

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

In the Matter of the Waiver of)	
Certain Rules and Statutes as to)	File No. _____
Birch Telecom of Missouri, Inc. d/b/a)	
Birch Communications and)	
Ionex Communications, Inc. d/b/a Birch)	
Communications)	

**NOTIFICATION OF ELECTION OF WAIVERS ON BEHALF OF
BIRCH TELECOM OF MISSOURI, INC. AND IONEX COMMUNICATIONS, INC.**

Birch Telecom of Missouri, Inc. dba Birch Communications (“Birch”) and Ionex Communications, Inc. dba Birch Communications (“Ionex”) (Birch and Ionex collectively, the “Applicants”) hereby notify the Commission of their election to waive and be exempt from the application and enforcement of certain commission rules and statutes, pursuant to Sections 392.245.5(8), 392.420 and 392.461, RSMo, as amended by HB 338.

Background

1. 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.¹ It is authorized to do business in Missouri² and its fictitious name is duly registered with the Missouri Secretary of State.³ It is an “alternative local exchange telecommunications company” classified as “competitive” which is duly authorized to provide “basic local exchange telecommunications service” within the State of Missouri, as each of those terms is defined in Section 386.020, RSMo. Birch is a wholly owned

¹ Docket Nos. TA-97-371 and TA-97-372.

² See Exhibit 1.

³ See Exhibit 2.

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 38 states.

2. 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 exchange and interexchange services.⁴ It is authorized to do business in Missouri⁵ and its fictitious name is duly registered with the Missouri Secretary of State.⁶ It is an “interexchange telecommunications company” classified as “competitive” hat is duly authorized to provide “interexchange telecommunications service” within the State of Missouri, as each of those terms is defined in Section 386.020, RSMo. Ionex is also a wholly owned subsidiary of BCI.

3. Neither Birch nor Ionex have any pending action or final unsatisfied judgments or decisions against them from any state or federal agency or court that involve Missouri retail customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of this Notification.

4. Neither Birch nor Ionex have any overdue annual reports or regulatory assessment fees in Missouri.

5. For purposes of this Notification only, Birch and Ionex may be contacted at the electronic mail address, facsimile and telephone numbers of its attorneys, as set out under the signature block of this Notification. All correspondence, pleadings, orders, decisions, and communications regarding this Notification should be sent to:

⁴ Docket No. TA-93-332.

⁵ See Exhibit 3.

⁶ See Exhibit 4.

Leland B. Curtis
Carl J. Lumley
Curtis, Heinz, Garrett & O'Keefe, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
Tel: (314) 725-8788
Fax: (314) 725-8789
E-mail: lcurtis@lawfirmemail.com
clumley@lawfirmemail.com

Election of Waivers

6. In accordance with sections 392.245.5(8), 392.420 and 392.461, as amended by HB 338, Birch and Ionex hereby exercise their statutory right to elect to waive the application and enforcement of the statutes and rules listed in Paragraph 4 of the Motion of the Staff of the Missouri Public Service Commission filed October 18, 2011 in File No. TE-2012-0073, to the extent not already waived for these entities.⁷

WHEREFORE, Birch and Ionex hereby notify the Commission of its election made pursuant to this Notification of Election, commencing on the date of this filing.

⁷ See Exhibit 5.

Dated: August 17, 2012

Respectfully submitted,

**Birch Telecom of Missouri, Inc. d/b/a
Birch Communications**
and
**Ionex Communications, Inc. d/b/a Birch
Communications**

By: /s/ Leland B. Curtis
Leland B. Curtis, #20550
Carl J. Lumley, #32869
Curtis, Heinz, Garrett & O'Keefe, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
Tel: (314) 725-8788
Fax: (314) 725-8789
E-mail: lcurtis@lawfirmemail.com
clumley@lawfirmemail.com

Attorneys for Birch Telecom of Missouri d/b/a
Birch Communications and Ionex
Communications d/b/a Birch Communications

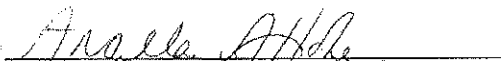
COUNTY OF JACKSON)
)
STATE OF MISSOURI) SS:

VERIFICATION

I, Christopher J. Bunce, being duly sworn upon my oath, state that I am over twenty-one, am sound of mind, and am authorized to act on behalf of Birch Telecom of Missouri, Inc. dba Birch Communications and Ionex Communications, Inc. dba Birch Communications regarding the document to which this Verification is appended. I have read the document and verify that the facts contained in it are true and correct according to the best of my knowledge, information and belief.



Sworn and subscribed to before me this 16th day of August, 2012.


Notary Public

ANGELA A. HOKE
Notary Public-Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires June 9, 2014
Commission # 10887286

Certificate of Service

I hereby certify that copies of the foregoing were mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following the 17th day of August, 2012.

/s/ Leland B. Curtis

General Counsel
Kevin Thompson
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.mo.gov
kevin.thompson@psc.mo.gov

Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102
opcservice@ded.mo.gov

Exhibit 1

STATE OF MISSOURI



Robin Carnahan
Secretary of State

**CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING**

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

BIRCH TELECOM OF MISSOURI, INC.

using in Missouri the name

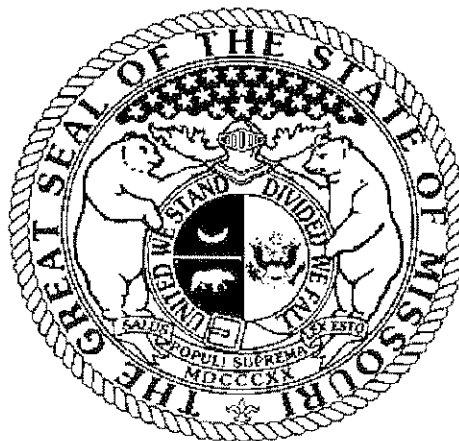
**BIRCH TELECOM OF MISSOURI, INC.
F00437977**

a DELAWARE entity was created under the laws of this State on the 28th day of February, 1997, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 17th day of August, 2012

A handwritten signature in cursive script that reads "Robin Carnahan".

Secretary of State



Certification Number: 14874599-1 Reference:
Verify this certificate online at <https://www.sos.mo.gov/businessentity/soskb/verify.asp>

Exhibit 2



X00882100

CERTIFICATE OF CORPORATE RECORDS

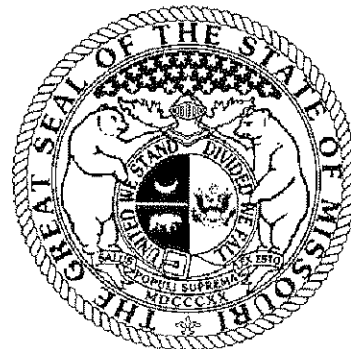
BIRCH COMMUNICATIONS

I, ROBIN CARNAHAN, Secretary of the State of the State of Missouri and Keeper of the Great Seal thereof, do hereby certify that the annexed pages contain a full, true and complete copy of the original documents on file and of record in this office for which certification has been requested.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 17th day of August, 2012

A handwritten signature in cursive script that reads "Robin Carnahan".

Secretary of State





State of Missouri

Robin Carnahan, Secretary of State

Corporations Division
P.O. Box 778 / 600 W. Main Street, Rm 322
Jefferson City, MO 65102

File Number:

X00882100

Date Filed: 03/13/2008

Expiration Date: 03/13/2013

Robin Carnahan

Secretary of State

Registration of Fictitious Name

(Submit with filing fee of \$7)
(Must be typed or printed)

This information is for the use of the public and gives no protection to the name being registered. There is no provision in this Chapter to keep another person or business entity from adopting and using the same name. The fictitious name registration expires 5 years from the filing date. (Chapter 417, RSMo)

The undersigned is doing business under the following name, and at the following address:

Business name to be registered: Birch Communications

Business Address: 2300 Main Street Suite 600

(P.O. Box may only be used in addition to a physical street address)

City, State and Zip Code: Kansas City, MO 64108

The parties having an interest in the business, and the percentage they own are (If a business entity is owner, indicate business name and percentage owned. If all parties are jointly and severally liable, percentage of ownership need not be listed.):

Name of Owners,

Individual or

Business Entity

Street and Number

City and State

Zip Code

If listed,
Percentage of
ownership
must equal
100%

Birch Telecom of Missouri, Inc. 2300 Main St Suite 600

Kansas City, MO

64108

In Affirmation thereof, the facts stated above are true and correct :

(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.060 RSMo)



Vincent M. Oddo, President/CEO

3/4/08

Authorized Signature

Printed Name

Date

Authorized Signature

Printed Name

Date

Authorized Signature

Printed Name

Date

Name and address to return filed document:

Name: Phyllis Miller c/o Technologies Management, Inc

Address: PO Drawer 200

City, State, and Zip Code: Winter Park, FL 32190

State of Missouri
Fictitious Creation 1 Page(s)



T0807701052

Exhibit 3

STATE OF MISSOURI



Robin Carnahan
Secretary of State

**CORPORATION DIVISION
CERTIFICATE OF GOOD STANDING**

I, ROBIN CARNAHAN, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

IONEX COMMUNICATIONS, INC.

using in Missouri the name

**IONEX COMMUNICATIONS, INC.
F00374226**

a KANSAS entity was created under the laws of this State on the 14th day of December, 1992, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 17th day of August, 2012

A handwritten signature in cursive script that reads "Robin Carnahan".

Secretary of State

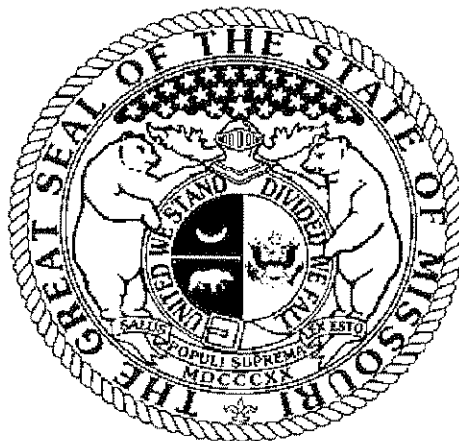


Exhibit 4



X00882051

CERTIFICATE OF CORPORATE RECORDS

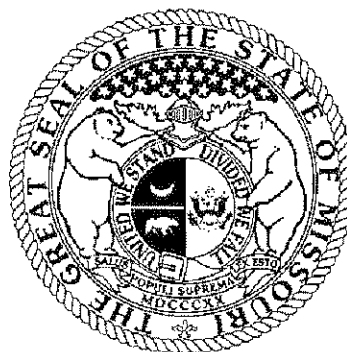
BIRCH COMMUNICATIONS

I, ROBIN CARNAHAN, Secretary of the State of the State of Missouri and Keeper of the Great Seal thereof, do hereby certify that the annexed pages contain a full, true and complete copy of the original documents on file and of record in this office for which certification has been requested.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 17th day of August, 2012

A handwritten signature in cursive script that reads "Robin Carnahan".

Secretary of State





State of Missouri
Robin Carnahan, Secretary of State

Corporations Division
P.O. Box 778 / 600 W. Main Street, Rm 322
Jefferson City, MO 65102

File Number:

X00882051

Date Filed: 03/13/2008

Expiration Date: 03/13/2013

Robin Carnahan

Secretary of State

Registration of Fictitious Name

(Submit with filing fee of \$7)
(Must be typed or printed)

This information is for the use of the public and gives no protection to the name being registered. There is no provision in this Chapter to keep another person or business entity from adopting and using the same name. The fictitious name registration expires 5 years from the filing date. (Chapter 417, RSMo)

The undersigned is doing business under the following name, and at the following address:

Business name to be registered: Birch Communications

Business Address: 2300 Main Street Suite 600

(P.O. Box may only be used in addition to a physical street address)

City, State and Zip Code: Kansas City, MO 64108

The parties having an interest in the business, and the percentage they own are (If a business entity is owner, indicate business name and percentage owned. If all parties are jointly and severally liable, percentage of ownership need not be listed.):

If listed,
Percentage of
ownership
must equal
100%

Name of Owners,

Individual or

Business Entity

Street and Number

City and State

Zip Code

IONEX Communications, Inc. 2300 Main St Suite 600

Kansas City, MO

64108

In Affirmation thereof, the facts stated above are true and correct :

(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.060 RSMo)


Authorized Signature

Vincent M. Oddo, President/CEO

Printed Name

3/4/08
Date

Authorized Signature

Printed Name

Date

Authorized Signature

Printed Name

Date

Name and address to return filed document:

Name: Phyllis Miller c/o Technologies Management, Inc

Address: PO Drawer 200

City, State, and Zip Code: Winter Park, FL 32190

State of Missouri
Fictitious Creation 1 Page(s)



T0807701050

Corp. 56 (01/05)

Exhibit 5

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

In the Matter of the Waiver of)
Certain Rules and Statutes to)
Telecommunications Companies) **File No. TE-2012-0073**

STAFF MOTION

COMES NOW the Staff of the Missouri Public Service Commission and for its Motion states:

1. On August 28, 2008, §392.245.5(8) and §392.420 RSMo were amended by H.B. 1779, allowing regulated telecommunications companies to apply for or elect waivers of certain provisions of statutes and regulations.

2. This year, on August 28, H.B. 338 added §392.461, which provides as follows:

A telecommunications company may, upon written notice to the commission, elect to be exempt from certain retail rules relating to:

(1) The provision of telecommunications service to retail customers and established by the commission which include provisions already mandated by the Federal Communications Commission, including but not limited to federal rules regarding customer proprietary network information, verification of orders for changing telecommunications service providers (slamming), submission or inclusion of charges on customer bills (cramming); or

(2) The installation, provisioning, or termination of retail service.

3. The Staff moves that the Commission require telecommunications companies who seek or elect waivers to file a Notice of Election of Waivers into this case file. The Staff notes that the assignment of discrete file numbers to notices of election has made the granted waivers difficult to track. In this Motion, the Staff also recommends that the Commission allow companies to elect a waiver of the requirement that they list waivers in their tariffs;

therefore the use of a single file will act as a simple repository of these Notices of Election, and will significantly enhance the ability to track which companies have which waivers in the future. Should companies file Notices of Election under other file numbers, the Staff requests that the other matter be subsumed under this file number.

4. The Staff believes the following waivers are consistent with §§392.245.5(8), 392.420 and §392.461; the Staff recommends that the Commission grant them if they are requested or elected by any certificated telecommunications company:

- 392.210.2 Accounting requirements (system of accounts)
- 392.240.1 Reasonableness of rates
- 392.270 Accounting requirements (valuation of property)
- 392.280 Accounting requirements (depreciation rates/accounts)
- 392.290 Issuance of stocks, bonds and other indebtedness
- 392.300 Transfer of property and ownership of stock
- 392.310 Approval of issuing stocks, bonds and other indebtedness
- 392.320 Certificate of Commission to be recorded-stock dividends
- 392.330 Accounting requirements (proceeds of sales of stock, bonds, notes, etc.)
- 392.340 Company reorganization
- 4 CSR 240-3.520 Applications to sell or transfer assets
- 4 CSR 240-3.525 Applications to merge or consolidate
- 4 CSR 240-3.530 Applications to issue stocks, obtain loans
- 4 CSR 240-3.535 Applications to acquire stock
- 4 CSR 240-3.545(8)(C) Listing of Waivers in Tariff
- 4 CSR 240-3.550 Telco Records and Reports (except (5)(B), (D) and (E))
- 4 CSR 240-3.555 Residential Customer Inquiries
- 4 CSR 240-3.560 Procedure for Ceasing Operations
- 4 CSR 240-10.020 Depreciation Records
- 4 CSR 240-30.020 Residential Telephone Underground Systems
- 4 CSR 240-30.040 Uniform System of Accounts
- 4 CSR 240-32.010 General Provisions
- 4 CSR 240-32.040 Metering, Inspections and Tests
- 4 CSR 240-32.050 Customer Services
- 4 CSR 240-32.060 Engineering and Maintenance
- 4 CSR 240-32.070 Quality of Service
- 4 CSR 240-32.080 Service objectives and surveillance levels
- 4 CSR 240-32.090 Connection of equipment and Inside Wiring
- 4 CSR 240-32.100 Provision of Basic Local and Interexchange Services
- 4 CSR 240-32.130-170 Prepaid Calling Cards (except 32.140 and 32.150(1))
- 4 CSR 240-32.180-190 Caller ID blocking requirements
- 4 CSR 240-33.010 Service and Billing Practice General Provisions
- 4 CSR 240-33.040 Billing and Payment standards
- 4 CSR 240-33.045 Clear identification and placement of charges on bills
- 4 CSR 240-33.050 Deposits

- 4 CSR 240-33.060 Residential Customer Inquiries
- 4 CSR 240-33.070 Discontinuance of service
- 4 CSR 240-33.080 Disputes by Residential Customers
- 4 CSR 240-33.090 Settlement agreements with residential customers
- 4 CSR 240-33.130 Operator service requirements
- 4 CSR 240-33.140 Payphone requirements (except (2))
- 4 CSR 240-33.150 "Anti-slamming" requirements
- 4 CSR 240-33.160 Customer Proprietary Network Information

5. The Staff requests that the Commission require the Notices of Election to simply state either that "the Company elects the waivers set out in Paragraph 4 of the Staff's Motion" or that "the Company elects the waivers set out in Paragraph 4 of the Staff's Motion with the following exceptions:..." This will allow for considerable lessening of the administrative burden to the Staff of comparing the lists of waivers to ensure that they are correct.

WHEREFORE, the Staff moves that the Commission establish the procedures whereby telecommunications companies may seek or elect waivers by filing Notices of Election as set forth above.

Respectfully submitted,



Colleen M. Dale
Senior Counsel
Missouri Bar No. 31624
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4255 (Telephone)
cully.dale@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 18th day of October, 2011.

A handwritten signature in black ink, appearing to be "M. D. [unclear]", is written over the text.