



*Sent via electronic mail transmission*

April 6, 2005

Mr. Larry Cooper  
Regional Vice President --  
Account Management West & SW  
SBC Telecommunications, Inc.  
Four SBC Plaza, Room 840  
Dallas, Texas 75202

RE: SBC April 1, 2005 Letter to Birch Denying Self Certification for Missouri

Dear Larry:

As you know, Birch Telecom, Inc. (on behalf of all of its operating subsidiaries) has made at least two attempts to provide a self-certification that it remains entitled to access to high capacity loops and transport, at a minimum while it continues its reasonably diligent inquiry of the *TRRO* mandated criteria, in accord with paragraph 234 of the *TRRO*.

Birch provided its first self-certification letter to you on March 9, 2005. In that letter, Birch requested responses to some very specific questions related to the wire center designation data, to which SBC has never responded on a business to business basis.<sup>1</sup> SBC responded to the March 9 letter on March 11, 2005, at approximately 4:20 p.m.,<sup>2</sup> denying Birch's self-certification and informing Birch of the issuance of CLECALL 05-039, which contained SBC's version of an "appropriate" self-certification form. SBC's March 11 letter also indicated that Birch's further review of SBC's wire center designation data, coupled with "additional information that SBC will be making available regarding the methodologies SBC used to identify the wire centers meeting those criteria

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<sup>1</sup> Although SBC finally responded to the identical questions in Oklahoma, after being ordered to do so by the Oklahoma Corporation Commission, SBC has objected to the same data requests in Missouri. Therefore, SBC's legal posturing serves no purpose but to impede the data validation process. If SBC believes that Birch or any other CLEC wants to do nothing but to engage in discovery battles regarding this data, it is sadly mistaken. Birch has neither the time nor the resources to wage these time-intensive battles.

<sup>2</sup> It is particularly troubling that SBC chose not to respond to Birch's March 9 self-certification letter, denying the same, until very late in the day on March 11, the very same day on which SBC was rejecting Birch high capacity loop and transport orders.

by Monday, March 14,” would answer the questions Birch had posed in its March 9 letter to SBC.

To be clear, on March 10, 2005, Birch had its attorneys from Kelley, Drye and Warren in Washington, D.C. review the wire center designation data provided by SBC at its outside counsel offices in Washington, D.C. Then, on March 14, 2005, I personally reviewed the wire center designation data for the entire region, provided under the FCC’s Protective Order, at SBC’s offices in Topeka, Kansas. Further, on March 30, 2005, I personally reviewed the Oklahoma specific wire center designation data, provided pursuant to the Oklahoma Corporation Commission Protective Order, at the Oklahoma Corporation Commission’s offices. Needless to say, much of the data that has been reviewed by Birch is duplicative, yet still we make the effort.

In response to SBC’s March 11 letter rejecting Birch’s self-certification, Birch then provided an additional self-certification letter to its Account Team on March 18, 2005, based on SBC’s form provided in CLECALL 05-039. Birch has been successfully operating under this revised self-certification letter since that date. However, on April 1, 2005, we received a letter from our Account Manager indicating that the March 18 self-certification letter “does not appear to comply with the intent of the FCC’s TRRO,” but that SBC would continue processing Birch’s UNE orders except in Missouri, where SBC indicated that it believes Birch’s self-certification does not comply with a Missouri PSC order, also issued on March 17, 2005.<sup>3</sup> The April 1 SBC letter essentially gives Birch until April 11 to update its self-certification to be consistent with the Missouri PSC order.

By asserting that Birch’s March 18 self-certification letter “does not appear to comply with the intent of the FCC’s TRRO,” it seems that SBC is alleging that Birch’s self-certification attempts have not been made in good faith. I take exception to that implication. As you can see from the chronology in the preceding paragraphs, Birch has taken every opportunity available to review and analyze the data provided by SBC to date. The fact of the matter is, however, that no matter how many times Birch reviews the nearly identical data, no matter how many cities it is produced in, questions still remain.

Birch sent an inquiry to SBC yesterday requesting whether Birch (or any of its subsidiaries or affiliates) has been named by SBC as a fiber-based collocater in any wire center designated as non-impaired by SBC. SBC responded today with a list in which Birch and/or ionex has been named as such. Clearly, we are in disagreement over this designation, but I expected as much after seeing the numbers of carriers considered to be fiber-based collocaters by SBC. Birch will respond to that SBC letter by tomorrow, but it is further evidence of Birch attempting to do everything in its power to establish the veracity of SBC’s wire center designation data, by conducting a reasonably diligent inquiry into it, in accord with paragraph 234 of the *TRRO*. Based on the past business

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<sup>3</sup> *Order Regarding Continued Provisioning of Service*, Big River Telephone Company, LLC, Birch Telecom of Missouri, Inc., ionex communications, Inc., NuVox Communications of Missouri, Inc., Socket Telecom, LLC, XO Communications Services, Inc., and Xspedius Communications, LLC, Case No. TC-2005-0294, March 17, 2005.

relationship between our two companies, surely SBC does not expect Birch to simply accept SBC's designations without any type of validation. In fact, SBC itself has already revised the information it initially provided to the FCC. Additionally, because of the FCC's directive that once a wire center is designated as non-impaired it will always remain so, it is absolutely critical to get the proper wire centers designated right the first time – because there will be no second chances.

In response to the Account Team's April 1 letter to Birch regarding the sufficiency of Birch's self-certification for Missouri, Birch will provide a third revised self-certification letter in an effort to alleviate SBC's concerns about compliance with the March 17 Missouri PSC order.

If you have any questions, please do not hesitate to contact me at 816-300-3731.

Sincerely,



Rose Mulvany Henry  
Vice President of Regulatory Affairs

cc: Larry Jones  
Jerry Gilmore  
John Ivanuska