

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

In the Matter of the Application of Birch Telecom)
of Missouri, Inc., d/b/a Birch Communications,)
and Now Communications, Inc., Known in Missouri) File No. TM-2009-0411
as Now Communications, Incorporated of Delaware)
d/b/a Cleartel Communications, for Transfer of)
Customer Base.)

STAFF RECOMMENDATION ON TARIFF FILING

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through the undersigned counsel, and files this *Staff Recommendation On Tariff Filing* with the Missouri Public Service Commission (Commission), respectfully stating the following:

1. On May 14, 2009, Birch Telecom of Missouri, Inc d/b/a Birch Communications (Birch or Company), and Now Communications, Inc., known in Missouri as Now Communications, Inc., d/b/a Cleartel Communications (NOW), all known collectively herein as the Applicants, filed a joint *Application For Authority To Transfer Assets (Joint Application)*. The Applicants have entered into an Asset Purchase Agreement (Agreement) to sell, assign, transfer, convey and deliver certain assets to Birch, including NOW's approximately 200 Missouri prepaid local service customers.
2. On May 18, 2009, the Commission issued its *Order Directing Filing*, by which Staff was directed to file a recommendation on or before June 1, 2009, and the Applicants were directed to supplement the *Joint Application's* schedules to describe the assets to be transferred. On May 19, 2009, the Applicants supplemented their *Joint Application* with Exhibit E, detailing certain assets to be transferred by the Agreement.
3. On June 1, 2009, Staff filed its recommendation, stating to the Commission it recommended the approval of the transfer of assets, with Birch to file updated tariff

sheets including the customer services being transferred to the Company and the charges for those services. Birch filed updated tariff sheets on June 3, 2009.

4. On June 16, 2009, the Commission issued *An Order Directing Filing and Notice of Deficiency*, which directed Birch to fix a deficiency in the effective date of its June 3rd tariff filing. The tariff's effective date was not in accordance with 4 CSR 240-3.545 (18), which requires an effective date to be at least thirty (30) days from the date it is submitted to the Commission.
5. Additionally, the Commission's June 16th Order directed Staff to review the tariff and make a recommendation.
6. On June 17, 2009, the Company filed corrected tariff sheets extending the effective date of the tariff from July 1 to July 3, 2009.
7. Staff's *Memorandum*, attached hereto as Appendix A, states that the Staff has reviewed the substance and the effective date of the June 17th tariff filing. As the deficiency has been corrected by extending the effective date, Staff recommends the Commission approve the tariff as updated.

WHEREFORE, the Staff of the Missouri Public Service Commission renews its recommendation that the Commission grant the transfer of asset authority requested in the *Joint Application*, and further, recommends the Company's June 17, 2009 updated tariff sheets be approved.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez
Legal Counsel
Missouri Bar No. 59814

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Missouri Public Service Commission
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served all parties of record to this case this 19th day of June, 2009, either by hand delivery, electronic mail or First Class United States Mail, postage prepaid.

/s/ Jennifer Hernandez

Memorandum

To: Missouri Public Service Commission Official Case File
Case No. TM-2009-0411
Tariff No. YC-2009-0852

Date: 6/19/09

From: Lisa Mahaney
Telecommunications Department

William Voight 6/19/09
Utility Operations Division/Date

Subject: Staff Recommendation

On May 14, 2009, Birch Telecom of Missouri d/b/a Birch Communications (Birch or Company) filed an Application For Authority To Transfer Assets from Now Communications d/b/a Cleartel Communications to Birch. On June 1, 2009, Staff filed its recommendation, stating to the Commission it recommended the approval of the transfer of assets, with Birch to file updated tariff sheets including the customer services being transferred to the Company and the charges for those services. Birch filed updated tariff sheets on June 3, 2009.

On June 16, 2009, the Commission issued An Order Directing Filing and Notice of Deficiency, which directed Birch to fix a deficiency in the effective date of its tariff filing. The tariff did not have an effective date in accordance with 4 CSR 240-3.545 (18), which requires a tariff's effective date to be at least thirty (30) days from the date it is submitted to the Commission. On June 17, 2009, the Company corrected the deficiency by extending the effective date of the tariff from July 1, 2009, to July 3, 2009. Staff has reviewed the tariff filing and recommends it become effective on July 3, 2009.

☒ The Company is not delinquent in filing an annual report, paying the PSC assessment , MoUSF, and Relay Missouri..

☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.

(☐ No annual report ☐ Unpaid PSC assessment ☐ Unpaid MoUSF
☐ Unpaid Relay Missouri. Amount owed:)

Appendix A

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

In the Matter of the 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)

Case No. TM-2009-0411
Tariff Filing No. YC-2009-0852

AFFIDAVIT OF LISA MAHANAY

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Lisa Mahaney, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying memorandum, and that the facts therein are true and correct to the best of her knowledge and belief.



LISA MAHANAY

Subscribed and affirmed before me this 19th day of June 2009.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

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My Commission Expires
September 21, 2010
Callaway County
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NOTARY PUBLIC