

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

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and submits its Staff Recommendation in Case No. TK-2009-0214 as follows:

1. On November 20, 2008, Embarq Missouri, Inc., d/b/a Embarq (Embarq or the Company) filed with the Missouri Public Service Commission (the Commission) its *Application Of Embarq Missouri, Inc. For Approval Of A Master Resale Agreement* (Application), in which Embarq seeks approval of an Interconnection, Collocation and Resale Agreement (Interconnection Agreement) between the Company and Birch Telecom of Missouri, Inc., d/b/a Birch Communications (Birch Communications) pursuant to the Telecommunications Act of 1996.

2. On November 26, 2008, the Commission issued its *Order Directing Notice and Making Birch Communications A Party*, directing notice be sent to interexchange and local exchange telecommunications companies, joining Birch Communications as party to the case, setting an intervention deadline, and directing Staff to file a memorandum regarding Embarq's *Application* by December 29, 2008.

3. The statutory standard for review of an interconnection and resale agreement can be found in Section 252(e) of the Telecommunications Act of 1996, which states that an interconnection agreement adopted by negotiation shall be submitted for approval to the state

commission, but that the state commission may only reject such agreement if it discriminates against a telecommunications carrier not a party to the agreement or if its implementation is not consistent with the public interest, convenience, and necessity. 42 U.S.C. § 252(e)(2).

4. In the attached memorandum, labeled Appendix A, Staff states that the Interconnection Agreement does not discriminate against telecommunications carriers not parties to the Interconnection Agreement and that the Interconnection Agreement is not against the public interest, convenience or necessity.

5. Embarras is not delinquent in filing its annual report, or in paying its PSC assessment, or MoUSF and Relay Missouri surcharges.

WHEREFORE, Staff recommends the Commission approve the *Application* and direct the parties to submit to the Commission any subsequent modifications or amendments to the Interconnection Agreement.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont
Assistant General Counsel
Missouri Bar No. 60892

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Missouri Public Service Commission
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 22nd day of December, 2008.

/s/ Eric Dearmont

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. **TK-2009-0214**

Party: Embarq Missouri, Inc. d/b/a Embarq

Type of Carrier:

- ☒ ILEC
☐ CLEC
☐ Wireless

Party: Birch Telecom of Missouri, Inc. d/b/a Birch Communications

Type of Carrier:

- ☐ ILEC
☒ CLEC
☐ Wireless

From: Sara Buyak, Telecommunications Department

William Voight 12/22/08
Utility Operations Division/Date

Subject: Staff Recommendation for Approval of Interconnection Agreement or
Amendment to Interconnection Agreement

Date: December 19, 2008

Date Filed: November 20, 2008

Staff Deadline: December 29, 2008

The Telecommunications Department Staff (Staff) recommends the Parties be granted approval of the submitted:

- ☒ Interconnection Agreement
☐ Amendment not previously approved

The parties submitted the proposed Agreement or Amendment to the Missouri Public Service Commission (Commission) pursuant to the terms of the Telecommunications Act of 1996 (Act). Staff has reviewed the proposed Agreement and believes it meets the limited requirements of the Act. Specifically, the Agreement: 1) does not discriminate against telecommunications carriers not party to the Agreement and 2) is not against the public interest, convenience or necessity. Staff recommends the Commission direct the Parties to submit any modifications or amendments to the Commission.

☐ The applicants have not submitted a serially numbered copy of the Agreement or Amendment. Staff recommends the Commission direct the Parties to submit a serially numbered copy of the Agreement or Amendment.

☒ Staff has a serially numbered copy of the Agreement or Amendment.

Additional Interconnection Agreement or Amendment Review Items

☒ No applications to intervene filed.

☒ Agreement or Amendment signed by both Parties.

Additional recommendations or special considerations (if any):

☒ The Company is not delinquent in filing an annual report, paying the PSC assessment, paying MoUSF, and paying Relay Missouri.

☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.

(☐ No annual report ☐ Unpaid PSC assessment. Amount owed:
☐ Unpaid MoUSF ☐ Unpaid Relay Missouri)

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

In the Matter of the Interconnection,)
Collocation and Resale Agreement By and)
Between Birch Telecom of Missouri, Inc.)
d/b/a Birch Communications and Embark)
Missouri, Inc. Pursuant to Sections 251 and)
252 of the Telecommunications Act of)
1996.)

Case No. TK-2009-0214

AFFIDAVIT OF Sara Buyak

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Sara Buyak, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying staff recommendation, and that the facts therein are true and correct to the best of her knowledge and belief.


SARA BUYAK

Subscribed and affirmed before me this 19th day of December.




NOTARY PUBLIC

CARLA K. SCHNIEDERS
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: August 25, 2012
Commission Number: 08533187