

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

Joint Application of Ionex Communications,)	
Inc. dba Birch Communications, Birch Telecom of)	
Missouri, Inc. dba Birch Communications, and)	File No. TM-2011-0079
American Fiber Networks, Inc. for Approval to)	
Transfer Assets and Customers)	

STAFF REPLY

COMES NOW the Staff of the Missouri Public Service Commission and moves the Missouri Public Service Commission (Commission) to dismiss the application to transfer assets and states as follows:

1. On September 17, 2010, Ionex Communications, Inc. (“Ionex”), Birch Telecom of Missouri, Inc. (“Birch”) and American Fiber Networks, Inc. (“American”) asked the Commission to approve a transfer of certain assets from American to Ionex and Birch. The Applicants state that they make their application pursuant to §392.300 RSMo 2000. On that same day, Staff filed its Motion to Dismiss based on its reading of §392.420 RSMo Supp. 2009, which precludes the Commission from “the application and enforcement of ...section ...392.300...”

2. On September 23, 2010, the Companies filed a Response in which they correctly pointed out that, without the Commission’s approval of the asset transfer, they would not be able to rely on the exception from the Commission’s anti-slamming rules in 4 CSR 240-33.150(4). The Staff is aware that the phrase “approved by the commission” continues to appear in paragraph (4)(A), and appears to make the exception conditional on receiving Commission approval. Until such time as the rule can be amended, the Staff believes that the most appropriate Commission action would be to grant a waiver of 4 CSR 240-33.150, as the transfer of assets falls within the exception set forth in section (4) of that rule, irrespective of the Commission’s inaction in approving or denying the underlying asset transfer.

WHEREFORE, the Staff respectfully moves the Commission grant the Companies a waiver of 4 CSR 240-33.150, with respect to any change of provider that occurs as a result of this asset transfer.

Respectfully submitted,



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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 13th day of October, 2010.

