

Director-Local Performance
Industry Markets

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March 11, 2005

via facsimile

Mr. John M. Ivanuska
Vice President, Carrier Relations & Interconnection
Birch Telecom, Inc.
2020 Baltimore Avenue
Kansas City, MO 64108-1914

Subject: Birch Telecom Letter dated March 9, 2005

Dear John:

This is to respond to your March 9, 2005 letter, in which Birch states is intended to "serve as Birch's notification to SBC that Birch intends to invoke the self certification provisions of the *TRRO* for any and all high capacity loops and transport UNE orders submitted to SBC on and after March 11, 2005 in Texas, Kansas, Oklahoma and Missouri." Your letter makes clear that Birch has not yet conducted the "reasonably diligent inquiry" contemplated by paragraph 234 of that order, which is a prerequisite to ordering high capacity loop and transport facilities on and after March 11, 2005.¹ Indeed, you specifically state that Birch has not "complete[d]" that inquiry, and ask that SBC provide additional information for Birch's use in fulfilling its obligation to conduct that inquiry.

As described in Accessible Letter CLECALL05-037, on March 3, 2005, SBC filed the data underlying its list of wire centers meeting the high capacity loop and transport non-impairment criteria in the *TRRO*, and made that data available to CLECs at the offices of its outside counsel, consistent with the protective order adopted in the *TRRO* proceeding. In addition, in response to CLEC requests, SBC is providing a further disaggregation of that data to facilitate CLEC compliance with their "diligent inquiry" and "self certification" obligations. Our records

¹ Based on your March 9 letter, Birch appears to misapprehend the diligent inquiry and certification process established by the FCC. CLECs may not certify first and inquire later, as your letter seems to suggest. In particular, you indicate that, notwithstanding the fact that Birch has *not* yet undertaken, much less completed, a diligent inquiry, Birch will continue to submit orders for high capacity facilities in Texas, Kansas, Oklahoma and Missouri "unless and until" Birch "validates" the list of wire centers meeting the non-impairment criteria. However, the mere fact that Birch waited until two days before the effective date of the *TRRO* to initiate its inquiry does not relieve it of its obligation to conduct a reasonably diligent inquiry consistent with the Commission's rules, and "based on that inquiry" self-certify that any request for high capacity facilities is consistent with the unbundling criteria established by the *TRRO*.

indicate that Birch has not yet availed itself of any of this additional information made available by SBC.

In light of these data, and Birch's failure to review the data, Birch would have no basis for claiming in any certification pursuant to paragraph 234 of the *TRRO* that it has conducted a "reasonably diligent inquiry," and "self-certify[ing]," "based on that inquiry," that "to the best of its knowledge" any request for high capacity loop and transport facilities is "consistent with the requirements discussed in parts IV, V and VI" of the *TRRO*. Until Birch provides SBC the self-certification required by paragraph 234, Birch will have no basis for ordering high capacity loop and transport facilities, and SBC will not process orders for any such facilities.

To further assist Birch and other CLECs in complying with their self-certification obligation, SBC today issued Accessible Letter CLECALL05-039. That Accessible Letter includes a self-certification form that provides for submission of relevant information regarding a CLEC's reasonably diligent inquiry, including identification of each specific route or wire center that has been identified by SBC as being non-impaired that a CLEC seeks to challenge.

It is our understanding that Birch will be reviewing the data in Topeka. We believe that the review of the data as well as additional information that SBC will be making available regarding the methodologies SBC used to identify the wire centers meeting those criteria by Monday, March 14 will answer the questions attached to your letter. In the meantime, this will not impede your ability to review the wire center data that SBC already has made available.

If, after review of the data, you feel there is need for further discussion, please call me at 214-464-5143.

Sincerely,



Cc: G. Sirles
L. Cooper
T. Rentschler