

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,	)	
	)	
	)	
	)	
v.	)	<u>File No. TC-2019-0136</u>
	)	
Birch Telecom of Missouri, LLC,	)	
d/b/a Birch Communications, LLC,	)	
	)	
	)	
Respondent.	)	

NOTICE OF CONTESTED CASE AND ORDER DIRECTING FILING

Issue Date: November 14, 2018

Effective Date: November 14, 2018

On November 13, 2018, the Commission's Staff filed a complaint against Birch Telecom of Missouri, LLC., d/b/a Birch Communications, LLC., a copy of which is attached. The filing of a complaint requires the Commission to set a hearing.¹ The requirement of a hearing on such issues signifies a contested case.² A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities and a decision without an evidentiary hearing, including by stipulation and agreement.³ The Commission's regulations provide for discovery at 4 CSR 240-2.090.

THE COMMISSION ORDERS THAT:

1. Birch Telecom of Missouri, LLC., d/b/a Birch Communications, LLC. shall file an answer to the complaint no later than December 14, 2018.

¹ Section 392.240, RSMo 2016.

² Section 536.010(4), RSMo 2016.

³ Section 536.060, RSMo 2016; 4 CSR 240-2.115.

2. The Commission's data center shall serve a copy of this order and the complaint upon Birch Telecom of Missouri, LLC., d/b/a Birch Communications, LLC. by certified mail, postage prepaid, at:

Birch Telecom of Missouri, LLC.
251 Little Falls Dr.
Wilmington, DE 19808

AND

Birch Telecom of Missouri, LLC.
c/o Sharyl Fowler, Official Representative
115 Gateway Dr.
Macon, GA 31210

AND

Birch Communications, LLC
c/o Registered Agent Solutions, Inc.
3225 – A Emerald Lane
Jefferson City, MO 65109

3. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Charles Hatcher, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 14th day of November, 2018.

The Staff of the Missouri Public Service
Commission,

Complainant,

v.

Birch Telecom of Missouri, LLC.,
d/b/a Birch Communications, LLC.,

Respondent.

COMES NOW the Staff of the Missouri Public Service Commission, through the undersigned counsel, and pursuant to Section 386.370 RSMo (2000)¹, files this Complaint with the Missouri Public Service Commission against Birch Telecom of Missouri, LLC., d/b/a Birch Communications, LLC. (“Company”), for violation of the Commission’s statutes relating to the payment of annual assessments. In support of its Complaint, Staff respectfully states the following:

1. This matter concerns Respondent's failure to pay the Company's annual Public Service Commission Assessment.

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Staff Counsel's Office as authorized by Commission Rule 4 CSR 240-2.070(1).

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3. Respondent Company is located at 251 Little Falls Dr., Wilmington, DE, 19808. Respondent's official representative, as listed in EFIS, is Sharyl Fowler, 115 Gateway Dr., Macon, GA, 31210. The Company provides telecommunications services statewide.

4. Respondent CSC-Lawyers Incorporating Service Company on information and belief is the registered agent of Respondent Company.

General Allegations

5. Respondent is a provider of "telecommunications services" to the public for gain as defined by § 386.020(54) and a "public utility" as defined by § 386.020(43), RSMo, and thus is subject to the jurisdiction of this Commission pursuant to § 386.250(3), RSMo.

6. Section 386.390.1, RSMo authorizes the Commission to entertain a complaint "setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed to be in violation, of any provision of law, or of any rule, or order or decision of the commission."

7. Section 386.600, RSMo provides, "an action to recover a penalty under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission."

Respondent failed to pay Company's fiscal year 2019 assessment

8. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 7, above.

9. Section 386.370.2 RSMo, states:

The Commission shall allocate to each group of public utilities the gross intrastate operating revenues of such group during the preceding calendar year. The Commission shall then assess the amount allocated to each public utility in proportion to their respective gross intrastate operating revenues during the preceding calendar year.

10. On June 20, 2018, the Commission, in Case No. AO-2018-0379, issued its Assessment Order for Fiscal Year 2019 (2019 Assessment Order) pursuant to Section 386.370 RSMo. The Assessment Order fixed the amount allocated to telephone service providers at \$1,304,107.

11. Section 408.020 RSMo allows "creditors to receive interest at the rate of nine percent per annum, when no other rate is agreed upon.on accounts after they become due and demand of payment is made[.]" and Complainant is statutorily entitled to prejudgment interest on Company's delinquent assessment amount.

12. On June 21, 2018, the Commission's Budget and Fiscal Services sent Respondent notice stating that \$4856.28 was due no later than July 15, 2018, to keep Company's account in good standing.

13. On August 15, 2018, the Commission sent Respondent a "late notice" by email, stating that \$4856.28 was due immediately to keep Company's account in good standing.

14. As of the date of this filing, Respondent has failed, omitted, or neglected to pay \$4856.28 of Company's total fiscal year 2019 assessment.

15. Section 386.570.1 RSMo provides that,

Any...public utility which violates or fails to comply with any...law, or which fails to comply with any order, decision, decree, rule direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty

has not herein been provided for such...public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

16. Section 386.570.2, RSMo, provides that “in case of a continuing violation each day’s continuance thereof shall be and be deemed to be a separate and distinct offense.”

WHEREFORE, the Staff respectfully requests the Commission give notice to the Respondent as required by law and, after the opportunity for hearing, issue an order that finds the Respondent has failed to pay the fiscal year 2019 assessment and authorizes the General Counsel’s Office to bring a penalty action against the Respondent in circuit court as provided in §§ 386.600, 386.370, and 386.570, RSMo., for the collection of the assessment, penalties, and interest on the assessment amount.

Respectfully submitted,

/s/ Travis J. Pringle

Missouri Bar No. 71128

Legal Counsel

Attorney for the Staff of the
Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-4140 (Telephone)

(573) 751-9265 (Fax)

Travis.Pringle@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record this 13th day of November, 2018.

/s/ Travis J. Pringle

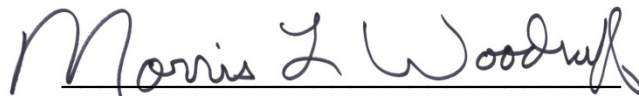
STATE OF MISSOURI

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 14th day of November 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 14, 2018

File/Case No. TC-2019-0136

**Missouri Public Service
Commission**

Staff Counsel Department
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Marc Poston
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opc@psc.mo.gov

Birch Communications, LLC

Legal Department
2323 Grand Blvd., Ste. 925
Kansas City, MO 64108-2414

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.