

**CAHILL GORDON & REINDEL LLP**

SUITE 950

1990 K STREET, N.W.

WASHINGTON, D.C. 20006

EIGHTY PINE STREET  
NEW YORK, N.Y. 10005-1702  
(212) 701-3000  
FAX: (212) 269-5420

TELEPHONE (202) 862-8900  
FACSIMILE (202) 862-8958

AUGUSTINE HOUSE  
6A AUSTIN FRIARS  
LONDON, ENGLAND EC2N 2HA  
(011) 44 20.7920 9800  
FAX: (011) 44.20.7920.9825

ANGELA F. COLLINS | 202-862-8900

| acollins@cgrdc.com

September 29, 2010

**Via Federal Express**

Ms. Sharla Dillon  
Docket Room Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

**Re: Docket 10-00190 – Response to Data Request No. 1  
Joint Application of Birch Telecom of the South, Inc. dba Birch  
Communications and American Fiber Network, Inc. for Approval to  
Transfer Assets and Customers of American Fiber Network, Inc. to Birch  
Telecom of the South, Inc. dba Birch Communications**

Dear Ms. Dillon:

Birch Telecom of the South, Inc. dba Birch Communications (“Birch” or “Purchaser”) and American Fiber Network, Inc. (“AFN” or “Seller”) (Birch and AFN collectively, the “Applicants”), hereby submit the following response Data Request No. 1 regarding the Joint Application for Approval to Transfer Assets and Customers (“*Joint Application*”) filed with the Tennessee Regulatory Authority (“Authority”) in the above-referenced docket.

**1. Provide the status of the FCC’s review of the transaction described in the *Joint Application* along with the associated document number.**

The Applicants filed their request for approval of the transfer of substantially all of AFN’s telecommunications assets and customer base to Birch (the “Transaction”) with the FCC on September 22, 2010 (international) and September 23, 2010 (domestic).<sup>1</sup> The FCC’s Wireline Competition and International Bureaus have just begun their review of the FCC Application. The FCC Application can be found in WC Docket No. 10-197 and IB File Nos. ITC-ASG-20100922-00371 and ITC-ASG-20100922-00372.

<sup>1</sup> *Application of Birch Communications, Inc., Birch Telecom, Inc., American Fiber Network, Inc., and CloseCall America, Inc. for Consent to Assign Assets and/or Transfer Control of Assets pursuant to Section 214 of the Communications Act of 1934, as Amended*, WC Docket No. 10-197 (filed Sept. 23, 2010); IB File Nos. ITC-ASG-20100922-00371 and ITC-ASG-20100922-00372 (filed Sept. 22, 2010) (collectively, the “FCC Application”).

2. **Provide a copy of the self-certification letter filed with the FCC in CC Docket No. 00-257 regarding transfer of customers.**

A copy of the self-certification letter filed by the Applicants with the FCC in CC Docket No. 00-257 is attached as **Exhibit A**.

3. **Provide current organizational charts of Birch Telecom of the South, Inc. d/b/a Birch Communications and American Fiber Network, Inc. before and after the proposed transaction described in the *Joint Application*.**

As explained in the *Joint Application*, the ownership structure of Birch will not be affected by the Transaction. Further, the proposed Transaction will not affect the ownership structure of AFN. A current copy of Birch's organizational chart can be found in Docket 10-00124 in which the Authority reviewed and approved Birch's current organizational structure.

4. **Please discuss the implications of the transaction described in the *Joint Application* on the public interest of Tennessee consumers.**

The proposed Transaction not have any negative implications on the public interest of Tennessee consumers. As explained in the *Joint Application*, the Transaction will be transparent to Tennessee consumers, and following the Transaction, AFN's Tennessee customers will continue to receive the same high-quality service under the same rates, terms, and conditions. Tennessee consumers will continue to receive the same service previously enjoyed and likely enhanced over time due to the benefits flowing from the Transaction. Further, the proposed Transaction will allow the Birch to benefit from increased economies of scale that will permit it to operate more efficiently, realize substantial financial synergies, and enhance its financial position. The proposed Transaction ultimately serves the public interest because it will strengthen Birch's ability to both compete in the market for telecommunications services in Tennessee and to introduce innovative products and services to consumers.

If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



Angela F. Collins

Counsel for Birch Telecom of the South,  
Inc. d/b/a Birch Communications

cc: Jerry Kettles (via electronic mail)  
Carlos Black (via electronic mail)  
Christopher Bunce, Birch  
Robert Heath, AFN

Attachments

**EXHIBIT A**

**FCC Self-Certification Letter**

**CAHILL GORDON & REINDEL LLP**

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1990 K STREET, N.W.

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(011) 44.20.7920.9800  
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September 28, 2010

**Via ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: CC Docket No. 00-257 – Birch Communications, Inc., American Fiber Network, Inc., and CloseCall America, Inc. Notification Pursuant to 47 C.F.R. § 64.1120**

Dear Secretary Dortch:

Birch Communications, Inc. (“BCI”), on behalf of itself and the subsidiaries noted below (collectively, “Birch”), American Fiber Network, Inc. (“AFN”), on behalf of itself and its subsidiary American Fiber Network of Virginia, Inc. (collectively, “AFN”), and CloseCall America, Inc., on behalf of itself and its subsidiary CloseCall America, Inc. of Virginia (collectively, “CCA”) (Birch, AFN, and CCA collectively, the “Applicants”), hereby notify the Federal Communications Commission (“Commission”) pursuant to 47 C.F.R. § 64.1120(e)(1) of the pending transfer of certain CCA and AFN customers to Birch.

**Parties to the Transaction:** The Applicants filed a request for approval of the transfer of certain CCA and AFN assets, including customers of CCA and AFN, to Birch on September 23, 2010.<sup>1</sup> The following entities are involved in this transaction:

American Fiber Network, Inc.  
American Fiber Network of Virginia, Inc.

CloseCall America, Inc.  
CloseCall America, Inc. of Virginia

Birch Communications, Inc.  
Birch Communications of the Northeast, Inc. dba Birch Communications  
Birch Communications of Virginia, Inc. dba Birch Communications

<sup>1</sup> *Application of Birch Communications, Inc., Birch Telecom, Inc., American Fiber Network, Inc., and CloseCall America, Inc. for Consent to Assign Assets and/or Transfer Control of Assets pursuant to Section 214 of the Communications Act of 1934, as Amended* (filed Sept. 23, 2010); ITC-214-19990908-00561 (filed Sept. 22, 2010).

Birch Telecom of the South, Inc. dba Birch Communications  
Birch Telecom of the West, Inc. dba Birch Communications  
Birch Telecom of the Great Lakes, Inc. dba Birch Communications  
Birch Telecom of Missouri, Inc. dba Birch Communications  
Birch Telecom of Oklahoma, Inc. dba Birch Communications  
Birch Telecom of Texas LTD LLP dba Birch Communications  
Birch Telecom of Kansas, Inc. dba Birch Communications  
Ionex Communications, Inc. dba Birch Communications  
Ionex Communications South, Inc. dba Birch Communications  
Ionex Communications North, Inc. dba Birch Communications

**Type of Telecommunications Services Provided to Affected Subscribers:** AFN provides interstate and international telecommunications services to its subscribers, and CCA provides domestic interstate telecommunications services to its subscribers. The customer transfer involves customers currently receiving AFN and CCA services in the following states: Alabama, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin.

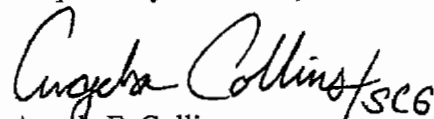
**Planned Date of Transfer:** CCA and AFN subscribers will be transferred on or after December 1, 2010, subject to the Applicants receiving all necessary regulatory approvals.

**Certification of Compliance:** Birch hereby certifies that it will comply with the requirement to provide advance notice to affected CCA and AFN subscribers in accordance with 47 C.F.R. § 64.1120(e)(3), with the obligations specified in that notice as applicable, and with the other statutory and Commission requirements that apply to this streamlined process. Please see the attached verification.

**Copy of Notice To Be Sent to Affected Subscribers:** Drafts of the notices to be sent to affected subscribers are attached. Please note that there are specific customer notice drafts for use in the states of Massachusetts, Missouri, New Jersey, New York, and Tennessee that comply with 47 C.F.R. § 64.1120 and applicable customer notice requirements in those states. Customers in all other states will receive the same notice in compliance with 47 C.F.R. § 64.1120.

If you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

A handwritten signature in cursive script that reads "Angela Collins/sec".

Angela F. Collins  
Counsel for Birch Communications, Inc.

Attachments

**Verification**

I, Christopher J. Bunce, Vice President, Legal, General Counsel and Secretary of Birch Communications, Inc., Birch Telecom, Inc., and their subsidiaries hereby certify under penalty of perjury that the statements in the foregoing filing are true, complete, and correct to the best of my knowledge and belief.

Date:

9/28/2010



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Christopher J. Bunce  
Vice President, Legal, General Counsel and Secretary

**ATTACHMENT**

**Draft Customer Notices**



**IMPORTANT NOTICE**  
**REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES**

Dear \_\_\_\_\_

Birch Communications ("Birch") and CloseCall America, Inc. ("CCA") are pleased to announce that Birch will acquire CCA's local and long distance telephone customers. Subject to approval by the Federal Communications Commission and state regulators, Birch will replace CCA as your current telecommunications service provider on or after **[30 DAYS]** (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all services previously provided to you by CCA. Birch is excited about the opportunity to provide your telecommunications service(s) and looks forward to a long and successful business relationship.

Please rest assured, the transition will have little or no impact on your current services, nor will there be any interruption of your service. The agreement between Birch and AFN has been structured so that the transfer of service will be virtually seamless other than the possibility of a minor change to your voice mail service for which you will receive additional information.<sup>1</sup> There may be instances, however, where there are service or rate structure dissimilarities that Birch cannot accommodate with its existing systems (e.g., customers currently utilizing a message or measured local service plan). In those cases, Birch will transition you in a neutral manner and **with no increase to your regular monthly recurring charges**. You will retain all other service rates, features, terms, and conditions of service and your telephone phone number. You will not incur any charges for the transfer of services to Birch and **no action is required from you to continue your telecommunications service(s) with Birch**. You will receive your first billing statement from Birch starting with your **[INSERT MONTH]** or **[INSERT MONTH]** bill. As in the past, you are responsible for paying all bills rendered to you by CCA during the transition of service.

You do have the right to select a different carrier for the telecommunications service(s) at issue. If you choose to switch to an alternate carrier for services, you may incur a fee for the transfer of services to that alternate carrier. In addition, should you have a term commitment with CCA and you disconnect services or transfer to another carrier prior to the end of that term, you will be liable for any early termination charges.

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<sup>1</sup> It will be necessary for you to reset your password and re-record your message greeting(s). Additionally, saved messages at the time of the transfer will no longer be retained. Birch will provide further details in a follow-up letter.



If you select a local telephone service provider other than Birch, you should also contact your current long distance provider to ensure that your current long distance plan is not changed.

Please note that if you are a customer of CCA on the Transfer Date, your account will automatically be transferred to Birch. Please note that any preferred carrier "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer of your services to another carrier will be over-ridden for purposes of this transaction and will need to be reinstated by you by contacting your local exchange carrier after the transfer is complete.

If you have any questions about this transaction or your service or billing prior to the actual Transfer Date, you should contact CCA at **877-81-CLOSE (25673)**.

If you have any questions regarding this transaction or your service or billing after the actual Transfer Date, you should contact Birch at **888-275-0777**.

**About Birch Communications** - Headquartered in Atlanta, Georgia, Birch Communications is one of the largest competitive local exchange carriers in its 38-state southeast, southwest, midwest and northeast regions serving residential and business customers. Birch was the first in its class to deploy its own private IP network utilizing soft switch technology to deliver innovative, high quality, affordable voice and broadband communications services to small and medium business customers.

CCA thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

CloseCall America, Inc. and  
Birch Communications



**IMPORTANT NOTICE**  
**REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES**

Dear \_\_\_\_\_

Birch Communications ("Birch") and American Fiber Network, Inc. ("AFN") are pleased to announce that Birch will acquire AFN's local and long distance telephone customers. Subject to approval by the Federal Communications Commission and state regulators, Birch will replace AFN as your current telecommunications service provider on or after **[30 DAYS]** (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all services previously provided to you by AFN. Birch is excited about the opportunity to provide your telecommunications service(s) and looks forward to a long and successful business relationship.

Please rest assured, the transition will have little or no impact on your current services, nor will there be any interruption of your service. The agreement between Birch and AFN has been structured so that the transfer of service will be virtually seamless other than the possibility of a minor change to your voice mail service for which you will receive additional information.<sup>1</sup> There may be instances, however, where there are service or rate structure dissimilarities that Birch cannot accommodate with its existing systems (e.g., customers currently utilizing a message or measured local service plan). In those cases, Birch will transition you in a neutral manner and **with no increase to your regular monthly recurring charges**. You will retain all other service rates, features, terms, and conditions of service and your telephone phone number. You will not incur any charges for the transfer of services to Birch and **no action is required from you to continue your telecommunications service(s) with Birch**. You will receive your first billing statement from Birch starting with your **[INSERT MONTH]** or **[INSERT MONTH]** bill. As in the past, you are responsible for paying all bills rendered to you by AFN during the transition of service.

You do have the right to select a different carrier for the telecommunications service(s) at issue. If you choose to switch to an alternate carrier for services, you may incur a fee for the transfer of services to that alternate carrier. In addition, should you have a term commitment with AFN and you disconnect services or transfer to another carrier prior to the end of that term, you will be liable for any early termination charges.

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If you select a local telephone service provider other than Birch, you should also contact your current long distance provider to ensure that your current long distance plan is not changed.

Please note that if you are a customer of AFN on the Transfer Date, your account will automatically be transferred to Birch. Please note that any preferred carrier "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer of your services to another carrier will be over-ridden for purposes of this transaction and will need to be reinstated by you by contacting your local exchange carrier after the transfer is complete.

If you have any questions about this transaction or your service or billing prior to the actual Transfer Date, you should contact AFN at **800-864-0583**.

If you have any questions regarding this transaction or your service or billing after the actual Transfer Date, you should contact Birch at **888-275-0777**.

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AFN thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

American Fiber Network, Inc. and  
Birch Communications



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You do have the right to select a different carrier for the telecommunications service(s) at issue. If you choose to switch to an alternate carrier for services, you may incur a fee from the alternate carrier for the transfer of services to that alternate carrier.

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In addition, should you have a term commitment with AFN and you disconnect services or transfer to another carrier prior to the end of that term, you will be liable for any early termination charges. If you select a local telephone service provider other than Birch, you should also contact your current long distance provider to ensure that your current long distance plan is not changed.

Please note that if you are a customer of AFN on the Transfer Date, your account will automatically be transferred to Birch. Please note that any preferred carrier "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer of your services to another carrier will be over-ridden for purposes of this transaction and will need to be reinstated by you by contacting your local exchange carrier after the transfer is complete.

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AFN thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

American Fiber Network, Inc. and  
Birch Communications



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Please rest assured, the transition will have little or no impact on your current services, nor will there be any interruption of your service. The agreement between Birch and AFN has been structured so that the transfer of service will be virtually seamless other than a minor change to your voice mail service.<sup>1</sup> There may be instances, however, where there are service or rate structure dissimilarities that Birch cannot accommodate with its existing systems (e.g., customers currently utilizing a message or measured local service plan). In those cases, Birch will transition you in a neutral manner and **with no increase to your regular monthly recurring charges**. You will retain all other service rates, features, terms, and conditions of service and your telephone phone number. You will not incur any charges for the transfer of services to Birch and **no action is required from you to continue your telecommunications service(s) with Birch**. You will receive your first billing statement from Birch starting with your **[INSERT MONTH]** or **[INSERT MONTH]** bill. As in the past, you are responsible for paying all bills rendered to you by AFN during the transition of service.

You do have the right to select a different carrier for the telecommunications service(s) at issue. A listing of other carriers providing service in the area is located on the Missouri Public Service Commission's website. If you do not wish to receive service from Birch, you should select and contact an alternate carrier directly to arrange to transfer your service before **[30 DAYS]**. If you choose to switch to an alternate carrier for services, you may incur a fee for the transfer of services to that alternate carrier. In

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Please note that if you are a customer of AFN on the Transfer Date, your account will automatically be transferred to Birch. Please note that any preferred carrier "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer of your services to another carrier will be over-ridden for purposes of this transaction and will need to be reinstated by you by contacting your local exchange carrier after the transfer is complete.

Please be aware that your customer proprietary network information ("CPNI")<sup>2</sup> will be transferred to Birch as part of this transaction, including any opt-in or opt-out authorization you've previously provided to CCA for use of your CPNI. At this time, however, Birch does not use or disclose CPNI for marketing purposes.

If you have any questions about this transaction or your service or billing prior to the actual Transfer Date, you should contact AFN at **800-864-0583**.

If you have any questions regarding this transaction or your service or billing after the actual Transfer Date, you should contact Birch at **888-275-0777**.

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AFN thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

American Fiber Network, Inc. and  
Birch Communications

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<sup>2</sup> CPNI includes information regarding the configuration, type, destination, location, and amount of telecommunications services you purchase.



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If you have any questions about this transaction or your service or billing prior to the actual Transfer Date, you should contact CCA at **877-81-CLOSE (25673)**.

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CCA thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

CloseCall America. Inc. and  
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<sup>2</sup> CPNI includes information regarding the configuration, type, destination, location, and amount of telecommunications services you purchase.



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If you have any questions about this transaction or your service or billing prior to the actual Transfer Date, you should contact AFN at **800-864-0583**.

If you have any questions regarding this transaction or your service or billing after the actual Transfer Date, you should contact Birch at **888-275-0777**.<sup>2</sup>

AFN thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

American Fiber Network, Inc. and  
Birch Communications, Inc.

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<sup>2</sup> About Birch Communications - Headquartered in Atlanta, Georgia, Birch Communications is one of the largest competitive local exchange carriers in its 38-state southeast, southwest, midwest and northeast regions serving residential and business customers. Birch was the first in its class to deploy its own private IP network utilizing soft switch technology to deliver innovative, high quality, affordable voice and broadband communications services to small and medium business customers.



**IMPORTANT NOTICE**  
**REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES**

Dear \_\_\_\_\_

Birch Communications ("Birch") and CloseCall America, Inc. ("CCA") are pleased to announce that Birch will acquire CCA's local and long distance telephone customers. Subject to approval by the Federal Communications Commission and state regulators, Birch will replace CCA as your current telecommunications service provider on or after **[60 DAYS]** (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all services previously provided to you by CCA. Birch is excited about the opportunity to provide your telecommunications service(s) and looks forward to a long and successful business relationship.

Please rest assured, the transition will have little or no impact on your current services, nor will there be any interruption of your service. The agreement between Birch and AFN has been structured so that the transfer of service will be virtually seamless other than the possibility of a minor change to your voice mail service for which you will receive additional information.<sup>1</sup> There may be instances, however, where there are service or rate structure dissimilarities that Birch cannot accommodate with its existing systems (e.g., customers currently utilizing a message or measured local service plan). In those cases, Birch will transition you in a neutral manner and **with no increase to your regular monthly recurring charges**. You will retain all other service rates, features, terms, and conditions of service and your telephone phone number. You will not incur any charges for the transfer of services to Birch and **no action is required from you to continue your telecommunications service(s) with Birch**. You will receive your first billing statement from Birch starting with your **[INSERT MONTH]** or **[INSERT MONTH]** bill. As in the past, you are responsible for paying all bills rendered to you by CCA during the transition of service.

You do have the right to select a different carrier for the telecommunications service(s) at issue. If you do not wish to receive service from Birch, you should select and contact an alternate carrier directly to arrange to transfer your service before **[30 DAYS]**. If you choose to switch to an alternate carrier for services, you may incur a fee for the transfer of services to that alternate carrier. In addition, should you have a term

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If you have any questions about this transaction or your service or billing prior to the actual Transfer Date, you should contact CCA at **877-81-CLOSE (25673)**.

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