



**BOULT CUMMINGS®**  
**CONNERS ■ BERRY PLC**

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February 10, 2006

Ron Jones, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

2006 FEB 10 PM 2:21  
T.R.A. DOCKET ROOM


**Re: Application for Approval of the Indirect Transfer of Control of Birch  
Telecom of the South, Inc., Debtor-in-Possession  
Docket number 060038**

Dear Chairman Jones:

Attached is the Application of Birch Telecom of the South, Inc. for Approval of Indirect Transfer of Control. In order to complete the transaction, we request that TRA act on this matter as quickly as possible.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker

HW/cw

**Before the  
TENNESSEE REGULATORY AUTHORITY**

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In the Matter of the )

Application for Approval of the )  
Indirect Transfer of Control of Birch )  
Telecom of the South, Inc., )  
Debtor-in-Possession )  
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Docket No. 060W 38.

**APPLICATION FOR APPROVAL  
OF INDIRECT TRANSFER OF CONTROL**

Birch Telecom of the South, Inc., Debtor-in-Possession ("Birch South" or "Applicant"), through undersigned counsel and pursuant to Section 65-4-113 of the Tennessee Code Annotated, *Tenn. Code Ann. § 65-4-113 (2000)*, hereby requests that the Tennessee Regulatory Authority ("Authority") grant such authority as may be necessary or required to permit the indirect transfer of control of Birch South, as described in greater detail below. Pursuant to its imminent exit from the Chapter 11 reorganization process, control of Birch South's ultimate parent, Birch Telecom, Inc., Debtor-in-Possession ("Birch DIP"), and consequently indirect control of Birch South, will transfer to a new group of shareholders.

The indirect transfer of control of Birch South is expected to have no effect on its operations and will be transparent to Tennessee customers. Birch South's customers will continue to receive service under the same rates, terms, and conditions as they currently do. The indirect transfer of control of Birch South and its emergence from the reorganization process, moreover, will result in a significant improvement to Birch South's financial position, to the

ultimate benefit of Tennessee customers. Applicant respectfully requests, therefore, that the Authority approve this Application as expeditiously as possible to allow Applicant to complete the proposed transaction at the earliest possible date.

In support of this Application, Birch South states as follows:

I. DESCRIPTION OF THE COMPANY

Birch South is a Delaware corporation with its principal place of business at 2300 Main Street, 6th Floor, Kansas City, MO 64108. Applicant's ultimate parent, Birch DIP, through its twenty-eight direct and indirect subsidiaries, provides small and medium-sized businesses with comprehensive voice and data services. Birch DIP is one of the largest competitive local exchange carriers providing telecommunications services in the central and southern United States. Voice services provided by Birch DIP include local dial tone, long distance, and various calling features such as "911" and call waiting. Data services include high-speed Internet access, web hosting, and other services such as virtual networking. Birch DIP currently operates sales offices and operations facilities across nine states: Alabama, Georgia, Kansas, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas and maintains a customer base in seventeen additional states. In 2004, prior to its bankruptcy, Birch Telecom, Inc. ("Birch Telecom") recognized over \$292 million in revenue.

In Tennessee, Birch South is authorized to provide facilities-based and resold local and interexchange telecommunications services pursuant to a Certificate of Public Convenience and Necessity issued by the Authority in Docket No. 00-00341 on July 20, 2000. Further information concerning Birch South's legal, managerial, and financial qualifications to provide service was submitted to the Authority with the application for certification and is, therefore, a matter of public record. Birch South respectfully requests that the Authority include the

information submitted in connection with its application for certification in the instant proceeding.

## II. CONTACT INFORMATION

Questions or inquiries concerning this Application may be directed to:

Henry M. Walker (No. 000272)  
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with a copy to:

Greg C. Lawhon  
Chief Executive Officer and General Counsel  
Birch Telecom of the South, Inc., Debtor-in-Possession  
2300 Main Street, 6<sup>th</sup> Floor  
Kansas City, MO 64108  
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## III. DESCRIPTION OF THE TRANSACTION

Beginning in 2004, Birch Telecom began to experience liquidity problems due, in part, to price competition, customer turnover, and changes in federal telecommunications policies. To raise capital and reduce indebtedness, Birch Telecom assessed and pursued various strategic alternatives with the assistance of financial advisors and restructuring counsel. Unable to negotiate a prepackaged restructuring agreement with certain lenders and stockholders, Birch

Telecom and its subsidiaries each filed voluntary petitions for relief with the United States Bankruptcy Court for the District of Delaware under Chapter 11 of the U.S. Bankruptcy Code on August 12, 2005 ("Petition Date"). Since the Petition Date, Birch South and Birch DIP have continued to operate with debtor-in-possession status, respectively, subject to the supervision of the Bankruptcy Court.'

During its restructuring process, Birch DIP successfully negotiated with its lenders for the terms of a reorganization plan ("Reorganization Plan") which provides for a major restructuring of Birch DIP's financial obligations and capital structure. Birch DIP intends to submit the Reorganization Plan for Bankruptcy Court approval shortly. Upon its emergence from the reorganization process, the resulting Birch entity ("New Birch") will be a reorganized company with a significant reduction in debt, which Birch DIP believes is vital to compete in today's telecommunications marketplace. Under the Reorganization Plan, all of Birch DIP's outstanding indebtedness will be extinguished and certain of Birch DIP's creditors will receive equity in New Birch. Following the reorganization of Birch DIP, no single shareholder will control New Birch. Moreover, all of the New Birch shareholders also were shareholders of Birch DIP. The Reorganization Plan will have no effect on the corporate structure of Birch South or Birch DIP. An organizational chart depicting New Birch's corporate structure is attached hereto as Exhibit A.

Pursuant to the Reorganization Plan, control of Birch DIP, and consequently the indirect control of Birch South, will transfer from the existing shareholders of Birch DIP to the

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The bankruptcy filing did not result in a change in the ultimate ownership of Birch South or Birch DIP. The Bankruptcy Petition, however, did result in a *pro forma* transfer of control of Birch South to debtor-in-possession status. To the extent that prior Authority approval was required for this *pro forma* transfer of control, Birch South respectfully requests that the Authority grant such approval *nunc pro tunc* in connection with the instant proceeding.

shareholders of New Birch. A list and description of these shareholders, as well as their respective ownership interests in New Birch, are attached hereto as Exhibit B. This transfer of control will be seamless to Birch South's Tennessee customers. Indeed, Birch South anticipates no major changes in its rates or terms of service and the company does not intend to change its name. The Reorganization Plan, moreover, contemplates that the existing Birch South management team will remain in place upon emergence from the reorganization process. A list of the senior management of Birch South and Birch DIP is attached hereto as Exhibit C.

#### IV. PUBLIC INTEREST CONSIDERATIONS

Applicant respectfully submits that the indirect transfer of control described herein serves the public interest. Applicant submits that its exit from the bankruptcy process will sustain and increase competition in the Tennessee telecommunications market by strengthening the financial status of Birch South. Indeed, the reorganization process has enabled Birch South and Birch DIP to reduce indebtedness and obtain access to additional funding capital. As a financially stable entity ready to compete, the reorganized Birch South entity will improve telecommunications infrastructure and economic opportunities for the state as a whole. As a result, Birch South will be in a better position to provide its Tennessee customers with the high-quality services for which it is known. In this regard, the change in ultimate ownership of Birch South will not have any adverse impact on existing Tennessee customers. The transactions described herein will be transparent to Tennessee customers. The change in ownership will not result in a change of carrier for Birch South's customers or any transfer of authorizations. Finally, Birch South will continue to provide services pursuant to the same rates, terms, and conditions of service as it has previously.

V. CONCLUSION

For the reasons stated herein, Applicant respectfully submits that the public interest, convenience, and necessity would be furthered by a grant of this Application. Accordingly, Applicant respectfully requests expedited treatment to permit Applicant to consummate the transactions described herein as soon as possible.

Respectfully submitted,



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Debtor-in-Possession*

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Chief Executive Officer  
Birch Telecom of the South, Inc., Debtor-in-  
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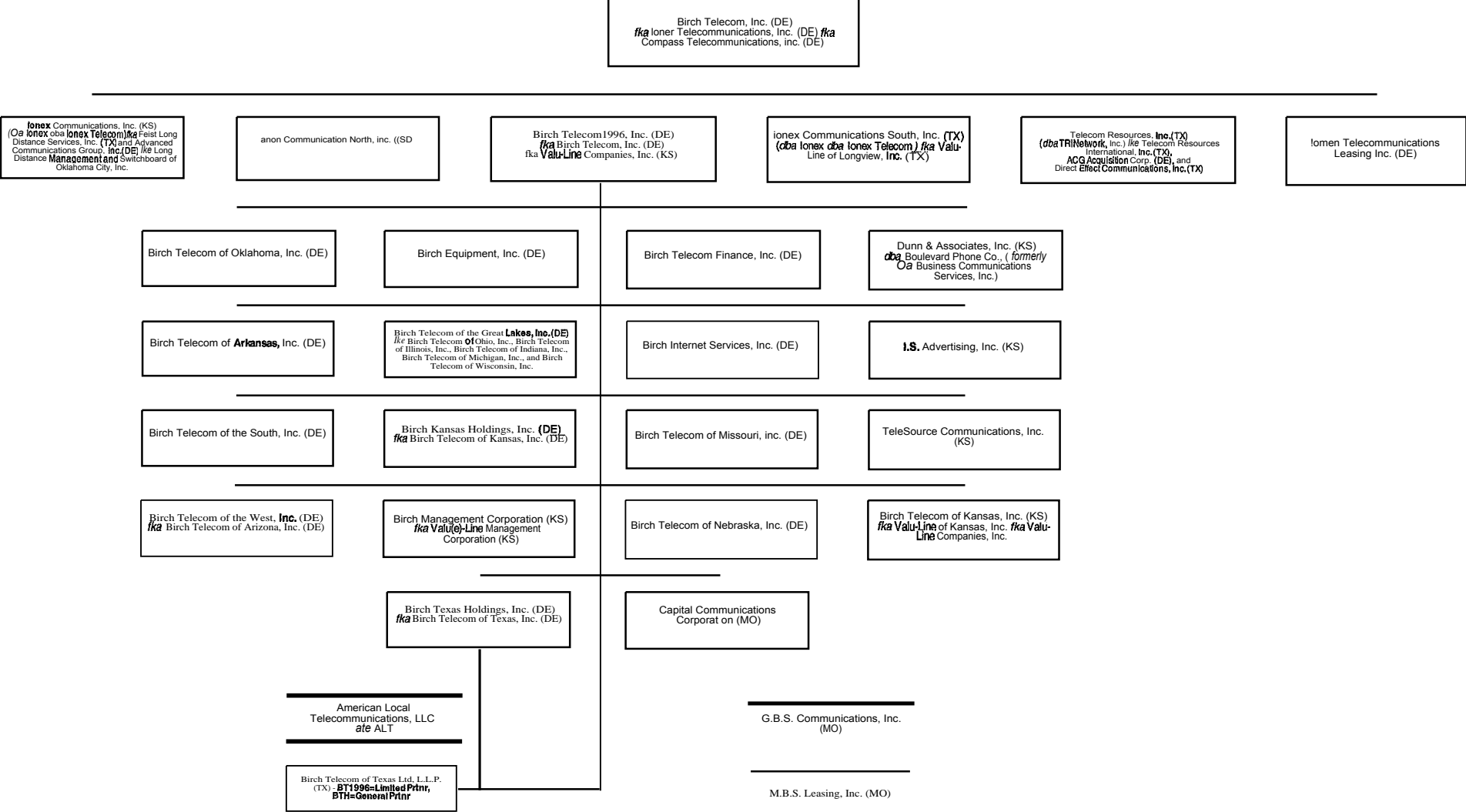
## **EXHIBITS**

Exhibit A	Organizational Chart
Exhibit B	New Shareholders
Exhibit C	Management Team



**EXHIBIT A -**  
**Organizational Chart**

# BIRCH CORPORATE ORGANIZATION



**EXHIBIT B -**

**List of New Shareholders**

<b>Bear Stearns</b> Corporate Lending, Inc.	4.35%
Banc of America Strategic Solutions, Inc.	10.25%
UBS Willow Fund LLC	29.4%
Strategic Value Master Fund Ltd.	26.2%
Merrill Lynch Credit Products, LLC	9.3%
Strategic Value Credit Opportunities Master Fund L.P.	5.0%
Special Credit Opportunities, Ltd.	6.0%
Man Mac 3 Limited	6.5%
Ritchie Special Credit Investments, Ltd.	3.0%
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	100%

**EXHIBIT C -**  
**Management Team**

Gregory C. Lawhon has been Chief Executive Officer since August 2005. Prior to becoming CEO, Mr. Lawhon served as Senior Vice President of Public Policy and General Counsel, a post he held since joining the company in January 1997. Prior to joining Birch, Mr. Lawhon practiced law for twelve years with the 90-lawyer Kansas City firm of Spencer Fane Britt & Browne. A partner in the firm since 1990, he was head of the firm's communications and media group and a member of its business group. Mr. Lawhon's areas of practice were mergers and acquisitions, with an emphasis on communication industry acquisitions, cable television franchising, and commercial and regulatory issues with respect to the telecommunications industry. Mr. Lawhon holds a Bachelor's Degree in Economics, *magna cum laude*, from Vanderbilt University and a law degree from Columbia University, where he was a Harlan Fiske Stone Scholar.

Thomas Peterson has been a Senior Vice President since August 2005. In November 2005, Mr. Peterson was promoted to Chief Financial Officer. Mr. Peterson joined Birch in June 2000 and during his tenure with the company he has served as Vice President, Corporate Controller and Assistant Controller. Prior to joining Birch, Mr. Peterson was employed at GST Telecom and at Kessler & Company. Mr. Peterson holds a Bachelor of Science in Business Administration with an emphasis in Accounting from Oregon State University and holds a CPA license from the Oregon Board of Accountancy.

Paul Hales has been Senior Vice President of Sales since March 2004. Mr. Hales has more than 25 years of experience in the technology industry and has proven success in business development, leadership and aggressive growth management. Prior to joining Birch, Mr. Hales was vice president of mergers and acquisitions/business development for Norstan Communications in Indianapolis. Before that, he held several high level positions with MCI/WorldCom and affiliated companies. Mr. Hales holds a Bachelor of Science degree in Marketing from Western Illinois University.