

**Docket No. 13-0448**

**ICC Staff Ex. 1.0**

**Direct Testimony of Dr. Qin Liu**

**ICC Staff Ex. 1.08a (Tempo Response to DR-1.09)**

**ICC Staff Ex. 1.08b (Tempo Exhibit 1.09-3)**

**Tempo Telecom, LLC**  
**Responses to Staff Data Requests 1.01 through 1.26**  
**Docket No. 13-0448**

ICC Docket No. 13-0448  
Staff Ex. 1.08a

**Staff Data Request 1.09:**

In its Petition, Tempo states that “Birch has not been subject to an abnormal number of enforcement proceedings.”

A. Please identify each and every enforcement proceeding or action to which Birch has been subject for the period beginning January 2008 and ending September 2013.

B. For each such enforcement proceeding or action identified in (A), please provide all documentations pertaining to the enforcement proceeding or enforcement action.

**Tempo Response to Staff Data Request 1.09:**

“Birch” as defined in the Petition refers to Birch Telecom of the Great Lakes, Inc. (*see* Petition at 2). Birch Telecom of the Great Lakes, Inc. has not been subject to any enforcement proceeding or action for the period beginning January 2008 and ending September 2013. In the interest of full disclosure, Tempo provides the following information regarding the Birch family of companies for the period beginning January 2008 and ending September 2013:

(1) In 2009, Birch Telecom of the West, Inc. d/b/a Birch Communications (“Birch West”) entered into a settlement agreement with staff of the California Public Utilities Commission (“PUC”) based on allegations that Birch West did not provide a complete initial application to the California PUC when seeking authority to operate in the state because it allegedly did not include complete information regarding its predecessor’s previous bankruptcy proceedings. Birch West contested these allegations, and ultimately settled with the California PUC in order to obtain a certificate to provide telecommunications services in the state. Birch West currently holds authority to provide telecommunications services in the state of California. A copy of the order is attached as Exhibit 1.09-1.

(2) Since June 2009, the Birch family of companies have received approximately 21 unfavorable decisions from the Federal Communications Commission (“FCC”) with respect to slamming matters. For the most part, these decisions fall into two categories. Copies of these 21 decisions are attached as Exhibit 1.09-2.

In the first category, approximately 16 of the decisions resulted in findings against a Birch entity based on technical violations of the FCC’s slamming requirements. In each case, the Birch entity provided a recording of its third-party verification (“TPV”) to the FCC to demonstrate the customer’s acquiescence to the change in carrier and the Birch entity’s compliance with state and federal carrier change requirements. In these cases, the FCC determined that the TPV did not adequately specify each of the services to be switched (local, toll, long distance) or each of the telephone numbers to be switched, or did not specifically confirm the customer was authorized to make a carrier change. These are technical violations of the TPV rules, and do not evince any deliberate wrongdoing on the part of the Birch entity or any intention of the Birch entity to execute an unauthorized switch in provider. In response to these FCC decisions, the TPV script has been revised to address these technicalities. Three of the 16 decisions related to customers located in Illinois that were served by Birch Telecom of the Great Lakes, Inc.

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ICC Docket No. 13-0448  
Staff Ex. 1.08a

In the second category, approximately 4 of the decisions resulted in findings against a Birch entity based on actions taken by the customer's previous carrier, which then transferred to the Birch entity when the entity acquired that carrier's customer base. In some of these cases, the previous carrier did not have proper authority to serve the customer, but the customer was then transferred to the Birch entity based on information provided by the selling carrier. In other cases, the customer's telephone number was mistakenly included on the selling carrier's list of customers to be transferred to the Birch entity. Again, there was no deliberate wrongdoing on the part of the Birch entity to execute an unauthorized switch in provider.

In the last decision, the FCC claims the Birch entity did not respond to the original complaint mailed on November 7, 2012, and thus found against the Birch entity. The Birch entity, however, had responded to the complaint in a timely manner, and has written correspondence confirming its response.

**Author of Tempo Response to Staff Data Request 1.09:**

Name: Sharyl Fowler  
Job Title: Manager - Legal & Regulatory  
Phone Number: 478-476-1165

**Date of Tempo Response to Staff Data Request 1.09:**

October 15, 2013

FCC Slamming Orders for Birch Family of Companies issued since June 2009

	Informal Complaint No.	Date Complaint Filed	FCC Order No.	Order Release Date	Determination	Company	Exhibit
1	10-S0297648	3/17/2010	DA 10-1390	7/29/2010	Granted	MO - Birch Telecom of Missouri, Inc. dba Birch Communications	Exhibit 1.09-2
2	10-S0297733	1/12/2010	DA 10-1820	9/28/2010	Granted	MO - Birch Telecom of Missouri, Inc. dba Birch Communications	Exhibit 1.09-4***
3	11-S003280	11/29/2011	DA 13-698	4/12/2013	Granted	GA - Birch Telecom of the South, Inc. dba Birch Communications	Exhibit 1.09-2
4	12-S3353064	3/12/2012	DA 13-698	4/12/2013	Granted	GA - Birch Telecom of the South, Inc. dba Birch Communications	Exhibit 1.09-2
5	12-S3410031	5/30/2012	DA 13-698	4/12/2013	Granted	IL - Birch Telecom of the Great Lakes, Inc. dba Birch Telecom	Exhibit 1.09-2
6	10-S0297943	5/4/2010	DA 13-994	5/3/2013	Granted	MO - Birch Telecom of Missouri, Inc. dba Birch Communications	Exhibit 1.09-2
7	10-S0297983	5/3/2010	DA 13-994	5/3/2013	Granted	IL - Birch Telecom of the Great Lakes, Inc. dba Birch Communications	Exhibit 1.09-2
8	11-S003149	5/16/2011	DA 13-1064	5/10/2013	Granted	MO - Birch Telecom of Missouri, Inc. dba Birch Communications	Exhibit 1.09-2
9	11-S003266	11/18/2011	DA 13-1064	5/10/2013	Granted	GA - Birch Telecom of the South, Inc. dba Birch Communications	Exhibit 1.09-2
10	11-S3259711	10/21/2011	DA 13-1131	5/17/2013	Granted	FL - Birch Telecom of the South, Inc. dba Birch Communications	Exhibit 1.09-2
11	11-S3272136	11/14/2011	DA 13-1258	5/30/2013	Granted	PA - Birch Communiations, Inc.	Exhibit 1.09-2
12	11-S2956074	1/31/2011	DA 13-1292	5/31/2013	Granted	VA - Birch Communications of Virginia, Inc. dba Birch Communications	Exhibit 1.09-2
13	11-S3259205**	10/17/2011	DA 13-1296	5/31/2013	Denied	VA - Birch Communications of Virginia, Inc. dba Birch Communications	Exhibit 1.09-2
14	12-S3353064*	3/12/2012*	DA 13-1501	7/2/2013	Granted	GA - Birch Telecom of the South, Inc. dba Birch Communications	Not provided
15	12-S3410031*	5/30/2012*	DA 13-1501	7/2/2013	Granted	IL - Birch Telecom of the Great Lakes, Inc. dba Birch Communications	Not provided
16	12-S3507721	10/31/2012	DA 13-1621	7/24/2013	Granted	FL - Birch Telecom of the South, Inc. dba Birch Communications	Exhibit 1.09-2
17	12-S3323965	1/30/2012	DA 13-1645	7/26/2013	Granted	PA - Birch Communiations, Inc.	Exhibit 1.09-2
18	12-S3324893**	2/6/2012	DA 13-1670	7/31/2013	Resolved	FL - Birch Telecom of the South, Inc. dba Birch Communications	Not provided
19	12-S003521	10/25/2012	DA 13-1716	8/8/2013	Granted	MO - Birch Telecom of Missouri, Inc. dba Birch Communications	Exhibit 1.09-2
20	12-S3453763	8/22/2012	DA 13-1716	8/8/2013	Granted	GA - Birch Telecom of the South, Inc. dba Birch Communications	Exhibit 1.09-2
21	12-S3354933	3/19/2012	DA 13-1827	8/28/2013	Granted	GA - Birch Telecom of the South, Inc. dba Birch Communications	Exhibit 1.09-2
22	12-S3382328	4/30/2012	DA 13-1827	8/28/2013	Granted	IL - Birch Telecom of the Great Lakes, Inc. dba Birch Communications	Exhibit 1.09-2
23	12-S3345240	3/5/2012	DA 13-1889	9/13/2013	Granted	GA - Birch Telecom of the South, Inc. dba Birch Communications	Exhibit 1.09-2

\* Complaints are duplicates that the FCC addressed in DA 13-698.

\*\* No liability found

\*\*\* Response to second data requests