

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

IN RE: )  
APPLICATION OF )  
**NAVIGATOR TELECOMMUNICATIONS, LLC.** )  
FOR APPROVAL TO TRANSFER ) Case No: TM-2009-0051  
CERTAIN ASSETS TO )  
**BIRCH TELECOM OF MISSOURI, INC.,** )  
**D/B/A BIRCH COMMUNICATIONS** )

**AMENDED APPLICATION FOR AUTHORITY TO TRANSFER ASSETS**

COME NOW Navigator Telecommunications, LLC. ("Navigator" or "Seller") and Birch Telecom of Missouri, Inc., d/b/a Birch Communications ("Birch") (jointly "Applicants"), pursuant to Section 392.300 RSMo. 2000 and 4 CSR 240-3.520, hereby file an Amended Application for Authority to Transfer Assets, requesting Missouri Public Service Commission ("Commission") authority to effect an acquisition and transfer of certain assets currently owned by Navigator to Birch.

Applicants originally filed an Application for Authority to Transfer Assets on August 19, 2008. Since that filing, Access Integrated Networks, Inc. has assigned its rights to acquire such assets to Birch. Therefore, the Applicants are submitting an Amended Application for Authority to Transfer Assets (the "Application").

Applicants seek such Commission authority to enable Birch to begin serving certain Navigator subscribers in Missouri immediately upon a grant of this Application. Navigator does not seek a transfer or cancellation of Navigator's Certificate of Service Authority. In support of this Application, Applicants state as follows:

**I. IDENTIFICATION OF APPLICANTS**

1. The full legal name, address, telephone number, facsimile number and e-mail address of Applicants are:

**Birch Telecom of Missouri, Inc., d/b/a Birch Communications**  
4885 Riverside Drive, Suite 304  
Macon, GA 31210  
Telephone: 478-475-9800  
Facsimile: 478-475-9988  
E-Mail: Chris.Bunce@Birch.com

- and -

**Navigator Telecommunications, LLC.**  
8525 Riverwood Park Drive  
PO Box 13860  
North Little Rock, AR 72113  
Telephone: 504-954-4000  
Facsimile: 504-954-4002  
E-Mail: David.Stotelmyer@Navtel.com

Communications concerning this Application should be directed to:

Michael L. McCann, MO Bar # 41166  
Spencer Fane Britt & Browne LLP  
1000 Walnut Street, Suite 1400  
Kansas City, MO 64106-2140

Telephone: 816-292-8110  
Facsimile: 816-474-3216

- and -

Carey Roesel, Consultant  
TECHNOLOGIES MANAGEMENT, INC.  
2600 Maitland Center Parkway, Suite 300  
Maitland, Florida 32751

Telephone: 407-740-8575  
Facsimile: 407-740-0631

## II. DESCRIPTION OF APPLICANTS

2. Navigator is a limited liability company organized under the laws of the State of Arkansas and is duly authorized to do business in Missouri as a foreign limited liability company. A Certificate of Good Standing from the Missouri Secretary of State providing that Navigator is authorized to do business and in good standing in Missouri is attached hereto as **Exhibit A**. Navigator is a local exchange and non-dominant interexchange telecommunications service provider, which is certified, registered or otherwise authorized to provide local services in thirty-six states and long distance services in forty-seven states. Navigator was

granted authority to provide local exchange services in Missouri in Dockets TA-200-232 and TA-98-383. Navigator seeks to transfer approximately 203 presubscribed residential customers and 42 presubscribed business customers of its services in Missouri to Birch.

3. Birch is a corporation organized under the laws of the State of Delaware and is duly authorized to do business in Missouri as a foreign corporation. A Certificate of Good Standing from the Missouri Secretary of State providing that Birch is authorized to do business and in good standing in Missouri is attached hereto as **Exhibit B**. Birch is a subsidiary of Birch Telecom, Inc., a Delaware corporation (“Birch Telecom”). Birch adopted the fictitious name “Birch Communications” following the acquisition by Access Integrated Networks, Inc., a Georgia-based local exchange and long distance carrier (“Access”), of Birch Telecom. A copy of the Registration of Fictitious Name filed by Birch is attached hereto as **Exhibit C**. Birch Telecom and its affiliates are authorized to provide local and long distance services in twenty-six states. Birch was granted local exchange and long distance resale authority in Missouri in Dockets TA-97-371 and TA-97-372 and its Certificate is in good standing with the Commission. Birch’s managerial, technical and financial ability to provide telecommunications services are a matter of record with the Commission; and Birch respectfully requests that the Commission take official notice of that information and incorporate it herein by reference. Birch is unaware of any pending customer complaints associated with its provision of service in Missouri.

4. Navigator and Access entered into an Agreement for Purchase and Sale of Customer Access Lines (the “Agreement”) on June 1, 2008, whereby Access has agreed to purchase, receive and assume certain assets of Seller, including Seller’s current residential and business local exchange and long distance customers located in Missouri (the “Missouri Purchased Assets”). A copy of the Agreement is attached hereto as **Exhibit D**. Pursuant to an Assignment, dated September 2, 2008 (the “Assignment”), Access has assigned to Birch its rights under the Agreement with respect to the Missouri Purchased Assets. A copy of the Assignment is attached hereto as **Exhibit D.1**. This transaction is predicated on applicable regulatory approval. A copy of Birch’s balance sheet and income statement are attached hereto as **Exhibit E**.

5. Under the terms of the Agreement and the Assignment, Birch will acquire from Navigator

approximately 203 presubscribed residential customers and 42 presubscribed business customers located in Missouri, customer related data, databases, and customer records needed to support the provision of telecommunications services to Navigator subscribers. Birch will provide telecommunications services as described in this Application. Navigator will continue to provide telecommunications services to all customers affected by this transaction pursuant to Navigator's existing tariff until this Application is granted by the Commission.

6. In accordance with the Agreement and the Assignment, Birch will assume all managerial, technical and financial responsibilities in connection with the operation of the retail local and interexchange long distance assets in order to provide telecommunications services to the affected Navigator customers in Missouri. Prompt handling of this Application will afford an expeditious, transparent and cost effective transition and will enable Birch and Navigator to remain fully compliant with their regulatory obligations. Navigator's customers affected by this transaction will continue to receive the same services from Birch under the current rates, terms and conditions as they currently enjoy. This transaction is being made in a seamless fashion that will cause no changes in customers' rates, terms and conditions of service and will be made at no charge to customers as they transition to Birch as their presubscribed carrier. There will be no interruption of service, other than a minor change to the non-regulated voicemail, and customers will be appropriately informed of their choices. The transfer of assets from Navigator to Birch will not result in any interruption or diminution in the quality of service provided to customers in Missouri and will be essentially transparent to such customers. Navigator's customers will be notified via letter that states (a) the quality of service to the customers will remain the same; (b) Birch will continue to provide service to the customers with the same or better services and rates currently provided to them by Navigator; (c) the customers have the right to switch to the carrier of their choice; (d) the customers may contact either Birch or Navigator via a toll free number with any questions regarding the switchover; and (e) the information required by 4 CSR 240-3.520(2)(G).

7. Written notice of the proposed transfer will be provided to Navigator customers via First Class United States mail on or about September 15, 2008, pursuant to Section 64.1120(e), Verification of Orders for Telecommunications Services, as amended, of Federal Communications Commission (FCC) rules<sup>1</sup>. A copy of

---

<sup>1</sup> 47 C.F.R. §64.1120(e). *In the Matter of 2000 Biennial Review - Review of Policies and Rules Concerning*

the subscriber notice and letter of compliance filed with the FCC are attached hereto as **Exhibit F**.

8. The transaction is exclusively an acquisition of assets and does not involve a merger or consolidation, nor does the transaction require financing. The asset acquisition is intended exclusively to enable Birch to provide telecommunications services to certain Navigator subscribers as new Birch subscribers. As time is of the essence, Birch requests expeditious handling of this notification.

### **III. INAPPLICABILITY OF CARRIER VERIFICATION RULES**

9. Pursuant to 4 CSR 240-33.150(4), upon approval of this Application by the Commission, Birch may submit or execute a change in a Navigator subscriber's provider of telecommunications service on behalf of such subscriber without obtaining authorization and verification in accordance with the procedures prescribed in 4 CSR 240-33.150(2) and 4 CSR 240-33.150(3), provided that Birch has complied with the requirements prescribed in 4 CSR 240-33.150(4), and provided further that such change is made in connection with the transfer of assets under the Agreement.

### **IV. PUBLIC INTEREST, CONVENIENCE AND NECESSITY**

10. Commission approval of Navigator's sale to Birch of the local and interexchange telecommunications assets is in the public interest. The infusion of Navigator's telecommunications service assets into Birch's existing operations will allow Birch to expand its operations and to achieve economies of scale, thus enhancing Birch's ability to compete in the Missouri market for telecommunications services. Missouri consumers will benefit from the expanded availability of innovative and economic telecommunications products and service options.

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

---

*Unauthorized Changes of Consumers Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket Nos 00-257, 94-129, First Report and Order in CC Docket No.*

11. The Applicants do not anticipate that the proposed transfer of assets will have any impact on the tax revenues of the Missouri political subdivisions in which any structure, facility or equipment of the Applicants is located.

**VI. NO PENDING ACTIONS OR FINAL UNSATISFIED JUDGMENTS**

12. Currently there are no pending actions or final unsatisfied judgments or decisions against either of the Applicants from any state or federal agency or court which involve customer service or rates.

**VII. NO OVERDUE ANNUAL REPORTS OR ASSESSMENT FEES**

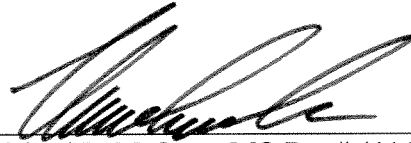
13. No annual report or assessment fees are overdue with respect to either of the Applicants in Missouri.

**VIII. REQUEST FOR WAIVER OF HEARING**

14. Inasmuch as time is of the essence, Applicants respectfully request expeditious approval of the Application.

**WHEREFORE**, Applicants, Navigator and Birch, respectfully request the Commission to issue its Order Approving Navigator's sale of certain telecommunications service assets, specifically a portion of Navigator's customer base, to Birch, and granting such other relief as is reasonable in the circumstances.

Respectfully submitted,



---

Michael L. McCann, MO Bar # 41166  
Spencer Fane Britt & Browne LLP  
1000 Walnut Street, Suite 1400  
Kansas City, MO 64106-2140  
Telephone: 816-292-8110  
Facsimile: 816-474-3216  
Email: [mmccann@spencerfane.com](mailto:mmccann@spencerfane.com)

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed, or mailed, First Class, postage prepaid, this 10<sup>th</sup> of September, 2008, to:

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Kevin Thompson, General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102



---

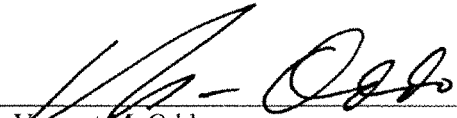
Michael L. McCann



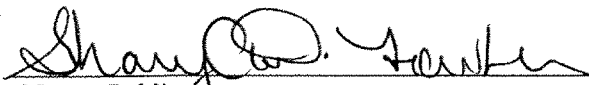
VERIFICATION

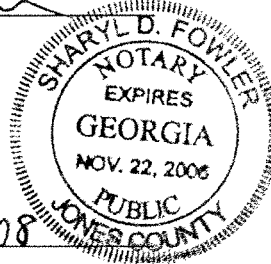
STATE OF GEORGIA  
COUNTY OF BIBB

I, Vincent M. Oddo, being first duly sworn, do hereby certify, depose and state that I am President/Chief Executive Officer of Birch Telecom of Missouri, Inc., d/b/a Birch Communications, and that I am authorized to make this verification on behalf of Birch Telecom of Missouri, Inc., d/b/a Birch Communications; that I have read the foregoing Application; and that the facts stated therein are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Vincent M. Oddo  
President/Chief Executive Officer  
Birch Telecom of Missouri, Inc., d/b/a Birch  
Communications

Subscribed and sworn to before me, a Notary Public, this 4<sup>th</sup> day of September 2008.

  
\_\_\_\_\_  
Notary Public

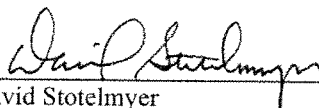


My Commission expires: 11/22/08

VERIFICATION

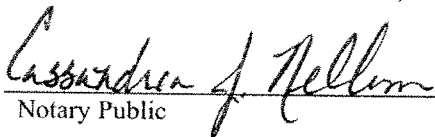
STATE OF ARKANSAS  
COUNTY OF PULASKI

I, David Stotelmyer, being first duly sworn, do hereby certify, depose and state that I am Chief Financial Officer for Navigator Telecommunications, LLC. and that I am authorized to make this verification on behalf of Navigator Telecommunications, LLC.; that I have read the foregoing Application; and that the facts stated therein are true and correct to the best of my knowledge, information and belief.



David Stotelmyer  
Chief Financial Officer  
Navigator Telecommunications, LLC.

Subscribed and sworn to before me, a Notary Public, this 9<sup>th</sup> day of September 2008.

  
Notary Public

My Commission expires: November 1, 2010