

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY**

**June 28, 2000**

**CASE NO: TC-2000-772**

**Office of the Public Counsel**  
P.O. Box 7800  
Jefferson City, MO 65102

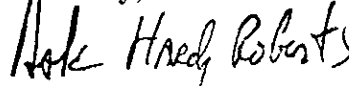
**General Counsel**  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Midwestern Tel**  
9705 Watson, Suite 309  
Crestwood, MO 63126

**Kara A. Gilmore**  
Birch Telecom of Missouri, Inc.  
2020 Baltimore Avenue  
Kansas City, MO 64018

**Enclosed find certified copy of a NOTICE in the above-numbered case(s).**

**Sincerely,**



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

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Birch Telecom of Missouri, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. TC-2000-772</u>
	)	
Midwestern Tel,	)	
	)	
Respondent.	)	

**NOTICE OF COMPLAINT**

Midwestern Tel  
9705 Watson, Suite 309  
Crestwood, Missouri 63126  
**CERTIFIED MAIL**

On May 22, 2000, Birch Telecom of Missouri, Inc., (Birch Telecom) filed a complaint with the Missouri Public Service Commission against Midwestern Tel. A copy of that Complaint is enclosed.

On May 25, the Commission issued a Notice of Complaint addressed to Midwestern Tel. There has been no response to that Notice. However, the Commission's records do not indicate that the Notice of Complaint was sent by Certified Mail as required by 4 CSR 240-2.070(7). Therefore, the Notice of Complaint is being reissued.

Pursuant to 4 CSR 240-2.070(7), Midwestern Tel, shall have **30 days** from the date of this notice to file an answer or to file notice that the complaint has been satisfied.

In the alternative, Midwestern Tel may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether or not Birch Telecom is also willing to submit to voluntary mediation. If Birch Telecom agrees to mediation, the time period within which an answer is due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If Birch Telecom declines the opportunity to seek mediation, Midwestern Tel will be notified in writing that the tolling has ceased and will also be notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint, or request for mediation) shall be mailed to:

Secretary of the Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

A copy shall be served upon Birch Telecom at its address as listed within the enclosed complaint. A copy of this notice has been mailed to Birch Telecom.

**BY THE COMMISSION**



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

(S E A L)

Dated at Jefferson City, Missouri,  
on this 28th day of June, 2000.

Woodruff, Regulatory Law Judge

cc: Birch Telecom

FILED<sup>3</sup>

MAY 22 2000

Missouri Public  
Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Complaint of )  
Birch Telecom of Missouri, Inc. Against )  
Midwestern Tel (Midwestern Services L.C.) )  
For Refusal to Lift Restrictive Identifiers )  
FIDs) from Customer Accounts Which )  
Have Authorized a Service Conversion to )  
Birch. )

Case No. TC-2000-772

**COMPLAINT**

Comes now Birch Telecom of Missouri, Inc. ("Birch"), and hereby files a formal complaint pursuant to 4 C.S.R. 240-2.070 against Midwestern Tel ("MWT") for MWT's refusal to lift restrictive identifiers it has placed on some of its customers' lines. In support of its complaint, Birch states as follows:

1. Birch is a Delaware corporation duly qualified to do business in the state of Missouri and certified by the Public Service Commission of the state of Missouri (the "Commission") to provide basic local exchange, nonswitched local exchange, and interexchange telecommunications service in the state of Missouri as a competitive telephone company.

2. All inquiries, correspondence, communications, pleadings, notices, orders, and decisions relating to this case should be addressed to:

Birch Telecom of Missouri, Inc.  
Attention: Rose M. Mulvany, Esq.  
2020 Baltimore Avenue  
Kansas City, MO 64108  
(816) 300-3731  
(816) 300-3293 fax

3. This complaint is being filed against MWT, whose address is:

Midwestern Tel  
9705 Watson, Suite 309  
Crestwood, MO 63126  
(888) 566-3426

4. Birch and MWT each serve customers in the St. Louis metropolitan area.

5. Certain of MWT's former customers (the "former customers") have signed appropriate letters of authorization to become Birch's customers. However, certain of the former customers' lines cannot be switched to Birch because MWT has placed restrictive identifiers ("FIDs") on them, which effectively "freezes" the accounts with MWT. No conversions can become effective until such restrictions are removed by MWT internally. Birch has obtained the appropriate documentation from all of the former customers to authorize MWT to remove the FIDs from each account, in order to be converted to Birch.

6. Over the course of the last several months, Birch provisioning personnel have worked with MWT personnel in an effort to get the FIDs lifted, with only partial success. Additionally, certain of Birch nonprovisioning personnel, primarily in its Legal Department, as well as its outside counsel, have attempted to resolve this problem with certain of MWT nonprovisioning personnel, including one or more of its officers. It is unclear whether MWT personnel are unwilling or simply unable to lift the FIDs as requested. In any event, the FIDs remain on the former customers' lines.

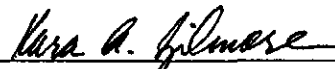
7. Birch requests the Commission to require MWT to lift the FIDs on the lines of the former customers which shall be identified to the Public Service Commission, independent of this pleading. This specific relief would enable Birch to fully provide to its customers, the former customers of MWT, the telecommunications services to which they are entitled and have requested of Birch.

8. Birch has learned that while MWT is still in operation, the future of the business remains uncertain, amid reports of the company closing its doors or being acquired by another company. While Birch personnel are still able to contact MWT personnel at this time, it is unknown how much longer MWT personnel will be available.

9. As set forth above, Birch has attempted to negotiate directly with MWT to reach a mutual solution to this problem without success. The Commission has jurisdiction over the subject matter of this complaint because it affects the provision of local telephone service throughout the state of Missouri.

WHEREFORE, Birch Telecom of Missouri, Inc. respectfully requests that the Commission consider the matters raised in this complaint, in an expedited manner, and grant the relief requested by ordering MWT to lift restrictive identifiers it has placed on certain of its former customers' lines without further delay.

Respectfully submitted,

  
Kara A. Gilmore, MO Bar No. 44861  
Birch Telecom of Missouri, Inc.  
2020 Baltimore Avenue  
Kansas City, MO 64108  
(816) 300-3000  
(816) 300-3293 fax

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Complaint of                     )  
Birch Telecom of Missouri, Inc. Against            )  
Midwestern Tel (Midwestern Services, L.C.)       )  
For Refusal to Lift Restrictive Identifiers        )  
(FIDs) from Customer Accounts Which            )  
Have Authorized a Service Conversion to          )  
Birch.   )

Case No. \_\_\_\_\_

**ATTORNEY AFFIDAVIT**

**STATE OF MISSOURI     )**  
  **) ss**  
**COUNTY OF JACKSON    )**

Kara A. Gilmore, of lawful age, on her oath, states: that she has participated in the preparation of the foregoing Complaint, that she has knowledge of the matters set forth in such motion that the contents of such motion are true and correct to the best of her knowledge and belief.

*Kara A. Gilmore*

Kara A. Gilmore

Subscribed and sworn to before me this 22nd day of May, 2000.

*Cheryl A. Brogan*

Notary Public

CHERYL A. BROGAN  
Notary Public - State of Missouri  
Commissioned in Jackson County  
My Commission Expires April 29, 2002

My commission expires \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that a correct copy of the above and foregoing Complaint was sent via U.S. Mail or certified U.S. Mail on this 22<sup>nd</sup> day of May, 2000 to:

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

President/CEO  
Midwestern Tel  
9705 Watson, Suite 309  
Crestwood, MO 63126





**Commissioners**

**SHEILA LUMPE**  
Chair

**M. DIANNE DRAINER**  
Vice Chair

**CONNIE MURRAY**

**ROBERT G. SCHEMENAUER**

**KELVIN L. SIMMONS**

**Missouri Public Service Commission**

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.state.mo.us>

**BRIAN D. KINKADE**  
Executive Director

**GORDON L. PERSINGER**  
Director, Research and Public Affairs

**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**DONNA M. KOLILIS**  
Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

**Information Sheet Regarding Mediation of Commission Formal Complaint Cases**

Mediation is process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.

Date: January 25, 1999



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Dale Hardy Roberts  
Secretary of the Commission

US Postal Service

**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	Midwestern Tel
Street & Number	9705 Watson, Ste. 309
Post Office, State, & ZIP Code	Crestwood, MO 63126
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

Thank you for using Return Receipt Service.  
PS Form 3800, April 1995

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

## 3. Article Addressed to:

Midwestern Tel  
9705 Watson, Ste. 309  
Crestwood, MO 63126

## 4a. Article Number

P102 316 553

## 4b. Service Type

- |   |   |
|---|---|
| <input type="checkbox"/> Registered                     | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail                   | <input type="checkbox"/> Insured              |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD                  |

## 7. Date of Delivery

7-6-00

## 5. Received By: (Print Name)

## 8. Signature (Addressee or Agent)

## 6. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

**STATE OF MISSOURI**  
**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 28<sup>th</sup> day of June 2000.

*Dale Hardy Roberts*

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

