

**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.)

File No. TM-2009-0411

STAFF RECOMMENDATION

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

Procedural History

1. On May 14, 2009, Birch Telecom of Missouri, Inc d/b/a Birch Communications (Birch), 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. The *Joint Application* states Birch will also assume all managerial, technical, and financial responsibilities in connection with the operation of the retail prepaid local assets in order to provide telecommunications services to the Missouri customers.
3. Further, the *Joint Application* states notice will to be sent to the affected customers on or after June 1, 2009.

4. 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 their application. On May 19, 2009, the Applicants supplemented their application with Exhibit E, detailing certain assets to be transferred by the Agreement.

Staff Recommendation

5. Pursuant to 4 CSR 240-2.060 and 240-3.520, telecommunications companies transferring assets are to file with the Commission a "...brief description of the property involved in the transaction, including any franchises, permits, operating rights or certificates of convenience and necessity", and "a copy of the contract or agreement of sale."
6. In this instance, the Applicants have complied with the Commission's rules, and Staff believes this transaction is not detrimental to the public interest. Staff's *Memorandum* is attached as Appendix A.
7. Both Applicants request no certificate of service authority granted by the Commission be cancelled with this *Joint Application*.
8. Neither Applicant is deficient in the Commission's annual report filing requirements, or remittances of annual assessment, Universal Service Fund or Relay Missouri charges.

WHEREFORE, the Staff of the Missouri Public Service Commission recommends the Commission grant the transfer of asset authority requested in the *Joint Application*, with Birch Telecom of Missouri, Inc., d/b/a Birch Communications to file updated tariff sheets containing the charges and customer services being transferred in this merger.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez
Legal Counsel
Missouri Bar No. 59814

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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 1st 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

From: Lisa Mahaney, Telecommunications Department
William Voight 6/1/09
Utility Operations Division/Date

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

Date: 6/1/09

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

- | | | |
|---|---|--|
| <input type="checkbox"/> Approve Merger
4 CSR 240-3.525 | <input type="checkbox"/> Approve Consolidation
4 CSR 240-3.525 | <input checked="" type="checkbox"/> Approve Sale of Assets
4 CSR 240-3.520 |
| <input type="checkbox"/> Approve Name Change
4 CSR 240-3.545(20) | | |
| <input type="checkbox"/> Cancel Certificate(s) & Tariff(s)
392.410.5 RSMo | <input type="checkbox"/> Approve Certificate(s) & Tariff(s)
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
NOW Communications , Incorporated of Delaware, d/b/a Cleartel Communications	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.

☐ 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, 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. Amount owed:

☐ Unpaid MoUSF ☐ Unpaid Relay Missouri)

Attachment to TM-2009-0411

Staff recommends the Commission order Birch Communications to file tariff pages containing the rates covering the customers being transferred in this merger. The filing should be made within ten days of the date of the order.

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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

AFFIDAVIT OF LISA MAHANEY

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 MAHANEY

Subscribed and affirmed before me this 1st day of June 2009



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



NOTARY PUBLIC