

CAHILL GORDON & REINDEL LLP

SUITE 950

1990 K STREET, N.W.

WASHINGTON, D.C. 20006-1181

EIGHTY PINE STREET
NEW YORK, N.Y. 10005-1702
(212) 701-3000
FAX: (212) 269-5420

TELEPHONE (202) 862-8900
FACSIMILE (202) 862-8958

AUGUSTINE HOUSE
6A AUSTIN FRIARS
LONDON, ENGLAND EC2N 2HA
(011) 44.20.7920.9800
FAX: (011) 44.20.7920.9825

ANGELA F. COLLINS | 202-862-8930 | acollins@cgrdc.com

December 18, 2012

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket Nos. 09-197, 11-42

Dear Secretary Dortch:

Birch Communications, Inc. (“Birch”) and Now Communications, LLC (“Now Comm”), by their attorneys, respectfully notify the Federal Communications Commission (“Commission”) that Now Comm will comply with and adopt as its own the Compliance Plan filed by Birch and approved by the Commission on August 8, 2012.¹

Now Comm is a Georgia limited liability company, which is in the process of registering with the Commission for domestic interstate authority and obtaining authorization from the Commission for the provision of international telecommunications services. Now Comm is also in the process of obtaining telecommunications authority at the state level in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Ohio, South Carolina, Tennessee, Texas, and Wisconsin. In addition to prepaid wireless Lifeline service, Now Comm will also provide the wireline Lifeline services currently provided by Birch and its affiliates as a non-ETC reseller in the 18 above-listed states.²

Sprint will provide Now Comm with the network infrastructure and wireless transmission facilities needed for Now Comm to offer service as a Mobile Virtual Network Operator (“MVNO”). Specifically, Birch’s current contract with Sprint will be assigned to Now Comm.³ In addition, Now Comm will rely on Birch for all other facilities, network, back office, billing, and customer support functions necessary to provide both its Lifeline and non-Lifeline services.

¹ 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); see also Lifeline Compliance Plans & ETC Petitions, <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions>.

² Petition at 2 (explaining Birch’s provision of Lifeline services as a non-ETC reseller in 18 states). Birch and Now Comm will obtain any necessary regulatory approvals to execute the transfer of existing Birch customers from Birch to Now Comm.

³ Petition at 2 (explaining Birch’s relationship with Sprint).

Birch noted in the Compliance Plan that it was reviewing whether a separate legal entity should be established for the provision of prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities.⁴ In that regard, Birch hereby notifies the Commission that the prepaid wireless Lifeline service will be provided by a separate legal entity known as Now Communications, LLC.

Now Comm will implement and comply with the Birch Compliance Plan approved by the Commission on August 8, 2012,⁵ and hereby adopts the Birch Compliance Plan as its own. Now Comm will utilize the same procedures and operations set forth in the Birch Compliance Plan for its provision of prepaid wireless Lifeline service, and will use the same draft application and verification forms attached to the Birch Compliance Plan. Now Comm will offer the same prepaid wireless Lifeline service plan set forth in the Birch Compliance Plan, and will market and advertise its prepaid wireless Lifeline service in the same manner as described in the Birch Compliance Plan. A copy of the Birch Compliance Plan adopted by Now Comm is attached. Birch and Now Comm have also filed amendments to the pending designation petitions previously filed by Birch to reflect Now Comm's adoption of the Birch Compliance Plan and to request that Now Comm, not Birch, be the entity designated as an eligible telecommunications carrier.⁶

Now Comm will utilize the same management and day-to-day operational personnel as currently utilized by Birch. Birch's current corporate officers will also be corporate officers of Now Comm. Now Comm will be owned by the same ultimate owners of Birch, but will not be part of the Birch corporate family.⁷

⁴ Compliance Plan at n.3.

⁵ 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); *see also* Lifeline Compliance Plans & ETC Petitions, <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions>.

⁶ On April 27, 2012, Birch filed a petition for designation as an eligible telecommunications carrier ("ETC") for Lifeline service only for the states of Alabama, Florida, North Carolina, and Tennessee. On November 29, 2012, Birch filed a petition for designation as an ETC for Lifeline service only for the state of Texas. On December 18, 2012, Birch and Now Comm filed amendments to these pending petitions to reflect Now Comm's adoption of the Birch Compliance Plan and the parties' request that ETC status be granted to Now Comm rather than Birch. Birch will not provide Lifeline services as an ETC in any state.

⁷ Specifically, Birch Capital, LLC (a Georgia limited liability company) holds a 100% ownership interest in Now Comm. The current owners of Birch (Holcombe Green and R. Kirby Godsey, which in combination hold a 98% interest in Birch) own approximately 90% of Birch Capital, LLC, with the remaining percentage owned by Vincent Oddo, the Chief Executive Officer of both Birch and Now Comm. *See* Birch Compliance Plan at 4-5 (discussing ownership of Birch).

Please contact the undersigned if you have any questions regarding this matter

Respectfully submitted,

A handwritten signature in cursive script that reads "Angela Collins".

Angela F. Collins
Counsel to Birch Communications, Inc. and
Now Communications, LLC

Attachment

cc: Garnet Hanly (via electronic mail)