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STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: February 6, 2018

AT (OFFICE): NHPUC

FROM:  Kath Mullholand, Director, Regulatory Innovation and Strategy

SUBJECT: DT 18-012, Birch Communications, Inc.
Application for Registration to Provide Voice Service

TO: Commissioners
Debra Howland, Executive Director

CC: David Wiesner, Staff Attorney

On November 7, 2017, Birch Communications, Inc. (Birch) filed a T-8: *Application for Registration to Provide Voice Service* with the Commission. The services that Birch proposes to provide in New Hampshire would require authorization pursuant to New Hampshire Code of Administrative Rules Puc 404.02. In the application, Birch reported that it had settled two instances of a “civil, criminal, or regulatory investigation or complaint involving any state or federal consumer protection law or regulation” during the past ten years. However, Birch denied that it had “had any civil, criminal, or regulatory sanctions or penalties imposed pursuant to any state or federal consumer protection law or regulation” during the past ten years.

Subsequent to Birch’s application filing, on November 30, 2017, Birch Communications, Inc., along with BCHI Holdings LLC, Fusion Telecommunications International, Inc., and Network Billing Systems LLC made joint notice of a merger that transfers a controlling interest of Network Billing Systems LLC to BCHI Holdings LLC. Birch Communications, Inc., Fusion Telecommunications International, Inc., and Network Billing Systems LLC are registered with the New Hampshire Secretary of State Corporations Division, and each is in good standing, with the exception of Fusion Telecommunications, which has been under administrative suspension since 2011. This filing was included in DT 18-012 but requires no action by the Commission.

In evaluating Birch’s application for registration to provide voice service, Commission Staff reviewed the Federal Communications Commission (FCC) *Order DA 16-1458: In the Matter of Birch Communications, Inc.* That Order adopted a Consent Decree to resolve complaints against Birch for, among other things, “slamming” and “cramming,” actions which are prohibited by New Hampshire statute as reflected in Puc 405.02 and Puc 405.04. As part of the Consent Decree, Birch must “pay a \$4,200,000 civil penalty” to the FCC.

Pursuant to Puc 404.03(a)(2), the Commission *shall* deny an application for authorization to provide voice service if the applicant[s] “[h]ave, within the 10 years

immediately prior to registration, had any civil, criminal, or regulatory sanctions or penalties imposed against them pursuant to any state or federal consumer protection law or regulation.” Staff considers the \$4,200,000 civil penalty required to be paid by Birch pursuant to the Consent Decree approved by the FCC to be an example of such a sanction or penalty.

In addition, Puc 404.03(a)(1) requires the Commission to deny an application if the applicant[s] have “committed an act that would constitute good cause to find a violation under these rules.” As noted above, the alleged actions by Birch that led to the FCC Consent Decree would represent violations of Puc 405.02 and 405.04.

Based on the foregoing, Staff recommends that the Commission deny Birch’s application for registration to provide voice service in New Hampshire.