



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION
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MEMORANDUM

TO: The Chair and Commissioners

FROM: Lisa B. Driggins, Public Utilities Analyst

DATE: January 22, 2018

SUBJECT: IN THE MATTER OF THE APPLICATION OF BIRCH COMMUNICATIONS, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE TELECOMMUNICATIONS SERVICES IN THE STATE OF DELAWARE (FILED NOVEMBER 29, 2017) - PSC DOCKET NO. 17-1171

Background

On November 29, 2017, Birch Communications, Inc. (“Birch” or the “Company”) filed an application (the “Application”) with the Delaware Public Service Commission (“Commission”) for a Certificate of Public Convenience and Necessity (“CPCN”) for approval to provide competitive local exchange and intrastate long distance telecommunications services throughout the State of Delaware. The Delaware Public Service Commission Staff (“Staff”) has reviewed the Application to determine its compliance with Delaware Law and the Rules and Regulations promulgated in 26 *Del. Admin. C.* § 4001.

Application

The Company’s original filing was submitted on November 29, 2017, but the submitted Application did not meet the minimum filing requirements (“MFR’s”). Staff requested the Company file the following additional documentation: (a) proof of publication of the public notice in at least one (1) newspaper of general circulation; (b) a copy of the Delaware Business License; and (c) a signed, sworn verification for any subsequent filings in support of the Application.

Applicant asserts that it will secure an interconnection agreement as necessary to provide the proposed services detailed in its Application. Staff has informed the Company that before starting any business in the state, the Applicant will be required to file an interconnection agreement with the Commission. Birch confirmed its understanding of such Commission Approval.

Financial, Operational, Managerial and Technical Ability

To demonstrate its financial capability, Birch provided to Staff confidential and redacted public versions of verified consolidated financial statements for 12-month periods ending December 31, 2015 and December 31, 2016.

The Company anticipates serving customers in the State of Delaware by providing facilities-based and resold local exchange and intrastate long distance telecommunications services. The Company will utilize a mix of its own facilities, unbundles network elements (“UNEs”) or UNE-replacement services for incumbent local exchange carriers (“ILECs”), and other ILEC-provided services to provide local exchange and intrastate long-distance services in Delaware. Birch has offered telecommunications services for more than 20 years. The Company is currently transacting business as a telecommunications carrier in the 9-state BellSouth region (Alabama, Georgia, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee), Arkansas, New Jersey, and Pennsylvania. The Company is in the process of seeking telecommunications authority in approximately 20 other states. Birch and its affiliates are authorized to provide local exchange and/or intrastate long-distance services in all 50 states and the District of Columbia.

To demonstrate its technical and operational capabilities, Birch provided Staff with detailed management biographies the Company’s senior management and directors, along with a description of the Company’s technical expertise.

Pursuant to 26 *Del. Admin. C.* § 4001-4.3, public notice of the Application was published in the News Journal newspaper on December 20, 2018. Staff reports that it received no formal comments or objections to the Company’s Application.

Tariff

Because the Company is not proposing to provide switched access services in Delaware, it is not required to provide an initial tariff or price list.

Waiver

As part of its Application, the Company requested a waiver of the provisions of 26 *Del. C.* § 208(b) so that it may maintain its books and records relating to its Delaware operations outside of the State of Delaware. Staff believes that the waiver request to maintain the Company’s books and records outside of Delaware is reasonable and recommends that the Commission grant the waiver.

Staff Recommendation

Based on Staff’s review and analysis, the Company has shown that it has the financial, operational, and technical means to provide facilities-based and resale local exchange and intrastate long-distance telecommunications services in Delaware. Therefore, Staff recommends that the Commission grant Birch a CPCN to provide facilities-based and resale local exchange and intrastate long-distance telecommunications services in the State of Delaware.