Tariff, the parties' respective interconnection agreements, and the Commission's Orders relating thereto; (ii) SBC-M has violated Mo. Rev. Stat. § 392.480 by attempting to impose charges outside the provisions of the Physical Collocation Tariff; (iii) SBC-M has violated the provisions of Mo. Rev. Stat. § 392.230.3 by attempting to change tariffed rates without submitting the proposed changes to the Commission for approval; (iv) SBC-M has violated the terms of the interconnection agreements by amending the provisions dealing with collocation charges without negotiation and mutual consent pursuant to Section 18.1 of the General Terms & Conditions of both the Birch/SBC-M and AT&T/SBC-M Interconnection Agreements; and (v) SBC-M has violated Sections 251(c)(6) and 252(d)(1) of the Act and 47 CFR 51.501-.09 by attempting to impose unapproved collocated prices that exceed the total element long run incremental cost ("TELRIC") of providing such services.

IV. Background and Chronology

9. On October 12, 2001, SBC-M's Physical Collocation Tariff took effect as a result of the Commission's approval of the Tariff in Case No. TT-2001-298. Birch and AT&T request that the Commission take notice of the Physical Collocation Tariff and the Order approving the Tariff, which is contained in the Commission's files and incorporated herein by this reference. In the Tariff, the Commission established permanent rates for SBC-M's physical collocation.

10. Prior to that event, Complainants paid SBC-M for its collocation arrangements in Missouri based on the interim rates for collocation established by the Commission in approving the SBC-M's Missouri 271 Agreement ("M2A"). Attachment

13-Appendix: Physical Collocation to the M2A established interim collocation provisions that were effective until replaced by provisions of SBC-M's Collocation Tariff. Section 20 of Attachment 13 provides that the rate elements were to be effective until replaced by the Tariff. Section 21 provides that the rates would be effective until replaced by the Tariff and were subject to a true-up to the rates approved by the Commission for inclusion in the Tariff. The true-up was limited to a period of six months preceding the effective date of the tariffed rates, but excluded periods prior to the effective date of the agreement. The true-up was required to be completed within 30 days of the effective date of the Tariff.

A. Birch-Specific Facts

11. The Commission approved an interconnection agreement between Birch and SBC-M ("Birch Original Agreement"), effective September 10, 1999, that was an adoption of the SWBT-AT&T arbitrated Missouri interconnection agreement in effect at that time. The Commission approved various amendments to this agreement. Birch requests that the Commission take notice of this Original Agreement and amendments, which are contained in its files and incorporated herein by reference.

12. Birch exercised its right to replace the Original Agreement with the M2A ("Birch Current Agreement"), as approved by the Commission in Case No. TO 99-227. Birch's Current Agreement became effective on April 18, 2001. The current term of the M2A ends March 6, 2005. The Commission approved various amendments to the Birch Current Agreement. Birch requests that the Commission take notice of the Agreement and amendments, which are contained in its files and incorporated herein by reference. The Birch Current Agreement contains Attachment 13 as described herein.

13. Currently, Birch has 30 physical collocation arrangements in SBC-M central offices in Missouri, specifically in the Kansas City and St. Louis metropolitan areas. Two of these collocation arrangements became operational in 1999, while the remaining arrangements became operational in 2000. All of Birch's collocation arrangements in Missouri have been in continuous use since becoming operational.

14. Birch utilizes these collocation arrangements for purposes of obtaining access to SBC-M's unbundled network elements and/or for interconnection with SBC-M. These collocation arrangements contain Birch-owned transmission and related telecommunications equipment. Accordingly, the collocation arrangements are essential to Birch's ability to provide uninterrupted voice and data telecommunications services to its existing customers in Missouri.

15. With permanent physical collocation rates in place effective October 21, 2001, Birch anticipated that SBC-M would prepare a true-up proposal between the interim and permanent rates, consistent with the terms of Attachment 13 of the Birch Current Agreement. Birch did not receive any notice or correspondence from SBC-M during the 30-day period regarding the true-up.

16. Then, on October 25, 2002, twelve (12) months after the effective date of the Tariff and permanent rates, SBC-M rebilled Birch for all of the physical collocation recurring charges, which included power recurring charges.⁶ In the SBC-M true-up bill,

⁶ Birch anticipated that rather than receive a bill from SBC-M with true-up charges, SBC-M would have provided true-up calculations in the form of a proposal to allow Birch to determine the methodology used by SBC-M, as well as allow the parties to discuss any disagreements with the proposed true-up calculations. Instead, SBC-M simply sent a bill, which then required Birch to spend an inordinate amount of resources simply to ascertain what was included in the true-up bill. To date, even though requested, Birch still has not received a spreadsheet showing how SBC-M reached the true-up amounts for both nonrecurring and recurring rates for the collocation arrangements. It appears that SBC-M retroactively trueed up all of Birch's collocation arrangements to the beginning of each individual order date, which preceded even the established time frames outlined in the Birch Current Agreement and Tariff.

SBC-M billed Birch for recurring power charges that basically doubled Birch's power charges based *solely* on SBC-M's decision to charge Birch for redundant DC power, in addition to the power consumed for each arrangement.⁷

17. Birch timely and properly disputed this amount as being an improper calculation of the true-up for DC Power Consumption rates during the true-up period. Upon further investigation, Birch determined that SBC-M is also charging Birch late payment charges on the disputed amounts despite SBC-M's and Birch's arrangement that Birch did not have to pay the disputed amounts until the issue was resolved. At no time did SBC-M notify or even discuss with Birch that SBC-M would impose late payment charges to any disputed amounts.

18. Also on October 25, 2002, twelve (12) months after the effective date of the Tariff and permanent collocation rates, SBC-M issued its regular monthly invoice to Birch, which included charges for Birch's current collocation arrangements. Upon investigation of the invoice (and all subsequent invoices), Birch determined that, without prior notice, explanation, or discussion, SBC-M began to charge Birch for DC Power Consumption based on the power consumed for the arrangement *and for redundant power* for the same arrangement. Birch disputed the collocation power charges on the basis that SBC-M was not authorized under the Physical Collocation Tariff to charge for redundant power. For the October 2002 invoice, the amount in dispute for the power related overcharges was \$425,050.18. Since that time, SBC-M has unlawfully continued to charge Birch power rates in excess of the tariffed rates on an average of \$ 18,000 per

⁷ Birch basically uses the same equipment and footprint for its end office collocation arrangements, as well as its tandem collocation arrangements in Missouri. That is generally, for its end office collocation arrangements, Birch currently utilizes cageless collocation with 40 amps of DC power; for its tandem office collocation arrangements, Birch currently utilizes caged collocation also with 40 amps of DC power; for its

month. As of the filing of this Complaint, the total amount in dispute for Birch through the May 2003 invoices received from SBC-M is \$551,035.90 in disputed recurring power charges and \$ 40,014.33 in late payment charges.

19. On May 14, 2003, SBC-M notified Birch, for the first time, via letter, that it would not accept Birch's billing disputes (even though Birch had been disputing such bills since November 2002) until and unless Birch deposited all disputed amounts related to the issue of Power Charges into an escrow account ("Birch's Failure to Properly Perfect Billing Disputes"). At no time prior to the issuance of such letter, did SBC-M deny Birch's billing dispute or demand that Birch place disputed amounts in an escrow account. In fact, pursuant to the business-to-business arrangement between Birch and SBC-M, Birch was not required to pay any disputed amounts to SBC-M or place funds in escrow. Birch objected to SBC-M's demands and escalated the issue to SBC-M upper management for SBC-M to comply with its agreement.

20. In addition to the SBC-M's notification of failure to perfect billing disputes, on or about May 15, 2003, for the first time since Birch started disputing the power charges, SBC-M sent Birch a written "dispute denied" notification. SBC-M's summary denial did not provide a basis for the denial. It was not clear at the time, nor is it clear today, why SBC-M suddenly started to "reject" a billing dispute that Birch had initiated in November 2002.

tandem office collocation arrangements, Birch currently utilizes all but one caged collocation with 100 amps of DC power, and one caged collocation with 300 amps of DC power.

21. Both of these communications came after seven (7) months of Birch's regular billing dispute of the overcharges and eight (8) months after the business-to-business arrangement that Birch would not pay any disputed monies while the dispute was pending.

22. SBC-M and Birch have discussed extensively both disputes and issues contained in this Complaint in a number of settings, both formal and informal. However, the parties have not been able to reach agreement. Commission intervention of the dispute is the only means that Birch can see to resolve the impasse.⁸

B. AT&T-Specific Facts

23. On November 25, 1997, in Case No. TO-97-40, the Commission approved an interconnection agreement between AT&T and SBC-M, which resulted from an arbitration conducted by the Commission. On March 30, 1998, in Case No. TO-98-115, the Commission approved a second interconnection agreement between AT&T Communications and SBC-M, which resulted from an arbitration proceeding conducted by the Commission. The Commission approved various amendments to this agreement. AT&T requests that the Commission take notice of these original agreements and amendments, which are contained in its files and incorporated herein by reference.

24. On September 15, 2001, in Case No. TA-2001-455, the Commission approved interconnection agreements between AT&T Communications and SBC-M, TCG St. Louis, Inc. and SBC-M and TCG Kansas City, Inc. and SBC-M. These

⁸ Complainants are very mindful of the limited Commission resources and time, particularly at this point in time. However, given the amount in controversy continues to rise, without any movement from SBC-M, Birch and AT&T determined that they had to file this Complaint. Birch and AT&T understand that NuVox Communications of Missouri, Inc. recently filed a similar complaint against SBC-M. See Cause No. XC-2003-0421. Birch and AT&T appreciate the ability to seek Commission assistance, and will work with the Commission Staff for an efficient method of resolving this Complaint in a consistent manner or with the NuVox Complaint.

agreements include provisions of the M2A, as well as other separately negotiated and arbitrated provisions approved by the Commission (“AT&T Current Agreements”). The Commission approved various amendments to the AT&T Current Agreements. AT&T requests that the Commission take notice of the Agreements and amendments, which are contained in its files and incorporated herein by reference. The AT&T Current Agreements contain Attachment 13 as described herein.

25. Currently, AT&T has 15 physical collocation arrangements in SBC-M central offices in Missouri, specifically in the St. Louis and Kansas City metropolitan areas. All of these collocation arrangements became operational in 2000 and have been in continuous use.

26. AT&T utilizes these collocation arrangements for purposes of obtaining access to SBC-M’s unbundled network elements and/or for interconnection with SBC-M. These collocation arrangements contain AT&T-owned transmission and related telecommunications equipment. Accordingly, the collocation arrangements are essential to AT&T’s ability to provide uninterrupted voice and data telecommunications services to its existing customers in Missouri.

27. With permanent physical collocation rates in place effective October 21, 2001, AT&T anticipated that SBC-M would prepare a true-up proposal between the interim and permanent rates, consistent with the terms of Attachment 13 of the AT&T Current Agreement. AT&T did not receive any notice or correspondence from SBC-M during the 30-day period regarding the true-up.

28. To date, AT&T has not received any invoice from SBC-M for a true-up for collocation rates in Missouri.

29. In October 2002, SBC-M issued its regular monthly invoice to AT&T, which included recurring monthly charges for AT&T's collocation arrangements. Upon investigation of the invoice, AT&T determined that SBC-M began to charge AT&T for DC Power Consumption for only some of its collocation arrangements based on the power amperage arrangement *and for redundant power* for the same arrangements; for other collocation cages, SBC-M was charging only for power consumed (no overcharges involved). By January 2003, SBC-M, through its regular monthly invoices, included recurring monthly charges for all collocation arrangements based on the power consumed and for redundant power.

30. AT&T disputed the collocation power charges on the basis that SBC-M was not authorized under the Tariff to charge for redundant power. SBC-M did not respond to AT&T's billing dispute. Since October 25, 2002, AT&T has withheld over \$150,000 in disputed amounts related to the power charge dispute. SBC-M has disputed AT&T's withholding of the disputed amounts, but has not placed any demands on AT&T.

31. Generally, the monthly amount in dispute for the power related overcharges is approximately \$39,865.00.

32. AT&T and SBC-M have discussed the dispute and issue contained in this Complaint in a number of settings, both formal and informal. However, the parties have not been able to reach agreement. Commission intervention of the dispute is the only means that AT&T can see to resolve the impasse.

V. The Dispute – Issue No. 1 – Power Overcharges

33. The most significant recurring component for Complainants' collocation arrangements in Missouri is the cost of power.

34. In order to provide power for its equipment located within the collocation arrangement,⁹ Complainants purchase power from SBC-M under the terms of the SBC-M Physical Collocation Tariff.

35. Under Section 20.5 of the Physical Collocation Tariff, the DC Consumption rate is defined as:

The DC Power charge consists of use of the DC power plant system, with AC input and AC backup for redundant DC power expressed on a per amp basis. The cost for HVAC to support DC Power Consumption is recovered as a separate but related rate element on a per 10-amp basis. DC Transmission Energy Charge provided per 2" mounting space consists of the AC energy to provide redundant power to an CEV/HUT/Cabinet arrangement expressed in a monthly rate. Rates and charges are as found in paragraph 21.4.¹⁰

36. Section 21.4 of SBC-M's Physical Collocation Tariff contains DC Power Consumption rates for caged, cageless, caged common, and adjacent on-site collocation arrangements.¹¹ The monthly recurring rates for DC Power Consumption include two rate components – DC Plant, on a per amp basis, and AC Usage, on a per amp basis. The dispute applies to all components of the Power Consumption rates.

⁹ Birch uses cageless collocation for its end office collocation arrangements and caged collocation for its tandem collocations within SBC-M's central offices and basically uses the same footprint (in terms of design and engineering of the collocation arrangement and the type of equipment used in each collocation arrangement in SBC-M's central offices). AT&T uses a variety of equipment in its caged and cageless physical collocation arrangements in Missouri.

¹⁰ SBC-M's Physical Collocation Tariff, § 20.5, at Sheet 59. A copy of § 20.5 of SBC-M's Physical Collocation Tariff is attached as Attachment 1. AT&T purchases collocation under the terms of the Tariff and its Interconnection Agreements. In AT&T's Current Agreements, the DC power consumption charge is defined as, "[t]he DC Power charge consists of use of the DC power system, with the AC input and DC backup for 20, 40, 50, 100, 200 or 400 AMS (redundant) feeder increments. Rates and charges are as found in Section 21.5." See AT&T Current Agreements, Att. 13, §20.5.

¹¹ SBC-M's Physical Collocation Tariff, § 21.4 at Sheet 70. A copy of § 21.4 of SBC-M's Physical Collocation Tariff is attached as Attachment 2.

37. The dispute is very straightforward. SBC-M unilaterally and without Commission approval has changed its interpretation of Sections 20.5 and 21.5 of the Physical Collocation Tariff altering the meaning of the Tariff, which magically enables it to basically double the power costs associated with each collocation arrangement.¹²

38. SBC-M claims that there is nothing in the Tariff preventing it from charging for redundant power, in addition to the power provided to the collocation arrangement, but has never been able to: (1) point to any Tariff provision that affirmatively authorizes SBC-M to charge for both the power arrangement and redundant power; (2) justify a change in interpretation of the Tariff, which have not been modified, effective October 12, 2001; or (3) point to any aspect of the Order approving the Tariff, the agreement reached by the parties in that proceeding, or the parties' interconnection agreements to support its new interpretation of what it is entitled to charge for power.

39. Neither Birch nor AT&T has changed the manner in which they obtain power from SBC-M since the commencement of their respective collocation arrangements.

40. SBC-M has had numerous opportunities to justify this unilateral change, including in its informal settlement conference before the Public Utility Commission of Texas. In each instance, SBC-T failed to justify its position.

41. Complainants submit that the correct and only interpretation of SBC-M's Collocation Tariff is that: (1) for the true-up and for going forward collocation rates

¹² Complainants submit that SBC-M not only unilaterally changed its interpretation of the Physical Collocation Tariff, but it also unilaterally changed its Collocation Application and its Collocation Handbook in July, 2002. Yet, under § 10.2 of SBC-T's Physical Collocation Tariff, SBC-M is only allowed to revise its Handbook "by joint agreement of SBC-T and all affected Collocators." SBC-M Physical Collocation Tariff, § 10.2 at Sheet 42 (emphasis added). Complainants are not aware of any SBC-M notification or joint agreement that enabled SBC-M to make changes to its Collocation Handbook. To

effective as of October 11, 2001, the Power Consumption rates in Section 21.4 of the Physical Collocation Tariff apply to the power used for the collocation arrangement;¹³ and (2) the costs for providing redundant power were included in the rates approved by this Commission. As a result, SBC-M cannot charge for both power consumed by the collocation equipment and redundant power for each collocation arrangement.

42. A simple example shows the financial implications of SBC-M's latest and newest attempt to overcharge under the Tariff. For example, if a collocator wants a 20-amp collocation power arrangement, effectively, the collocator obtains two 20 amps A and B feeds. In that situation, based on the manner in which the power is used, the collocator actually uses only approximately 20 amps. From the Complainants' perspective, the collocator should be charged a recurring rate of \$482.88¹⁴ for that arrangement.

43. In sharp contrast, SBC-M's new and unilateral interpretation is that it can charge for 40 amps of power - for both the 20 amp power arrangement and 20 amps of redundant power -- thus resulting in doubling the monthly power consumption charge to \$965.76 per month. While the number in isolation does not seem objectionable, it is objectionable because the result of the SBC-M's new interpretation basically doubles Complainants' power consumption costs, the single most expensive component for collocation arrangements.

the extent that SBC-M has made changes unilaterally to effectuate this change in interpretation of the power rates, Complainants contest the modifications made therein.

¹³ Also see, AT&T's Current Agreements, Att. 13, at § 21.5, which contain identical rates to those in § 21.4 of the Physical Collocation Tariff.

¹⁴ See Physical Collocation Tariff, § 21.5.

44. SBC-M's true-up retroactively imposed this latest interpretation resulting in a significant imposition of excessive and unlawful charges and associated late payment charges; dollars that SBC-M is not authorized to charge for or to recoup.

45. SBC-M's unilateral and new interpretation is not supported by: (1) the Collocation Tariff; (2) any Commission or regulatory proceeding; or (3) the actual provisioning of the power to Complainants.

1. The Tariffs

46. Sections 20.5 and 21.4 of the Physical Collocation Tariff were approved by the Commission in Case No. TT-2001-298, with an effective date of October 12, 2001. As quoted above, the DC Power Consumption charge specifically states (as it has historically) that the DC power rate element includes provision of redundant DC power. The primary change in the most recent Commission approval of the rate element is that the rate is expressed on a per amp basis. The rates for the DC Power Consumption charge, found in Section 21.4 of the Physical Collocation Tariff, are on a per amp arrangement basis dependent on the amount of power consumed. At the time the rate element and rates were approved, SBC-M charged or interpreted the provisions as permitting SBC-M to charge only for the power amperage for the collocation arrangement, and did not seek to charge for the power amperage arrangement and redundant power.

47. It was only in the true-up that SBC-M unilaterally and unlawfully determined that the Tariff, which had not been changed in any respect since the Commission approved the Tariff, now enabled SBC-M to double the amount of assumed power consumption to include redundant power. There is nothing in the Tariff that

supports SBC-M's unilateral interpretation and there has been no change in the Tariff that would support SBC-M's interpretation.

2. Regulatory Proceedings

48. SBC-M has never been able to cite to any aspect of the record of this Commission's approval of the M2A, the interconnection agreements, or the Tariff to justify its overcharging for power.

49. Generally, SBC-M attempts to rely on decisions or statements (normally used out of context) made in the Public Utility Commission of Texas' ("PUCT") Arbitration Award that established permanent collocation rates for the SBC-Texas' Physical Collocation Tariffs.¹⁵ The SBC-M Collocation Tariff, particularly the terms, conditions and rate element definitions, is based largely on the SBC-Texas Physical Collocation Tariff. Using the SBC-Texas Tariff as a starting point, AT&T, Birch, SBC-M, and other parties negotiated the SBC-M Tariffs that were ultimately approved by the Commission.

50. The PUCT's decision in Docket No. 21333, as well as the development of the rate element defining DC Power, do not support SBC-M's latest interpretation and attempt to double the power charges. The issue of whether the DC Power costs should or did assume provision of redundant power was addressed both in the hearing on the merits in Docket No. 21333, and also in the subsequent post-Award workshops afforded the parties to implement the Award.

51. In fact, in Docket No. 21333, SBC-M raised the issue that it should be allowed to charge for both the power arrangement and redundant power on several

occasions, but the Arbitrators, upon clarification, rejected SBC-M's argument and adopted rates that do not reflect SBC-Texas' claim. To the contrary, the record in Docket No. 21333 confirms the Complainants' understanding and historical practice in purchasing collocation power from SBC. As a result, to the extent that SBC-M may claim reliance on the regulatory decisions from Texas, SBC-M reliance is completely misplaced.

3. Provision of Power

52. In addition, from an engineering and operational perspective, Complainants submit that the manner in which Complainants use power supplied by SBC-M for collocation also defeats SBC-M's claim. In the example used above, where a Collocator seeks a 20-amp power arrangement, the Collocator's equipment is engineered for and the power delivered is actually for approximately 20 amps, not 40 amps (which is what SBC-M's interpretation would result in). Generally, the type of equipment that Collocators have today in their collocation arrangements uses power using either the A or B feed, but not both.¹⁶ Generally, if the A feed power is interrupted, only then is the B feed power used. Therefore, it would be completely inappropriate to charge the collocator for 40 amps of power when, in fact, it only uses up to 20 amps, based on the engineering configuration of its equipment.

53. SBC-M's attempt to unilaterally double the monthly recurring power consumption charges for Birch's and AT&T's collocation arrangements in Missouri, retroactively for Birch and prospectively for Birch and AT&T, violates the express

¹⁵ PUCT Docket No. 21333; *Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Physical and Virtual Collocation Tariffs*; Revised Arbitration Award (April 12, 2001) ("Docket No. 21333").

provisions of the Tariff, the applicable interconnection agreements, and the Commission's Orders. The Tariff and Agreements establish that application of the power consumption charges will be based on the capacity of the amount consumed. This interpretation is confirmed by the conduct and practices of the parties in ordering, provisioning, billing, and paying for power consumption prior to October 2001. Thus, SBC-M's billing of and attempt to collect unlawful charges for collocation power consumption is in violation of Mo. Rev. Stat. §§ 392.200.1 and 392.240.2.

54. SBC-M's attempt to unilaterally alter its conduct and practices regarding power consumption charges is not in good faith, contrary to the express requirements of the interconnection agreements¹⁷ and the common law. SBC-M also has violated Commission Orders and Mo. Rev. Stat. §§ 392.200.1 and 392.400.2.

55. SBC-M's attempt to retroactively impose its purported double charges for collocation power consumption violates the express provisions of the Tariff and interconnection agreements, in that there was to be a one-time true-up for charges incurred between May 31, 2001 and October 12, 2001 to be completed within 30 days of October 12, 2001 – which true-up was unilaterally sent to Birch in October 2002, and to date has not been completed as a result of this dispute. SBC-M's actions, or failure to act, violated Commission Orders and Mo. Rev. Stat. §§ 392.200.1 and 392.240.2.

56. By purporting to charge more than the amounts allowed by the Tariff, SBC-M has also violated Mo. Rev. Stat. § 392.480.

¹⁶ AT&T and Birch acknowledge that there are various telecommunications equipment that are engineered differently and may draw on both the A and B feed. But the same resulting use of power occurs where the collocater would not use more than approximately 20 amps of power.

¹⁷ See, Birch Current Agreement (M2A), General Terms & Condition, § 36.1; AT&T Current Agreements, § 36.1.

57. By unilaterally attempting to change the interpretation and application of the Tariff, without any notice to or sanction by the Commission, SBC-M has violated Mo. Rev. Stat. § 392.230.3. SBC-M has also violated Section 30.4 of the General Terms and Conditions of the M2A by failing to provide Birch and AT&T¹⁸, respectively, with advance notice of intent to SBC-M's attempt to change a tariff.

58. SBC-M's attempt to double the power consumption charge violates Sections 251(c)(6) and 252(d)(1) of the Act and 47 CFR 51.501-09 in that SBC-M seeks to impose unapproved collocation prices that exceed the TELRIC-based mutually negotiated rates in the Tariffs.

59. SBC-M's attempt to unilaterally alter the terms of power charges for collocation arrangements violates the express terms of Birch's and AT&T's current Interconnection Agreements because SBC-M can only amend the terms of the agreements by mutual agreement by the parties.¹⁹

VI. The Dispute – Issue No. 2 – Escrow

60. As stated herein, as of the filing of this Complaint, on May 14, 2003, SBC-M unilaterally and without prior notice, notified Birch that in order to dispute the power charges in Missouri, it would be required to place all disputed amounts (including those for the true-up) in an escrow account. SBC-M's notification is contrary to an 8-month-standing business-to-business arrangement wherein Birch would not pay disputed amounts for collocation. This agreement applied to all states, including Missouri.

61. Birch disputes that it is required to pay any amounts in escrow as a result of this business-to-business arrangement.

¹⁸ Section 30.4 of the M2A is incorporated into Section 30.4 of AT&T's Current Agreements.

62. To date, AT&T has withheld its disputed amounts related to the Power Charges, and does so on a monthly basis. SBC-M has never made demand that AT&T place the disputed amounts in an escrow.

63. Birch and AT&T dispute SBC-M's ability to attempt to invoke Section 6.6.1 of the Physical Collocation Tariff in order for Birch and AT&T to file this Complaint or to participate in dispute resolution regarding SBC-M's unilateral and unlawful overcharging for power consumption.

64. Only recently, SBC-M has unlawfully demanded that Birch pay the amount of the double and retroactive charges into escrow to pursue this dispute. Section 6.6.1 of the Physical Collocation Tariff, upon which SBC-M relies, is intended to apply to bona fide disputes regarding bills issued on a timely basis for collocation ordered pursuant to the provisions of the Tariff as incorporated into the Complainants' Interconnection Agreements. For the reasons stated with respect to Issue No. 1, SBC-M's unilateral and unlawful overcharge of the power consumption rate should not be considered a "charge" or "item" from the Tariff. The Complainants have not changed the manner in which they use or consume power collocation from SBC-M. SBC-M has not changed the manner in which it provides the power; yet it has changed its interpretation of tariff provisions resulting in overcharges. Accordingly, by its own terms, Section 6.6.1 of the Physical Collocation Tariff does not apply and should not be considered a prerequisite for filing a complaint or seeking Commission resolution of this dispute.

65. Nor is a dispute that SBC-M has created, by its unilateral attempt to double charge the Complainants for collocation power, constitute a "bona fide dispute"

¹⁹ See, Birch Current Agreement, General Terms & Conditions, § 18.1; AT&T Current Agreements, § 18.1.

under Section 6.6.1 of the Physical Collocation Tariff. Section 6.6.1 was never intended to permit SBC-M to unilaterally change the interpretation and charges assessed to the Complainants and then to require the Complainants to put the disputed amount into escrow. Rather, Section 6.6.1 was intended, if at all, to apply to disputes regarding legitimately approved tariff charges that the parties dispute. In addition, Section 6.6.1 does not apply to disputes regarding a true-up that is not required or authorized by the AT&T and Birch Current Agreements. These provisions do not apply to attempts by SBC-M to retroactively true-up collocation rates for bills that have already been issued and which improperly double the prior charges for the same amount of power, based on SBC-M's unilateral, unfounded, and self-serving new interpretation of the Tariff. SBC-M's attempts to retroactively impose additional charges taint all invoices issued by SBC-M that include double charges for power consumption that would exempt application of the escrow provisions. The substantive dispute raised in this Complaint is a dispute over the implementation of language in the Tariff that arose solely from SBC-M's attempt to retroactively impose a new interpretation (for Birch's true-up) and impose that new interpretation on a going-forward basis. Consequently, this dispute is not a bona fide dispute that is subject to the billing dispute provisions of the Tariff.

66. In addition, at least to this specific dispute, Section 6.6.1 of the Physical Collocation Tariff provision at issue should not be imposed because it would be contrary to sound regulatory and public policy. Basically, if SBC-M's interpretation of the billing dispute provisions is correct, SBC-M can force a CLEC to place extensive amounts of cash into an escrow solely as a result of SBC-M's unilateral and arbitrary actions or interpretations. Allowing SBC-M to unilaterally compel Birch (or AT&T in the future)

to tie up significant cash which, in fact, is working capital used for the Complainants to provide services to its customers, solely because SBC-M changes its interpretation of a tariff provision, is not reasonable or sound. Denial of working capital caused by an unwarranted escrow can have significant detrimental consequences. Moreover, allowing SBC-M to demand that amounts be placed in escrow can reinforce SBC-M's ability to "game the system" without a CLEC's ability to dispute even the applicability of the tariff provision. If such practices were permitted, there would be no limit to the amount of CLEC money that SBC-M could tie up simply by placing unlawful, unfounded, and unreasonable charges on its invoices in bad faith.

67. The escrow provisions of the Physical Collocation Tariff do not apply because the amounts exceed one percent (1%) of the amounts charged to Birch under the Tariff in the preceding twelve months. Because of the amount in dispute, mandatory arbitration does not apply under Section 6.6.6 of the Physical Collocation Tariff. The escrow provisions only apply to arbitrated disputes, in that there is no provision for release of funds from escrow except in relation to an arbitration.²⁰

²⁰ See Physical Collocation Tariff, § 6.6.2.D(5).

VI. Relief Requested

SBC-M's attempts to unilaterally and unlawfully impose a new interpretation of tariff provisions, approved effective October 12, 2001, that basically doubles retroactively the single most expensive costs of collocation, must be stopped immediately by this Commission. For all of the reasons stated herein, Birch and AT&T respectfully request that the Commission:

(1) serve this Complaint and its notice upon SBC-M, directing SBC-M to answer this Complaint as required within the rules;

(2) issue an order ruling that neither Birch nor AT&T have to comply with SBC-M's demands for payment into escrow of the disputed amounts imposed by SBC-M related to its unilateral new interpretation of the power consumption element and charges in the Physical Collocation Tariff as the only rational interpretation of Section 6.6.1 of the Tariff and Attachment 13 of AT&T's Interconnection Agreements would never contemplate the imposition of such charges;

(3) promptly set a prehearing conference and a deadline to file a procedural schedule, so that this case may proceed to hearing;

(4) allow, upon proper motion, this Complaint to be consolidated and considered with Cause No. XC-2003-0421, filed by NuVox Communications of Missouri, Inc. against SBC-M, which contain identical issues regarding Issue Nos. 1 and 2, as stated herein;

(5) upon consideration of the record and after hearing, issue an order that prohibits SBC-M from charging the rates contained in Section 21.4 of the Physical Collocation Tariff and Attachment 13, Section 21.5 of AT&T's Current Interconnection

Agreements, for additional power consumption, referred to by SBC-M as redundant power, on a going forward basis;

(6) issue an order that finds that SBC-M is not entitled to charge on a retroactive and true-up basis for redundant power;

(7) issue an order that finds that the billing dispute resolution provisions found in the Physical Collocation Tariff and Attachment 13 of AT&T's Current Agreements do not apply to this dispute;

(8) order SBC-T to modify its Collocation Handbook and/or Collocation Applications consistent with the ultimate decision on the merits; and

(9) grant any and all other relief to which Birch and AT&T show themselves to be justly entitled.

Respectfully submitted,

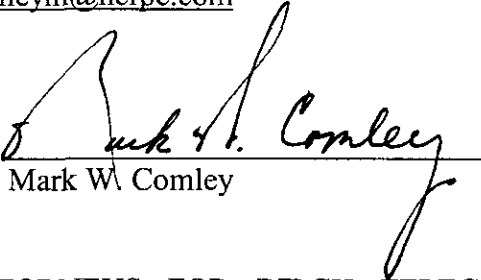
Katherine K. Mudge
SMITH, MAJCHER & MUDGE, L.L.P
816 Congress Ave., Suite 1270
Austin, Texas 78701
Tel: (512) 322-9044
Fax: (512) 322-9020

Rose Mulvany Henry
BIRCH TELECOM, Inc.
2020 Baltimore Avenue
Kansas City, Missouri 64108
(816) 300-3731 (voice)
(816) 300-3350 (fax)
rmulvany@birch.com

Rebecca B. DeCook
AT&T
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
(303) 298-6357 (direct)
(303) 298-6301 (fax)
decook@att.com

Mark W. Comley
Newman, Comley & Ruth, P.C.
601 Monroe Street, Suite 301
Jefferson City, Missouri 65102
(573) 634-2266 (voice)
(573-) 636-3306 (fax)
comleym@ncrpc.com

By:



Mark W. Comley

ATTORNEYS FOR BIRCH TELECOM
Ltd, L.P., AT&T COMMUNICATIONS OF
THE SOUTHWEST, INC., TCG KANSAS
CITY, INC. AND TCG ST. LOUIS, INC.

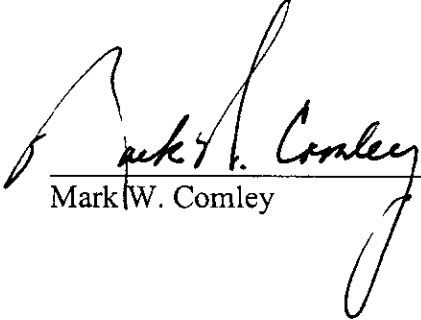
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the counsel of record via hand-delivery, first-class mail, email or telecopier to all parties of record on this 9th day of June, 2003.

Office of Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

Office of General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Legal Department
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, Missouri 63101-1976

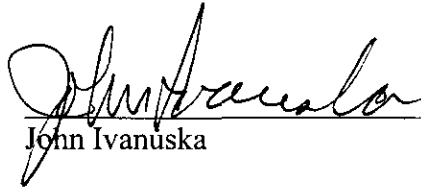


Mark W. Comley

STATE OF MISSOURI)
)
COUNTY OF JACKSON)

VERIFICATION

I, John Ivanuska, first being duly sworn, state on my oath that I am over the age of twenty-one years and of sound mind, and the Vice President of Birch Telecom. I am authorized to act on behalf of Birch Telecom of Missouri, Inc. regarding the foregoing document. I have read the Complaint and I am informed and believe that the matters contained therein are true and correct to the best of my knowledge. Further, I hereby confirm that Mark Comley, Newman, Comley & Ruth, P.C., and Katherine K. Mudge, Smith, Majcher & Mudge L.L.P. are authorized to sign all pleadings and documents necessary to obtain the decision of the Missouri Public Service Commission on the foregoing Complaint, and to represent Birch Telecom of Missouri, Inc. in this proceeding.

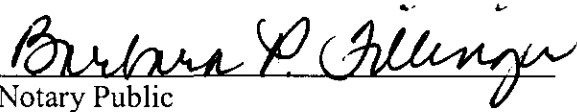


John Ivanuska

On this 5th day of June, 2003, before me, a Notary Public, personally appeared John Ivanuska, and being first duly sworn his/her oath stated that he/she is over twenty-one years and of sound mind, and the Vice President, he signed the foregoing document as Vice President of Birch Telecom of Missouri, Inc. and the facts contained therein are true and correct according to the best of his/her information, knowledge, and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year above-written.

BARBARA P. FILLINGER
Notary Public-Notary Seal
State Of Missouri
Commissioned In Jackson County
My Commission Expires: June 6, 2004



Notary Public

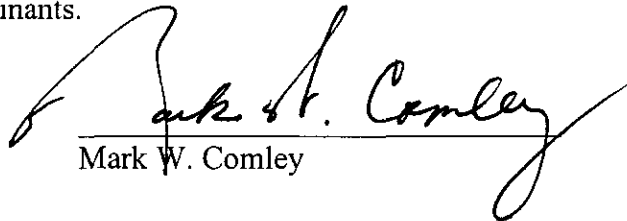
My Commission Expires:

June 6, 2004

ATTORNEY VERIFICATION

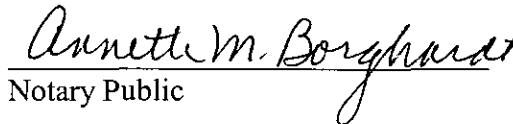
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Mark W. Comley, being first duly sworn, do hereby certify, depose and state that I am the attorney for Birch Telecom of Missouri, Inc., AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc. and TCG St. Louis, Inc., joint complainants in this proceeding; that I have read the above and foregoing Complaint and the allegations therein contained are true and correct to the best of my knowledge, information and belief; and I further state that I am authorized to verify the foregoing complaint by the above said complainants.



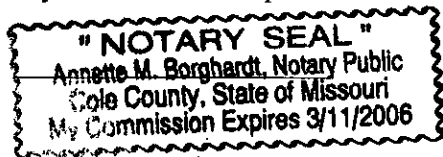
Mark W. Comley

Subscribed and sworn to before me, a Notary Public, this 9th day of June, 2003.



Notary Public

My Commission expires:



ATTACHMENT 1

SBC-M's Physical Collocation Tariff Section 20.5 Sheet 59

PHYSICAL COLLOCATION
(SERVICES AND RATES)**20.0 RATE ELEMENTS (Continued)****20.5 DC Power Consumption**

The DC Power Charge consists of use of the DC power system, with AC input and AC backup for redundant DC power expressed on a per amp basis. The cost for HVAC to support DC Power Consumption is recovered as a separate but related rate element on a per 10-amp basis. DC Transmission Energy Charge provided per 2" mounting space consists of the AC energy to provide redundant DC power to an CEV/HUT/Cabinet arrangement expressed in a monthly rate. Rates and charges are as found in paragraph 21.4.

20.6 DC Power Panel (Maximum 50 AMP) (Optional)

This DC power panel is optional with each application requiring DC power designed to provide up to 50 (maximum) AMPS per feed of DC current. This rate element may be provided by SWBT. Rates and charges are as found in paragraph 21.5 following.

20.7 DC Power Panel (Maximum 200 AMP) (Optional)

At least one (1) DC power panel is required with each application requiring DC Power when designed to provide between 50 and 200 AMPS per feed of DC current, however the Collocator may substitute the required power panel with an equivalent power panel subject to meeting NEBS Level 1 Safety and review by SWBT technical support. This rate element may be provided by SWBT. Rates and charges are as found in paragraph 21.6 following.

20.8 Eligible Structure Ground Cable Arrangement, Each

The ground cable arrangement is the cabling arrangement designed to provide grounding for equipment within the Collocator's Dedicated Space. Separate Ground Cable Arrangements are required for Integrated and Isolated Ground Planes. Isolated Ground Planes require a Ground Cable Arrangement in the Collocator's Dedicated Space. Adjacent structure ground cable arrangement is found in paragraph 20.24. Rates and charges are as found in paragraph 21.7 following.

20.9 Security Cards

The Security Cards Charge consists of a charge per five (5) new cards or replacement cards, for access cards, and ID cards. Rates and charges are as found in paragraph 21.8 following. SWBT will issue access cards and/or ID cards within twenty-one (21) days of receipt of a complete and accurate SBC Photo ID Card and Electronic Access For Collocators and Associated Contractors form, which is located on the CLEC ONLINE website. In emergency or other extenuating circumstances (but not in the normal course of business), collocators may request that the twenty-one (21) day interval be expedited, and SWBT will issue the access and/or ID cards as soon as reasonably practical. Rates and charges for such expedited requests are as found in paragraph 21.9 following.

Issued:

Effective:

By JAN NEWTON, President-Missouri
Southwestern Bell Telephone Company
St. Louis, Missouri

ATTACHMENT 2

**SBC-M's Physical Collocation Tariff
Section 21.4
Sheet 70**

P.S.C. Mo. - No. 42

Local Access Tariff
Section 2
Original Sheet 70PHYSICAL COLLOCATION
(REGULATIONS)**21.0 RATES AND CHARGES (Continued)**

The following rates and charges apply for physical collocation requests:

	<u>USOC</u>	<u>Rate Per Month</u>	<u>Nonrecurring Charge</u>
21.3.1 Caged Collocation			
(A) Floor Space Charges Caged Common Per linear foot of rack space		\$24.87	None
(B) Site Conditioning Per Bay		None	\$92.81
(C) Common Systems Materials Charge, Per Linear Foot of Rack Space		\$3.62	\$294.37
(D) Safety & Security, Cages Common Per Frame		None	\$123.35
(E) Cage Preparation Charge Per Linear Foot of Rack Space		\$1.00	\$157.04
(F) RSM Option Additional Dedicated HVAC Charge Dedicated Power Plant Floor Space Charge		None \$394.00	\$3,100.00 None
21.4 DC Power Consumption (Caged, Cageless, and Caged Common Arrangements)			
- Per AMP	SPIPT	\$10.61	None
- HVAC (Per 10 Amps)	XXXX	\$14.62	None
Adjacent On-Site Arrangements			
- DC Power Consumption (CEV, Hut, and Cabinet)			

Issued:

Effective:

By JAN NEWTON, President-Missouri
Southwestern Bell Telephone Company
St. Louis, Missouri