

THE STATE OF NEW HAMPSHIRE



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February 7, 2018

Angela F. Collins, Esq.
Cahill Gordon & Reindel, LLP
1990 K. Street, N.W. Suite 950
Washington, DC 20006-1181

Re: DT 18-012, Birch Communications, Inc.
Application for Registration to Provide Voice Service
Denial of Application Pursuant to Puc 404.03(a)

Dear Ms. Collins:

On November 7, 2017, Birch Communications, Inc. (Birch) filed with the Commission a *T-8: Application for Registration to Provide Voice Service*, as the services Birch proposes to provide in New Hampshire require authorization pursuant to N.H. Code Admin. Rules Puc 404.02. In its 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. Birch denied, however, that it "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.

On February 6, 2018, Commission Staff filed a memorandum recommending that Birch's application be denied under Puc 404.03(a)(2), which requires an application for authorization to provide voice service to be denied if the applicant has "within the 10 years immediately prior to registration, had any civil, criminal, or regulatory sanctions or penalties imposed against [it] pursuant to any state or federal consumer protection law or regulation." Staff described its review of the Federal Communications Commission (FCC) *Order DA 16-1458: In the Matter of Birch Communications, Inc.* adopting 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. Staff noted that the Consent Decree required Birch to pay the FCC "a \$4,200,000 civil penalty." Staff concluded that the substantial civil penalty required to be paid by Birch to the FCC is an example of a sanction or penalty based on consumer protection laws or regulations. Staff also noted that Puc 404.03(a)(1) requires denial of an application if the applicant has "committed an act that would constitute good cause to find a violation under these rules," and Staff observed that the alleged actions by Birch that led to the FCC Consent Decree would represent violations of Puc 405.02 and Puc 405.04.

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The Commission has reviewed Birch's application and Staff's recommendation and has determined that the application must be denied under Puc 404.03(a)(1) and (a)(2), for the reasons summarized in Staff's memorandum. Accordingly, Birch's application for registration to provide voice service in New Hampshire is denied.

Pursuant to Puc 404.03(b), Birch may, within 30 days of the date of this letter, file a request for reconsideration of the application denial.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra A. Howland / ael".

Debra A. Howland
Executive Director

cc: Service List/Docket File

SERVICE LIST - EMAIL ADDRESSES- DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 18-012-1 Printed: February 07, 2018

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.