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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
BIRCH TELECOM OF THE GREAT)
LAKES, INC., d/b/a BIRCH)
COMMUNICATIONS,)
Petitioner,)
) No. 12-0642
)
Verified petition for)
designation as an eligible)
telecommunications carrier)
in the State of Illinois)
for the limited purpose of)
offering lifeline service)
to qualified households.)

Chicago, Illinois
January 7, 2013

Met, pursuant to adjournment, at 10:04 a.m.,
in Conference Room S-801, 160 North LaSalle Street,
Chicago, Illinois.

BEFORE:
Mr. John T. Riley, Administrative Law Judge

1 APPEARANCES:

2

CAHILL, GORDON & REINDEL, LLP,

3 (1990 K Street NW, Suite 950,

Washington, D.C. 20006,

4 (202) 863-8940),

MS. ANGELA F. COLLINS,

5 for the Petitioner,

6 ILLINOIS COMMERCE COMMISSION,

(160 North LaSalle Street, Suite C-800,

7 Chicago, Illinois 60601-3104,

(312) 793-2877),

8 MS. ANGELIQUE PALMER, and

MR. MATTHEW L. HARVEY,

9 mharvey@icc.illinois.gov,

for the Staff.

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I N D E X

WITNESS	DX	CX	RDX	RCX	By Judge
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None.

E X H I B I T S

NUMBER	MARKED FOR ID	IN EVIDENCE
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None.

1 JUDGE RILEY: All right.

2 Pursuant to the direction of the
3 Illinois Commerce Commission, I call Docket 12-0642.
4 This is a verified petition by Birch Telecom of the
5 Great Lakes, Inc., d/b/a Birch Communications for
6 designation as an eligible telecommunications carrier
7 in the State of Illinois for the limited purpose of
8 offering lifeline service to qualified households.

9 And, Ms. Palmer -- excuse me. Ms.
10 Collins, would you enter an appearance for the record
11 stating your name and office address?

12 MS. COLLINS: Good morning. Angela F. Collins
13 with Cahill, Gordon & Reindel on behalf of Birch
14 Telecom of the Great Lakes, Inc. My address is
15 1990 -- 1990 K Street NW, Suite 950, Washington,
16 D.C., 20006.

17 JUDGE RILEY: Thank you.

18 And for commission staff?

19 MS. PALMER: On behalf of staff of the Illinois
20 Commerce Commission, Matthew L. Harvey and Angelique
21 Palmer, 160 North LaSalle Street, Suite C-800,
22 Chicago, Illinois, 60601.

1 JUDGE RILEY: Thank you.

2 And at this point, I am going to begin
3 with staff counsel and ask whether or not staff has
4 raised or has noted any issues in this matter as a
5 result of the filing.

6 MS. PALMER: Yes, Judge. The first issue that
7 we have is in doing a search as to whether or not
8 Birch Telecom has a certificate of service for
9 authority in Illinois. We could not find a
10 certificate at this time. There did appear to be
11 evidence that they have been working in Illinois.
12 But as to the existence of a certificate, we just
13 can't find that. So we would respectfully request
14 time before the next status to maybe issue any
15 necessary DRs to counsel for Birch Telecom to see if
16 they can produce a certificate of authority for
17 Illinois.

18 JUDGE RILEY: Ms. Collins?

19 MS. COLLINS: Yes, your Honor. Thank you.
20 Before we move forward, I just wanted to make an oral
21 motion for the record in order to proceed pro hac
22 vice as an out-of-state attorney.

1 JUDGE RILEY: And pro hac is with an h-a-e-c?

2 MS. PALMER: H-a-c.

3 MS. COLLINS: H-a-c, yes.

4 JUDGE RILEY: Okay. V-i-c-e.

5 MS. PALMER: No objection, Judge.

6 JUDGE RILEY: No objection? The motion is
7 granted.

8 MS. COLLINS: Thank you. I will be happy to
9 look into staff's request further. I just did a
10 quick search on the Illinois Commerce Commission
11 website from my end, and I see that Birch Telecom of
12 the Great Lakes holds interexchange carrier authority
13 and local exchange carrier authority both under
14 Docket 00-0376.

15 JUDGE RILEY: 00-0376?

16 MS. COLLINS: Correct.

17 MS. PALMER: And if you could just repeat that.
18 What did you find?

19 MS. COLLINS: I plugged in the search under
20 public utilities search --

21 MS. PALMER: Ah-huh.

22 MS. COLLINS: -- for Birch, and I found that it

1 holds interexchange carrier authority and local
2 exchange carrier authority. And the docket listed is
3 00-0376.

4 JUDGE RILEY: Okay.

5 MS. PALMER: Okay.

6 And we did find information consistent
7 with that, Judge, just so you are aware. However,
8 upon further research, we couldn't actually find a
9 copy of the certificate of authority. That's our
10 issue.

11 JUDGE RILEY: The only other thing I would note
12 is that the company also does -- is listed as doing
13 business as Birch Communications. And one of the
14 things that would have to be checked is whether or
15 not that assumed name has been filed with the
16 Illinois Secretary of State's office.

17 MS. COLLINS: Judge, it's my understanding that
18 it has. But these issues may be moot based on
19 Birch's decision for a different legal entity to be
20 designated as eligible telecommunications carrier in
21 Illinois.

22 JUDGE RILEY: I'm not sure I followed you on

1 that.

2 MS. COLLINS: Birch has decided that it would
3 like a separate legal entity, not Birch, to be the
4 entity to be designated as an ETC.

5 JUDGE RILEY: What's the other entity?

6 MS. COLLINS: It's a newly formed company,
7 which has no authority at this point. We're in the
8 process of getting it registered with the Secretary
9 of State and getting all necessary authority in the
10 state. I'm sorry. Go ahead.

11 JUDGE RILEY: The only thing I would suggest,
12 then, is that that would be the entity. If it's a
13 separate entity from the one who has -- who has filed
14 here, they would have to file their own application
15 or their own petition.

16 MS. COLLINS: Correct. That's what I wanted to
17 discuss today, was whether your preference would be
18 to withdraw the pending application and re-file under
19 the new entity or simply amend the existing
20 application to reflect the new entity.

21 JUDGE RILEY: What is staff's response?

22 MS. PALMER: As we indicated, there appears to

1 be a deficiency in the existing petition. So it
2 would, in my opinion, be a little more logical,
3 possibly, that you would file a new application and
4 we know that all certificate issues are resolved, and
5 then we could proceed forward on that -- on that
6 basis.

7 JUDGE RILEY: Right. That would be my tendency
8 as well.

9 MS. COLLINS: Would -- I'm sorry. Go ahead.

10 JUDGE RILEY: No, go ahead.

11 MS. COLLINS: Would -- the new entity is an
12 entirely new company, although owned by the same
13 three owners that currently own Birch. So it would
14 need to get all new certificates and basically start
15 from scratch. Would the ETC proceedings be able to
16 proceed simultaneously with the certificate
17 proceedings, or would we need to wait for the
18 certificate proceeding to be completed and then move
19 forward with the ETC?

20 JUDGE RILEY: Well, they would have to have
21 certificates to operate as a telecom carrier in
22 Illinois before they can get ETC designation, but we

1 could go with ahead with statuses and prehearing
2 conferences.

3 Well, let me ask staff. Does staff
4 believe that possible, that -- suppose there were
5 data requests that had to be issued in responses
6 there.

7 MS. PALMER: The only problem, I believe, staff
8 has, Judge, is they want to proceed knowing that
9 you're already a certificated entity, and there is
10 resistance to proceed and deal with these matters if
11 that certificate has not been approved. So as to
12 simultaneously initiating the docket, that's up to
13 your Honor's discretion. But I'm not sure how long
14 the certificating would take at this point. So is it
15 a waste of time? That's really up to you, Judge.

16 JUDGE RILEY: Right.

17 Well, Ms. Collins, has this new entity
18 been formed yet or is it in the process of being
19 formed?

20 MS. COLLINS: It has been formed, and Secretary
21 of State filings have been made. I do not know if
22 the certificates have been received. We've been

1 getting them every day. So we are prepared to file
2 the applications for authority once we have the
3 Secretary of State forms that we need. And let me --
4 maybe it would make sense to give a little more
5 background on the new entity. It's owned by the same
6 three ultimate owners of Birch Telecom. It's formed
7 solely to provide the lifeline services. Birch
8 determined that for accounting reasons they wanted to
9 separate their prepaid and postpaid
10 telecommunications services, the lifeline service
11 being a prepaid service, all of their other telecom
12 services being postpaid. And they did this by
13 creating a separate legal entity that is not a
14 subsidiary of Birch but is in a separate corporate
15 family. However, the new legal -- the new legal
16 entity will rely on Birch for all of its billing,
17 customer service, underlying facilities, etcetera.
18 So they will have a very close working relationship,
19 just not technically a subsidiary affiliate
20 relationship.

21 JUDGE RILEY: Anything further from staff?

22 MS. PALMER: The same statement as before,

1 Judge. I just think it's cleaner if we -- that
2 counsel might want to consider withdrawing this
3 petition based on the deficiencies I've already
4 stated and just simply filing when she's got a
5 certificate of authority with the new entity.

6 JUDGE RILEY: Right. Well, that's almost a
7 certainty, because the entity, the new entity, which
8 is going to bear the certificates -- telecom
9 certificates in Illinois, and to get the ETC
10 designation is totally separate and apart from the
11 one who has applied here.

12 MS. COLLINS: Correct. Correct.

13 JUDGE RILEY: So the procedure would be to
14 withdraw the present petition for ETC designation of
15 Birch Telecom doing business as Birch Communications
16 and then to re-file with the new entity, and the new
17 entity would have to have its own certificates and
18 its own ETC designation.

19 MS. COLLINS: And that's fine. I just --
20 that's why I wanted to discuss it with you, the best
21 way you thought to proceed. Some states had wanted
22 us just to amend the existing application instead of

1 re-filing, but whatever works best for your Honor is
2 fine with us.

3 JUDGE RILEY: My only concern is with an
4 amendment is that it's distinctly possible that
5 whatever is in this application or is in the current
6 petition will not apply to the new entity. We don't
7 know that one way or the other. So I would rather
8 that they applied themselves, filed a new petition
9 themselves with its own -- with their information
10 unique to them. And that way there's no guesswork.

11 MS. COLLINS: That makes sense. My only
12 concern is timing wise. Do you have any estimate as
13 to how long the certification process is currently
14 taking?

15 JUDGE RILEY: Well, the certification -- they
16 generally don't take very long. There are very
17 rarely any issues in a certification case. Now, I
18 can't say they won't arise, but they are rare. And
19 once an application is received or a petition is
20 received for a telecom certificate, it's generally
21 set for hearing within 30 days. And they're very
22 rarely involved so that they do get to the

1 commission, generally, within a couple of weeks. So
2 I think that it's fair to estimate one could be done
3 as quickly as six weeks after the time the
4 application is filed, maybe even sooner.

5 MS. COLLINS: Okay.

6 JUDGE RILEY: But, again, that's -- that's
7 assuming that there are no issues and that --

8 MS. COLLINS: So would it be acceptable to
9 staff if we filed the certification application and
10 then re-filed the ETC but knowing that it would only
11 be kept in a status mode until the authority was
12 granted?

13 JUDGE RILEY: My attitude would be that you
14 could file an application for a certificate and a
15 petition for an ETC designation concurrently. But
16 there wouldn't be any positive or substantive action
17 on the ETC until the certificates were granted, until
18 the telecom certificates were granted.

19 MS. COLLINS: That makes sense.

20 JUDGE RILEY: But there's nothing preventing
21 the new entity from filing a petition for an ETC
22 designation prior to the time it actually receives

1 the certificates, and that could be made clear on the
2 record.

3 MS. PALMER: And in the petition.

4 JUDGE RILEY: Right. Right. That could be
5 stated in the petition and could be reaffirmed on the
6 record. But that is -- I think staff counsel is on
7 point. That would be the much preferred way to go.

8 MS. COLLINS: Then that is what we will do.

9 JUDGE RILEY: Right. And also what we need,
10 then, is just a verified statement withdrawing the
11 current petition for ETC designation. And once
12 that's received, I'll forward a memo to the
13 commission and to have this docket closed. And in
14 the meantime, you can get the petitions for telecom
15 certificates and ETC designation ready. And like I
16 said, they can be filed concurrently.

17 MS. COLLINS: Okay.

18 I will plan to file that within the
19 next day.

20 JUDGE RILEY: All right.

21 That sounds -- that sounds good. And
22 is there anything else?

1 MS. PALMER: No, Judge.

2 JUDGE RILEY: All right.

3 Then we look forward to hearing from
4 you.

5 MS. COLLINS: Thank you.

6 MS. PALMER: Thank you, Judge.

7 JUDGE RILEY: Then I'll continue this matter
8 generally, and I'll -- as soon as I receive the
9 notice of withdrawal from counsel, then I'll close
10 the record.

11 All right. Thank you very much.

12 MS. PALMER: Thank you, Judge.

13 MS. COLLINS: Thank you.

14 JUDGE RILEY: Take care.

15 MS. COLLINS: Bye-bye.

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17 (WHEREUPON, the proceedings have
18 been continued sine die.)

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