

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

April 19, 2006

IN RE:)	
)	
PETITION FOR APPROVAL OF THE)	DOCKET NO.
INDIRECT TRANSFER OF CONTROL OF)	06-00038
BIRCH TELECOM OF THE SOUTH, INC.)	

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on March 20, 2006 for consideration of the *Application for Approval of Indirect Transfer of Control* ("*Application*") filed by Birch Telecom of the South, Inc. ("Birch South" or "Applicant") on February 10, 2006.

The Application

Birch South is a Delaware corporation with its principal location in Kansas City, Missouri. The Applicant's ultimate parent, Birch Telecom, Inc. ("Birch Telecom"), through its twenty-eight direct and indirect subsidiaries, provides small and medium-sized businesses with comprehensive voice and data services. According to the *Application*, Birch Telecom is one of the largest competitive local exchange carriers providing telecommunications services in the central and southern United States. Voice services provided by Birch Telecom 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 Telecom currently operates sales offices and operations facilities across nine states, including Tennessee, and maintains a

customer base in seventeen additional states. In Tennessee, Birch South is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services pursuant to Authority Order in Docket No. 00-00341 issued on July 20, 2000. Birch South has 7,560 customer accounts in Tennessee.

On February 10, 2006, the *Application* was filed requesting Authority approval of a proposed transfer of control of Birch Telecom and an indirect transfer of control of Birch South. According to the *Application*, beginning in 2004, Birch Telecom began to experience liquidity problems due, in part, to price competition, customer turnover, and changes in federal telecommunications policies. 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 Telecom have continued to operate with debtor-in-possession status, respectively, subject to the supervision of the Bankruptcy Court.

The *Application* indicated that during its restructuring process, Birch Telecom successfully negotiated with lenders for the terms of a reorganization plan ("Reorganization Plan") which provides for a major restructuring of Birch Telecom's financial obligations and capital structure. According to the *Application*, Birch Telecom will submit the Reorganization Plan to the Bankruptcy Court for approval. Upon its emergence from the reorganization process, the resulting Birch entity ("New Birch") will be a reorganized company with significant reduction in debt. Under the Reorganization Plan, all of Birch Telecom's outstanding indebtedness will be extinguished and certain Birch Telecom creditors will receive equity in New Birch. Pursuant to the Reorganization Plan, control of Birch Telecom, and consequently the indirect control of Birch South, will transfer from the existing shareholders of Birch Telecom to the shareholders of New Birch. The *Application* states that

following the reorganization of Birch Telecom, no single shareholder will control New Birch. The shareholders of New Birch, as well as their respective ownership interests, consist of: Bear Stearns Corporate Lending, Inc. (4.35%); Banc of America Strategic Solutions, Inc. (10.25%); USB 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%); and Ritchie Special Credit Investments, Ltd. (3.0%).

The Applicant asserts that the proposed indirect transfer of control will be seamless to Birch South's Tennessee customers. In addition, the *Application* states that 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 contemplates that the existing Birch South management team will remain in place upon emergence from the reorganization process.

The Applicant maintains that the indirect transfer of control serves the public interest. The *Application* states that the indirect transfer will allow the Applicant to exit from the bankruptcy process and increase competition in the Tennessee telecommunications market by strengthening the financial status of Birch South. Birch South will be in a better position to provide its Tennessee customers with high-quality services on an uninterrupted basis. The transaction and the change in ultimate ownership of Birch South will not have any adverse impact on existing customers. The change in ownership will not result in a change of carrier for Birch South's customers or any transfer of authorizations. In addition, the transaction will be transparent to customers, and Birch South will continue to provide service pursuant to the same rates, terms, and conditions of service as it has previously.

In response to a data request from the TRA Staff, the Applicant indicates that it has filed applications for approval of the transfer in other states as well. The Applicant also notes that it has filed with the Federal Communications Commission ("FCC") an Application for the Transfer of

Control of Domestic and International Section 214 Authorizations held by Birch Telecom and/or its specific subsidiaries.

March 20, 2006 Authority Conference

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the regularly scheduled Authority Conference held on March 20, 2006, the voting panel assigned to this docket considered the indirect transfer of authority requested in the *Application*. The panel found that Tenn. Code Ann. § 65-4-113 (2004) applies to this transaction. Further, the panel found that services will continue to be provided by Birch South in the same manner as they were prior to the transaction. In addition, the panel found the transaction will benefit the public in that the transfer will not reduce the number of providers in the State and may, as the Applicant asserts, improve the financial stability of Birch South. Finally, the panel found that the Section 214 domestic application had not yet been approved by the FCC. Thereafter, based upon the evidentiary and administrative record as a whole and relying on the legal standard set forth in Tenn. Code Ann. § 65-4-113 (2004), the panel determined that

the transfer furthers the public interest and voted unanimously to grant approval of the *Application* contingent upon FCC approval of the Application for the Transfer of Control of Domestic Section 214 Authorizations.

IT IS THEREFORE ORDERED THAT:

- 1) The indirect transfer of authority of Birch Telecom of the South, Inc. as described in the *Application for Approval of Indirect Transfer of Control* and discussed herein is approved contingent upon the FCC's approval of the Application for the Transfer of Control of Domestic Section 214 Authorizations held by Birch Telecom, Inc. and/or its specific subsidiaries.
- 2) Because this transaction is an indirect transfer of authority, Birch Telecom of the South, Inc. will retain its certificate of public convenience and necessity.
- 3) The Applicants shall file with the Authority the FCC's approval of its Domestic and International Section 214 Application.


Ron Jones, Chairman


Pat Miller, Director


Sara Kyle, Director