

**BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION**

Joint Application of	)	
Ionex Communications, Inc. dba Birch	)	
Communications, Birch Telecom of Missouri, Inc.	)	Docket No. _____
dba Birch Communications, and American Fiber	)	
Network, Inc. for Approval to Transfer Assets and	)	
Customers	)	

**JOINT APPLICATION**

Pursuant to RSMo. Section 392.300 and 4 CSR 240-3.520, Birch Telecom of Missouri, Inc. dba Birch Communications (“Birch”), Ionex Communications, Inc. dba Birch Communications (“Ionex”) (together, the “Purchasers”) and American Fiber Network, Inc. (“AFN” or “Seller”) (Birch, Ionex, and AFN collectively, the “Applicants”) hereby request that the Missouri Public Service Commission (“Commission”) approve the transfer of substantially all of Seller’s telecommunications assets and Missouri customer base to Birch and Ionex (the “Transaction”). Applicants submit the following in support of this Joint Application:

**I. DESCRIPTION OF THE APPLICANTS**

**A. American Fiber Network, Inc.**

AFN is a Delaware corporation with headquarters located at 9401 Indian Creek Parkway, Suite 280, Overland Park, Kansas 66210. AFN is authorized by the Commission to provide local exchange and interexchange services.<sup>1</sup>

**B. Ionex Communications, Inc. dba Birch Communications**

Ionex is a Kansas corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. Ionex is authorized by the Commission to provide local

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<sup>1</sup> Docket No. TA-2000-305.

exchange and interexchange services.<sup>2</sup> Ionex is a wholly owned subsidiary of Birch Communications Inc. (“BCI”), a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. BCI and its subsidiaries provide telecommunications services to both business and residential customers in 33 states.

**C. Birch Telecom of Missouri, Inc. dba Birch Communications**

Birch is a Delaware corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. Birch is authorized by the Commission to provide local exchange and interexchange services.<sup>3</sup> Birch is also a wholly owned subsidiary of BCI.

**II. DESIGNATED CONTACTS**

For the purposes of this Joint Application, inquiries, or copies of any correspondence, orders, or other materials should be directed as follows:

**For Ionex Communications, Inc. dba Birch Communications and Birch Telecom of Missouri, Inc. dba Birch Communications:**

Leland B. Curtis #20550  
Carl J. Lumley #32869  
Curtis, Heinz, Garrett & O’Keefe, P.C.  
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[clumley@lawfirmemail.com](mailto:clumley@lawfirmemail.com)

with copies to:

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Cahill Gordon & Reindel LLP  
1990 K Street, NW, Suite 950  
Washington, DC 20006  
202-862-8930 (telephone)  
202-862-8958 (facsimile)  
[acollins@cgrdc.com](mailto:acollins@cgrdc.com)

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<sup>2</sup> Docket No. TA-93-332.

<sup>3</sup> Docket Nos. TA-97-371 and TA-97-372.

**For American Fiber Network, Inc.:**

Douglas C. Bethell  
American Fiber Network, Inc.  
9401 Indian Creek Parkway, Suite 280  
Overland Park, KS 66210  
913-338-2658 (telephone)  
913-338-5285 (facsimile)  
doug.bethel@afnltd.com

**III. DESCRIPTION OF TRANSFER OF ASSETS AND CUSTOMERS**

On September 3, 2010, BCI agreed to purchase AFN's assets and customer base pursuant to a Sale Agreement pursuant to Article 9 of the Uniform Commercial Code ("Agreement").

The assets to be purchased include customer accounts, accounts receivable, customer agreements and contracts, vendor agreements and contracts, and intellectual property. A copy of the Agreement is attached as **Exhibit A**, and is filed as highly confidential pursuant to 4 CSR 240-2.135(2)(A). A copy of the Board resolution authorizing the Agreement is attached as **Exhibit B**, and is filed as highly confidential pursuant to 4 CSR 240-2.135(2)(A). The ownership structure of Birch and Ionex will not be affected by the Transaction. Upon consummation of the Transaction and after completion of the customer transfer, Birch and Ionex will provide AFN customers with the same service quality they have come to expect and all billing will be handled under the Birch name. Consummation of the Transaction is contingent on, among other things, receipt of all necessary regulatory approvals.

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Following approval of the proposed Transaction, Birch and Ionex will file any necessary tariff revisions to incorporate the Seller's current services and rates so that the affected customers will continue to receive the same services that they currently receive without any changes to the service offerings, rates, or terms and conditions. Birch and Ionex will provide services to AFN customers utilizing their existing interconnection agreements, 911

arrangements, and numbering arrangements. Applicants will provide a joint notice of the transfer to AFN customers at least thirty (30) days prior to the transfer in accordance with the customer notice rules adopted by the Commission and the Federal Communications Commission. A sample of the customer notification is included with the Application in **Exhibit C**.

Upon completion of the Transaction and the migration of customers, Seller will no longer offer telecommunications services in Missouri. After Seller determines that it no longer needs its authorization for operational or billing purposes, Seller will surrender its authorization and cancel its tariffs in a separate filing.

#### **IV. PUBLIC INTEREST ANALYSIS**

Approval of the Transaction is in the public interest. As discussed above, current AFN customers will be given prior written notice of the transfer of their account to Birch and Ionex, in compliance with Missouri and federal customer notice rules. Following consummation of the Transaction, Birch and Ionex will continue to offer high quality services to Missouri residents, as is supported by their industry knowledge, technical expertise, and financial strength. As a result, the proposed Transaction will be transparent to customers and will not have a negative impact on the public interest, services to Missouri customers, or competition.

#### **V. NO TAX IMPACT**

The proposed Transaction will have no impact upon the revenues of the political subdivisions in which any structure, facility or equipment of the companies involved are located.

## VI. CONCLUSION

WHEREFORE, for the reasons stated above, the Applicants respectfully request that the Commission grant all authority necessary for AFN to transfer substantially all of its assets and Missouri customers to Birch and Ionex.

Respectfully submitted,

**AMERICAN FIBER NETWORK, INC.**

**BIRCH TELECOM OF MISSOURI, INC.  
and IONEX COMMUNICATIONS, INC.**

Douglas C. Bethell  
President  
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Counsel for Birch Telecom of Missouri, Inc.  
dba Birch Communications and  
Ionex Communications, Inc. dba Birch  
Communications

Dated: September 17, 2010

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing document was emailed to the persons listed below this 17<sup>th</sup> day of September, 2010 to:



General Counsel Office  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
Phone: 573-751-2690  
Fax: 573-751-9285  
GenCounsel@psc.mo.gov

Lewis Mills  
Office Of Public Counsel  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102  
Phone: 573-751-1304  
Fax: 573-751-5562  
opcservice@ded.mo.gov

STATE OF GEORGIA )

COUNTY OF BIBB )

VERIFICATION

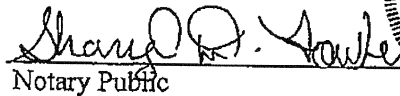
I, Vincent M. Oddo, being first duly sworn, do hereby certify, depose and state that I am President/Chief Executive Officer for Birch Communications, Inc., that I am authorized to make this verification on behalf of Birch Communications, Inc., and that the contents with respect to Birch Communications, Inc. is true and correct to the best of my knowledge, information and belief.



Name: Vincent Oddo

Title: President/Chief Executive Officer  
Birch Communications, Inc.

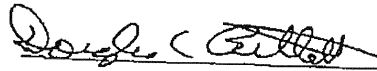
Subscribed and sworn to before me this 7<sup>th</sup> day of Sept 2010

  
Notary Public

STATE OF Kansas       )  
                                  )  
COUNTY OF Johnson    )

VERIFICATION

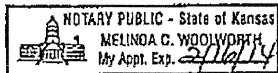
I, Douglas C. Bethell, being first duly sworn, do hereby certify, depose and state that I am President for American Fiber Network, Inc. ("AFN"), that I am authorized to make this verification on behalf of AFN, and that the contents with respect to AFN are true and correct to the best of my knowledge, information and belief.




Name: Douglas C. Bethell

Title: President  
American Fiber Network, Inc.

Subscribed and sworn to before me this 9 day of SEPTEMBER 2010



  
Notary Public



## **LIST OF EXHIBITS**

<b>Exhibit A</b>	<b>Agreement*</b>
<b>Exhibit B</b>	<b>Board Resolution*</b>
<b>Exhibit C</b>	<b>Customer Notice</b>

\* Submitted pursuant to a request for confidential treatment pursuant to 4 CSR 240-2.135(2)(A).

**EXHIBIT A**

**CONFIDENTIAL - Agreement\***

\* Submitted pursuant to a request for confidential treatment pursuant to 4 CSR 240-2.135(2)(A).

**EXHIBIT B**

**CONFIDENTIAL - Board Resolution\***

\* Submitted pursuant to a request for confidential treatment pursuant to 4 CSR 240-2.135(2)(A).

**EXHIBIT C**

**Customer Notice**