

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**February 12, 2008**

**IN RE:**

**APPLICATION OF BIRCH TELECOM OF THE SOUTH, INC.  
FOR AUTHORITY TO TRANSFER CONTROL**

**DOCKET NO.  
07-00258**

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Chairman Eddie Roberson, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 14, 2008 for consideration of the *Application for Transfer of Control* (“*Application*”) filed by Birch Telecom of the South, Inc. (“Birch-South” or “Applicant”) on November 16, 2007.

Birch-South, a subsidiary of Birch Telecom, Inc. (“Birch” or “Seller”), is authorized to provide facilities-based and resold local and interexchange telecommunications services in Tennessee.<sup>1</sup> Birch-South currently serves approximately 17,700 business lines in Tennessee.

Birch Telecom, Inc. is a Delaware Corporation with approximately twenty-eight direct and indirect subsidiaries. Through these subsidiaries, Birch provides voice and data services to small and medium sized business customers in twenty-six states.

Access Integrated Networks, Inc. (“AIN” or “Buyer”), a Georgia Corporation, is a full service telecommunications company that provides local exchange and long distance services to

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<sup>1</sup> See *In re: Birch Telecom of the South, Inc.’s Application for Certificate of Public Convenience and Necessity to Operate as a Competing Telecommunications Service Provider within the State of Tennessee*, Docket No. 00-00341, Revised Initial Order Granting Certificate of Public Convenience and Necessity (July 20, 2000).

residential and small to medium sized business customers in nine states. AIN is authorized to provide competing telecommunications services in Tennessee.<sup>2</sup>

### **The Application**

According to the *Application*, Birch and AIN entered into a purchase agreement dated November 1, 2007, whereby AIN will purchase all ownership interests in Birch in return for a cash payment. AIN is 100% owner of Access Merger which was organized for the purpose of merging with and into Birch. Upon consummation of the transfer, Access Merger will merge out of existence, and Birch will survive as a wholly owned subsidiary of AIN. Birch will continue to hold 100% of the equity, directly or indirectly, of each of its subsidiaries, including Birch-South with no change in management or corporate structure contemplated at this time.

Birch-South will remain a separate certificated company in Tennessee and will continue to provide the same services with no change in provider name, rates, terms or conditions, thereby making the transfer of control transparent to its customers.

According to the *Application*, the transfer will increase the ability of both companies to provide meaningful competition against larger providers through greater efficiencies and economies of scale, which will in turn give rise to better prices, higher service quality, and increased innovation. The transaction is expected to be completed in early February 2008 contingent on receipt of all necessary regulatory approvals. The Federal Communications Commission approved the transfer of Birch to AIN on December 31, 2007.<sup>3</sup>

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<sup>2</sup> See *In re: Application of Access Integrated Networks, Inc. for a Certificate of Public Convenience and Necessity as a Competing Telecommunications Service Provider*, Docket No. 99-00644, *Order Granting Certificate of Public Convenience and Necessity* (December 3, 1999).

<sup>3</sup> See *DA 07-5109 issued in WC Docket No. 07-270* (December 31, 2007), filed in this Docket on January 3, 2008.

## **Findings and Conclusions**

The Applicant requests approval to consummate the transfer of authority pursuant to Tenn. Code Ann. § 65-4-113 (2004). The Authority finds that the proposed transaction should be considered pursuant to Tenn. Code Ann. § 65-4-112 (2004) because the transfer involves two Tennessee-certificated entities.

Tenn. Code Ann. § 65-4-112 (2004) provides as follows:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

At the regularly scheduled Authority Conference held on January 14, 2008, the voting panel<sup>4</sup> assigned to this docket considered the *Application* and voted unanimously to approve the transfer of authority pursuant to Tenn. Code Ann. § 65-4-112 (2004) based on the following findings:


1. The transfer of authority will be transparent and Birch customers will continue to receive the same rates and services as they currently do.
2. According to the Applicants, the proposed transaction will serve the public interest by increasing the ability of both companies to provide meaningful competition.
3. The FCC has previously approved the transfer of control.

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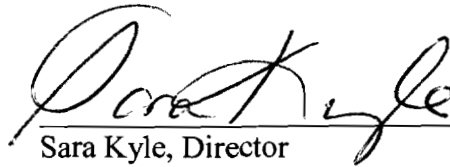
<sup>4</sup> As a result of Director Miller's resignation effective December 1, 2007, a Notice of Reassignment of Panels was filed in this docket on January 4, 2008.

**IT IS THEREFORE ORDERED THAT:**

The transfer of authority of Birch Telecom of the South, Inc. to Access Integrated Networks, Inc. as described in the *Application for Transfer of Control* and discussed herein is approved pursuant to Tenn. Code Ann. § 65-4-112 (2004).

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Eddie Roberson, Chairman

A handwritten signature in black ink, appearing to read "Sara Kyle", written over a horizontal line.

Sara Kyle, Director

A handwritten signature in black ink, appearing to read "Ron Jones", written over a horizontal line.

Ron Jones, Director