

**Before the  
MISSOURI PUBLIC SERVICE COMMISSION**

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In the Matter of )  
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)

Application of Birch Telecom of Missouri, )  
Inc. dba NOW Communications as an )  
Eligible Telecommunications Carrier in the )  
State of Missouri for the Limited Purpose of )  
Offering Lifeline Service to Qualified )  
Households )  
\_\_\_\_\_)

Case No. \_\_\_\_\_

**APPLICATION OF BIRCH TELECOM OF MISSOURI, INC. DBA NOW  
COMMUNICATIONS FOR DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER IN THE STATE OF MISSOURI FOR THE  
LIMITED PURPOSE OF OFFERING LIFELINE SERVICE TO QUALIFIED  
HOUSEHOLDS**

Birch Telecom of Missouri, Inc. dba NOW Communications (“Birch”), by its attorneys, and pursuant to Section 214(e)(2)<sup>1</sup> of the Communications Act of 1934, as amended (the “federal Act”), Section 54.201<sup>2</sup> of the rules and regulations of the Federal Communications Commission (“FCC”),<sup>3</sup> and the rules and regulations of the Missouri Public Service Commission (“Commission”),<sup>4</sup> including 4 CSR 240-3.570 and 240-31.050, hereby submits this Application for Designation as an Eligible Telecommunications Carrier (“Application”). Birch seeks designation as an eligible telecommunications carrier (“ETC”) for Lifeline support only to provide prepaid wireless services under the “NOW Communications” brand name to qualifying Missouri consumers; it will not seek access to funds from the federal Universal Service Fund

<sup>1</sup> 47 U.S.C. § 214(e)(2).

<sup>2</sup> 47 C.F.R. § 54.201.

<sup>3</sup> Birch files this Application in accordance with Missouri law and the rules adopted by the FCC in *Lifeline and Link Up Reform and Modernization; et al.*, 27 FCC Rcd 6656 (2012) (“*Lifeline Reform Order*”) and *Connect America Fund; et al.*, 26 FCC Rcd 17663 (2011) (“*Connect America Fund Order*”).

<sup>4</sup> Birch files this Application along with its initial responses to the Staff’s Data Requests, attached hereto as **Exhibit A**.

(“USF”) for the purpose of providing service to high cost areas.<sup>5</sup> As demonstrated herein, Birch meets all the statutory and regulatory requirements for designation as an ETC in the State of Missouri.

1. Birch is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business (“SMB”) customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services. The Birch family of companies currently serves approximately 118,000 customers throughout 38 states.<sup>6</sup>

2. For numerous years, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T. Birch serves approximately 1,200 wireline Lifeline customers at this time. Birch is therefore intimately familiar with the eligibility and verification procedures applicable to Lifeline service offerings.

3. Birch now seeks to build on its existing expertise to provide prepaid wireless services to eligible Lifeline customers. Birch currently provides services using its state-of-the-art, feature rich IP-based network, and relies on resold services as needed to supplement its network. For purposes of providing its prepaid wireless Lifeline product, Birch will resell the wireless services of Sprint, which provides wholesale capacity to many wireless resellers. Like

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<sup>5</sup> Given that Birch only seeks Lifeline support and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to Birch.

<sup>6</sup> Specifically, the Birch family of companies offers service in the following states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming.

several other prepaid wireless providers that have received ETC designation, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”).<sup>7</sup>

4. Birch is a corporation duly organized and existing under the laws of the State of Delaware and duly qualified to conduct business in the State of Missouri. Pursuant to 4 CSR 240-2.060(1)(B), (E), and G, Birch notes that it has filed a copy of its Certificate of Good Standing with the Missouri Secretary of State in Missouri Public Service Commission Case No. TM-2009-0411.<sup>8</sup> Attached hereto as **Exhibit B** is a copy of Birch’s registration of the name “NOW Communications” with the Missouri Secretary of State. Birch’s pertinent contact information is as follows:

Birch Telecom of Missouri, Inc.  
2300 Main Street, Suite 340  
Kansas City, MO 64108  
816-300-3000 (telephone)

5. Pursuant to 4 CSR 240-2.060(1)(I), communications concerning this Application should be directed to:

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<sup>7</sup> The list of exchanges that will comprise Birch’s service area will be set forth in **Exhibit C**, which will be filed as soon as possible as a supplement to this Application.

<sup>8</sup> See Missouri Public Service Commission Case No. TM-2009-0411, *Application of Birch Telecom of Missouri, Inc., d/b/a Birch Communications and Now Communications, Inc., known in Missouri as Now Communications, Incorporated of Delaware, d/b/a Cleartel Communications for Transfer of Customer Base*, Application for Authority to Transfer Assets (May 13, 2009). Birch has also registered the name “Birch Missouri” for activities separate from those that are the subject of this Application.

Carl J. Lumley  
Curtis, Heinz, Garrett & O'Keefe, P.C  
130 S. Bemiston, Suite 200  
Clayton, MO 63105  
(314) 725-8788 (telephone)  
(314) 725-8789 (facsimile)  
CLumley@lawfirmemail.com

with a copy to:

Angela F. Collins  
Cahill Gordon & Reindel LLP  
1990 K Street, N.W., Suite 950  
Washington, D.C. 20006  
202-862-8930 (telephone)  
866-255-0185 (facsimile)  
acollins@cahill.com

6. Pursuant to 4 CSR 240-2.060(1)(K), Birch states that it has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates, which action, judgment, or decision has occurred within three (3) years of the date of this Application.

7. Pursuant to 4 CSR 240-2.060(1)(L), Birch states that no annual report or assessment fees are overdue.

**I. BIRCH MEETS THE REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 214(e) OF THE FEDERAL ACT AND SECTION 54.201(d) OF THE FCC'S RULES**

8. Under Section 214(e)(1) of the federal Act and Section 54.201(d) of the FCC's rules, a common carrier<sup>9</sup> may be designated as an ETC if it: (1) offers the services supported by federal universal service as determined by the FCC; (2) offers such services using its own facilities or a combination of its own facilities and resale of another carrier's services; and (3)

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<sup>9</sup> Birch is a common carrier by virtue of its current provision of CLEC and IXC services, and will be a common carrier by virtue of its provision of wireless services. *See* 47 U.S.C. § 332(c)(1)(A) (an entity providing commercial mobile services is deemed to be a common carrier); *see also* 47 U.S.C. § 332(d)(1) (defining "commercial mobile service" to be any mobile service that is provided for profit and makes interconnected service available to the public).



advertises the availability of such services and the relevant charges using media of general distribution.<sup>10</sup> As set forth below, Birch meets these requirements.

**A. Birch Will Offer the Services Supported by Federal Universal Service**

9. Pursuant to Section 54.101(a) of the FCC's rules, as modified by the *Lifeline Reform Order*, carriers seeking ETC designation must provide voice telephony services.<sup>11</sup> Specifically, eligible Lifeline telephony services must provide voice grade access to the public switched telephone network ("PSTN") or its functional equivalent, minutes of use for local service provided at no additional charge, access to emergency 911 and enhanced 911 service in locations where implemented, and toll limitation at no charge (subject to certain requirements and limitations).<sup>12</sup> Birch certifies that its prepaid wireless Lifeline service offering satisfies the FCC's definition of voice telephony service, and it will therefore provide all services designated for support by the FCC.

10. Birch's prepaid wireless Lifeline service offering will provide voice grade access to the PSTN through its provision of resold wireless services from Sprint. As described below, Birch's prepaid wireless Lifeline service offering will provide 250 minutes of use to eligible consumers at no additional charge. In addition, as explained below, Birch's prepaid wireless Lifeline service offering will provide consumers with access to 911 and enhanced 911 to the extent local governments have implemented such services. Although Birch understands it has an independent obligation to provide 911 and E911 services as a reseller,<sup>13</sup> Birch will rely on its contractual arrangement with Sprint to provide such emergency services to consumers.

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<sup>10</sup> 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

<sup>11</sup> 47 C.F.R. § 54.101(a); *Lifeline Reform Order* ¶ 48.

<sup>12</sup> *Lifeline Reform Order* ¶ 48.

<sup>13</sup> 47 C.F.R. § 20.18(m).

11. With respect to toll limitation service, the *Lifeline Reform Order* eliminated the requirement to provide toll limitation services if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.<sup>14</sup> As explained more below, Birch's prepaid wireless Lifeline service offering will be a nationwide calling plan, and will not distinguish between toll and non-toll calls. Consumers, however, may implement toll control for international calls to the extent they seek that capability. Moreover, consumers purchasing Birch's prepaid wireless Lifeline service offering will have the ability to monitor their minute usage and balances from their handset, online, or through customer service.

**B. Birch Satisfies the Requirements for Conditional Forbearance from the Facilities Requirement**

12. Both the federal Act and the FCC's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>15</sup> In the *Lifeline Reform Order*, however, the FCC decided to conditionally forbear from application of the federal Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.<sup>16</sup> Specifically, the FCC determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.<sup>17</sup> Birch certifies that

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<sup>14</sup> *Lifeline Reform Order* ¶ 49.

<sup>15</sup> 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

<sup>16</sup> *Lifeline Reform Order* ¶ 368.

<sup>17</sup> *Lifeline Reform Order* ¶ 368.

it meets the requirements for conditional forbearance.

13. Birch's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Birch will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Birch will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. As noted above, Birch will rely on its contractual arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.<sup>18</sup> Birch's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all FCC requirements.

14. Birch submitted its Compliance Plan in support of conditional forbearance to the FCC,<sup>19</sup> and on August 8, 2012, the FCC approved Birch's Compliance Plan.<sup>20</sup> The FCC-approved version of Birch's Compliance Plan is attached hereto as **Exhibit D** and can be found at: <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions> on the FCC's website.

### **C. Birch Will Advertise the Availability of the Supported Services and the Relevant Charges Using Media of General Distribution**

15. Birch will publicize the availability of its prepaid wireless Lifeline service

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<sup>18</sup> Birch understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n. 989.

<sup>19</sup> *See* WC Docket Nos. 09-197 and 11-42, *Birch Communications Inc. Compliance Plan Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only*, Further Amended Compliance Plan of Birch Communications, Inc. (June 29, 2012) ("Compliance Plan") (attached hereto as **Exhibit D**).

<sup>20</sup> *See* WC Docket Nos. 09-197 and 11-42, *Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, Public Notice, DA 12-1286 (rel. Aug. 8, 2012) (attached hereto as **Exhibit E**).

offering in a manner reasonably designed to reach those likely to qualify for the service.<sup>21</sup> Birch will utilize the FCC's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.<sup>22</sup> Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies.

16. Birch's advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC reseller. Birch's advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, and radio advertising. Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will also advertise through online search engines and third-party referral agents/dealers. As required under the *Lifeline Reform Order*, Birch will ensure the FCC-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.<sup>23</sup>

## **II. BIRCH MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54.202 OF THE FCC'S RULES**

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<sup>21</sup> 47 C.F.R. § 54.405(b).

<sup>22</sup> *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

<sup>23</sup> *Lifeline Reform Order* ¶¶ 274-282.

17. Section 54.202 of the FCC's rules contains certain additional requirements for a common carrier<sup>24</sup> to be designated as an ETC. As set forth below, Birch satisfies each of those requirements.

**A. Birch Will Comply with the Service Requirements Applicable to Lifeline Support**

18. Section 54.202(a)(1) of the FCC's rules requires a common carrier seeking ETC designation to (1) certify that it will comply with the service requirements applicable to the support that it receives and (2) submit a five-year plan for proposed improvements or upgrades to the applicant's network unless the applicant is seeking Lifeline support only.<sup>25</sup> Birch seeks ETC designation for Lifeline support only. Birch hereby certifies that it will comply with the service requirements applicable to Lifeline support. Given that Birch seeks designation for Lifeline support only, a five-year network improvement plan is no longer necessary.<sup>26</sup>

**B. Birch Will Remain Functional in Emergency Situations**

19. Section 54.202(a)(2) of the FCC's rules requires a common carrier seeking ETC designation to demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.<sup>27</sup> Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining

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<sup>24</sup> Birch is a common carrier by virtue of its current provision of CLEC and IXC services, and will be a common carrier by virtue of its provision of wireless services. *See* 47 U.S.C. § 332(c)(1)(A) (an entity providing commercial mobile services is deemed to be a common carrier); *see also* 47 U.S.C. § 332(d)(1) (defining "commercial mobile service" to be any mobile service that is provide for profit and makes interconnected service available to the public).

<sup>25</sup> 47 C.F.R. § 54.202(a)(1).

<sup>26</sup> *Lifeline Reform Order* ¶ 386.

<sup>27</sup> 47 C.F.R. § 54.202(a)(2).

functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the FCC's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years, Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations.

20. Birch's MVNO contract arrangement with Sprint imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency situations.<sup>28</sup> As a large, nationwide wireless carrier, Sprint is subject to regulatory requirements to remain functional during emergency situations.<sup>29</sup> Birch's MVNO agreement with Sprint also contains certain quality of service guarantees.

### **C. Birch Will Satisfy Applicable Consumer Protection and Service Quality Standards**

21. Section 54.202(a)(3) of the FCC's rules requires a common carrier seeking ETC designation to demonstrate that it will satisfy applicable consumer protection and service quality standards.<sup>30</sup> As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the FCC and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product, and will comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for

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<sup>28</sup> While Sprint will provide the underlying wireless services to Birch, Birch will provide billing services associated with the prepaid wireless Lifeline product to the Birch end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

<sup>29</sup> Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

<sup>30</sup> 47 C.F.R. § 54.202(a)(3). Pursuant to FCC rules, Birch will annually certify that it is in compliance with applicable service quality standards and consumer protection rules. 47 C.F.R. § 54.422(b)(3).

Wireless Service to satisfy this requirement.

**D. Birch Is Financially and Technically Capable of Providing Lifeline Services in Accordance with the FCC's Rules**

22. Section 54.202(a)(4) of the FCC's rules requires a common carrier seeking ETC designation for Lifeline support to demonstrate it is financially and technically capable of providing Lifeline service in compliance with the FCC's rules.<sup>31</sup> The FCC stated that the "relevant considerations" for satisfying this requirement would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.<sup>32</sup>

23. Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. Moreover, as discussed above, Birch has been providing wireline Lifeline services as a non-ETC reseller for numerous years. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch's funds to operate will come from "non-Lifeline" services it provides throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the number of customers it serves and the more than 15 years it has been offering service.

24. With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to numerous wireless resellers. Like several other prepaid wireless providers, Sprint will provide Birch with the network

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<sup>31</sup> 47 C.F.R. § 54.202(a)(4); *see also Lifeline Reform Order* ¶ 387.

<sup>32</sup> *Lifeline Reform Order* ¶ 388.



infrastructure and wireless transmission facilities needed for Birch to offer service as a MVNO. Sprint is a large, nationwide carrier, and serves several other MVNOs offering wireless Lifeline products.<sup>33</sup> Birch's partnership with Sprint further demonstrates Birch is technically capable of providing a prepaid wireless Lifeline service.

#### **E. Birch Will Provide Prepaid Wireless Lifeline Service Plans to Eligible Consumers**

25. Section 54.202(a)(5) of the FCC's rules require a common carrier seeking ETC designation for Lifeline support to submit information describing the terms and conditions of the voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.<sup>34</sup> At this time, Birch plans to offer the following prepaid wireless Lifeline plan at no charge to the customer:

##### Basic Plan Prepaid Wireless Lifeline Plan

Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices<sup>35</sup>

250 nationwide minutes per month

Voicemail

National texting, with each text sent or received counting as 1 minute

911 and E911 access as available

Option to purchase additional minutes anytime during the month that carry over for 2 months

Option for international calling with per-minute pricing based on the country to be called, which will be provided to the consumer when opting for this capability

##### Additional minutes

Minutes	Price
200	13.95

<sup>33</sup> Based on filings made with the FCC, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the FCC.

<sup>34</sup> 47 C.F.R. § 54.202(a)(5).

<sup>35</sup> Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable FCC requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.



250	16.95
300	19.95
400	25.95
900	49.95

Birch's planned prepaid wireless Lifeline service offering is consistent with the federal Act's requirement that consumers have access to quality services at "just, reasonable, and affordable rates,"<sup>36</sup> and is consistent with the FCC's findings that Lifeline consumers should have the option to purchase bundled packages, additional calling features, and optional voice services.<sup>37</sup>

### **III. BIRCH MEETS THE REQUIREMENTS FOR LIFELINE SERVICES UNDER SECTION 54.405 OF THE FCC'S RULES**

26. Under Section 54.405 of the FCC's rules, an ETC has certain obligations to offer Lifeline service.<sup>38</sup> Birch understands these obligations and will meet them as described below.

#### **A. Birch Will Make Lifeline Service Available as Defined under the FCC's Rules**

27. Section 54.405(a) of the FCC's rules requires an ETC to make available Lifeline service, as defined in Section 54.401 of the FCC's rules,<sup>39</sup> to qualifying low-income consumers.<sup>40</sup> Birch certifies that its prepaid wireless Lifeline service offering will conform to the definition of "Lifeline" in the FCC's rules.

#### **B. Birch Will Publicize the Availability of Lifeline Service**

28. Section 54.405(b) of the FCC's rules requires an ETC to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.<sup>41</sup> As described above in Section I.C., Birch will publicize the availability of its prepaid

<sup>36</sup> 47 U.S.C. § 254(b)(1).

<sup>37</sup> *Lifeline Reform Order* ¶ 317.

<sup>38</sup> 47 C.F.R. § 54.405.

<sup>39</sup> 47 C.F.R. § 54.401.

<sup>40</sup> 47 C.F.R. § 54.405(a).

<sup>41</sup> 47 C.F.R. § 54.405(b).

wireless Lifeline service offering in a manner reasonably designed to eligible consumers.

**C. Birch Will Include Certain Disclosures on Materials Describing Its Lifeline Service, Including the Name of the ETC**

29. Sections 54.405(c) and (d) of the FCC’s rules require an ETC to make certain disclosures on all materials describing the Lifeline service offering, including the name of the ETC.<sup>42</sup> As noted above in Section I.C., Birch will ensure that all materials describing its prepaid wireless Lifeline service offering use easily understood language to indicate that the service is a Lifeline service, that Lifeline is a government assistance program, that the service is non-transferrable, that only eligible consumers may enroll in the program, and that the program is limited to one discount per household as required under the rules.<sup>43</sup> Birch will also ensure that all materials describing its prepaid wireless Lifeline service offering utilize the “NOW Communications” brand as the name of the ETC providing services.<sup>44</sup> Birch understands that the term “materials describing the service” include all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.<sup>45</sup>

**D. Birch Will Comply with the FCC’s De-Enrollment Procedures**

30. Section 54.405(e) of the FCC’s rules requires an ETC to impose certain de-enrollment procedures for Lifeline services.<sup>46</sup> Birch will comply with the FCC’s de-enrollment procedures as described more fully in Birch’s Compliance Plan set forth in **Exhibit D**. As discussed in Birch’s compliance plan, Birch will de-enroll Lifeline customers for duplicative support, for non-usage, and for failure to re-certify, and will have general de-enrollment

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<sup>42</sup> 47 C.F.R. § 54.405(c), (d).

<sup>43</sup> 47 C.F.R. § 54.405(c).

<sup>44</sup> 47 C.F.R. § 54.405(d).

<sup>45</sup> 47 C.F.R. § 54.405(c).

<sup>46</sup> 47 C.F.R. § 54.405(d).

procedures in place.

#### **IV. BIRCH WILL COMPLY WITH THE FCC'S CONSUMER CERTIFICATION AND ANNUAL VERIFICATION REQUIREMENTS**

31. As discussed at length in Birch's Compliance Plan, set forth in **Exhibit D**, Birch will offer its prepaid wireless Lifeline service to households receiving benefits from a qualifying state or federal assistance program or with an income at or below 135% of the Federal Poverty Guidelines.<sup>47</sup> Birch's associated consumer certification form will collect identifying information about the prospective Lifeline recipient, certify his or her eligibility to receive it, and require the consumer to acknowledge the terms and conditions of the Lifeline program as delineated by the FCC.<sup>48</sup> Set forth as Attachment A to Birch's Compliance Plan is an initial draft of Birch's prepaid wireless Lifeline enrollment and certification forms. Birch is continuing to refine these documents and will make any necessary changes to the extent the FCC or the Universal Service Administrative Company ("USAC") issue additional guidance on the language to be contained on enrollment and certification forms. Birch also confirms that it will comply with any future FCC or USAC guidance, directives, or rule changes regarding the Lifeline program.

32. Birch certifies that will verify the eligibility of its Lifeline subscriber base after 2012<sup>49</sup> in accordance with Section 54.409 and 54.410 of the FCC's rules.<sup>50</sup> As documented in Attachment B to Birch's Compliance Plan, Birch has designated an annual recertification process that fulfills the requirements set forth by Section 54.410(f) of the FCC's rules.<sup>51</sup>

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<sup>47</sup> 47 C.F.R. § 54.409(a).

<sup>48</sup> See 47 C.F.R. §§ 54.405(c), 54.409, 54.410(a)-(d); *Lifeline Reform Order* ¶ 121.

<sup>49</sup> *Lifeline Reform Order* ¶ 133. As Birch did not have a Lifeline subscriber basis as of June 1, 2012, the FCC's January 31, 2013 recertification requirement is inapplicable. *Id.* ¶¶ 130, 132 ("[T]he rule we adopt today will apply to all Lifeline subscribers enrolled in the program as of June 1, 2012").

<sup>50</sup> 47 U.S.C. §§ 54.409, 54.410.

<sup>51</sup> 47 U.S.C. § 54.410(f). To fulfill the Commission's annual reporting and certification requirements, Birch certifies that it will maintain records to document compliance with all FCC and Commission requirements pursuant

## **V. DESIGNATION OF BIRCH AS A LIFELINE-ONLY ETC IS IN THE PUBLIC INTEREST**

33. Pursuant to Section 54.202(b) of the FCC's rules, Birch's designation as an ETC is in the public interest.<sup>52</sup> Birch's designation as Lifeline-only ETC will bring increased competitive choice and unique advantages to qualifying Missouri consumers, on the part of a carrier with a demonstrated commitment to quality. The goals of universal service mandated by Congress and the Commission are therefore served by designation of Birch as a Lifeline-only ETC.<sup>53</sup>

34. Birch's ETC designation will bring another competitive alternative to low-income consumers in Missouri, and will exert further competitive pressures on existing wireless Lifeline providers operating in Missouri. This furthers the federal Act's goal of ensuring that quality communication services are available at "just, reasonable, and affordable rates."<sup>54</sup> As the FCC has observed, "an important goal of the Act is to open local telecommunications markets to competition. Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies."<sup>55</sup> In seeking ETC designation in Missouri, Birch seeks to make it easier for low-income consumers located within Missouri to receive affordable telecommunications services that are comparable to those enjoyed by other consumers.

35. Birch seeks to offer a comprehensive wireless communications solution to the qualifying consumer at no charge. Birch's ETC designation provides accessible, technologically

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to FCC rules. 47 C.F.R. § 54.417(a). Birch also certifies that it will comply with the FCC's annual reporting rules promulgated by 47 C.F.R. § 54.422.

<sup>52</sup> 47 C.F.R. § 54.202(b).

<sup>53</sup> 47 U.S.C. § 254.

<sup>54</sup> 47 U.S.C. § 254(b)(1).

<sup>55</sup> *Federal-State Joint Board on Universal Service*, 16 FCC Rcd 48, ¶ 17 (2000).

advanced services to a portion of the public that may not otherwise be able to obtain telecommunications services due to insufficient credit, immigrant status, or living situation. Prepaid wireless services like those offered by Birch also offer consumers convenience, control over their telecommunications spending without the imposition of high monthly fees, and the ability to pay for only those services needed. Such advantages directly fulfill the goals of universal service promulgated by Congress and the FCC.<sup>56</sup>

**VI. BIRCH WILL COMPLY WITH MISSOURI-SPECIFIC ETC REQUIREMENTS THAT ARE APPLICABLE TO ITS PREPAID WIRELESS LIFELINE SERVICE**

36. Pursuant to 4 CSR 240-3.570, Birch will comply with Missouri-specific ETC requirements that are applicable to its prepaid wireless Lifeline service.

**A. 4 CSR 240-3.570(2)(A)**

**1. Intended use of high-cost support**

37. As explained in this Application, Birch is not seeking high-cost support, rendering inapplicable the requirement that Birch provide construction plans with start and end dates, populations affected by construction plans, existing tower site locations for CMRS cell towers, and estimated budget amounts.

**2. Two-year high-cost support plan**

38. As explained in this Application, Birch is not seeking high-cost support, rendering inapplicable the requirement that Birch provide a two (2)-year plan demonstrating, with specificity, that such support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area.

**3. Demonstration in two-year plan that that universal service support shall be used to improve coverage, service quality or capacity**

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<sup>56</sup>

47 U.S.C. § 254.

39. As explained in this Application, Birch is not seeking high-cost support, and need not complete the two (2)-year plan requirement, rendering inapplicable the requirement that Birch include a demonstration that universal service support shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the Missouri service area with the two (2)-year plan.

#### **4. Demonstration of emergency functionality**

40. As explained in Section II.B, Birch has the ability to remain functional in emergency situations, including a reasonable amount of back-up power to ensure functionality without an external power source, the ability to reroute traffic around damaged facilities and the capability of managing traffic spikes resulting from emergency situations.<sup>57</sup>

#### **5. Demonstration that ETC grant is consistent with the public interest, convenience and necessity**

41. As explained in Section V, grant of Birch's request for ETC designation is consistent with the public interest, convenience and necessity.<sup>58</sup>

#### **6. Commitment to advertise the availability of services and charges**

42. As explained in Section I.C and in its FCC-approved Compliance Plan, Birch will advertise the availability of services and charges therefore using media of general distribution throughout the ETC service area.<sup>59</sup>

#### **7. Commitments pursuant to provision of Lifeline service**

43. As explained in Section I.A.3 and III.A, Birch will provide Lifeline consistent with 47 C.F.R. § 54.401 and will publicize the availability of Lifeline service in a manner

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<sup>57</sup> 4 CSR 240-3.570(2)(A)(4).

<sup>58</sup> 4 CSR 240-3.570(2)(A)(5).

<sup>59</sup> 4 CSR 240-3.570(2)(A)(6).

reasonably designed to reach those likely to qualify for the service consistent with 47 C.F.R. § 54.405.<sup>60</sup>

**8. Statement that the carrier will satisfy consumer privacy protection standards**

44. Birch commits to satisfy consumer privacy protection standards as provided in 47 C.F.R. § 64 Subpart U and service quality standards as applicable.<sup>61</sup>

**9. Statement that the carrier will provide equal access**

45. Should all other ETCs in Birch's service area relinquish their designation pursuant to 47 U.S.C. § 214(e), Birch will provide equal access.<sup>62</sup> Birch notes, however, that 4 CSR 240-32.100(3) and (4) are facially inapplicable to Birch, as they pertain to basic local and interexchange telecommunications service as provided by basic local telecommunications companies.

**10. Commitment to offer local usage plan comparable to those offered by ILEC**

46. Pursuant to the *Connect America Fund Order*, the FCC has eliminated the requirement that ETC applicants demonstrate that they offer a local usage plan comparable to the one offered by the incumbent local exchange carrier ("ILEC") in the service areas for which it seeks designation.<sup>63</sup> The local usage commitment promulgated by Missouri regulations is therefore inapplicable to Birch.<sup>64</sup>

**B. 4 CSR 240-3.570(2)(B)**

47. As explained in Section II.C, Birch certifies that it will abide by the consumer code for wireless service recognized by CTIA. Birch has provided a copy of the consumer code

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<sup>60</sup> 4 CSR 240-3.570(2)(A)(7).

<sup>61</sup> 4 CSR 240-3.570(2)(A)(8).

<sup>62</sup> 4 CSR 240-3.570(2)(A)(9).

<sup>63</sup> See *Connect America Fund Order* at 18199-18200.

<sup>64</sup> 4 CSR 240-3.570(2)(A)(10).

for wireless service currently recognized by CTIA to which it commits to abide, attached to the Application as **Exhibit F**. Birch certifies that following its designation as an ETC by the Commission, it will file with the Commission any change(s) to the consumer code for wireless service included with its Application or any subsequent code approved under 4 CSR 240-3.570, within thirty (30) days of the change.

**C. 4 CSR 240-3.570(2)(C)**

48. As explained in this Application, Birch will offer Lifeline service to qualifying Missouri consumers through its provision of resold wireless services from Sprint. Thus, the requirement that Birch a plan outlining the method for handling unusual construction or installation charges is inapplicable.

**D. 4 CSR 240-3.570(3)(A)**

49. As explained in the Application, Birch's prepaid wireless Lifeline service product is offered at no charge to qualifying consumers. To the extent that customers purchase additional minutes or services, Birch certifies that, as an ETC, it will develop a bill design that can be easily interpreted by their customers and clearly sets forth charges in compliance with state and federal billing requirements.

**E. 4 CSR 240-3.570(3)(B)**

50. Birch certifies that, upon being designated an ETC, it will provide customer service contact information online and, to the extent applicable, on billing statements. Birch acknowledges that the customer service contact information requirement applies to the use of third-party billing agents.

**F. 4 CSR 240-3.570(3)(C)**

**1. Supported services**



51. As explained in Section I.A, Birch will provide the required services for federal universal service support delineated by Section 54.101(a) of the FCC’s rules, as modified by the *Lifeline Reform Order*.<sup>65</sup> Several provisions of 4 CSR 240-3.570(3)(C)(1) are thus inapplicable to Birch – dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to interexchange service; access to Directory Assistance service; access to operator services; and toll limitation and/or blocking for qualifying low-income consumers.<sup>66</sup> Birch certifies that it will offer access to telecommunications relay services by dialing 711.<sup>67</sup>

## **2. Publicize construction of new facilities**

52. As explained in this Application, Birch will provide prepaid wireless Lifeline service via Sprint, which will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a MVNO. Birch will serve any potential customer to the extent resold wireless services are available from Sprint in the customer’s geographic area. Pursuant to the *Connect America Fund Order*, the FCC has eliminated the requirement that ETC applicants modify, replace, adjust, or add equipment or facilities to encompass potential customers that are inside the applicant’s licensed service area but outside its existing network coverage.<sup>68</sup> Birch therefore does not contemplate the construction of all new facilities that will enhance services in unserved or underserved areas, but

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<sup>65</sup> 47 C.F.R. § 54.101(a); *Lifeline Reform Order* ¶ 48. Toll limitation services need no longer be offered if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls. *Lifeline Reform Order* ¶ 49.

<sup>66</sup> 4 CSR 240-3.570(3)(C)(1)(A), (B), (E), (G), (H), (I).

<sup>67</sup> 4 CSR 240-3.570(3)(C)(1)(F).

<sup>68</sup> *Connect America Fund; et al.*, 26 FCC Rcd 17663, 18199-18200 (2011) (“*Connect America Fund Order*”).

agrees to publicize it to the extent applicable so that consumers are aware of the improved service in the area.<sup>69</sup>

### **3. Extend networks**

53. Birch certifies that, upon designation as an ETC, it will provide service upon reasonable request from a Missouri customer to the extent it can obtain such service from Sprint. Birch will serve any potential customer to the extent resold wireless services are available from Sprint in the customer's geographic area. As noted above, the FCC has eliminated the requirement that ETC applicants modify, replace, adjust, or add equipment or facilities to encompass potential customers that are outside the applicant's licensed service area but outside its existing network coverage. Birch certifies that if there is no possibility of providing service to a requesting customer, Birch will notify the customer and include such information in its annual certification documentation to the Commission.<sup>70</sup>

#### **G. 4 CSR 240-3.570(3)(D)**

54. Birch certifies that within thirty (30) days of receiving ETC status or before offering service, it make an informational filing with the Commission consisting of a complete description of all of its service offerings, and will amend this filing as service offerings are introduced or modified.

#### **H. 4 CSR 240-3.570(3)(E)**

55. Birch certifies that, upon designation as an ETC, it will maintain a record of customer complaints that have been received by the company in a manner that includes, at a minimum: the end-user name; the account number; a description of the complaint; the date the complaint was filed; the resolution; and the amount of refund or credit, if any. Birch will also

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<sup>69</sup> 4 CSR 240-3.570(3)(C)(2).

<sup>70</sup> 4 CSR 240-3.570(3)(C)(3).

maintain a record of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the FCC for which Birch has knowledge in a manner that includes, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any.

**I. 4 CSR 240-3.570(3)(F)**

56. Birch certifies that, upon designation as an ETC, it will, within ten (10) days of a change in the company-designated contacts, either notify the manager of the Telecommunications Department, in writing or by electronic mail, or shall update the Commission's electronic filing system ("EFIS"). The notification or update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s). The contact name(s) provided shall be the individual(s) primarily responsible for: customer service; repair and maintenance; answering complaints; authorizing and/or furnishing refunds to customers; and informational or tariff filing issues.

**J. 4 CSR 240-3.570(4)(A)**

57. As explained in this Application, Birch is not seeking high-cost support, rendering inapplicable the requirement that Birch, by August 15 of each year, submit an affidavit executed by a Birch officer attesting that federal high-cost support is used consistent with the Commission's rules and the Telecommunications Act of 1996.<sup>71</sup> Likewise inapplicable is the requirement that Birch, in conjunction with the annual high-cost certification process, assist the

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<sup>71</sup> 4 CSR 240-3.570(4)(A)(1).

Commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.<sup>72</sup>

**K. 4 CSR 240-3.570(4)(B)**

**1. Review of two-year plan**

58. As noted above, the Commission's two (2)-year improvement plan requirement is inapplicable to Birch. Thus, the requirement that Birch annually meet with the Commission concerning this plan is inapplicable. To the extent that the Commission seeks information on other aspects of Birch's operations as a prepaid wireless Lifeline service provider, Birch certifies that it will comply in accordance with the Commission's rules.

**2. Demonstration that high-cost support shall be used for the provision, maintenance and upgrading of facilities and services in service area**

59. As explained in this Application, Birch is not seeking high-cost support, rendering inapplicable the requirement that Birch submit a demonstration that the receipt of high-cost support will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

**3. Demonstration that high-cost support was used to improve coverage, service quality or capacity in service area**

60. As explained in this Application, Birch is not seeking high-cost support, rendering inapplicable the requirement that Birch submit a demonstration that high-cost support was used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that such support was used in addition to any expenses the ETC would normally incur.

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<sup>72</sup> 4 CSR 240-3.570(4)(A)(2).

**4. Statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ETC's service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas**

61. Birch will provide a statement that costs incurred and/or estimated budget/investment amounts were no greater than necessary to provide consumers in the ETC's service area access to telecommunications and information services that are reasonably comparable to those services provided in urban areas. As noted above, the FCC has eliminated the requirement that ETC applicants modify, replace, adjust, or add equipment or facilities to encompass potential customers that are inside the applicant's licensed service area but outside its existing network coverage.<sup>73</sup>

**5. Affidavit signed by an officer of the company certifying that the ETC complies with quality, functionality, local usage, and equal access requirements**

62. Birch will submit an affidavit signed by a Birch officer certifying that Birch continues to comply with the approved consumer code for wireless service recognized by CTIA and/or applicable service quality standards and consumer protection rules, certifying that Birch continues to be able to function in emergency situations, and continues to acknowledge that Birch shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(3) of the Telecommunications Act of 1996. The requirement that the affidavit certify that Birch continues to offer a local usage plan comparable to that offered by the incumbent local exchange telecommunications carrier in the relevant service areas is inapplicable to Birch. As noted above, the FCC has eliminated the requirement that ETC applicants demonstrate that they offer a local usage plan comparable to the one offered by the ILEC.

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<sup>73</sup> See *Connect America Fund Order* at 18199-18200.

**6. Report of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the FCC in the previous twelve (12) months for which the company has knowledge**

63. Birch will submit a report of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the FCC in the previous twelve (12) months for which Birch has knowledge. Such report shall include, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any.

**7. Other requested information**

64. Birch will promptly furnish, concurrent with or following its designation as an ETC, requested information, including financial information, related to its designation as an ETC to the Commission, its staff or the Office of the Public Counsel.

**L. 4 CSR 240-3.570(4)(C)**

65. As explained in this Application, Birch is offering prepaid wireless Lifeline service to qualifying Missouri consumers. Requirements applicable to ILECs promulgated by 4 CSR 240-3.570(4)(C) are thus inapplicable to Birch.

**M. 4 CSR 240-3.570(5)**

66. Birch certifies that it will take the following actions as necessary, and in conformance with the Commission's rules:

- Birch will submit to the Commission a letter reflecting a change to the name and/or change, deletion or addition of a trade name under which Birch will be doing business in the state of Missouri, attaching, as applicable, an amended Certificate of Incorporation, Fictitious Name registration or an amendment

thereof. Birch shall modify its current informational filing, as required in subsection (3)(D) to reflect the new name and shall attest that no revisions are being made, except for the name change.

- Birch shall not self-certify to the Universal Service Administrative Company for receipt of federal universal service funds.
- Birch shall not willfully make any false entry in any business record of any kind kept by it, nor shall it willfully destroy, mutilate, alter or by any method falsify any such record, nor shall it willfully neglect or fail to make full, true and correct entries in such records of all facts and transactions appertaining to its business, nor shall it falsify any statement to the commission.
- Except as otherwise provided in commission rules, Birch shall keep all books and records associated with its ETC designation and/or the Commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. Birch shall make its books and records associated with its ETC designation and/or the Commission's annual certification process available to the Commission at reasonable times for examination and inspection at a location designated by the Commission. Birch will preserve all such records for at least two (2) years).

#### **N. 4 CSR 240-31.050**

67. As described in this Application, Birch will meet the applicable eligibility, verification and reporting requirements set forth in Rule 31.050.

68. To the extent the Commission deems it necessary, Birch requests a formal waiver of the various rules identified herein as being inapplicable to it. Birch does not view Rule

4 CSR 240-4.020(2) as requiring Birch to provide 60 days advance notice of the intent to file this Application, but to the extent the Commission disagrees, Birch requests a waiver of that requirement. Birch is not aware of any public utility that would be affected by any of the waivers it has requested in this Application.

### **CONCLUSION**

WHEREFORE, for the forgoing reasons, Birch respectfully requests that the Commission expeditiously designate it as an ETC for the provision of prepaid wireless Lifeline services in the State of Missouri.

Respectfully submitted,

**BIRCH TELECOM OF MISSOURI, INC.  
DBA NOW COMMUNICATIONS**

s/ Carl J. Lumley

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Dated: November 29, 2012



CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing has been served by forwarding the same by electronic mail and/or first class mail, postage prepaid this 29<sup>th</sup> day of November, 2012 to the following:

Office of the Public Counsel  
PO Box 2230  
Jefferson City, Missouri 65102  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Office of General Counsel  
Missouri Public Service Commission  
PO Box 360  
Jefferson City, Missouri 65102  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

**s/ Carl J. Lumley**


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STATE OF MISSOURI           )  
  )  
COUNTY OF JACKSON        )

**VERIFICATION**

I, Christopher J. Bunce, Senior Vice President, Legal and General Counsel, of Birch Communications, Inc. and Birch Telecom of Missouri, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.

11/27/2012  
Date

  
Name: Christopher J. Bunce

Title: Senior Vice President,  
          Legal and General Counsel  
          Birch Communications, Inc. and  
          Birch Telecom of Missouri, Inc.

Subscribed and sworn to before me this 27 day of November

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

  
Notary Public