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December 6, 2012

RECEIVED

DEC 07 2012

PUBLIC SERVICE
COMMISSION

Via Federal Express

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Application of Birch Telecom of the South, Inc. dba Birch Communications of the Southeast for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky for the Limited Purpose of Offering Lifeline Service to Qualified Households

Dear Mr. Derouen:

Enclosed please find an original and ten (10) copies of the Application of Birch Telecom of the South, Inc. dba Birch Communications of the Southeast ("Birch") for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky for the Limited Purpose of Offering Lifeline Service to Qualified Households (the "Application"). Please place your file stamp on the extra copy and return to me via the enclosed self-addressed, postage paid envelope.

Please contact me if you have any questions about this submission.

Sincerely,



Angela F. Collins

Counsel for Birch Telecom of the South,
Inc. dba Birch Communications of the
Southeast

Enclosures

RECEIVED

DEC 07 2012

PUBLIC SERVICE
COMMISSION

Before the
KENTUCKY PUBLIC SERVICE COMMISSION

_____)	
In the Matter of)	
Application of Birch Telecom of the South,)	No. _____
Inc. dba Birch Communications of the)	
Southeast for Designation as an Eligible)	
Telecommunications Carrier in the)	
Commonwealth of Kentucky for the Limited)	
Purpose of Offering Lifeline Service to)	
Qualified Households)	
_____)	

APPLICATION OF BIRCH TELECOM OF THE SOUTH, INC. DBA BIRCH COMMUNICATIONS OF THE SOUTHEAST FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE COMMONWEALTH OF KENTUCKY FOR THE LIMITED PURPOSE OF OFFERING LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS

The Application of Birch Telecom of the South, Inc. dba Birch Communications of the Southeast (“Birch”) respectfully shows:

(a) That applicant is engaged in the business of providing communications services and related information technology services in the Commonwealth of Kentucky.

(b) That the post office address of the applicant is 2300 Main Street, Suite 340 Kansas City, MO 64108.

(c) That Birch by its attorneys, and pursuant to Section 214(e)(2)¹ of the Communications Act of 1934, as amended (the “federal Act”) and Section 54.201² of the rules and regulations of the Federal Communications Commission (“FCC”),³ hereby submits this Application for Designation as an Eligible Telecommunications Carrier (“ETC”) by the

¹ 47 U.S.C. § 214(e)(2).

² 47 C.F.R. § 54.201.

³ Birch files this Application in accordance with the rules adopted by the FCC in *Lifeline and Link Up Reform and Modernization; et al.*, 27 FCC Rcd 6656 (2012) (“*Lifeline Reform Order*”) and *Connect America Fund; et al.*, 26 FCC Rcd 17663 (2011) (“*Connect America Fund Order*”).

Kentucky Public Service Commission (the “Commission”),⁴ and seeks ETC designation for Lifeline support only to provide prepaid wireless services under the “NOW Communications” brand name to qualifying Kentucky consumers; it will not seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of providing service to high cost areas.⁵ As demonstrated herein, Birch meets all the statutory and regulatory requirements for designation as an ETC in the Commonwealth of Kentucky:

Birch is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business (“SMB”) customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services. The Birch family of companies currently serves approximately 118,000 customers throughout 38 states.⁶

For numerous years, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T. Birch serves approximately 1200 wireline Lifeline customers at this time. Birch is therefore intimately familiar with the eligibility and verification procedures applicable to Lifeline service offerings.

⁴ This Application is submitted in accordance with the Commission’s recent revisions to its ETC designation requirements promulgated by Kentucky Public Service Commission Administrative Case No. 2012-00146, *Lifeline Reform*, Order (May 1, 2012) (“*KPSC Lifeline Order*”).

⁵ Given that Birch only seeks Lifeline support and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to Birch.

⁶ Specifically, the Birch family of companies offers service in the following states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming.

Birch now seeks to build on its existing expertise to provide prepaid wireless services to eligible Lifeline customers. Birch currently provides services using its state-of-the-art, feature rich IP-based network, and relies on resold services as needed to supplement its network. For purposes of providing its prepaid wireless Lifeline product, Birch will resell the wireless services of Sprint, which provides wholesale capacity to many wireless resellers. Like several other prepaid wireless providers that have received ETC designation, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”).

Birch is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305 and 2300 Main Street, Suite 340, Kansas City, MO 64108.

Pleadings, orders, notices and other papers filed or serviced in this matter should be serviced upon:

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Pursuant to 807 KAR 5:001.8(3), Birch has attached a certified copy of its articles of incorporation, and all amendments thereto, as **Exhibit 3**.

I. BIRCH MEETS THE REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 214(e) OF THE FEDERAL ACT AND SECTION 54.201(d) OF THE FCC’S RULES

Under Section 214(e)(1) of the federal Act and Section 54.201(d) of the FCC’s rules, a common carrier⁷ may be designated as an ETC if it (1) offers the services supported by federal

⁷ Birch is a common carrier by virtue of its current provision of CLEC and IXC services, and will be a common carrier by virtue of its provision of wireless services. See 47 U.S.C. § 332(c)(1)(A) (an entity providing

universal service as determined by the FCC, (2) offers such services using its own facilities or a combination of its own facilities and resale of another carrier's services; and (3) advertises the availability of such services and the relevant charges using media of general distribution.⁸ As set forth below, Birch meets these requirements.

A. Birch Will Offer the Services Supported by Federal Universal Service

Pursuant to Section 54.101(a) of the FCC's rules, as modified by the *Lifeline Reform Order*, carriers seeking ETC designation must provide voice telephony services.⁹ Specifically, eligible Lifeline telephony services must provide voice grade access to the public switched telephone network ("PSTN") or its functional equivalent, minutes of use for local service provided at no additional charge, access to emergency 911 and enhanced 911 service in locations where implemented, and toll limitation at no charge (subject to certain requirements and limitations).¹⁰ Birch certifies that its prepaid wireless Lifeline service offering satisfies the FCC's definition of voice telephony service, and it will therefore provide all services designated for support by the FCC.

Birch's prepaid wireless Lifeline service offering will provide voice grade access to the PSTN through its provision of resold wireless services from Sprint. As described below, Birch's prepaid wireless Lifeline service offering will provide 250 minutes of use to eligible consumers at no additional charge. In addition, as explained below, Birch's prepaid wireless Lifeline service offering will provide consumers with access to 911 and enhanced 911 to the extent local governments have implemented such services. Although Birch understands it has an

commercial mobile services is deemed to be a common carrier); *see also* 47 U.S.C. § 332(d)(1) (defining "commercial mobile service" to be any mobile service that is provided for profit and makes interconnected service available to the public).

⁸ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

⁹ 47 C.F.R. § 54.101(a); *Lifeline Reform Order* ¶ 48.

¹⁰ *Lifeline Reform Order* ¶ 48.

independent obligation to provide 911 and E911 services as a reseller,¹¹ Birch will rely on its contractual arrangement with Sprint to provide such emergency services to consumers.

With respect to toll limitation service, the *Lifeline Reform Order* eliminated the requirement to provide toll limitation services if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.¹² As explained more below, Birch's prepaid wireless Lifeline service offering will be a nationwide calling plan, and will not distinguish between toll and non-toll calls. Consumers, however, may implement toll control for international calls to the extent they seek that capability. Moreover, consumers purchasing Birch's prepaid wireless Lifeline service offering will have the ability to monitor their minute usage and balances from their handset, online, or through customer service.

B. Birch Satisfies the Requirements for Conditional Forbearance from the Facilities Requirement

Both the federal Act and the FCC's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.¹³ In the *Lifeline Reform Order*, however, the FCC decided to conditionally forbear from application of the federal Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.¹⁴ Specifically, the FCC determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the

¹¹ 47 C.F.R. § 20.18(m).

¹² *Lifeline Reform Order* ¶ 49.

¹³ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

¹⁴ *Lifeline Reform Order* ¶ 368.

obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.¹⁵ Birch certifies that it meets the requirements for conditional forbearance.

Birch's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Birch will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Birch will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. As noted above, Birch will rely on its contractual arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.¹⁶ Birch's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all FCC requirements.

Birch submitted its Compliance Plan in support of conditional forbearance to the FCC,¹⁷ and on August 8, 2012, the FCC approved Birch's Compliance Plan.¹⁸ The FCC-approved version of Birch's Compliance Plan is attached hereto as **Exhibit 1** and can be found at: <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions> on the FCC's website.

¹⁵ *Lifeline Reform Order* ¶ 368.

¹⁶ Birch understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n.989.

¹⁷ *See* WC Docket Nos. 09-197 and 11-42, *Birch Communications Inc. Compliance Plan Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only*, Further Amended Compliance Plan of Birch Communications, Inc. (June 29, 2012) ("Compliance Plan") (attached hereto as **Exhibit 1**).

¹⁸ *See* WC Docket Nos. 09-197 and 11-42, *Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, Public Notice, DA 12-1286 (rel. Aug. 8, 2012) (attached hereto as **Exhibit 2**).

D. Birch Will Advertise the Availability of the Supported Services and the Relevant Charges Using Media of General Distribution

Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify for the service.¹⁹ Birch will utilize the FCC's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.²⁰ Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies.

Birch's advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC reseller. Birch's advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, and radio advertising. Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will also advertise through online search engines and third-party referral agents/dealers. As required under the *Lifeline Reform Order*, Birch will ensure the FCC-required disclosures, any DBA names it uses, and

¹⁹ 47 C.F.R. § 54.405(b).

²⁰ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

details of the prepaid wireless Lifeline service offering are contained in all marketing materials.²¹

II. BIRCH MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION UNDER SECTION 54.202 OF THE FCC'S RULES

Section 54.202 of the FCC's rules contains certain additional requirements for a common carrier to be designated as an ETC. As set forth below, Birch satisfies each of those requirements.

A. Birch Will Comply with the Service Requirements Applicable to Lifeline Support

Section 54.202(a)(1) of the FCC's rules requires a common carrier seeking ETC designation to (1) certify that it will comply with the service requirements applicable to the support that it receives and (2) submit a five-year plan for proposed improvements or upgrades to the applicant's network unless the applicant is seeking Lifeline support only.²² Birch seeks ETC designation for Lifeline support only. Birch hereby certifies that it will comply with the service requirements applicable to Lifeline support. Given that Birch seeks designation for Lifeline support only, a five-year network improvement plan is no longer necessary.²³

B. Birch Will Remain Functional in Emergency Situations

Section 54.202(a)(2) of the FCC's rules requires a common carrier seeking ETC designation to demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.²⁴ Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining

²¹ *Lifeline Reform Order* ¶¶ 274-282.

²² 47 C.F.R. § 54.202(a)(1).

²³ *Lifeline Reform Order* ¶ 386.

²⁴ 47 C.F.R. § 54.202(a)(2).

functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the FCC's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations.

Birch's MVNO contract arrangement with Sprint imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency situations.²⁵ As a large, nationwide wireless carrier, Sprint is subject to regulatory requirements to remain functional during emergency situations.²⁶ Birch's MVNO agreement with Sprint also contains certain quality of service guarantees.

C. Birch Will Satisfy Applicable Consumer Protection and Service Quality Standards

Section 54.202(a)(3) of the FCC's rules requires a common carrier seeking ETC designation to demonstrate that it will satisfy applicable consumer protection and service quality standards.²⁷ As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the FCC and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product, and will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless

²⁵ While Sprint will provide the underlying wireless services to Birch, Birch will provide billing services associated with the prepaid wireless Lifeline product to the Birch end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

²⁶ Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

²⁷ 47 C.F.R. § 54.202(a)(3). Pursuant to FCC rules, Birch will annually certify that it is in compliance with applicable service quality standards and consumer protection rules. 47 C.F.R. § 54.422(b)(3).

Service to satisfy this requirement.

D. Birch Is Financially and Technically Capable of Providing Lifeline Services in Accordance with the FCC’s Rules

Section 54.202(a)(4) of the FCC’s rules requires a common carrier seeking ETC designation for Lifeline support to demonstrate it is financially and technically capable of providing Lifeline service in compliance with the FCC’s rules.²⁸ The FCC stated that the “relevant considerations” for satisfying this requirement would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.²⁹

Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. Moreover, as discussed above, Birch has been providing wireline Lifeline services as a non-ETC reseller for numerous years. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch’s funds to operate will come from “non-Lifeline” services it provides throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the number of customers it serves and the more than 15 years it has been offering service.

With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to numerous wireless resellers. Like several other prepaid wireless providers, Sprint will provide Birch with the network

²⁸ 47 C.F.R. § 54.202(a)(4); *see also Lifeline Reform Order* ¶ 387.

²⁹ *Lifeline Reform Order* ¶ 388.

infrastructure and wireless transmission facilities needed for Birch to offer service as a MVNO. Sprint is a large, nationwide carrier, and serves several other MVNOs offering wireless Lifeline products.³⁰ Birch's partnership with Sprint further demonstrates Birch is technically capable of providing a prepaid wireless Lifeline service.

E. Birch Will Provide Prepaid Wireless Lifeline Service Plans to Eligible Consumers

Section 54.202(a)(5) of the FCC's rules require a common carrier seeking ETC designation for Lifeline support to submit information describing the terms and conditions of the voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.³¹ At this time, Birch plans to offer the following prepaid wireless Lifeline plan at no charge to the customer:³²

Basic Plan Prepaid Wireless Lifeline Plan

Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices³³

250 nationwide minutes per month

Voicemail

National texting, with each text sent or received counting as 1 minute

911 and E911 access as available

Option to purchase additional minutes anytime during the month that carry over for 2 months

Option for international calling with per-minute pricing based on the country to be called, which will be provided to the consumer when opting for this capability

³⁰ Based on filings made with the FCC, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the FCC.

³¹ 47 C.F.R. § 54.202(a)(5).

³² Though Birch's product will be offered at no charge to qualifying Kentucky customers, Birch certifies that it will notify its Lifeline customers in writing of any changes to the rates they will pay. *KPSC Lifeline Order* at 5.

³³ Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable FCC requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

Additional minutes

Minutes	Price
200	13.95
250	16.95
300	19.95
400	25.95
900	49.95

Birch’s planned prepaid wireless Lifeline service offering is consistent with the federal Act’s requirement that consumers have access to quality services at “just, reasonable, and affordable rates,”³⁴ and is consistent with the FCC’s findings that Lifeline consumers should have the option to purchase bundled packages, additional calling features, and optional voice services.³⁵

III. BIRCH MEETS THE REQUIREMENTS FOR LIFELINE SERVICES UNDER SECTION 54.405 OF THE FCC’S RULES

Under Section 54.405 of the FCC’s rules, an ETC has certain obligations to offer Lifeline service.³⁶ Birch understands these obligations and will meet them as described below.

A. Birch Will Make Lifeline Service Available as Defined under the FCC’s Rules

Section 54.405(a) of the FCC’s rules requires an ETC to make available Lifeline service, as defined in Section 54.401 of the FCC’s rules,³⁷ to qualifying low-income consumers.³⁸ Birch certifies that its prepaid wireless Lifeline service offering will conform to the definition of “Lifeline” in the FCC’s rules.

B. Birch Will Publicize the Availability of Lifeline Service

Section 54.405(b) of the FCC’s rules requires an ETC to publicize the availability of

³⁴ 47 U.S.C. § 254(b)(1).

³⁵ *Lifeline Reform Order* ¶ 317.

³⁶ 47 C.F.R. § 54.405.

³⁷ 47 C.F.R. § 54.401.

³⁸ 47 C.F.R. § 54.405(a).

Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.³⁹

As described above in Section I.C., Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach eligible consumers.

C. Birch Will Include Certain Disclosures on Materials Describing Its Lifeline Service, Including the Name of the ETC

Sections 54.405(c) and (d) of the FCC’s rules require an ETC to make certain disclosures on all materials describing the Lifeline service offering, including the name of the ETC.⁴⁰ As noted above in Section I.C., Birch will ensure that all materials describing its prepaid wireless Lifeline service offering use easily understood language to indicate that the service is a Lifeline service, that Lifeline is a government assistance program, that the service is non-transferrable, that only eligible consumers may enroll in the program, and that the program is limited to one discount per household as required under the rules.⁴¹ Birch will also ensure that all materials describing its prepaid wireless Lifeline service offering utilize the “NOW Communications” brand as the name of the ETC providing services.⁴² Birch understands that the term “materials describing the service” include all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.⁴³

D. Birch Will Comply with the FCC’s De-Enrollment Procedures

Section 54.405(e) of the FCC’s rules requires an ETC to impose certain de-enrollment procedures for Lifeline services.⁴⁴ Birch will comply with the FCC’s de-enrollment procedures as described more fully in Birch’s Compliance Plan set forth in **Exhibit 1**. As discussed in

³⁹ 47 C.F.R. § 54.405(b).

⁴⁰ 47 C.F.R. § 54.405(c), (d).

⁴¹ 47 C.F.R. § 54.405(c).

⁴² 47 C.F.R. § 54.405(d).

⁴³ 47 C.F.R. § 54.405(c).

⁴⁴ 47 C.F.R. § 54.405(d).

Birch's compliance plan, Birch will de-enroll Lifeline customers for duplicative support, for non-usage, and for failure to re-certify, and will have general de-enrollment procedures in place.

IV. BIRCH WILL COMPLY WITH THE FCC'S CONSUMER CERTIFICATION AND ANNUAL VERIFICATION REQUIREMENTS

A. Birch Will Comply with the FCC's Consumer Certification Requirements

In the *KPSC Lifeline Order*, the Commission noted that per the FCC's *Lifeline Reform Order*, "Kentucky ETCs offering Lifeline must now offer consumers the option of qualifying for Lifeline by meeting the income-based qualifier of 135 percent of the Federal Poverty Guidelines."⁴⁵ The *KPSC Lifeline Order* also detailed new ETC certification form requirements promulgated by the FCC.⁴⁶ Birch meets these requirements.

As discussed at length in Birch's Compliance Plan, set forth in **Exhibit 1**, Birch will offer its prepaid wireless Lifeline service to households receiving benefits from a qualifying state or federal assistance program or with an income at or below 135% of the Federal Poverty Guidelines.⁴⁷ Birch's associated consumer certification form will collect identifying information about the prospective Lifeline recipient, certify his or her eligibility to receive it, and require the consumer to acknowledge the terms and conditions of the Lifeline program as delineated by the FCC.⁴⁸ Set forth as Attachment A to Birch's Compliance Plan is an initial draft of Birch's prepaid wireless Lifeline enrollment and certification forms. Birch is continuing to refine these documents and will make any necessary changes to the extent the Commission or the Universal Service Administrative Company ("USAC") issue additional guidance on the language to be contained on enrollment and certification forms. Birch also confirms that it will comply with

⁴⁵ *KPSC Lifeline Order* at 3; see 47 C.F.R. § 54.409(a)(1).

⁴⁶ *KPSC Lifeline Order* at 3-4.

⁴⁷ 47 C.F.R. § 54.409(a).

⁴⁸ See 47 C.F.R. §§ 54.405(c), 54.409, 54.410(a)-(d); *Lifeline Reform Order* ¶ 121.

any future FCC or USAC guidance, directives, or rule changes regarding the Lifeline program.

B. Birch Will Comply with the FCC's Annual Verification Requirements

In the *KPSC Lifeline Order*, the Commission formally adopted the FCC's annual audit and recertification process for ETCs.⁴⁹ Birch certifies that will verify the eligibility of its Lifeline subscriber base after 2012⁵⁰ in accordance with Section 54.409 and 54.410 of the FCC's rules.⁵¹ As documented in Attachment B to Birch's Compliance Plan, Birch has designated an annual recertification process that fulfills the requirements set forth by Section 54.410(f) of the FCC's rules.⁵²

V. DESIGNATION OF BIRCH AS A LIFELINE-ONLY ETC IS IN THE PUBLIC INTEREST

Section 54.202(b) of the FCC's rules requires the FCC make a public interest finding prior to making an ETC designation.⁵³ Birch's designation as Lifeline-only ETC will bring increased competitive choice and unique advantages to qualifying Kentucky consumers, on the part of a carrier with a demonstrated commitment to quality. The goals of universal service mandated by Congress and the Commission are therefore served by designation of Birch as a Lifeline-only ETC.⁵⁴

Birch's ETC designation will bring another competitive alternative to low-income

⁴⁹ *KPSC Lifeline Order* at 4-5. Birch certifies that its annual verification process will follow the FCC's rules and direction pertaining to annual audits. *KPSC Lifeline Order* at 5.

⁵⁰ *Lifeline Reform Order* ¶ 133. As Birch did not have a Lifeline subscriber basis as of June 1, 2012, the FCC's January 31, 2013 recertification requirement is inapplicable. *Id.* ¶¶ 130, 132 (“[T]he rule we adopt today will apply to all Lifeline subscribers enrolled in the program as of June 1, 2012”).

⁵¹ 47 U.S.C. §§ 54.409, 54.410.

⁵² 47 U.S.C. § 54.410(f). To fulfill the Commission's annual reporting and certification requirements, Birch certifies that it will maintain records to document compliance with all FCC and Commission requirements pursuant to FCC rules. 47 C.F.R. § 54.417(a). Birch also certifies that it will comply with the FCC's annual reporting rules promulgated by 47 C.F.R. § 54.422.

⁵³ 47 C.F.R. § 54.202(b).

⁵⁴ 47 U.S.C. § 254.

consumers in Kentucky, and will exert further competitive pressures on existing wireless Lifeline providers operating in Kentucky. This furthers the federal Act’s goal of ensuring that quality communication services are available at “just, reasonable, and affordable rates.”⁵⁵ As the FCC has observed, “an important goal of the [federal] Act is to open local telecommunications markets to competition. Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”⁵⁶

According to the latest USAC data, Kentucky’s Lifeline participation rate is between 10 and 20 percent.⁵⁷ In seeking ETC designation in Kentucky, Birch seeks to make it easier for low-income consumers located within Kentucky to receive affordable telecommunications services that are comparable to those enjoyed by other consumers.

The impact of Birch’s designation as an ETC on the USF will be negligible, in light of the fact that Birch is not seeking high-cost support. The Lifeline program, unlike high-cost support, is predicated on per-customer reimbursement.⁵⁸ The overall size of the program is thus capped by the number of qualified consumers in a state, and further limited by eligibility, utilization and de-enrollment standards.⁵⁹ Birch intends to strictly adhere to such standards, as demonstrated by its Compliance Plan, set forth in **Exhibit 1**, that was approved by the FCC in August 2012.⁶⁰

⁵⁵ 47 U.S.C. § 254(b)(1).

⁵⁶ *Federal-State Joint Board on Universal Service*, 16 FCC Rcd 48, ¶ 17 (2000).

⁵⁷ 2010 Lifeline Participation Rates by State (Feb. 15, 2011), *available at* http://www.usac.org/_res/documents/li/pdf/participation-rates/li-participation-rate-map-2010.pdf.

⁵⁸ *See, e.g.*, WC Docket No. 09-197, *Telecommunications Carriers Eligible for Universal Service Support*, Order, DA 12-1339, ¶ 9 (Aug. 16, 2012).

⁵⁹ *See* WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, *Wireline Competition Bureau Issues Progress Report on the Lifeline Program Savings*, Public Notice, DA 12-1232 (July 31, 2012).

⁶⁰ *See* Compliance Plan at 10-18, **Exhibit 1**.

Historically, only a small proportion of the USF has been dedicated to low-income support. In 2007, low-income support constituted 11.8% of the universal service support – in the next year, 11.5%.⁶¹ Accordingly, the FCC has concluded that “[a]ny increase in the size of the fund” from certifying a Lifeline-only prepaid wireless reseller “would be minimal and is outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.”⁶²

As explained above, Birch seeks to offer a comprehensive wireless communications solution to the qualifying consumer at no charge. Birch’s ETC designation provides accessible, technologically advanced services to a portion of the public that may not otherwise be able to obtain telecommunications services due to insufficient credit, immigrant status, or living situation. Prepaid wireless services like those offered by Birch also offer consumers convenience, control over their telecommunications spending without the imposition of high monthly fees, and the ability to pay for only those services needed. Such advantages directly fulfill the goals of universal service promulgated by Congress and the FCC.⁶³

⁶¹ FEDERAL COMMUNICATIONS COMMISSION INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION WIRELINE COMPETITION BUREAU, TRENDS IN TELEPHONE SERVICE, 19-5 (Sept. 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁶² *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 15095, ¶ 17 (2005). Pursuant to FCC precedent, no “cream-skimming” analysis is necessary as Birch is seeking ETC designation only with respect to low-income support mechanisms. See *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, 24 FCC Rcd 3381, ¶ 39, n. 101 (2009).

⁶³ 47 U.S.C. § 254.

CONCLUSION

WHEREFORE, applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order designating applicant as an ETC for the provision of prepaid wireless Lifeline services in the Commonwealth of Kentucky.

Dated this 6th of December, 2012.

Respectfully submitted,

**BIRCH TELECOM OF THE SOUTH, INC.
DBA BIRCH COMMUNICATIONS OF THE
SOUTHEAST**



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Its Attorneys

STATE OF MISSOURI)
)
COUNTY OF JACKSON)

VERIFICATION

I, Christopher J. Bunce, Senior Vice President, Legal and General Counsel, of Birch Communications, Inc. and its subsidiary Birch Telecom of the South, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.

11/27/2012
Date


Name: Christopher J. Bunce

Title: Senior Vice President,
Legal and General Counsel
Birch Communications, Inc. and
Birch Telecom of the South, Inc.

Subscribed and sworn to before me this 27 day of November

ANGELA A. HOKE
Notary Public-Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires June 9, 2014
Commission # 10887286


Notary Public

EXHIBITS

- Exhibit 1 Compliance Plan**
- Exhibit 2 FCC Approval of Birch Compliance Plan**
- Exhibit 3 Birch articles of incorporation**

EXHIBIT 1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
BIRCH COMMUNICATIONS, INC.)	WC Docket No. 09-197
)	
Compliance Plan)	WC Docket No. 11-42
)	
)	
Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only)	
)	
)	

FURTHER AMENDED COMPLIANCE PLAN OF BIRCH COMMUNICATIONS, INC.

Birch Communications, Inc. (“Birch”), by its attorneys, respectfully submits this Amended Compliance Plan to be associated with its Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e)¹ of the Communications Act of 1934, as amended (the “Act”), and Section 54.201² of the rules and regulations of the Federal Communications Commission (“Commission”), which was filed on April 27, 2012 in the above-referenced matters. Birch’s original Compliance Plan was filed May 7, 2012, and an amendment was filed June 1, 2012. Birch seeks ETC designation for Lifeline support only to provide prepaid wireless services under the “NOW Communications” brand name in the non-rural areas of the following states: Alabama, Florida, North Carolina, and Tennessee (the “Designated Service Area”).³

¹ 47 U.S.C. § 214(e).

² 47 C.F.R. § 54.201.

³ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a subsidiary of Birch and operates as a certificated carrier in Alabama, Florida, North Carolina, and Tennessee. More information on Birch’s corporate structure is set forth herein.

Both the Act and the Commission's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.⁴ In the *Lifeline Reform Order*, however, the Commission decided to conditionally forbear from application of the Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.⁵ Specifically, the Commission determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.⁶

To avail itself of the Commission's conditional grant of forbearance from the facilities requirement, Birch provides this Compliance Plan in accordance with the requirements of the *Lifeline Reform Order*⁷ and the *Public Notice* issued by the Wireline Competition Bureau on February 29, 2012.⁸ Specifically, Birch's Compliance Plan provides information regarding Birch's planned Lifeline service offerings and outlines the measures Birch will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards

⁴ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

⁵ *Lifeline Reform Order* ¶ 368.

⁶ *Lifeline Reform Order* ¶ 368.

⁷ WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, *Lifeline and Link Up Reform and Modernization, et al.*, FCC 12-11, Report and Order and Further Notice of Proposed Rulemaking, ¶ 368 ("*Lifeline Reform Order*").

⁸ WC Docket Nos. 09-197, 11-42, *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (rel. Feb. 29, 2012) ("*Public Notice*").

against waste, fraud and abuse. To that end, Birch provides the information requested in the *Public Notice*, which indicated compliance plans should contain the following:

(1) Information about the carrier and the Lifeline plans it intends to offer:

(a) names and identifiers used by the carrier, its holding company, operating company and all affiliates;

Birch is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business (“SMB”) customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services.

Birch is a Georgia corporation with offices located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305 and 2300 Main Street, Suite 340, Kansas City, MO 64108. Birch has authority to provide interstate and international telecommunications services from the Commission.⁹ Birch’s wholly-owned subsidiary, Birch Communications of Virginia, Inc., operates pursuant to Birch’s international 214 authority and is registered to provide interstate telecommunications services.¹⁰ Birch’s wholly-owned subsidiary, Birch Telecom, Inc., has authority to provide international telecommunications services.¹¹ The following wholly-owned subsidiaries of Birch Telecom, Inc. operate pursuant to Birch Telecom Inc.’s international authority and also provide interstate telecommunications services: Birch Telecom of the South, Inc., Birch Telecom of the West, Inc., Birch Telecom of the Great Lakes, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas Ltd., LLP, Birch

⁹ IB File No. ITC-214-19970926-00584, FCC Filer ID 815113.

¹⁰ FCC Filer ID 828502.

¹¹ IB File No. ITC-214-19990701-00441.

Telecom of Kansas, Inc., Birch Communications of the Northeast, Inc., Ionex Communications, Inc., Ionex Communications South, Inc., and Ionex Communications North, Inc.¹² Each of these subsidiaries also operates under the D/B/A name of “Birch Communications,” and certain of Birch’s subsidiaries also serve customers under the brand name “NOW Communications.”¹³ Customers purchasing Birch’s prepaid wireless Lifeline service offering will see the “NOW Communications” logo.¹⁴

The Birch family of companies either offer service or are certificated to offer telecommunications services as CLECs and intrastate IXCs in the following 38 states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. The Birch family of companies currently serves approximately 118,000 customers throughout Birch’s 38-state territory.

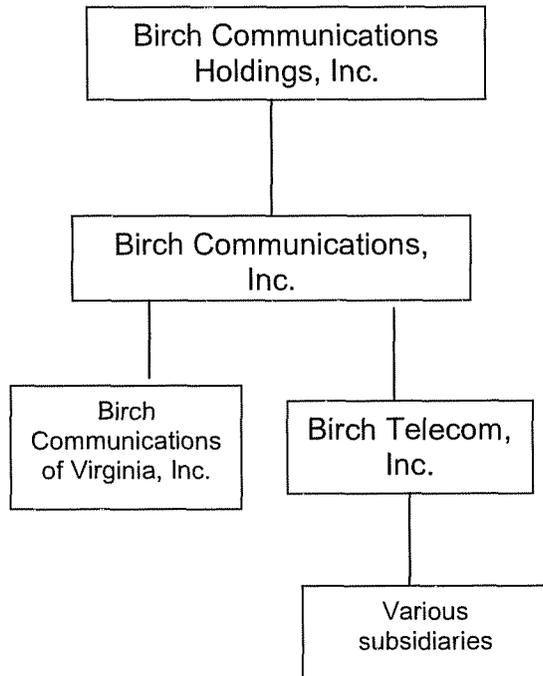
Birch Communications Holdings, Inc. (“Birch Holdings”) owns a 100% voting and equity interest in Birch. Birch Holdings is a Georgia corporation whose principal business is

¹² Birch Telecom of the South, Inc. (FCC Filer ID 820616), Birch Telecom of the West, Inc. (FCC Filer ID 827985), Birch Telecom of the Great Lakes, Inc. (FCC Filer ID 826636), Birch Telecom of Missouri, Inc. (FCC Filer ID 819422), Birch Telecom of Oklahoma, Inc. (FCC Filer ID 82061), Birch Telecom of Texas LTD LLP (FCC Filer ID 819948), Birch Telecom of Kansas, Inc. (FCC Filer ID 807993), IONEX Communications, Inc. (FCC Filer ID 815376), Birch Communications of the Northeast, Inc. (FCC Filer ID 828483), Ionex Communications South, Inc. (FCC Filer ID 808443), Ionex Communications North, Inc. (FCC Filer ID 815082).

¹³ These subsidiaries are Birch Telecom of the South, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Kansas, Inc., Birch Telecom of Oklahoma, Inc., and Birch Telecom of Texas Ltd., L.L.P. Birch acquired the use of the “NOW Communications” trade name in an earlier asset acquisition.

¹⁴ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a certificated carrier in Alabama, Florida, North Carolina, and Tennessee.

telecommunications holdings. The address for Birch Holdings is 3060 Peachtree Road, NW, Suite 1065, Atlanta, GA 30305. Below is Birch's organizational chart:



The following entities and individuals hold a ten percent (10%) or greater direct or indirect ownership interest in Birch Holdings: (1) Holcombe Green, a U.S. citizen, owns a 66% voting and equity interest in Birch Holdings and (2) R. Kirby Godsey, a U.S. citizen, owns a 32% voting and equity interest¹⁵ in Birch Holdings. The business address for both Mr. Green and Mr. Godsey is 3060 Peachtree St., NW, Suite 1060, Atlanta, GA 30305. None of the entities or individuals holding an interest in Birch or Birch Holdings hold any interests in other telecommunications-related entities.

¹⁵ R. Kirby Godsey holds his percentage through his individual holdings and through the R. Kirby Godsey 2008 Grantor Retained Annuity Trust.

(b) detailed information demonstrating that the carrier is financially and technically capable of providing the supported Lifeline service in compliance with the Commission's rules;

The Commission has stated that the “relevant considerations” for demonstrating that a carrier is financially and technically capable would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.¹⁶ Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. In addition to the other services it offers, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T for numerous years. Birch serves approximately 1800 wireline Lifeline customers at this time as a non-ETC reseller. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch's funds to operate will come from the non-Lifeline services it provides throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the significant number of customers it serves and the more than 15 years it has been offering service.

With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to wireless resellers. Like several other prepaid wireless providers, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”). Sprint is a large, nationwide carrier, and serves several other MVNOs offering

¹⁶ *Lifeline Reform Order* ¶ 388.

wireless Lifeline products.¹⁷ Birch's partnership with Sprint further demonstrates that Birch is technically capable of providing a prepaid wireless Lifeline service.

(c) detailed information, including geographic locations, of the carrier's current service offerings if the carrier currently offers service;

Please see Birch's response to 1(a) above. Birch currently provides local, toll, domestic long distance, and international long distance as a CLEC/IXC in the 38 states listed above. Birch also provides broadband Internet, converged IP solutions, and related telecommunications and IT services throughout its 38-state service territory.

(d) the terms and conditions of each Lifeline service plan offering, including rates, the number of minutes provided, and additional charges, if any, for toll calls; and

At this time, Birch plans to offer the following prepaid wireless Lifeline plan at no charge to an eligible customer:

Basic Plan Prepaid Wireless Lifeline Plan

Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices¹⁸

250 nationwide minutes per month

Voicemail

National texting, with each text sent or received counting as 1 minute

911 and E911 access as available

Option to purchase additional minutes anytime during the month that carry over for 2 months

Option for international calling with per-minute pricing based on the country to be called, which will be provided to the consumer when opting for this capability

¹⁷ Based on filings made with the Commission, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the Commission.

¹⁸ Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable Commission requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

Additional minutes

Minutes	Price
200	13.95
250	16.95
300	19.95
400	25.95
900	49.95

Available minutes are nationwide, and there are no additional charges for toll calling.

(e) all other certifications required under newly amended section 54.202 of the Commission's rules.

Section 54.202 of the Commission's rules requires a common carrier seeking ETC designation to: (1) certify that it will comply with the service requirements applicable to the support that it receives;¹⁹ (2) submit a five-year plan for proposed improvements or upgrades to the applicant's network unless the applicant is seeking Lifeline support only;²⁰ (3) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations;²¹ (4) demonstrate that it will satisfy applicable consumer protection and service quality standards;²² (5) demonstrate it is financially and technically capable of providing Lifeline service in compliance with the Commission's rules;²³ and (6) submit information describing the terms and conditions of the voice telephony plans offered to

¹⁹ 47 C.F.R. § 54.202(a)(1)(i).

²⁰ 47 C.F.R. § 54.202(a)(1)(ii).

²¹ 47 C.F.R. § 54.202(a)(2).

²² 47 C.F.R. § 54.202(a)(3).

²³ 47 C.F.R. § 54.202(a)(4).

Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.²⁴

Birch has addressed (5) and (6) above in (1)(b) and (1)(d), and the five-year plan required under (2) is no longer applicable given that Birch seeks designation for Lifeline support only.²⁵

With respect to (1), Birch seeks ETC designation for Lifeline support only, and therefore certifies that it will comply with the service requirements applicable to Lifeline support.

With respect to (3), Birch has the ability to remain functional in emergency situations. Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations. Birch's MVNO contract arrangement with Sprint also imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency situations.²⁶ As a large, nationwide wireless carrier, Sprint is subject to regulatory

²⁴ 47 C.F.R. § 54.202(a)(5).

²⁵ *Lifeline Reform Order* ¶ 386.

²⁶ While Sprint will provide the underlying wireless services to Birch, Birch will provide billing services associated with the prepaid wireless Lifeline product to the Birch end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

requirements to remain functional during emergency situations.²⁷ Birch's MVNO agreement with Sprint also contains certain quality of service guarantees.

With respect to (4), Birch will satisfy applicable consumer protection and service quality standards. As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the Commission and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product, and will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement as permitted by the Commission's rules.²⁸

(2) A detailed explanation of how the carrier will comply with the Commission's new rules relating to determinations of subscriber eligibility for Lifeline services, including all of the consumer eligibility, consumer enrollment, and re-certification procedures, as required by Section VI and Appendix C of the *Lifeline Reform Order*, and a copy of the carrier's certification form.

Birch currently offers wireline Lifeline services as a non-ETC reseller. Birch is therefore intimately familiar with the Commission's procedures for confirming consumer eligibility, enrolling eligible customers, re-certifying eligibility at regular intervals, and recordkeeping. Birch plans to build on that expertise in offering its prepaid wireless Lifeline service offering as an ETC. Birch has implemented the Commission's *Lifeline Reform Order* rule changes into its existing wireline, non-ETC Lifeline program.²⁹ Birch will utilize the same processes outlined below for both its prepaid wireless Lifeline service (as an ETC) and its wireline Lifeline service (as a non-ETC reseller) to the extent applicable.

²⁷ Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

²⁸ 47 C.F.R. § 54.202(a)(3).

²⁹ Birch recently received and executed a certification form from AT&T, its underlying provider for its resold Lifeline services, in which Birch certified its compliance with the FCC's *Lifeline Reform Order* requirements for Birch's provision of wireline Lifeline services as a non-ETC reseller.

Set forth as Attachment A is an initial draft of Birch's prepaid wireless Lifeline enrollment and certification forms. Birch is continuing to refine these documents and will make any necessary changes to the extent the Commission or the Universal Service Administrative Company ("USAC") issue additional guidance on the language to be contained on enrollment and certification forms. Birch also confirms that it will comply with any future Commission or USAC guidance, directives, or rule changes regarding the Lifeline program.

Consumer Eligibility

Under its current procedures for its wireline Lifeline offering (as a non-ETC reseller), Birch utilizes the Texas Low Income Database Administrator database to verify and document a Texas consumer's eligibility for Lifeline service. Until a national database is available, Birch will utilize available state-level databases to verify eligibility for its prepaid wireless Lifeline service offering as required under the Commission's rules. Where state-level database technology is not available, Birch will require potential customers to provide their proof of eligibility documentation directly to Birch (either via facsimile, U.S. mail, electronic mail, or through a Birch-authorized third-party dealer as discussed below). New subscribers can be added to the Lifeline program through Birch internal sales agents or through Birch-authorized third-party dealers. Birch currently utilizes approximately 100 third-party dealers for its wireline Lifeline product (non-ETC reseller), and plans to offer its wireless Lifeline product at those same locations plus additional locations that would be frequented by the target audience for Lifeline services. Birch's current third-party dealers include check cashing locations, grocery stores, computer stores, independent telephone retailers, storage facilities, beauty supply stores, and pawn shops. Once wireless Lifeline service is implemented, Birch plans to add independent wireless retailers and mall kiosks to its potential third-party dealer locations.

In the internal sales agent situation, the potential subscriber would provide its eligibility documentation to Birch and would complete the enrollment and certification form in paper format, via third-party verification (or “TPV”), or via electronic signature as described in the “Enrollment and Certification” section below. As described in more detail below, the handset would then be shipped to the customer after Birch verifies the customer’s eligibility to obtain a Lifeline product and has obtained all necessary certifications from the customer. The flow-chart in Attachment B-1 provides more detail on the process using internal sales agents.

At the third-party retail location, a potential subscriber can provide its eligibility information in-person to the third-party dealer, which will then be transmitted to Birch for review as explained below. The potential subscriber can also complete the enrollment and certification form discussed further below and a draft of which is set forth in Attachment A. As described in more detail below, the handset would then be shipped to the customer after Birch verifies the customer’s eligibility to obtain a Lifeline product and has obtained all necessary certifications from the customer. The flow-chart in Attachment B-2 provides more detail on the process using third-party retail locations. To ensure compliance with the Commission’s one-per-household and other Lifeline eligibility requirements, Birch will require its third-party dealers to have their employees participate in quarterly webinars to receive training (and re-training) on Commission-compliance requirements for Lifeline services. Birch will also supply each third-party dealer with copies of written materials providing detailed information on the Commission’s Lifeline compliance requirements. Birch will then require the third-party dealer to sign documentation certifying that all employees selling Birch Lifeline services have read the Lifeline compliance requirements provided by Birch, understand the Lifeline compliance requirements,

and will comply with the Lifeline compliance requirements. Birch will conduct periodic audits and random checks of its third-party dealers to ensure compliance with the Commission's rules.

It is important to note that, even when a customer signs up for Lifeline service through a third-party dealer, eligibility information provided by potential consumers will be reviewed by appropriate Birch personnel pursuant to Birch's internal policies for review of Lifeline eligibility documents. Until such time as there is adequate database access allowing third-party dealers to confirm eligibility automatically through Commission-sanctioned databases, all initial eligibility determinations will be made by Birch personnel. And even after third-party dealers have access to eligibility databases, Birch will review and verify a consumer's eligibility prior to seeking reimbursement for that customer. As part of confirming a potential customer's eligibility, Birch personnel will also confirm that there is no Lifeline duplication using the process discussed under (5) below. Detailed information regarding the documents provided by the potential customer and Birch's review of the documentation will be included in the customer's account information as kept in Birch's internal recordkeeping system. Any actual documentation provided by the potential customer will be destroyed or returned to the customer upon request.³⁰

Enrollment and Certification

Once Birch determines a potential customer is eligible to receive a Lifeline service product, Birch will proceed to enroll the customer in its prepaid wireless Lifeline program and obtain the necessary certifications under the Commission's rules (this can be done by an internal Birch sales agent or a Birch-authorized third-party dealer as explained above). In its current wireline Lifeline service offering (as a non-ETC reseller), Birch utilizes TPV to enroll customers and confirm their certification for Lifeline eligibility in addition to paper enrollment/certification

³⁰ *Lifeline Reform Order* ¶ 101.

forms. Birch plans to continue utilizing TPV for its prepaid wireless Lifeline service product³¹ to the extent Birch can ensure all Commission-required information is included in the TPV without the process becoming too unwieldy for the potential customer. Birch also plans to make paper forms available for enrollment/certification and also is looking to develop an online portal that potential customers could access via any Internet connection, including at their local libraries or social service organizations for electronic signature of the required documentation.

As part of the enrollment/certification process, Birch will first obtain the relevant contact information from the potential customer: (a) full name; (b) full residential address; (c) whether the residential address is permanent or temporary; (d) billing address if different than residential; (e) date of birth, (f) last 4 digits of Social Security Number; (g) if qualifying under federal or state assistance program, which program; and (h) if qualifying under income-based criteria, the number of individuals in the household. Birch will also require the customer to indicate whether the household is shared, which would trigger the use of the Lifeline Household Worksheet developed by USAC (included as part of Birch's draft enrollment and certification form set forth in Attachment A). Birch will also confirm that the customer understands its information may be shared with USAC as necessary under the Commission's rules and to ensure there is no duplication of Lifeline benefits.

Next, Birch will utilize its TPV script or the paper form (or online portal once developed) to address each of the certifications required under the Commission's rules. The certifications will be addressed through individual questions, each to be answered by the customer before

³¹ The Commission has recognized TPV is an acceptable method for obtaining such information. *See Lifeline Reform Order* ¶ 169.

moving any further in the TPV script³² or each to be initialed by the customer on the paper form (or each to be individually acknowledged in an online format):

- Certifying, under penalty of perjury, that the consumer meets the Lifeline eligibility requirements because either the household receives benefits from a qualifying state or federal assistance program (and naming the program) or has income at or below 135% of the Federal Poverty Guidelines;
- Certifying, under penalty of perjury, that the consumer has presented documentation to Birch that accurately represents the consumer's household income or participation in the program;
- Certifying, under penalty of perjury, that the consumer will notify Birch within 30 days when it is no longer eligible for Lifeline service, whether because the consumer no longer qualifies, it has another Lifeline supported service, or for any other reason, and confirming that the customer understands failure to so notify Birch may subject it to penalties;
- Certifying, under the penalty of perjury, that the information the consumer is providing to Birch is true and correct to the best of its knowledge;
- Certifying, under the penalty of perjury, that the consumer understands that providing false or fraudulent information to receive Lifeline benefits is punishable by law;
- Certifying, under penalty of perjury, that the consumer understands it will be required to annually re-certify its continued eligibility for Lifeline at any time and that failure to do so will result in the termination of the consumer's Lifeline benefits;

³² The customer will be required to answer "Yes" to these questions on the recorded TPV to enroll in Birch's prepaid wireless Lifeline program. TPV recordings are searchable by confirmation number and primary telephone number assigned to the customer. TPV confirmation numbers will be stored in the order and account notes associated with the customer.

- Certifying, under penalty of perjury, that the consumer will provide its new address to Birch within 30 days of moving;
- Certifying, under penalty of perjury, that the consumer will be required to verify its temporary address every 90 days if the subscriber provides a temporary residential address when initially enrolling;
- Certifying, under penalty of perjury that the subscriber's household is receiving no more than one Lifeline-supported service, that the consumer receives Lifeline-supported service only from Birch, and to the best of the consumer's knowledge no one else in the subscriber's household is receiving a Lifeline-supported service;
- Certifying that the consumer understands that Lifeline is a government benefit and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program;
- Certifying that the consumer understands that Lifeline is a non-transferrable benefit, and that an eligible Lifeline subscriber may not transfer its phone service to anyone else, not even someone who is also eligible;
- Certifying that the consumer understands that non-usage of its prepaid wireless Lifeline service from Birch for any consecutive 60-day period of time will result in de-enrollment and deactivation of the service; and
- Certifying that the consumer understands that (a) Lifeline is a federal benefit; (b) Lifeline service is available for only one line per household; (c) a household is defined for purposes of the Lifeline program as any individual or group of individuals who live together at the same address and share income and expenses; (d) a household is not permitted to receive Lifeline benefits from multiple providers; and (e) violation of the

one-per-household rule constitutes a violation of Commission rules and will result in the consumer's de-enrollment from the program and could result in criminal prosecution by the United States government.

Birch will ensure its TPV script and paper documentation is written in clear, easily understood language. Birch will retain its TPV recordings and copies of its paper enrollment/certification documentation for at least five (5) years.

Once all eligibility determinations and documentation requirements are complete, Birch will ship the handset to the customer via overnight delivery to the address listed on the enrollment form. Birch will require the customer to take affirmative steps to "personally activate" the service, either by requiring the customer to use the handset to activate the Lifeline service or to complete an outgoing call.³³ If service is not initiated, Birch will not consider the consumer to be enrolled in the Lifeline program and Birch will not request Lifeline reimbursement until the subscriber personally activates its service.³⁴ The flow-charts in Attachments B-1 and B-2 provide more detail on the certification process using both internal sales agents and third-party dealers.

Annual Re-Certification

Birch's systems are capable of tracking and flagging the anniversary of a Lifeline customer's start date. Birch plans to utilize this anniversary date to ensure its Lifeline customers re-certify their eligibility to participate in the Lifeline program once a year. Birch will utilize state-level databases or the national database to the extent available to re-certify customers. Until that time, Birch plans to contact its prepaid wireless Lifeline customers via written notification, and is exploring the ability to utilize text messaging, automated voicemail, and TPV

³³ *Lifeline Reform Order* ¶ 260.

³⁴ *Lifeline Reform Order* ¶ 257.

re-certification procedures. Any customers that do not re-certify within the 30-day window will be de-enrolled from Birch's prepaid wireless Lifeline service within five (5) business days after the expiration of the subscriber's time to respond to Birch's re-certification efforts as required by Commission's rules, which is explained in more detail below.³⁵ Birch will retain any TPV recordings, paper forms, copies of text message, or other documentation for re-certification for at least five (5) years. The flow-chart in Attachment B-3 provides more detail on the annual re-certification process.

(3) A detailed explanation of how the carrier will comply with the forbearance conditions relating to public safety and 911/E-911 access.

Birch's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Birch will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Birch will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. Birch will rely on its contractual arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.³⁶ Birch's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all Commission requirements.

³⁵ 47 C.F.R. § 54.405(e)(4).

³⁶ Birch understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n.989.

(4) A detailed explanation of how the carrier will comply with the Commission's marketing and disclosure requirements for participation in the Lifeline program;

Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify the service.³⁷ Birch will utilize the Commission's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.³⁸ Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies. As required under the *Lifeline Reform Order*, Birch will ensure the Commission-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.³⁹

Birch's advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC reseller. Birch understands that its ability to provide wireline Lifeline services as a non-ETC reseller may be limited in the future. As part of its marketing efforts for its prepaid wireless Lifeline service, Birch will market to those consumers currently taking its wireline Lifeline product, but will ensure that the consumer receives only one Lifeline service in accordance with the Commission's one-per-household rules.

Birch's advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, event sponsorship, bus advertising, radio advertising, and online search engines. Birch will also engage in outbound calling campaigns (consistent with applicable telemarketing

³⁷ 47 C.F.R. § 54.405(b).

³⁸ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

³⁹ *Lifeline Reform Order* ¶¶ 274-282.

regulations). Birch will obtain marketing calling lists through various marketing activities, which may include, but not be limited to interest forms completed by prospective customers who have attended a marketing event and have provided their phone number indicating their interest in being contacted. Birch also plans to target its current wireline Lifeline customers (served by Birch as a non-ETC reseller) to determine interest in converting from wireline Lifeline service to wireless Lifeline service. Birch will also consider purchasing prospective customer lists for outbound calling campaigns once the company has determined such lists effectively target potential Lifeline customers and adhere to all applicable telemarketing regulations. Once Birch has a list of prospective customer to contact, Birch marketing personnel will deliver a marketing message that accurately and in detail describes the benefits of the Lifeline program, how the Lifeline program works, and eligibility requirements to qualify as a Lifeline customer, including a determination of whether the prospective customer is already receiving a Lifeline service (duplicative service check). If the prospective customer appears initially qualify, the outbound marketing call will initiate the completion of the Birch Lifeline Enrollment Form and receipt program eligibility documents to be reviewed by Birch personnel.

Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will pro-actively market its prepaid wireless Lifeline services through state, county, municipal and non-profit community action agencies, associations and networks. These agencies support Lifeline eligible individuals and families in

obtaining support services, employment, employment training, life skills training and other services. Birch will have marketing personnel dedicated to building strong relationships with these agencies - and formulate marketing programs that support the missions of these agencies. Birch will raise awareness of Birch Lifeline services through the inclusion of Birch Lifeline information in resource guides and other support materials (online and in printed materials issued by the agency) that are provided to Lifeline-eligible prospective customers. Birch will also pursue referral arrangements and partnerships where a non-profit non-governmental agency can specifically refer Lifeline-eligible customers directly to Birch in exchange for minimal compensation or other remuneration to the agency for the referral. Birch will also raise awareness of its Lifeline services through sponsoring events held by these agencies.

(5) A detailed explanation of the carrier's procedures and efforts to prevent waste, fraud and abuse in connection with Lifeline funds, including but not limited to, procedures the carrier has in place to prevent duplicate Lifeline subsidies within its own subscriber base, procedures the carrier undertakes to de-enroll subscribers receiving more than one Lifeline subsidy per household, information regarding the carrier's toll limitation service, if applicable, and the carrier's non-usage policy, if applicable.

Prior to enrolling a Lifeline customer, Birch will take two steps to prevent duplicate Lifeline subsidies within its own subscriber base. First, Birch will review its own service records to ensure the potential customer is not currently receiving a Lifeline service from Birch. Second, Birch will utilize available state-level databases and the national database to be created to ensure the potential customer is not currently receiving a Lifeline service from any other carrier. Birch will promptly investigate any notification it receives from a state, the Commission, or USAC that one of its Lifeline customers is improperly receiving service. Birch will also update any required databases within one (1) business day of de-enrolling a consumer.⁴⁰ The flow-chart set forth in Attachment B-4 provides additional detail on the de-enrollment process described herein.

⁴⁰ *Lifeline Reform Order ¶ 257.*

De-enrollment for failure to re-certify. Birch will also re-check its internal databases and available state-level or federal databases as part of its annual re-certification process. Birch will issue a letter separate from the invoice to all subscribers, requesting them to recertify and noticing the subscriber that failure to respond within 30 days will trigger de-enrollment. The subscriber will be given the option to mail or fax back the re-certification form. The subscriber will also be given the option to complete their recertification form online, over the phone with TPV, or by mail. If the subscriber fails to respond with their completed form and documentation of eligibility by the 30th day of the notice period, Birch will de-enroll the customer by taking the following steps: Birch will place a Local Service Request (“LSR”) with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the billing system; and the credit may only be reapplied if customer goes through certification process again. The flow-chart in Attachment B-3 provides more detail on the annual re-certification process.

De-enrollment for duplicative support. Birch understands that duplicative claims are wasteful and burden the fund, and will take all necessary steps to swiftly de-enroll consumers found to be receiving duplicative federal Lifeline discounts. Upon notification from the Commission, a state, or USAC that a subscriber is receiving Lifeline service from another carrier, or more than one member of a household is receiving Lifeline service, Birch will de-enroll the subscriber within five business days.⁴¹ To the extent de-enrollment is necessary due to duplicative support, Birch will take the following steps to de-enroll a customer: Birch will immediately place a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the

⁴¹ 47 C.F.R. § 54.405(e)(2); see also *Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, ¶ 15 (2011).

billing system; and have a company policy in place that the credit may only be reapplied if the customer goes through certification process again. Birch will not seek reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

De-enrollment for non-usage. As part of its de-enrollment procedures, Birch will comply with the Commission's 60-day non-usage policy. Specifically, Birch will not consider a consumer to be enrolled, and Birch will not seek reimbursement for that consumer, until the consumer activates its service in the first instance.⁴² Further, Birch will de-enroll and not seek reimbursement for any consumer whose service is inactive for a consecutive 60-day period.⁴³ Birch will define "usage" consistent with Commission rules. Specifically, the following activities will constitute "usage" of Birch's prepaid wireless Lifeline service: (1) completion of an outbound call; (2) purchase of minutes to add to the subscriber's service plan; (3) answer of an incoming call from a party other than Birch or its representative; and (4) response to direct contact from Birch and confirmation that the consumer seeks to continue receiving the Lifeline service.⁴⁴ Birch will run usage reports for each customer to determine non-usage over a period of 60 consecutive days. Despite a consumer's "usage" as defined herein and in the Commission's rules, Birch will continue to comply with its existing public safety obligations to transmit all wireless 911 calls regardless of subscriber inactivity even if Birch is no longer providing Lifeline service to that consumer.⁴⁵

When a customer has been identified for de-enrollment for non-usage, a letter will be sent to the customer, and the customer will have 30 days to respond. Birch will allow 15 calendar

⁴² 47 C.F.R. § 54.404(b)(10).

⁴³ *Lifeline Reform Order* ¶ 257.

⁴⁴ 47 C.F.R. § 54.407(c)(2); *Lifeline Reform Order* ¶ 261.

⁴⁵ *Lifeline Reform Order* ¶ 262.

days for mail delivery and handling, and a 30-day notice period thereafter. Birch will run usage monitoring reports on the customers who have been noticed and de-enroll the customer if usage is not reflected on their account by the 30th day. On the 31st day, Birch will de-enroll the customer by placing a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits and remove the credit supplied by Birch to the end user from the billing system. The flow-chart set forth in Attachment B-5 provides more information on the process for de-enrollment for non-usage.

CONCLUSION

WHEREFORE, for the forgoing reasons, Birch respectfully requests that the Commission expeditiously approve its further amended Compliance Plan and designate it as an ETC for the provision of prepaid wireless Lifeline services in the states of Alabama, Florida, North Carolina, and Tennessee.

Respectfully submitted,

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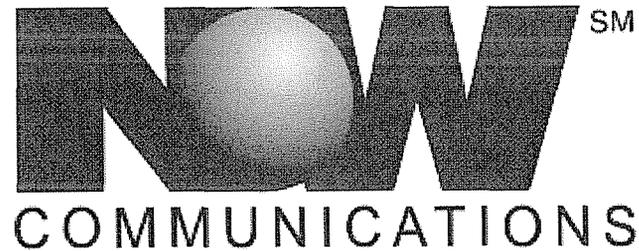
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Dated: June 29, 2012

Its Attorneys

Attachment A
to
Compliance Plan

Draft Enrollment and Certification Form



Lifeline Enrollment Form

Three Easy Steps to Complete:

Step #1 – Complete Lifeline Enrollment Form on page 2
(And if needed Household Worksheet on page 5)

Step #2 – Locate your Lifeline benefit documentation
(More info on your required documentation on pages 3 and 4)

Step #3 – Send complete enrollment form and benefit documentation to NOW Communications
(There are many convenient ways to send them, check Page 2)



Lifeline Enrollment Form

This signed application is required to enroll you in the Lifeline program in your state. This application is only for the purpose of verifying your participation in these programs and will not be used for any other purpose.

Things to know about the Lifeline Program:

- Lifeline is a Federal benefit that is not transferrable to any other person;
- Lifeline service is available for only one line per household. A household cannot receive benefits from multiple providers;
- A household is defined, for purposes of the Lifeline program, as any individual or group of individuals living at the same address that share income and expenses; and,
- Violation of the one-per household rule is not permitted under federal rules and will result in the subscriber's de-enrollment from the program and possible criminal prosecution by the U.S. Government.

First Name: _____ **MI:** _____ **Last Name:** _____ **Date of Birth:** _____

Last Four Digits of Social Security Number: _____ **Contact Telephone Number:** _____

Residential Address:
Must be a street address (not a P.O. Box) and your principal residence.

Billing Address: Check here if the billing address is the same as the residential address.
May contain a P.O. Box.

Address Line 1: _____

Address Line 1: _____

Address Line 2: _____

Address Line 2: _____

City, State and Zip: _____

City, State and Zip: _____

This Address Is: Permanent Temporary *(If temporary, your address must be certified or updated every 90 days.)*

A shared, multi-household residence \rightarrow
(Complete Household Worksheet)

If shared, multi-household residence, I hereby certify that other household adults do not contribute income and/or share expenses in my household. *Complete Household Worksheet*

(Initial) I hereby certify that I qualify to participate in at least one of the following programs *(check all that apply):*
Please see the related documentation requirements on the reverse side.

- Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps
- Supplemental Security Income (SSI)
- Federal Public Housing Assistance (FPHA) or Section 8
- Low Income Home Energy Assistance Program (LIHEAP)
- National School Lunch Program's free lunch program
- Temporary Assistance for Needy Families (TANF)
- Medicaid

(initial) I hereby certify that my household income is at or below 135% of the Federal Poverty Guidelines; there are _____ members in my household.
Please see the Federal Poverty Guidelines and the related documentation requirements on the reverse side

I certify, under penalty of perjury: Initial by Each Certification

The information provided in this application is true and correct to the best of my knowledge; I acknowledge that willfully providing false or fraudulent information in order to receive Lifeline service is punishable by fine or imprisonment, termination of all Lifeline benefits, and being barred from participating in the Lifeline program.

I acknowledge that non-usage over a consecutive 60-day period will result in my de-enrollment from this Lifeline service.

I am eligible for Lifeline service through participation in the qualifying program(s) or meeting the income requirements as identified above.

I have provided documentation of eligibility for Lifeline service, unless otherwise specifically exempted from providing such documentation.

I will inform NOW within 30 days of any potential change in eligibility, including, but not limited to: (i) a move or change of address; (ii) any change in participation in the programs identified above or change in income or household members; (iii) receiving Lifeline service from another provider; or (iv) any other change that would affect my eligibility for Lifeline service. If I fail to inform NOW of any of these changes, I understand under penalty of perjury, I may be subject to penalties.

I have provided the address where I currently reside and, if a temporary address has been provided, then I acknowledge that NOW will attempt to verify my address every 90 days, and, if I do not respond to verification attempts within 30 days, then I may be de-enrolled from my Lifeline benefits.

My household will receive only one Lifeline benefit and, to the best of my knowledge, no one in my household is currently receiving Lifeline service from any other provider.

I acknowledge that I will be required to annually re-certify eligibility and may be required to re-certify continued eligibility for Lifeline at any time and failure to re-certify will result in the termination of Lifeline benefits or other penalties.

I authorize NOW and its agents to access any records (including financial records) required to verify my statements herein and to confirm my eligibility for Lifeline service. I authorize government agencies and their authorized representatives to discuss with and/or provide information to NOW and its agents verifying my participation in public assistance programs that qualify me for Lifeline service.

I acknowledge and consent to my name, telephone number, and address being divulged to the Universal Service Administrative Company (USAC) (the administrator of the program) and/or its agents for the purpose of verifying that I, as a subscriber, do not receive more than one Lifeline benefit. In the event that USAC identifies that I am receiving more than one Lifeline subsidy for my household, all carriers involved may be notified so that I may select one service and be de-enrolled from the other.

APPLICANT SIGNATURE/TPV ID: _____ DATE: _____

FOR NOW COMMUNICATIONS OFFICE USE ONLY

Company Representative Name: _____ Database Queried? Date: ___/___/___ Database Name: _____

ETC Eligibility Review Confirmation Type: Written, attached Screenshot, attached ETC employee

Type of Documentation reviewed: _____ State Agency Queried? Date: ___/___/___ Agency Name: _____

Type of media: _____ How received: _____ Agency contact: _____ Confirmation Type: Notice, attached

Date/Expiration Date of Documentation: ___/___/___

Identity of Documentation: _____

Date reviewed: ___/___/___

Applicant name different than name on documentation (Note: _____)

Name: _____

_____ Certification that individual is part of applicant's household

_____ Certification that individual is does not already receive Lifeline

Representative Signature: _____ Date: _____

NOTES : _____

HOW TO SUBMIT YOUR ENROLLMENT APPLICATION:

COMPLETE ENROLLMENT APPLICATION ONLINE: www.nowcommunications.com FAX: (877) 465-0545 EMAIL: nowcommunications@birch.com
POSTAL MAIL : NOW Communications, 2300 Main St., Suite 340, Kansas City, MO 64108.

HOW TO SUBMIT YOUR DOCUMENTATION:

TEXT A DOCUMENT: (816) 446-3388 FAX: (877) 465-0545 EMAIL: nowcommunications@birch.com POSTAL MAIL: NOW Communications, 2300 Main St., Suite 340, Kansas City, MO 64108.

DOCUMENTATION REQUIREMENTS

**You are required to provide proof of your participation in the programs you identified
OR proof of your qualifying income.**

PROGRAM ELIGIBILITY

If, on page 1 of this form, you indicated you were in a qualifying program. You must provide documentation to prove receipt of benefits under these programs to NOW Communications. Upon examination by NOW Communications, any copies, photos or faxes of your documentation will be destroyed or returned to you at your request. Acceptable forms of documentation are described below:

Public Housing Assistance (FPHA) or Section 8

There are two types of documentation that can prove receipt of benefits under the Public Housing Assistance (FPHA), or Section 8, Program. First, an applicant can provide an award letter. A recipient of Public Housing Assistance (FPHA), or Section 8, receives an award letter from his or her local Public Housing Agency (PHA). The award letter should include the following information: name of program, date of award, name of beneficiary and award amount.

Second, an applicant can provide either a Public Housing Assistance Lease Agreement  or a Section 8 Voucher. These items should clearly reflect the type of Public Housing Assistance credit issued.

If the beneficiary does not have an award letter, lease agreement, or voucher, the applicant can contact the agency that approved the application and request formal documentation of his or her award. To find contact information for a local Public Housing Agency, please visit the U.S. Department of Housing and Urban Development's state contact and agency listing.

The beneficiary named on the FPFA documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, NOW Communications must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Low Income Home Energy Assistance Program (LIHEAP)

Because the Low Income Home Energy Assistance Program (LIHEAP) is administered by a wide range of local agencies, the program's name may vary by state (note that most include the words "energy assistance program" in the name). There are two types of documentation applicants can provide to demonstrate receipt of LIHEAP benefits.

First, a LIHEAP participant might have an award letter from a state agency. The award letter will include the following: name of program, date of award, name of beneficiary and award amount. In some instances, if the beneficiary received notification of his or her approval in-person, the awardee might not have a formal award letter and will need to contact the state agency that approved the application to request a formal award letter.

Second, a LIHEAP participant can provide a utility bill that reflects the Housing Assistance credit. The utility bill should clearly reflect inclusion of an Energy Assistance credit.

The beneficiary named on the LIHEAP documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline. To find contact information for a local LIHEAP agency, please visit the Low Income Home Energy Assistance Program's [state contact and agency listing](#).

National School Lunch Program's Free Lunch Program (NSLP)

Although the National School Lunch Program's Free Lunch Program (NSLFP) is a federally assisted program, award letters are provided by state agencies and, thus, will vary by locality. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award. The beneficiary named on the NSLP documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Supplemental Security Income (SSI)

Participation in the federal portion of SSI is an eligibility criterion for Lifeline. Some states offer state supplements to the federal SSI program, but receipt of benefits from the state supplement, but not federal SSI, does not qualify an individual for Lifeline. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary, date of award and award amount. A benefit check stub from the Social Security Administration may also be submitted as proof of participation, if the check stub clearly states the date and name of the beneficiary.

The beneficiary named on the SSI documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Temporary Assistance for Needy Families (TANF)

All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

The beneficiary named on the TANF documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

In some states, TANF might be more commonly referred to by a different name. Look for your state on this list of [TANF program names by state](#).

Supplemental Nutrition Assistance Program (SNAP)

The Supplemental Nutrition Assistance Program (SNAP) was previously known as Food Stamps. Beneficiary cards and award letters may vary because SNAP is administered on a state level. Because not all beneficiary cards include the recipient's name, it is recommended that an award letter from the local state agency be used for Lifeline verification purposes. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

The beneficiary named on the SNAP documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

In some states, SNAP might be more commonly referred to by a different name. Look for your state on this list of [SNAP program names by state](#).

Medicaid

Each state provides its own unique Medicaid card to beneficiaries. However, most cards should clearly state the following: name of program, name of beneficiary, state of residence, issued or effective date and the name of the state agency that provided the card.

The beneficiary named on the Medicaid documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Some states have different names for their Medicaid programs. Look for your state on this list of [Medicaid program names by state](#).

PROGRAM ELIGIBILITY

An applicant may be eligible for Lifeline if he or she has a household income at or below 135% of the Federal Poverty Guidelines. Below are the acceptable types of documentation:

- The prior year's state, federal, or Tribal tax return
- A current income statement from an employer or paycheck stub
- A Social Security statement of benefits
- A Veterans Administration statement of benefits
- A retirement or pension statement of benefits
- An Unemployment or Workers' Compensation statement of benefits
- A federal or Tribal notice letter of participation in General Assistance
- A divorce decree, child support award, or other official document containing income information
- If the documentation relied on does not cover a full year, such as a

135% FEDERAL POVERTY GUIDELINES - 2012	
Members of Household	Household Income must be at or below
1	\$ 15,080
2	\$ 20,426
3	\$ 25,772
4	\$ 31,118
5	\$ 36,464
6	\$ 41,810
7	\$ 47,156
8	\$52,502
For every additional member of your household, add \$4,950.	



Optional Lifeline Household Worksheet

Complete only if you checked "A shared, multi-household residence" on your enrollment form

Name	
Address	
Telephone Number	

Lifeline is a government program that provides a monthly discount on home or mobile telephone services. Only ONE Lifeline discount is allowed per household. Members of a household are not permitted to receive Lifeline service from multiple telephone companies.

Your **household** is everyone who lives together at your address as one economic unit (including children and people who are not related to you).

The **adults** you live with are part of your **economic unit** if they contribute to and share in the income and expenses of the household. An **adult** is any person 18 years of age or older, or an emancipated minor (a person under age 18 who is legally considered to be an adult). Household **expenses** include food, health care expenses (such as medical bills) and the cost of renting or paying a mortgage on your place of residence (a house or apartment, for example) and utilities (including water, heat and electricity). **Income** includes salary, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, and lottery winnings.

Spouses and domestic partners are considered to be part of the same household. Children under the age of 18 living with their parents or guardians are considered to be part of the same household as their parents or guardians. If an adult has no income, or minimal income, and lives with someone who provides financial support to that adult, both people are considered part of the same household.

You have been asked to complete this Worksheet because someone else currently receives a Lifeline-supported service at your address. This other person may or may not be a part of your household. Answer the questions below to determine whether there is more than one household residing at your address.

1. Does your spouse or domestic partner (that is, someone you are married to or in a relationship with) already receive a Lifeline-discounted phone? (check *no* if you do not have a spouse or partner) **YES** **NO**
 - If you checked **YES**, you may not sign up for Lifeline because someone in your household already receives Lifeline. Only ONE Lifeline discount is allowed per household.
 - If you checked **NO**, please answer question #2.

2. Other than a spouse or partner, do other adults (people over the age of 18 or emancipated minors) live with you at your address?

A. A parent <input type="checkbox"/> YES <input type="checkbox"/> NO	D. An adult roommate <input type="checkbox"/> YES <input type="checkbox"/> NO
B. An adult son or daughter <input type="checkbox"/> YES <input type="checkbox"/> NO	E. Other <input type="checkbox"/> YES <input type="checkbox"/> NO
C. Another adult relative (such as a sibling, aunt, cousin, grandparent, grandchild, etc.) <input type="checkbox"/> YES <input type="checkbox"/> NO	

 - If you checked **NO** for each statement above, you do not need to answer the remaining questions. Please initial line B, below, and sign and date the worksheet.
 - If you checked **YES**, please answer question #3.

3. Do you share living expenses (bills, food, etc.) and share income (either your income, the other person's income or both incomes together) with at least one of the adults listed above in question #2? **YES** **NO**
 - If you checked **NO**, then your address includes **more than one household**. Please initial lines A and B below, and sign and date the worksheet.
 - If you checked **YES**, then your address includes only **one household**. You may not sign up for Lifeline because someone in your household already receives Lifeline.

CERTIFICATION

Please initial the certifications below and sign and date this worksheet. Submit this worksheet to NOW Communications along with your Lifeline application.

- A. I certify that I live at an address occupied by multiple households.
- B. I understand that violation of the one-per-household requirement is against the Federal Communication Commission's rules and may result in me losing my Lifeline benefits, and potentially, prosecution by the United States government.

Signature _____ Date _____

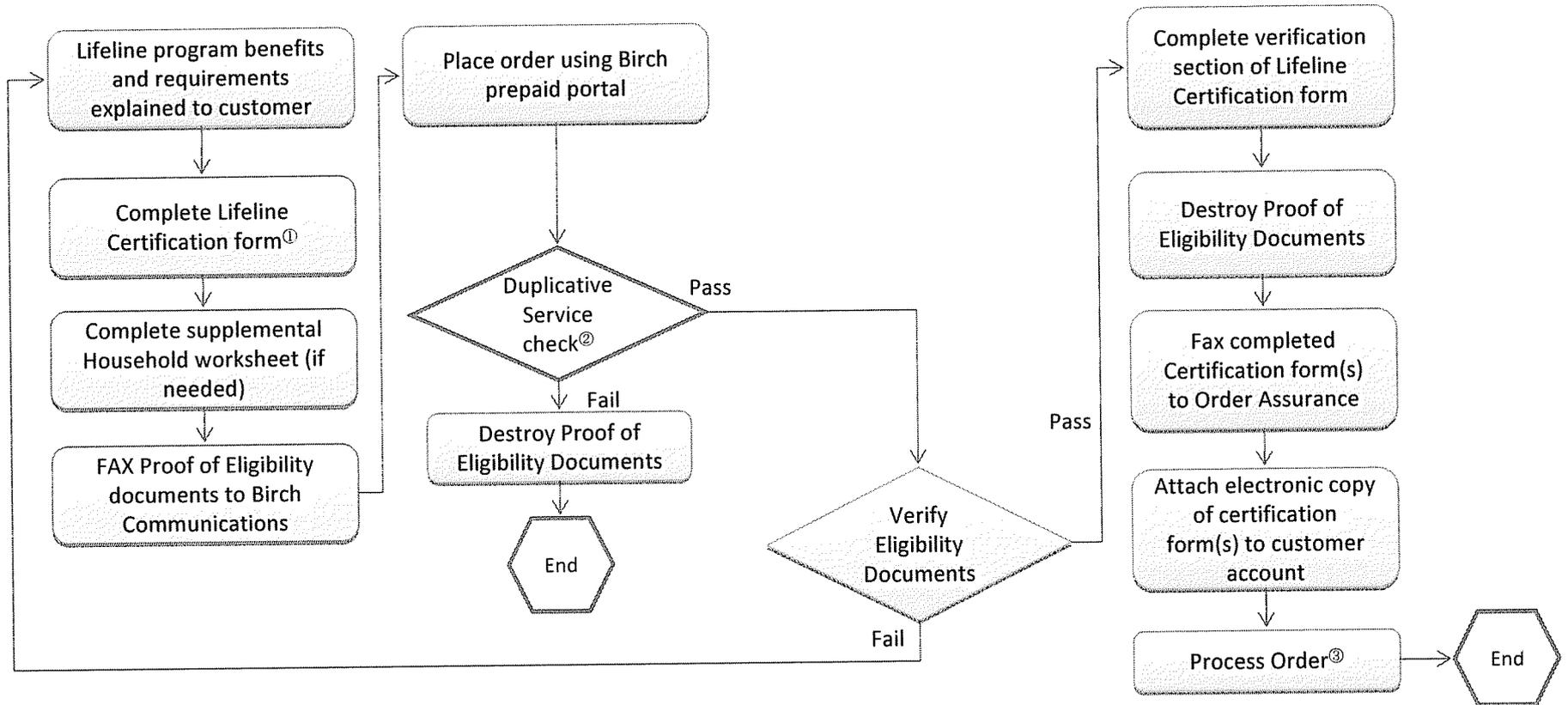
Attachment B

to

Compliance Plan

Flow-Charts Depicting Birch Internal
Processes for Lifeline Compliance

Lifeline Certification process – Internal Sales Agents

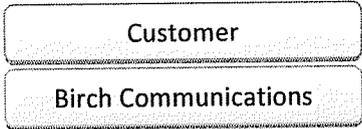


① Certification form may be completed by one of the following methods:

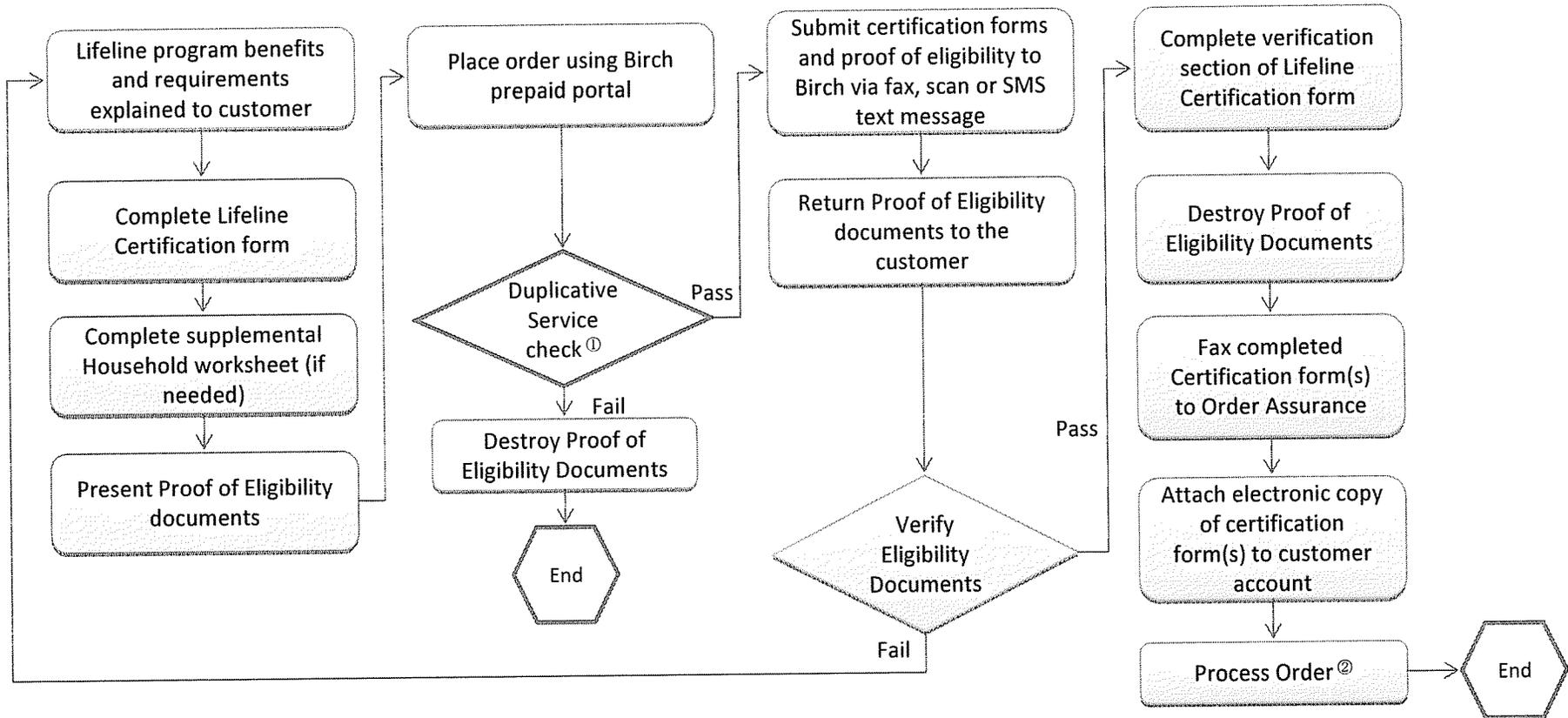
- Hand-written paper form
- Third-Party Verification (TPV)
- Electronic Signature (DocuSign)

② When duplicative service is found, Birch will determine if customer is part of multi-household residence

③ Wireless handsets will be shipped to the customer in an inactive state. Birch will not seek lifeline reimbursement from USAC until the customer activates the device and incurs usage



Lifeline Certification process – Authorized Dealers



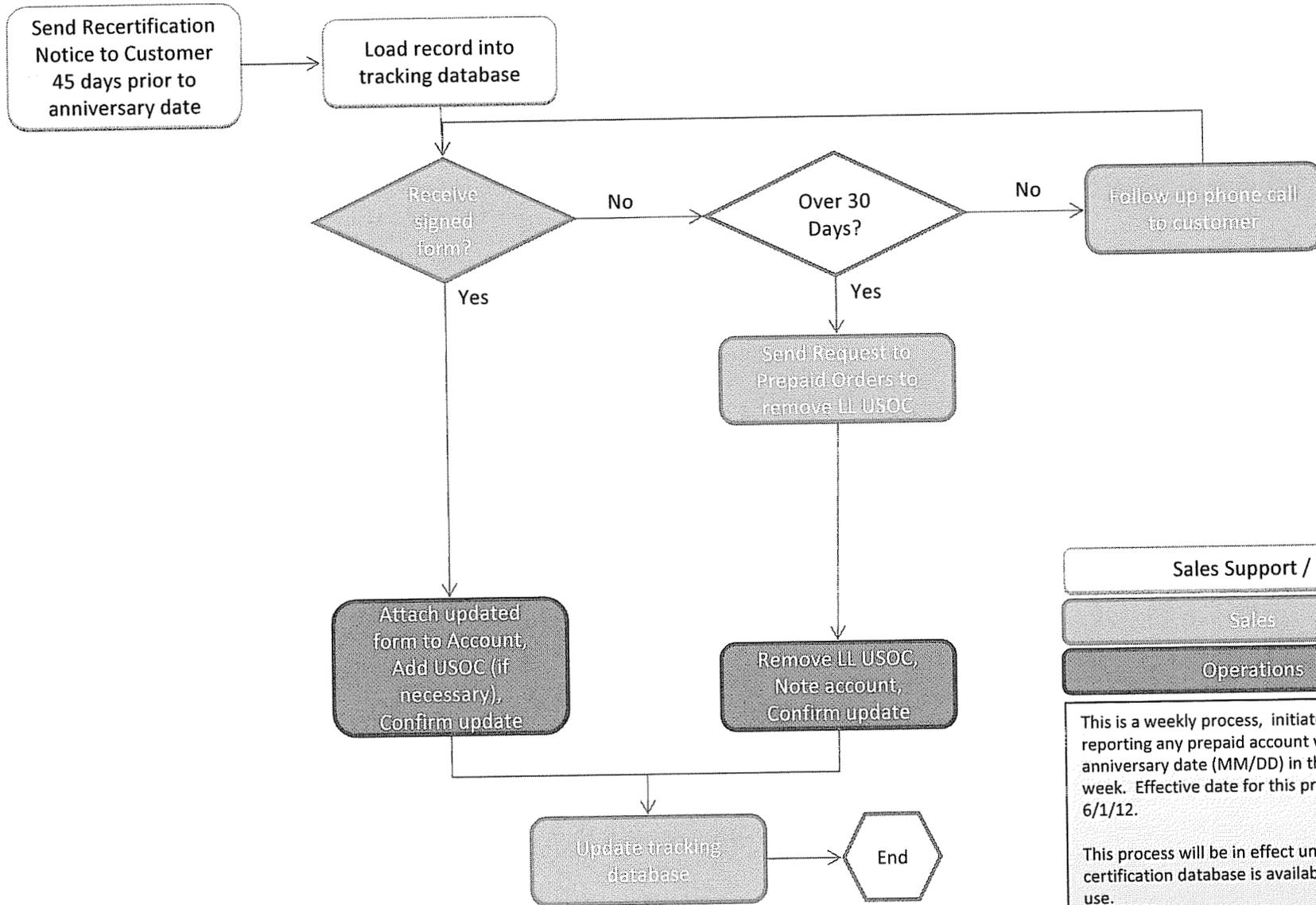
① When duplicative service is found, Birch will determine if customer is part of multi-household residence
 ② Wireless handsets will be shipped to the customer in an inactive state. Birch will not seek lifeline reimbursement from USAC until the customer activates the device and incurs usage

Birch Authorized Dealer

Customer

Birch Communications

Annual Lifeline Re-Certification



Sales Support / IT

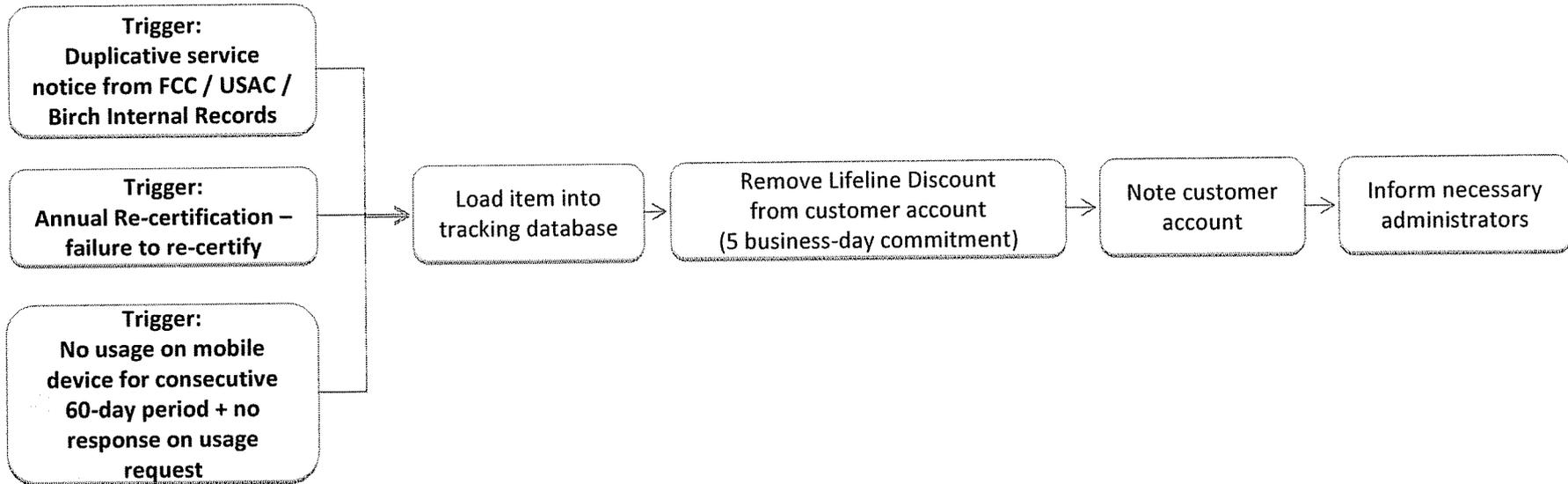
Sales

Operations

This is a weekly process, initiated by reporting any prepaid account with an anniversary date (MM/DD) in the previous week. Effective date for this process is 6/1/12.

This process will be in effect until the national certification database is available and is in use.

Lifeline De-enrollment Scenarios



- De-enrollment in Lifeline program will remove the customer from any USAC filings for reimbursement of the lifeline discount amount.
- All wireless handsets, regardless of activation status, will retain the capability of dialing and reaching emergency-911

Non-Usage notification

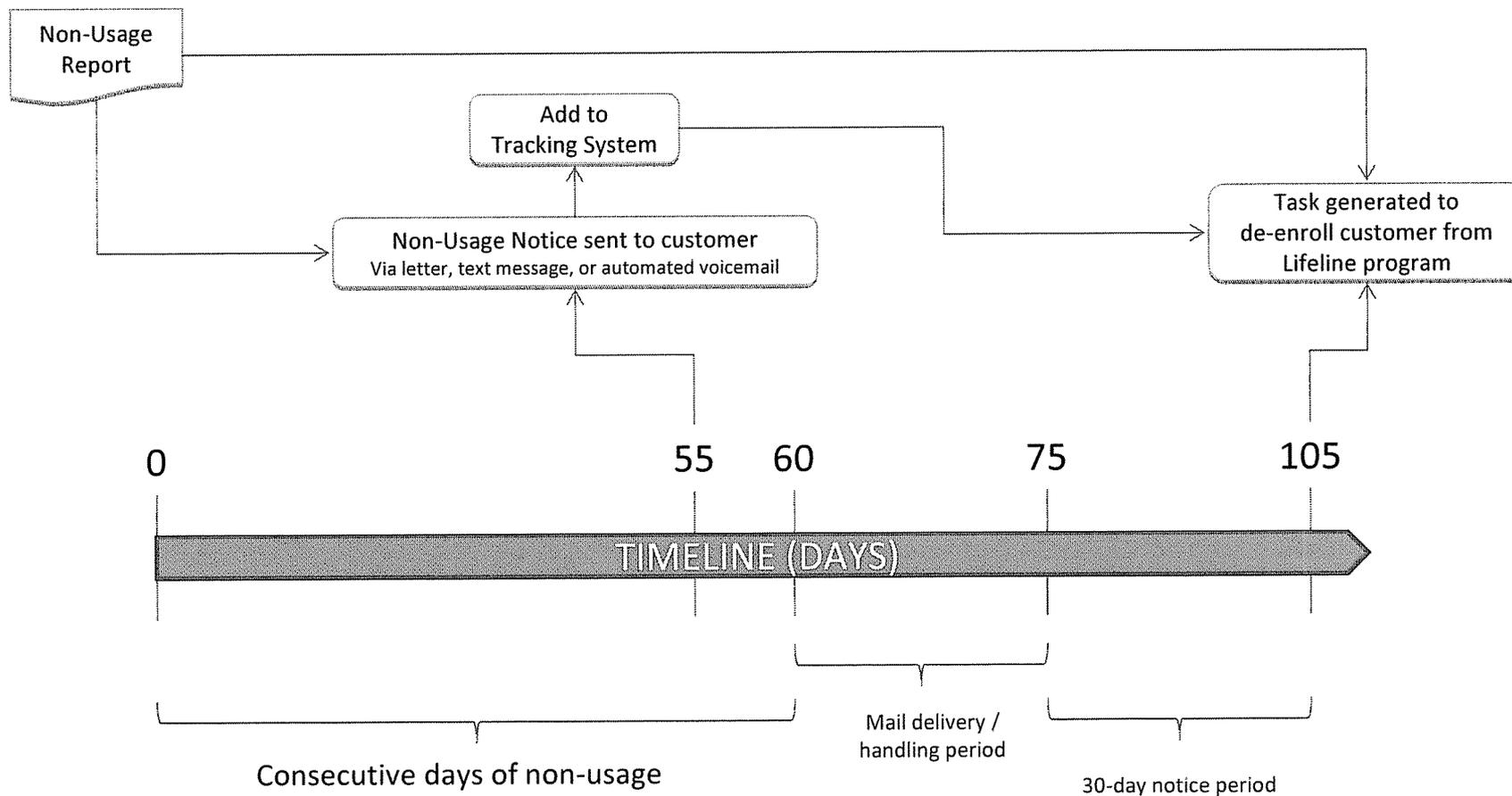


EXHIBIT 2



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 12-1286

Release Date: August 8, 2012

WIRELINE COMPETITION BUREAU APPROVES THE COMPLIANCE PLANS OF BIRCH COMMUNICATIONS, BOOMERANG WIRELESS, IM TELECOM, Q LINK WIRELESS AND TAG MOBILE

WC Docket Nos. 09-197 and 11-42

The Wireline Competition Bureau (Bureau) approves the compliance plans of five carriers: Birch Communications, Inc. (Birch); Boomerang Wireless, LLC (Boomerang); IM Telecom, LLC (IM); Q Link Wireless, LLC (Q Link); and TAG Mobile, LLC (TAG). The compliance plans were filed pursuant to the *Lifeline Reform Order* as a condition of obtaining forbearance from the facilities requirement of the Communications Act of 1934, as amended (the Act), for the provision of Lifeline service.¹

The Act provides that in order to be designated as an eligible telecommunications carrier for the purpose of universal service support, a carrier must “offer the services that are supported by Federal universal service support mechanisms . . . either using its own facilities or a combination of its own facilities and resale of another carrier’s services”² The Commission recently amended its rules to define voice telephony as the supported service and removed directory assistance and operator services, among other things, from the list of supported services.³ As a result of these amendments, many Lifeline-only ETCs that previously met the facilities requirement by providing operator services, directory assistance or other previously supported services no longer meet the facilities requirement of the Act.⁴ In the *Lifeline Reform Order*, the Commission found that a grant of blanket forbearance of the facilities requirement, subject to certain public safety and compliance obligations, is appropriate for carriers

¹ See *Lifeline and Link Up Reform and Modernization et al*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6816-17 at paras. 379-380 (2012) (*Lifeline Reform Order*). A list of the compliance plans approved through this Public Notice can be found in the Appendix to this Public Notice.

² 47 U.S.C. § 214(e)(1)(A).

³ See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-93, paras. 77-78, 80 (2011); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Order on Reconsideration, 26 FCC Rcd 17633, 17634-35, para. 4 (2011) (*USF/ICC Transformation Order on Reconsideration*).

⁴ See *Lifeline Reform Order*, 27 FCC Rcd 6812, at para. 366, App. A; *USF/ICC Transformation Order on Reconsideration* at para. 4. Some ETCs have included language in their compliance plans indicating that they have facilities or plan to acquire facilities in the future. See, e.g., Blanket Forbearance Compliance Plan, WC Docket Nos. 09-197 and 11-42, Q Link Wireless, LLC’s Third Amended Compliance Plan at 4 n. 2 (filed July 30, 2012). To the extent ETCs seek to avail themselves of the conditional forbearance relief established in the *Lifeline Reform Order*, we presume they lack facilities to provide the supported service under section 54.101 and 54.401 of the Commission’s rules. See 47 C.F.R. §§ 54.101 and 54.401. Such ETCs must comply with the compliance plan approved herein in each state or territory where they are designated as an ETC, regardless of their claim of facilities for other purposes, such as eligibility for state universal service funding.

seeking to provide Lifeline-only service.⁵ Therefore, in the *Lifeline Reform Order*, the Commission conditionally granted forbearance from the Act's facilities requirement to all telecommunications carriers seeking Lifeline-only ETC designation, subject to the following conditions: (1) compliance with certain 911 and enhanced 911 (E911) public safety requirements; and (2) Bureau approval of a compliance plan providing specific information regarding the carrier and its service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Order*.⁶

The Bureau has reviewed the five plans listed in the Appendix for compliance with the conditions of the *Lifeline Reform Order*, and now approves those five compliance plans.⁷

Filings, including the Compliance Plans identified in the Appendix, and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 448-5563, or via email www.bcpweb.com.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-7400 or TTY (202) 418-0484.

For further information, please contact Divya Shenoy, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

- FCC -

⁵ See *Lifeline Reform Order*, 27 FCC Rcd 6813-6817 at paras. 368-381.

⁶ See *id.* at paras. 373 and 389. Subsequently, the Bureau provided guidance for carriers submitting compliance plans pursuant to the *Lifeline Reform Order*. *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, WC Docket Nos. 09-197 and 11-42, Public Notice, 27 FCC Rcd 2186 (Wireline Comp. Bur. 2012).

⁷ The Commission has not acted on any pending ETC petitions filed by these carriers, and this Public Notice only approves the compliance plans of the carriers listed above. While these compliance plans contain information on each carrier's Lifeline offering, we leave it to the designating authority to determine whether or not the carrier's Lifeline offerings are sufficient to serve consumers. See *Lifeline Reform Order*, 27 FCC Rcd 6679-80, 6818-19 at paras. 50 and 387.

APPENDIX

Petitioner	Compliance Plans As Captioned by Petitioner	Date of Filing	Docket Numbers
Birch Communications, Inc.	Further Amended Compliance Plan of Birch Communications, Inc.	July 2, 2012	09-197; 11-42
Boomerang Wireless, LLC	Boomerang Wireless, LLC Revised Compliance Plan	July 26, 2012	09-197; 11-42
IM Telecom, LLC	IM Telecom, LLC d/b/a Infiniti Mobile Compliance Plan	July 5, 2012	09-197; 11-42
Q Link Wireless, LLC	Q Link Wireless, LLC's Third Amended Compliance Plan	July 30, 2012	09-197; 11-42
TAG Mobile, LLC	TAG Mobile, LLC Compliance Plan	July 26, 2012	09-197; 11-42

EXHIBIT 3

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "BIRCH TELECOM OF THE SOUTH, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE EIGHTH DAY OF FEBRUARY, A.D. 2000, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTIETH DAY OF SEPTEMBER, A.D. 2002, AT 11 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "BIRCH TELECOM OF THE SOUTH, INC.".

3173306 8100H

121300479



You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 0038418

DATE: 12-05-12

CERTIFICATE OF INCORPORATION
OF
BIRCH TELECOM OF THE SOUTH, INC.

First: The name of the Corporation is Birch Telecom of the South, Inc.

Second: The address of the Corporation's initial registered office in the State of Delaware is 1013 Centre Road, in the City of Wilmington, County of New Castle, and the name of its initial registered agent at such address is Corporation Service Company.

Third: The Corporation is organized for profit, and its purpose is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

Fourth: The aggregate number of shares which the Corporation shall have authority to issue shall be 10,000 shares, all of which shall be common stock with a par value of one cent (\$.01) each.

Fifth: The number of directors constituting the entire Board of Directors shall be three (3).

Sixth: The Board of Directors shall have power to make, and from time to time alter, amend, or repeal the Bylaws of the Corporation; provided, however, that (a) the stockholders shall have the paramount power to alter, amend and repeal the Bylaws or adopt new Bylaws, exercisable by a majority vote of the stockholders present in person or by proxy at any annual or special meeting of stockholders, and (b) if and to the extent the stockholders exercise such power, the Board of Directors shall not thereafter suspend, alter, amend or repeal the Bylaws, or portions thereof, adopted by the stockholders, unless, in adopting such Bylaws, or portions thereof, the stockholders otherwise provide.

Seventh: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under the provisions of Section 174 of the Delaware General Corporation Law and amendments thereto, or (d) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. No amendment, repeal or adoption of any provision of this Certificate of Incorporation inconsistent with this Article Seventh shall apply or have any effect on the liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment, repeal, or adoption of any inconsistent provision.

Eighth: The directors of the Corporation need not be elected by written ballot.

Ninth:

(a) Subject only to the exclusions set forth in paragraph (c) of this Article Ninth, the Corporation shall hold harmless and indemnify each director or officer of the Corporation (each, an "Indemnitee") against any and all expenses (including attorneys' fees), judgments, fines, excise taxes assessed with respect to any employee benefit plan, or penalties and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of the Corporation), to which Indemnitee is, was or at any time becomes a party, or is threatened to be made a party, by reason of the fact that Indemnitee is, was or at any time becomes a director or officer of the Corporation, or is, or was serving, or at any time serves at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise.

(b) The expenses (including attorneys' fees) actually and reasonably incurred by Indemnitee in defending any proceeding and any judgments, fines or amounts to be paid in settlement shall be advanced by the Corporation at the request of the Indemnitee and upon delivery to the Corporation of an undertaking by such Indemnitee to repay all amounts so advanced if it shall ultimately be determined that Indemnitee was not entitled to be indemnified or was not to be fully indemnified.

(c) No indemnity pursuant to this Article Ninth shall be paid by the Corporation (i) for which payment is actually made to Indemnitee under a valid and collectible insurance policy, except in respect of any excess beyond the amount of payment under such insurance; (ii) for which Indemnitee is indemnified by the Corporation pursuant to applicable law or otherwise than pursuant to this Article Ninth; (iii) for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Corporation within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law or common law; (iv) on account of Indemnitee's conduct which is finally adjudged by a court to have been knowingly fraudulent, deliberately dishonest or willful misconduct; or (v) if a final decision by a court having jurisdiction in the matter shall determine that such indemnity is not lawful.

(d) All obligations of the Corporation contained herein shall continue during the period Indemnitee is a director or officer of the Corporation (or is, or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any possible claim or threatened, pending or completed action, suit or proceeding, whether civil, criminal or investigative, by reason of the fact that Indemnitee was a director or officer of the Corporation or serving in any other capacity referred to herein.

(e) Promptly after receipt by Indemnitee of notice of the commencement of any action, suit or proceeding, Indemnitee will, if a claim in respect thereof is to be made against the

Corporation under this Article Ninth, notify the Corporation of the commencement thereof; but the omission so to notify the Corporation will not relieve it from any liability which it may have to Indemnitee otherwise than under this Article Ninth. With respect to any such action, suit or proceeding as to which Indemnitee notifies the Corporation of the commencement thereof, the Corporation will be entitled to participate therein at its own expense.

(f) Except as otherwise provided below, to the extent that it may wish, the Corporation jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof. After notice from the Corporation to Indemnitee of its election so to assume the defense thereof, the Corporation will not be liable to Indemnitee under this Article Ninth for any legal or other expenses subsequently incurred by Indemnitee in connection with the defense thereof other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its counsel in such action, suit or proceeding, but the fees and expenses of such counsel, incurred after notice from the Corporation of its assumption of the defense thereof, shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Corporation and Indemnitee in the conduct of the defense of such, subject to the approval of the Corporation, which approval shall not be unreasonably withheld, or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of counsel shall be at the expense of the Corporation. The Corporation shall not be entitled to assume the defense of any action, suit or proceeding brought by or on behalf of the Corporation or as to which Indemnitee shall have made the conclusion provided for in (ii) above.

(g) The Corporation shall not be liable to indemnify Indemnitee under this Article Ninth for any amounts paid in settlement of any action or claim effected without its written consent. The Corporation shall not settle any action or claim in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold their consent to any proposed settlement.

(h) In the event Indemnitee is required to bring any action to enforce rights or to collect moneys due under this Article Ninth and is successful in such action, the Corporation shall reimburse Indemnitee for all of Indemnitee's reasonable fees and expenses in bringing and pursuing such action.

(i) The provisions of this Article Ninth shall inure to the benefit of and be enforceable by the Indemnitee's personal or legal representatives, executors, administrators, heirs, devisees and legatees.

(j) The Corporation shall have power to purchase and maintain insurance, at its expense, on behalf of any person who is or was an officer, director, employee or agent of the Corporation or a subsidiary thereof, or is or was serving at the request of the Corporation as an officer, director, partner, member, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise, including any employee benefit plan, against any expense, liability or loss asserted against such person and incurred by such person in any such capacity, or arising out of such

person's status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Bylaws, the provisions of this Article Ninth or the Delaware General Corporation Law.

(k) The indemnification provided by this Article Ninth shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, the Bylaws, other provisions of this Certificate of Incorporation, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in any other capacity while holding such office, and shall continue as to a person who has ceased to be an officer or director of the Corporation or a subsidiary thereof or an officer, director, partner, member, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise, including any employee benefit plan, and shall inure to the benefit of the heirs, executors and administrators of such person.

(l) This Article Ninth may be hereafter amended or repealed; provided, however, that no amendment or repeal shall reduce, terminate, or otherwise adversely affect the right of a person entitled to obtain indemnification hereunder with respect to acts or omissions of such person occurring prior to the effective date of such amendment or repeal.

Tenth: The incorporator is Gregory C. Lawhon, whose mailing address is 2020 Baltimore Avenue, Kansas City, Missouri 64108.

I, THE UNDERSIGNED, being the incorporator, for the purpose of forming a corporation under the laws of the State of Delaware do make, file and record this Certificate of Incorporation, do certify that the facts herein stated are true, and, accordingly, have hereto set my hand this 7th day of February, 2000.


Gregory C. Lawhon

||

CERTIFICATE OF AMENDMENT
TO
THE CERTIFICATE OF INCORPORATION OF
BIRCH TELECOM OF THE SOUTH, INC.

Adopted in accordance with the provisions
of Section 303 of the General Corporation
Law of the State of Delaware

It is hereby certified that:

FIRST: The original Certificate of Incorporation of Birch Telecom of the South, Inc. (the "Corporation") was filed with the Secretary of State of the State of Delaware on February 8, 2002.

SECOND: This Certificate of Amendment amends the provisions of the Certificate of Incorporation of the Corporation, as amended to date (the "Certificate of Incorporation"), and was duly adopted pursuant to the Corporation's Plan of Reorganization as filed with the United States Bankruptcy Court for the District of Delaware and confirmed by such court as of September 18, 2002 (the "Plan") pursuant to Chapter 11 of Title 11 of the United States Code and otherwise in accordance with Section 303 and other applicable provisions of the General Corporation Law of the State of Delaware.

THIRD: The Certificate of Incorporation is hereby amended by,

A) Amending and Restating Article Fourth in its entirety as follows:

"**Fourth:** The aggregate number of shares that the Corporation shall have the authority to issue shall be 20,000 shares, all of which shall be common stock with a par value of one cent (\$0.01) each."

B) Adding the following Article to the end of such document:

"**Eleventh:** The issuance of nonvoting equity securities shall be prohibited pursuant to Section 1123(a)(6) of title 11 of the United States Code, as amended."

FOURTH: Except as specifically set forth in this Certificate of Amendment, the terms of the Certificate of Incorporation shall not be changed by this Certificate of Amendment and shall remain in full force and effect.

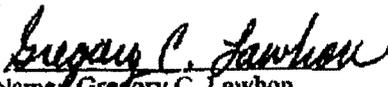
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STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 11:00 AM 09/30/2002
020605512 - 3173306

IN WITNESS WHEREOF, I have subscribed this document on the date set forth below and do hereby affirm, under the penalties of perjury, that the statements contained therein have been examined by me and are true and correct.

Date: September 30, 2002

BIRCH TELECOM OF THE SOUTH,
INC.

By: 
Name: Gregory C. Lawhon
Title: Senior Vice President