

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

|  |                        |   |                   |
|--|------------------------|---|-------------------|
| <b>IN RE:</b>                                    | <b>August 31, 2009</b> | ) |                   |
|  |                        | ) |                   |
| <b>JOINT PETITION OF BIRCH TELECOM OF THE</b>    |                        | ) |                   |
| <b>SOUTH, INC. D/B/A BIRCH COMMUNICATIONS OF</b> |                        | ) | <b>DOCKET NO.</b> |
| <b>THE SOUTHEAST AND IDS TELECOM CORP. AND</b>   |                        | ) | <b>09-00074</b>   |
| <b>NOW COMMUNICATIONS, INC. FOR EXPEDITED</b>    |                        | ) |                   |
| <b>APPROVAL OF TRANSFER OF CUSTOMER BASE</b>     |                        | ) |                   |

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**ORDER APPROVING TRANSFER OF CUSTOMER BASE**

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This matter came before Chairman Sara Kyle, Director Eddie Roberson and Director Mary W. Freeman of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 4, 2009 for consideration of the Joint Petition filed on May 28, 2009 by IDS Telecom Corp. ("IDS"), Now Communications, Inc. ("NOW") (IDS and NOW together, the "Sellers") and Birch Telecom of the South, Inc. d/b/a Birch Communications of the Southeast ("Birch") (IDS, NOW, and Birch collectively, the "Petitioners") for the approval of transfer of customers from Sellers to Birch.

IDS is authorized to provide local exchange and interexchange telecommunications services in Tennessee pursuant to Authority Order in Docket No. 05-00048 issued on June 30, 2005. NOW is authorized to provide local exchange and interexchange telecommunications services in Tennessee pursuant to Authority Order in Docket No. 03-00455 issued on February 19, 2004. Birch is a wholly owned subsidiary of Birch Communications, Inc. ("BCI"). BCI and/or its subsidiaries are authorized to provide telecommunications services in thirty states, as well as being authorized by the Federal Communications Commission to provide both interstate and international telecommunications services. In

Tennessee, Birch is authorized to provide resold local exchange and long distance service pursuant to Authority Order in Docket No. 00-00341 issued on July 20, 2000.

#### **THE JOINT PETITION AND RELATED REQUESTS FROM THE COMPANY**

The Petitioners propose to transfer approximately 160 business customers, thirty-two residential customers, and ninety-five prepaid local service customers in Tennessee from Sellers to Birch. The Joint Petition states upon completion of the proposed transaction and the migration of customers to Birch, Sellers will no longer offer telecommunications services in Tennessee. After Sellers determine that they no longer require their authorizations for operational or billing purposes, Sellers will surrender their authorizations in a separate filing.

On July 22, 2009, the Petitioners requested a waiver of the prior approval requirement of the Authority's customer notification rule. Pursuant to TRA Rule 1220-4-2-.56(2)(d)(2), the customer notification letter must be pre-approved and mailed no less than thirty days prior to the actual transfer. The Petitioners claimed that in order for customers to have the required thirty day notice of the change in carrier, notifications must be mailed out no later than July 23, 2009. The Petitioners noted that the next scheduled Authority Conference is after July 23, 2009. Based upon these representations, the Petitioners requested waiver of the prior approval requirement of the customer notification rule.

#### **FINDINGS AND CONCLUSIONS**

The Authority finds that the transaction described in the Joint Petition and herein involves solely a transfer of a customer base. Since there are no other assets being transferred, only TRA Rule 1220-4-2-.56(2)(d) applies to the transaction.<sup>1</sup> The rule provides:

1. The acquiring telecommunications service provider shall provide the Authority a copy of the self-certification letter it shall file with the Federal Communications Commission ("FCC"), as required in CC Docket No. 00257, certifying that the customer transfer is in compliance with all FCC regulations governing such transactions.
2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its

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<sup>1</sup> Consistent with Docket No. 04-00431 (May 17, 2006) and Docket No. 05-00269 (January 3, 2006), the Authority found that separate review and approval of the transaction under Tenn. Code Ann. § 65-4-112 is not required.

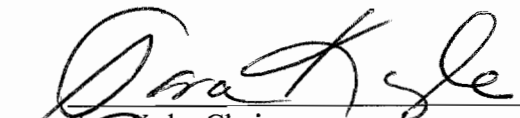
customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.

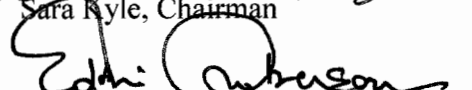
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

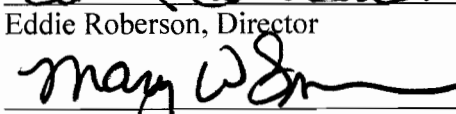
As to the waiver of the pre-approval requirement for the customer notification letter as requested by the Petitioners, the Authority found that the Petitioners' inability to provide a thirty day notice to affected customers if the pre-approval requirement was not waived constituted a finding of good cause for waiver as contemplated by TRA Rule 1220-4-2.56(2)(d)(2). Thereafter, the panel voted unanimously to approve the Joint Petition and transfer of customers pursuant to TRA Rule 1220-4-2-.56(2)(d).

**IT IS THEREFORE ORDERED THAT:**

1. Pursuant to TRA Rule 1220-4-2.56(2)(d)(2), good cause exists to waive the requirement of pre-approval for the customer notification letter, and such pre-approval is hereby waived.
2. The Joint Petition filed by IDS Telecom Corp., Now Communications, Inc. and Birch Telecom of the South, Inc. d/b/a Birch Communications of the Southeast is hereby approved pursuant to TRA Rule 1220-4-2.56(2)(d).

  
Sara Kyle, Chairman

  
Eddie Roberson, Director

  
Mary W. Freeman, Director