

March 6, 2001

Ms. Carol E. Matthey
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Dear Deputy Chief Matthey:

On January 26, 2001, Birch Telecom, Inc. ("Birch") issued a letter of intent to SBC Communications, Inc. to elect the Oklahoma 271 Agreement ("O2A"). In that letter, Birch also notified SBC of its intention to incorporate additional amendments to the O2A, after the executed agreement was filed with the Oklahoma Corporation Commission. (Attachment A)

On February 19, 2001, Birch notified SBC of its intent to port the Sage Telecom, Inc./Southwestern Bell Telephone Company ("SWBT") Attachment 12, Compensation, from the Texas Public Utility Commission-approved Sage/SWBT Interconnection Agreement ("Sage Attachment") (Attachment B), in accordance with the SBC/Ameritech Merger Conditions.

On February 19, 2001, SBC/Ameritech issued a letter to Birch indicating that SWBT was not "amenable to voluntarily adding the Sage Compensation Appendix from Texas to Birch's Oklahoma Agreement" (see Attachment C). Additionally, this letter also indicates SBC/Ameritech's position that the Sage Attachment was not available for porting under the Merger Conditions as reciprocal compensation provisions are not UNEs, interconnection or service arrangements available for adoption under Section 252(I) of the Federal Telecommunications Act. The SBC/Ameritech letter further explains that the compensation terms Birch is seeking through the Sage Attachment are arbitrated terms and therefore precluded from being ported. Finally, the letter indicates that the terms of the Sage Attachment were awarded to a CLEC that operates exclusively through UNEs, and therefore SWBT is unwilling to port the same terms to Birch.

The purpose of this letter is to seek an interpretation of relevant SBC/Ameritech Merger Conditions governing the ability of a Competitive Local Exchange Carrier to import a negotiated, subsequently approved, attachment to an interconnection agreement from a state within the SBC/Ameritech region.

Section XII, paragraph 43 of the FCC SBC/Ameritech Merger Conditions provides:

Subject to the conditions specified in this Paragraph, SBC/Ameritech shall make available to any requesting telecommunications carrier in the SBC/Ameritech Service Area within any SBC/Ameritech State any interconnection arrangement or UNE in the SBC/Ameritech Service Area within any other SBC/Ameritech State that (1) was negotiated with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), by an SBC/Ameritech incumbent LEC that at all times during the interconnection agreement negotiations was an affiliate of SBC and (2) has been made available under an agreement to which SBC/Ameritech is a party.

In addition, with respect to the Sage/SWBT Agreement, *Order No. 2 Approving Amendment to Interconnection Agreement*, issued by the Texas Public Utility Commission on February 2, 2000 (“Texas Order”) (Attachment D), provides:

The amendments include *negotiated mutually acceptable amendments* to Section 2.2 of the General Terms and Conditions (new); Appendix Pricing – UNE and Appendix Pricing – UNE Schedule of Prices (amended); Appendix Cellular (amended), **Attachment 12: Compensation**; and addition of Attachment 27: FCC Merger Conditions (new). (Emphasis added).

Birch believes that both Paragraph 43 of the SBC/Ameritech Merger Order and the Texas Order approving the Sage Attachment provide clear and convincing evidence to support Birch’s right to incorporate the Sage Attachment from Texas into its agreements in Texas, Oklahoma, Kansas and Missouri. Birch believes the SBC-Ameritech Merger Conditions contemplated the very election Birch has sought from SBC. Further, Birch asserts that the Texas Order is clear in its conclusion that the Sage Attachment was the result of a mutually acceptable negotiation between Sage and SWBT.

Birch is also aware that on December 22, 2000, the Common Carrier Bureau (“CCB”) issued a nearly identical interpretation to Focal Communications Corporation (“Focal”) with respect to the Bell Atlantic/GTE Merger Conditions (Attachment E). Under the scenario addressed in the letter, Verizon had asserted to Focal that the most-favored nation (“MFN”) language of the Bell Atlantic/GTE Merger Order excluded the portability of provisions addressing reciprocal compensation. It is clear from the CCB’s response letter that Verizon was incorrect in its assertion, and in fact Verizon’s position was inconsistent with the underlying purpose of the MFN provisions.

Therefore, Birch respectfully requests an interpretation of SBC’s obligation to allow Birch to port the aforementioned Sage Attachment into its current and/or future interconnection agreements in Oklahoma, Texas, Kansas and Missouri, consistent with the obligations enumerated in the FCC SBC/Ameritech Merger Conditions.

Thank you in advance for your prompt attention to this matter.

Very truly yours,

John M. Ivanuska
Vice President – Regulatory & Carrier Relations

cc: Ms. Radhika Karmarkar
Assistant Chief
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission



January 26, 2001

Marianne Kline
Southwestern Bell Telephone Company
Contract Administration
311 S. Akard
4 Bell Plaza, 9th Floor
Dallas, TX 75202

Re: Election of Oklahoma Interconnection Agreement

Dear Ms. Kline:

Enclosed please find the executed signature page of the Interconnection Agreement between Southwestern Bell Telephone Company and Birch of Oklahoma, Inc. This agreement will supercede our current Interconnection Agreement in Oklahoma.

Additionally, as discussed with Lisa Dabkowski, Birch reminds you that once the executed Agreement has been filed with the Oklahoma Commission for approval, Birch will amend the O2A as follows:

1. Amend Attachment 12: Compensation to substitute the Attachment 12 from the Sage Telecom, Inc./SWBT Texas Interconnection Agreement; and
2. Amend Attachment 25: xDSL to include the acceptance testing language that is available today in our current Interconnection Agreement.

Thank you for your attention to this matter. Please call if you have any questions or concerns.

Sincerely yours,

John Ivanuska
Vice President, Interconnection
& Carrier Relations

cc: Patti Kettler
Rina Hartline

John Chuang
Lisa Dabkowski – SBC



February 19, 2001

Kathy Karavidas
SBC Communications, Inc.
350 N Orleans, Fl 3
Chicago, IL 60654

Re: Election of Attachment 12 from the Sage Telecom, Inc./SWBT Texas Interconnection Agreement.

Dear Kathy:

Pursuant to the FCC Merger Conditions adopted on October 6, 1999, and incorporated by reference in our interconnection agreements in Texas, Missouri, Kansas and Oklahoma (collectively referred to herein as "Interconnection Agreements"), Birch requests amendments to our Interconnection Agreements to incorporate the Attachment 12 from the Sage Telecom, Inc./SWBT Texas interconnection agreement.

Section XII, paragraph 43 of the FCC Merger Conditions provides:

Subject to the conditions specified in this Paragraph, SBC/Ameritech shall make available to any requesting telecommunications carrier in the SBC/Ameritech Service Area within any SBC/Ameritech State any interconnection arrangement or UNE in the SBC/Ameritech Service Area within any other SBC/Ameritech State that (1) was negotiated with a telecommunications carrier, pursuant to 47 U.S.C. § 252(a)(1), by an SBC/Ameritech incumbent LEC that at all times during the interconnection agreement negotiations was an affiliate of SBC and (2) has been made available under an agreement to which SBC/Ameritech is a party.

Therefore, as a negotiated interconnection arrangement in Texas, the Sage Attachment 12 must be made available in Texas, Missouri, Kansas and Oklahoma. Please provide me with three (3) executed signature pages for each of the Amendments so that Birch can execute and file these Amendments in a timely fashion.

Thank you for your attention to this matter.

Sincerely yours,

John Ivanuska
Vice President, Interconnection
& Carrier Relations