

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

In the Matter of Birch Telecom of Missouri,)
Inc. and Ionex Communications, Inc.’s) **File No. CE-2010-0143**
Request for Waiver)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation states:

1. On November 6, 2009, Birch Telecom of Missouri, Inc. and Ionex Communications, Inc., (“the Companies”) filed an Application for Waiver of Commission Rules and Statutes, requesting that the Commission waive certain rules and statutory provisions pursuant to §392.420 RSMo Supp. 2008.

2. Section 392.245.5(8), as amended by H.B. 1779, states in relevant part that

“ . . . all alternative local exchange telecommunications companies shall not be required to comply with customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels established by the commission.”

3. Section 392.245.5(8) does provide, however, that the Commission shall retain the authority to hear and resolve customer complaints based upon certain federal regulations and standards, the company’s tariff, or Commission rules “other than those related to customer billing, network engineering and maintenance, and service objectives and surveillance levels or a failure to provide service in a manner that is safe, adequate, usual and customary in the telecommunications industry.”

4. In addition to that retention of authority, the Staff notes that these waivers do not relieve the Companies of any reporting or other obligations that arise from a source other than the waived rules or statutory provisions, such as undertakings made in a Stipulation or Agreement or as a merger or other condition.

5. Section 392.420 RSMo, as amended by H.B. 1779, states in part that

“[i]n the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340.”


6. The Companies are alternative local exchange telecommunications company as that term is used in the statutory provisions recited above. In the attached Memorandum, labeled Appendix A, the Staff recommends the Commission grant the following waivers:

- Section 392.210.2 Uniform System of Accounts
- Section 392.300 Transfer of Property
- 4 CSR 240-3.550 (4) and (5)(A) Held order records and quality of service reports
- 4 CSR 240-33.080 (1) Toll-free number for billing disputes on bills

7. The Companies are currently compliant in obligations relating to Commission assessment, Missouri Universal Service Fund, Relay Missouri, and the submission annual reports.

WHEREFORE, the Staff recommends that the Commission grant the Companies the waivers requested in their Application.

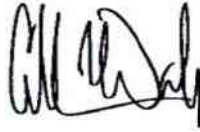
Respectfully submitted,



Colleen M. Dale
Senior Counsel
Missouri Bar No. 31624
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4255 (Telephone)
cully.dale@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 13th day of November, 2009.

A handwritten signature in black ink, appearing to be "All the Day".

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. CE-2010-0143
Company Name: Birch Telecom of Missouri, Inc. and Ionex Communications, Inc.

From: Sara Buyak
Telecommunications Department

William Voight 11/16/09
Utility Operations Division/Date

Subject: Request for Waivers

Date: November 12, 2009

Birch Telecom of Missouri, Inc. and Ionex Communications, Inc., competitive local exchange and long distance telecommunications companies, filed a Request for Waiver of Commission Rules and Statutes pursuant to 4 CSR 240-2.060 and Section 392.420, RSMo, as amended by House Bill 1779, effective August 28, 2008. The Commission Staff (Staff) has no objections to the requested waivers identified in the filings.

Birch Telecom of Missouri, Inc. and Ionex Communications, Inc. requests the Commission waive the following:

4CSR 240-3.550 (4), (5)(A) and (5)(C)
4CSR 240-32.080
392.210.2
392.300

Staff recommends the Commission grant to the companies all of the waivers listed above and direct the companies to list these waivers in the tariffs.

- Birch Telecom of Missouri, Inc. is not delinquent in filing an annual report, paying the PSC assessment, and paying USF
- Ionex Communications, Inc. is not delinquent in filing an annual report, paying the PSC assessment, and paying USF.

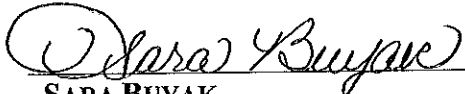
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Missouri, Inc. and Ionex Communications,) Case No. CE-2010-0143
Inc. for a Request for Waiver)

AFFIDAVIT OF Sara Buyak

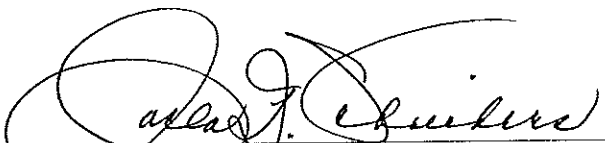
STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

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 12th day of NOVEMBER, 2009.



NOTARY PUBLIC

CARLA K. SCHNIEDERS
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: August 25, 2012
Commission Number: 08533187