



State of Utah  
Department of Commerce  
Division of Public Utilities

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**MEMORANDUM**

**To:** Public Service Commission

**From:** Division of Public Utilities  
Chris Parker, Director  
Bill Duncan, Telecommunications / Water Manager  
Ron Slusher, Utility Technical Consultant

**Date:** December 18, 2017

**Re:** In the Matter of the Application of Birch Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange, Access, and Interexchange Telecommunications Services in the State of Utah. Docket No. 17-2600-01.

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**RECOMMENDATION (Approve):**

The Division of Public Utilities (“Division”) has reviewed the technical, managerial, and financial abilities of the Birch Communications, Inc. (“Birch”) and has found that they have provided the necessary information to fulfill the requirements as stated in the existing Public Service Commission (“Commission”) rules. The public interest will be promoted by the Commission granting Birch Communications, Inc. a Certificate of Public Convenience and Necessity (“CPCN”) as requested under the same terms and conditions allowed in other CPCNs.

The Division also recommends that the \$100,000 bond be waived on the basis that the Applicant will not require customer deposits or prepayments of any kind.

The Division expects that based on history, a filing of this type and with the information submitted by the company will generate no objections or opposition to this recommendation. Therefore, the Division requests that this docket be adjudicated informally in accordance with R746-110-1.

**EXPLANATION:**

On or about December 01, 2017, Birch Communications, Inc. ("Birch or Applicant") filed an application for a CPCN. The Division reviewed the application and found the following:

Birch Communications, Inc. is a registered foreign corporation within the State of Utah; with its corporate headquarters located at 320 Interstate North Parkway SE, Atlanta, GA 30339. Birch is a wholly owned subsidiary of Ionex Communications North, Inc.

Birch seeks authority to offer interexchange telecommunications statewide. To the extent Birch provides basic local exchange service, it will initially do so in the areas served by CenturyLink Communications, Inc. ("CenturyLink") and does not plan to provide service in areas of any small or rural local exchange carriers having fewer than 5,000 access lines that are owned or controlled by an ILEC with fewer than 30,000 total access lines in accordance with Utah Code Ann. 5 54-8b-2.1 (3) and (4). However, Birch does seek statewide authority so that it may expand into other services as market conditions warrant and as additional service areas become open to competition.

The Applicant intends to provide a full range of telecommunications services to business customers in the incumbent, CenturyLink, exchanges statewide in Utah, consistent with the exchange maps CenturyLink has on file with the Commission.

Applicant does not currently own facilities or property in the State of Utah, but will acquire or construct any facilities in the state as necessary in order to provide its services. Ultimately, Applicant will utilize a mix of its own facilities unbundled network elements ("UNEs") or UNE-replacement services from incumbent local exchange carriers ("ILECs"), and other ILEC-provided services to provide local exchange and interexchange services in Utah.

The Applicant intends to commence negotiations with CenturyLink for an interconnection/commercial agreement immediately upon receiving approval from the Commission to operate as a local exchange telecommunications service provider in the State of Utah.

Birch will provide access to local exchange, operator services, directory assistance, directory listings, and emergency services such as 911 and E911 either through facilities-based interconnection or resale services purchased from an underlying provider.

Applicant does not plan to operate an office within the State of Utah. Responsibility for Utah operations will be handled by Applicant's management team from its headquarters in Atlanta, Georgia. Summaries of professional experience and education of its managerial personnel demonstrate that the Applicant has considerable experience in the telecommunications industry.

According to financial statements attested to be accurate, objective and with integrity by Gordon P. Williams, Jr., Senior Vice President, General Counsel, and Secretary, Birch Communications, Inc. the Applicant has a positive net worth and has ample working capital.

The Applicant requests that the \$100,000 bond requirement be waived because it will not require customer deposits or prepayments of any kind.

The Applicant is currently authorized to provide local exchange telecommunications services in Alabama, Arkansas, Florida, Georgia, Louisiana, Montana, Mississippi, New Jersey, North Carolina, Pennsylvania, South Carolina, and Tennessee.

The Birch companies, like all telecommunications carriers, are subject to slamming complaints, billing complaints, and other routine types of customer complaints that are filed with state and federal commissions throughout their 50-state operating territory and in the District of Columbia. The Birch companies respond to those complaints and inquiries in the ordinary course and make every effort to resolve any disputes directly with the customer and without regulatory intervention. Like any other nationwide telecommunications carrier, the Birch companies are occasionally involved in civil litigation concerning various types of matters such as customer complaints, breach of contract, billing and collection, employee claims, and intellectual property.

In December 2016, Birch Communications, Inc. entered into a Consent Decree with the Federal Communications Commission ("FCC"), which the FCC ordered Birch to refund and or give credit to its customers for slamming claims.

In October 2017, Birch Communications, Inc. reached a settlement in *Abante Rooter and Plumbing, Inc. v. Birch Communications, Inc.* in which the plaintiff alleged Birch Communications, Inc. violated the federal Telephone Consumer Protection Act. Relevant documents can be found in Civil Action File No. 2015-CV-03562 in the United States District Court for the Northern District of Georgia.

Currently Birch is involved in a Missouri consumer protection statute case, *Richard W. Huskey v. Birch Communications, Inc., Ionex Communications, Inc., Birch Telecom of Missouri, Inc.* in the Circuit Court of St. Louis County, Missouri.

Applicant has detailed anti-slamming measures in place and routinely uses third-party verification ("TPV") to verify carrier change requests in accordance with federal and state requirements. After TPV is used to verify a carrier change request, Applicant customer service personnel often conduct recorded, follow-up conversations with the customer to confirm the switch and for quality assurance purposes.

The Applicant asserts that approval of its application will serve the public interest creating and enhancing competition and expanding customer service options. Additionally, the approval of this application will expand the availability of innovative, high quality, reliable and competitively-priced telecommunications services in the State of Utah.

cc: Gordon P. Williams, Jr., Senior Vice President, General Counsel, and Secretary, Birch Communications, Inc.  
Angela F. Collins, Cahill Gordon & Reindel, LLP  
William J. Evans, Parsons Behle & Latimer  
Justin Jetter, Assistant Attorney General, State of Utah  
Office of Consumer Services, State of Utah