

**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	)	<b>File No. TM-2011-0079</b>
American Fiber Networks, Inc. for Approval to	)	
Transfer Assets and Customers	)	

**MOTION To DISMISS**

**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.

2. All three applicants are certificated alternative local exchange telecommunications companies, as well as interexchange telecommunications companies.

3. Effective August 28, 2008, §392.420 RSMo Supp. 2009 provides that “for all existing alternative local exchange telecommunications companies, the commission shall waive...the application and enforcement of ...section ...392.300...”

4. Approval or denial of the Application would constitute “application and enforcement” of §392.300 RSMo 2000. Therefore, the Commission should dismiss the Application, without granting or denying the relief requested in it, and inform the applicants that the requirement to obtain Commission approval for the transfer of assets, to the extent it ever applied to them, no longer applies.

**WHEREFORE**, the Staff respectfully moves the Commission dismiss the Application for Transfer of Certain Assets and Customer Base.

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 17<sup>th</sup> day of September, 2010.

