

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

In the Matter of the Application of )  
Navigator Telecommunications, LLC for )  
Approval to Transfer Certain Assets to )  
Birch Telecom of Missouri, Inc. d/b/a )  
Birch Communications )

Case No. TM-2009-0051

**STAFF RECOMMENDATION**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and hereby submits this Staff Recommendation, labeled Attachment A. In support of its recommendation, Staff respectfully states as follows:

1. On August 19, 2008, Navigator Telecommunications, LLC (Navigator) and Birch Telecom of Missouri, Inc. d/b/a Birch Communications (Birch) filed a Joint Application for Authority to Transfer Assets.
2. The Commission directed Staff to file a status report or recommendation in this matter no later than September 9, 2008.
3. Staff timely filed a Status Report on September 9, 2008.
4. Navigator and Birch filed an Amended Application on September 10, 2008.
5. In Attachment A, Staff recommends that the Commission approve the sale of assets from Navigator to Birch for the reasons set forth in that Attachment.

**WHEREFORE**, Staff submits this recommendation for the Commission's consideration.

Respectfully submitted,

/s/ Jennifer Heintz

Jennifer Heintz  
Senior Counsel  
Missouri Bar No. 57128

Attorney for the Staff of the  
Missouri Public Service Commission  
PO Box 360  
Jefferson City, MO 65102  
(573) 751-8701 (Telephone)  
(573) 751-9285 (Fax)  
[jennifer.heintz@psc.mo.gov](mailto:jennifer.heintz@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 15<sup>th</sup> day of September 2008.

**/S/ JENNIFER HEINTZ**

## Memorandum

To: Missouri Public Service Commission Official Case File  
Case No. TM-2009-0051

From: Sara Buyak, Telecommunications Department

William Voight 9-11-08  
Utility Operations Division/Date

Jennifer Heintz 9-11-08  
General Counsel's Office/Date

**Subject: Staff Recommendation for Application Seeking Commission Approval of  
Competitive Company Transaction**

Date: September 11, 2008

The Telecommunications Department Staff (Staff) recommends the Commission (check, as applicable):

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Approve Merger<br>4 CSR 240-3.525                   | <input type="checkbox"/> Approve Consolidation<br>4 CSR 240-3.525              | <input checked="" type="checkbox"/> Approve Sale of Assets<br>4 CSR 240-3.520 |
| <input type="checkbox"/> Approve Name Change<br>4 CSR 240-3.545(20)          |  |   |
| <input type="checkbox"/> Cancel Certificate(s) & Tariff(s)<br>392.410.5 RSMo | <input type="checkbox"/> Approve Certificate(s) & Tariff(s)<br>4 CSR 240-3.510 |   |

According to Commission rule 4 CSR 240-2.060 and the rule(s) specifically cited above, competitively classified companies are required to provide information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest for the following reason(s) (check all that apply):

- ☒ This transaction solely involves competitively classified companies.
- ☒ Customers have/will receive advance notice.
- ☒ Customers can switch to another provider.
- ☒ Customers will continue to receive service at the same rates, terms and conditions.
- ☐ Other:

The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
Navigator Telecommunications, LLC	X		X						
Birch Telecom of Missouri, Inc., d/b/a Birch Communications		X		X					

\*See attachment to Staff recommendation for further details associated with approving certificates or tariffs.

**Merger, Consolidation, Sell or Transfer Assets**

Will affected customers be switched to a different company?

☐ No

☒ Yes

☒ Customers have been notified.

☐ Customers will be notified at least 30 days prior to being switched to a different company.  
(4 CSR 240-3.525)

**Company Name Change Notification**

☒ Company has notified its customers of the name change on September 1, 2008.

☐ Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? ☐ Yes ☒ No

If yes, a copy of the bankruptcy order is attached.

**Competitive Company Transaction Review Items**

**Administrative:**

☒ Application solely involves competitively classified companies.

☒ No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

☒ Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

☒ Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No.

*Missouri corporations:* A Certificate of Good Standing.

*Foreign corporations:* Authorization to do business in Missouri.

*If business conducted under a fictitious name:* A copy of registration of the fictitious name.

- ☒ No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).  
☒ A statement that no annual report or assessment fees are overdue for any applicant.

**Are there additional recommendations or special considerations?**

☒ No

☐ Yes

If yes, explain in an attachment.

- ☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.  
☐ 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. Amount owed:    )



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

In the Matter of the Application of )  
Navigator Telecommunications, LLC, for )  
Approval to Transfer Certain Assets to )  
Birch Telecom of Missouri, Inc. d/b/a )  
Birch Communications. )

Case No. TM-2009-0051

**AFFIDAVIT OF Sara Buyak**

STATE OF MISSOURI            )  
  ) ss:  
COUNTY OF COLE            )

Sara Buyak, 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 staff recommendation and that the facts therein are true and correct to the best of her knowledge and belief.

  
SARA BUYAK

Subscribed and affirmed before me this 11<sup>th</sup> day of September.



  
NOTARY PUBLIC