

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 100399-TP

REQUEST FOR EXPEDITED WAIVER OF
CARRIER SELECTION REQUIREMENTS OF
RULE 25-4.118, FAC, DUE TO TRANSFER
OF ALL ASSETS AND CUSTOMERS FROM
AMERICAN FIBER NETWORK, INC. AND
CLOSECALL AMERICA, INC. TO BIRCH
TELECOM OF THE SOUTH, INC. D/B/A
BIRCH TELECOM D/B/A BIRCH
COMMUNICATIONS AND BIRCH
COMMUNICATIONS, INC.



PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 7

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, October 26, 2010

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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P R O C E E D I N G S

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3 **CHAIRMAN GRAHAM:** Item 7. Did you guys ever
4 play musical chairs when you were a kid? Wait for the
5 music to stop.

6 Ms. Watts, it looks like you're introducing
7 this one.

8 **MS. WATTS:** Yes. Melinda Watts for Commission
9 Staff.

10 And, Commissioners, Item 7 is Staff's
11 recommendation in Docket Number 100399-TP, on the
12 request for waiver of the carrier selection requirements
13 of Rule 25-4.118, *Florida Administrative Code*, and the
14 transfer of customers from American Fiber Network, Inc.,
15 and CloseCall America, Inc., to Birch Telecom of the
16 South, Inc. And Staff is available if you have any
17 questions.

18 **CHAIRMAN GRAHAM:** Thank you, Ms. Watts.

19 Anything from the Commission? Commissioner
20 Skop.

21 **COMMISSIONER SKOP:** Ms. Watts, with respect to
22 the recommendation, on the caption line I guess it's a
23 request for expedited waiver, but in the remainder of
24 the recommendation it just requests for a waiver. Can
25 Staff elaborate on that a little bit, please?

1 **MS. WATTS:** The title was basically what is,
2 was requested by the Company. That's what they titled
3 their filing. And they do that because they're trying
4 to do this in several states, and some states require
5 that they file these, you know, so they're trying to
6 close their transaction in time in Florida. They are
7 not required to have, to file this at all. They can do
8 it if they like. And they are, you know, they're not
9 under a time crunch with Florida. They can close their
10 transaction without it. So we really don't address the
11 time issue.

12 **COMMISSIONER SKOP:** Okay. Very well. With
13 respect to the acquiring company, which I believe is
14 Birch, that's seeking the waiver so that the customers
15 won't have to provide individual authorizations, what do
16 we know, if anything, about Birch as a company? I
17 noticed on page 4 of the Staff recommendation they
18 indicated that there is no outstanding regulatory
19 assessment fees or penalties, but typically in the past
20 in telecom we've had some problems. I just wanted to
21 seek Staff's input with respect to the proposed waiver
22 of the acquiring company.

23 **MS. WATTS:** I've worked with Birch several
24 times on certain issues. Most often they've approached
25 me for help in going over the wording of their letters

1 of agency to make sure that they comply with our rules,
2 and they've always complied with any suggestions that
3 we've had. And they've applied for waivers in the past
4 and, you know, we've always seemed to have a fairly good
5 working relationship with them.

6 **COMMISSIONER SKOP:** Okay. Very well. And
7 then on page 3 of the Staff recommendation, it says for,
8 if for any reason the transaction -- excuse me. "If for
9 any reason the transaction is not consummated, any
10 waiver approved by the Commission shall be null and
11 void." Is Staff proposing to put that specific
12 provision within the order?

13 **MS. WATTS:** Yes, sir.

14 **COMMISSIONER SKOP:** Okay. Great. Thank you.

15 **CHAIRMAN GRAHAM:** Anything else from the
16 Commission board? Seeing none, can I get a motion?
17 Commissioner Brisé.

18 **COMMISSIONER BRISÉ:** Yes. I'd like to move
19 Staff recommendation.

20 **CHAIRMAN GRAHAM:** It's been moved and --

21 **COMMISSIONER EDGAR:** Second.

22 **CHAIRMAN GRAHAM:** -- seconded by Commissioner
23 Edgar. Any further discussion? Seeing none, all in
24 favor, signify by saying aye.

25 (Unanimous vote.)

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Those opposed. By action, you've approved

Item 7.

(Agenda item concluded.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 1st day of November, 2010.

Linda Boles
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FPSC Official Commission Reporter
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