

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

SECOND NOTICE OF CONTESTED CASE AND ORDER GRANTING MOTION TO AMEND COMPLAINT AND DIRECTING SERVICE OF NOTICE AND FILINGS

Issue Date: December 11, 2018

Effective Date: December 11, 2018

The Commission will give a second notice of a complaint and contested case, will make an order directing service of the *Complaint*, grant a motion amending the *Complaint*, and make orders directing the parties to make certain filings.

Service of Process

On November 13, 2018, the Commission's Staff filed their *Complaint* against Birch Telecom of Missouri, LLC, d/b/a Birch Communications, LLC (Birch). On November 14, the Commission issued its *Notice of Contested Case and Order Directing Filing*, ordering Birch to file an answer to the *Complaint* no later than December 14, and directing the Data Center of the Missouri Public Service Commission to serve the *Complaint* and notice on Respondent by certified mail as follows:

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

On November 27, two Certified Mail Receipts were received and entered into EFIS¹. The first, signed by Shelby Braun, was sent to:

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

The second Certified Mail Receipt has what appears to be a stamped signature that appears to be William Rolley (the last name is partially illegible). This notice was sent to:

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

On November 29, the third Certified Mail Receipt was received and entered into EFIS². It was signed by V Sark, and was sent to:

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

On December 5, Staff discovered that the *Complaint* had been improperly served as it was not served on Respondent, either directly or through Respondent's registered agent. On December 7, Staff filed their *Motion to Direct Service* which requests that the

¹ Electronic Filing Information System, Item Nos. 3 and 4.

² EFIS, Item No. 5.

Commission direct its Data Center to serve the *Complaint* on Respondent at the following address:

Registered Agents Solutions, Inc.
3225 – A Emerald Lane
Jefferson City, MO 65101

Amended Complaint

Also on December 7, Staff filed their *Motion to Amend Complaint* which requests to amend paragraphs 3 and 4 of the *Complaint*. Paragraph three currently states the Delaware and Georgia addresses listed above as Birch's location. Staff's proposed amended paragraph 3 would substitute the Delaware address for the Jefferson City registered agent address filed with the Secretary of State.

Staff's current paragraph 4 of its *Complaint* states on information and belief that CSC-Lawyers Incorporating Service Company is Birch's registered agent. Staff's proposed amended paragraph 4 names Registered Agents Solutions, Inc. as the registered agent on information and belief. Commission Rule 4 CSR 240-2.080(18) allows a pleading to be amended by leave of the Commission.

Notice of Contested Case

The filing of a complaint requires the Commission to set a hearing.³ The requirement of a hearing signifies a contested case.⁴ A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities and a decision without a hearing,⁵ including

³ Section 386.390.5, RSMo 2016.

⁴ Section 536.010(4), RSMo 2016.

⁵ Section 536.060, RSMo 2016.

by stipulation and agreement.⁶ The Commission's regulations on discovery are at 4 CSR 240-2.090.

As an alternative to the formal evidentiary hearing procedure, the Commission offers mediation. Mediation is a voluntary process in which a neutral person assists the parties in exploring opportunities for settlement. Upon a request for mediation, the Commission may suspend the schedule.

THE COMMISSION ORDERS THAT:

1. The *Motion to Amend Complaint* filed by the Staff of the Missouri Public Service Commission is granted. The *Complaint as amended* is deemed filed with the Commission.

2. Birch Telecom of Missouri, LLC, d/b/a Birch Communications, LLC, shall file an Answer to the *Complaint as amended* no later than January 10, 2019.

3. The Data Center of the Missouri Public Service Commission shall serve the *Complaint*, Staff's *Motion to Amend Complaint*, and this *Second Notice of Contested Case and Order Amending Complaint and Directing Service of Notice and Filing on Respondent* by certified mail at the following address:

Registered Agents Solutions, Inc.
3225 – A Emerald Lane
Jefferson City, MO 65101

⁶ 4 CSR 240-2.115.

4. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in black ink 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 11th day of December, 2018.

The Staff of the Missouri Public Service
Commission,

Complainant,

v.

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

Respondent.

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

The Staff of the Missouri Public Service Commission,

Complainant,

V.

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

Respondent

Case No. TC-2019-0136

MOTION TO AMEND COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), and
for its *Motion to Amend Complaint* states as follows:

1. Staff filed its *Complaint* in the above-captioned matter on November 13, 2018.
2. On December 5, 2018, Staff discovered that the *Complaint* had been improperly served.
3. Staff wishes to amend Paragraphs 3 and 4 from the *Complaint* to correct this error.
4. Paragraph 3 of the *Complaint* should read as follows:

“Respondent Company’s registered address with the Secretary of State is 3225 – A Emerald Lane, Jefferson City, MO 65101. Respondent’s official representative, as listed in EFIS, is Sharyl Fowler, 115 Gateway Dr., Macon, GA, 31210. The Company provides telecommunications services statewide.”

5. Paragraph 4 of the *Complaint* should read as follows:

“Respondent Registered Agents Solutions, Inc., on information and belief is the registered agent of Respondent Company.”

6. As these changes would not introduce new topics to the *Complaint*, the amending of the *Complaint* will cause no party any undue prejudice.

WHEREFORE, the Staff prays that the Commission will duly amend the original *Complaint* filed on November 13, 2018.

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 7th day of December, 2018.

/s/ Travis J. Pringle



Commissioners

RYAN A. SILVEY
Chairman

WILLIAM P. KENNEY

DANIEL Y. HALL

SCOTT T. RUPP

MAIDA J. COLEMAN

Missouri Public Service Commission

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

SHELLEY BRUEGGEMANN
General Counsel

MORRIS WOODRUFF
Secretary

LOYD WILSON
Director of Administration

NATELLE DIETRICH
Staff Director

Information Sheet Regarding Mediation of Commission Formal Complaint Cases

Mediation is a 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. The Regulatory Law Judges at the Public Service Commission are trained mediators and this service is offered to parties who have formal complaints pending before the Public Service Commission at no charge. In addition, 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.

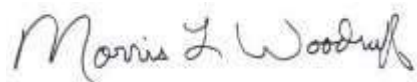
The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating 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 Judge assigned to be the mediator will not be the same Judge assigned to the contested complaint.

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.

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

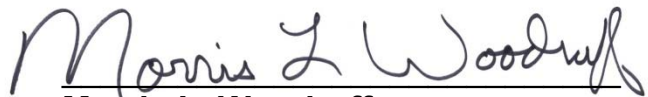
STATE OF MISSOURI

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 11th day of December 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 11, 2018

File/Case No. TC-2019-0136

**Missouri Public Service
Commission**

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**Missouri Public Service
Commission**

Travis Pringle
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Travis.Pringle@psc.mo.gov

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

Sincerely,



**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.