

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 18th day
of September, 2008.

In the Matter of the Application of Navigator)	
Telecommunications, LLC for Approval to Transfer)	<u>Case No. TM-2009-0051</u>
Certain Assets to Birch Telecom of Missouri, Inc.)	
d/b/a Birch Communications)	

ORDER APPROVING AMENDED APPLICATION

Issue Date: September 18, 2008

Effective Date: September 28, 2008

Syllabus

This order approves an Amended Application for Birch Telecom of Missouri, Inc., d/b/a Birch Communications (hereafter “Birch”) to purchase certain assets of Navigator Telecommunications, LLC (hereafter “Navigator”); namely, Navigator’s customer base.

The Applicants

On August 19¹, Navigator and Birch asked the Commission to approve a transfer of certain assets from Navigator to Access Integrated Networks, Inc. (hereafter “Access”), and for Access to immediately transfer those assets to Birch. The assets consist of approximately 203 residential and 42 business customers in Missouri, as well as customer-related data, databases, and customer records.

Access later assigned its right to receive those assets to Birch. Thereafter, on September 10, Navigator and Birch filed an amended application with the Commission, in which Birch asks to serve Navigator’s customers.

¹ All date references are to 2008 unless otherwise stated.

The Commission granted Navigator a certificate to provide basic local exchange telecommunications services in Case No. TA-98-383, and a certificate to provide interexchange telecommunications services in Case No. TA-2000-232. The Commission granted Birch a certificate of service authority to provide interexchange telecommunications services in Case No. TA-97-371, and a certificate of service authority to provide basic local exchange services in Case No. TA-97-372.

The Transaction

The joint applicants ask for authority for Birch to purchase the right to serve Navigator's customers. Birch states that it will serve those customers at the same rates, terms, and conditions of service that those customers currently enjoy.

The applicants state that the proposed transaction is not detrimental to the public interest. Birch's current tariff will allow it to provide the same services under the same terms and conditions that Navigator currently provides its customers. Also, the merger would strengthen Birch's competitive position by allowing it to achieve economies of scale due to its expanded operations. Navigator's customers have already received notice of the transaction. No tax impact to any Missouri political subdivision is expected.

Discussion

On September 15, Staff filed its recommendation. Staff notes that Commission Rule 4 CSR 240-3.520 governs the sale of assets. The Commission may approve an asset sale if it is "not detrimental to the public interest."²

² See, e.g., *In re WorldCom*, 5 Mo. P.S.C.3d 312, 315 (1996); *In re Computer Network Technology Corporation*, Commission Case No. XM-2005-0283 (Order Approving Merger and Directing Filing, March 29, 2005).

Staff agrees that the Commission's approval of the merger will not be detrimental to the public interest. Staff recommends that the Commission approve the merger.

The Commission has reviewed the verified amended application and Staff's verified recommendation, which are hereby admitted into evidence. The Commission finds that the proposed transaction is not detrimental to the public interest and that the Commission should therefore approve it. The Commission notes that the asset sale involves competitively classified companies, and that the customers being switched from Navigator to Birch have already received notice of the sale, including a notice that they can freely change carriers.

IT IS ORDERED THAT:

1. The Amended Application for Authority to Transfer Assets filed by Navigator Telecommunications, LLC and Birch Telecom of Missouri, Inc., d/b/a Birch Communications is approved.
2. This order shall become effective on September 28, 2008.
3. This case shall be closed on September 29, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
Jarrett, and Gunn, CC., concur.

Pridgin, Senior Regulatory Law Judge