

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

In Re: Interconnection, Collocation and Resale            )  
Agreement by and between Birch Telecom of            )  
Missouri, Inc., d/b/a Birch Communications and        )  
Embarq Missouri, Inc. Pursuant to Sections 251        )  
And 252 of the Telecommunications Act of 1996        )  
**Case No. TK-2009-0214**

**ORDER APPROVING MASTER RESALE AGREEMENT**

Issue Date: January 6, 2009

Effective Date: January 16, 2009

This order approves the Master Resale Agreement executed by the parties and filed by Embarq Missouri, Inc., d/b/a Embarq (Embarq).

On November 20, 2008, Embarq filed an application with the Commission for approval of a Master Resale Agreement with Birch Telecom of Missouri, Inc., d/b/a Birch Communications (Birch Communications). The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.<sup>1</sup> Both Embarq and Birch Communications hold certificates of service authority to provide basic local exchange telecommunications services in Missouri.

Although Birch Communications is a party to the Agreement, it did not join in the application. On November 26, 2008, the Commission issued an order making Birch Communications a party in this case and directing any party wishing to request a hearing to do so no later than December 19, 2008. No requests for hearing were filed.

The Staff of the Commission filed a memorandum and recommendation on December 22, 2008, recommending that the Agreement be approved.

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<sup>1</sup> See 47 U.S.C. § 251, *et seq.*

### **Discussion**

Under Section 252(e) of the Act, any interconnection agreement adopted by negotiation must be submitted to the Commission for approval. The Commission may reject an agreement if it finds that the agreement is discriminatory or that it is not consistent with the public interest, convenience and necessity.

The Staff memorandum recommends that the Agreement be approved and notes that the Agreement meets the limited requirements of the Act in that it is not discriminatory toward nonparties and is not against the public interest. Staff recommends that the Commission direct the parties to submit any amendments to the Commission for approval.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission has considered the application, the supporting documentation, and Staff's verified recommendation, which are hereby admitted into evidence. Based upon that review, the Commission concludes that the Agreement meets the requirements of the Act in that it does not discriminate against a nonparty carrier and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity. The Commission finds that approval of the Agreement shall be conditioned upon the parties submitting any amendments to the Commission for approval pursuant to the procedure set out below.

### **Amendment Procedure**

The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.<sup>2</sup> In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize amendments to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.<sup>3</sup> This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission.<sup>4</sup>

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all amendments, in the Commission's offices. Any proposed amendment must be submitted pursuant to Commission rule 4 CSR 240-3.513(6).

### **Conclusions of Law**

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of Section 252(e)(1) of the federal Telecommunications Act of 1996,<sup>5</sup> is required to review negotiated interconnection agreements. It may only reject a negotiated agreement upon a finding that its implementation would be discriminatory to a nonparty or inconsistent with the public interest, convenience

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<sup>2</sup> 47 U.S.C. § 252.

<sup>3</sup> 47 U.S.C. § 252(h).

<sup>4</sup> 4 CSR 240-3.545.

<sup>5</sup> 47 U.S.C. § 252(e)(1).

and necessity.<sup>6</sup> Based upon its review of the Agreement between Embarq and Birch Communications and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and shall be approved.

The Commission notes that prior to providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

**THE COMMISSION ORDERS THAT:**

1. The Master Resale Agreement between Embarq Missouri, Inc., d/b/a Embarq and Birch Telecom of Missouri, Inc., d/b/a Birch Communications, filed on November 20, 2008, is approved.

2. Any changes or amendments to this Agreement shall be submitted in compliance with 4 CSR 240-3.513(6).

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<sup>6</sup> 47 U.S.C. § 252(e)(2)(A).

3. This order shall become effective on January 16, 2009.
4. This case may be closed on January 17, 2009.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Colleen M. Dale, Chief Regulatory Law  
Judge, by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 6<sup>th</sup> day of January, 2009.