

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 5, 2010

IN RE:

APPLICATION OF BIRCH TELECOM OF THE
SOUTH, INC. AND BIRCH COMMUNICATIONS, INC.
FOR APPROVAL OF FINANCING ARRANGEMENTS
AND RELATED TRANSACTIONS

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DOCKET NO.
09-00179

ORDER APPROVING FINANCING TRANSACTION

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 December 14, 2009 for consideration of the *Application of Birch Telecom of the South, Inc. and Birch Communications, Inc. for Approval of Financing Arrangements and Related Transactions* (“*Application*”) filed on November 6, 2009 by Birch Telecom of the South, Inc. (“Birch Telecom”) and Birch Communications, Inc. (“Birch Communications”) (collectively, “Applicants”) for approval to issue and sell secured notes and undertake other related financing transactions.

Birch Telecom is a Delaware corporation. In Tennessee, Birch Telecom is authorized to provide local exchange and interexchange telecommunications services pursuant to Authority Order in Docket No. 00-00341 issued on July 20, 2000.¹

¹ See *In re: Birch Telecom of the South Inc.’s Application for Certificate of Public Convenience and Necessity to Operate as Competing Telecom Service Provider Within the State of Tennessee*, Docket No. 00-00341.

Birch Communications is a Georgia corporation with subsidiaries that provide telecommunications services in thirty-two states. In Tennessee, Birch Communications is authorized to provide local exchange and interexchange telecommunications services pursuant to Authority Order in Docket No. 99-00644 issued on December 3, 1999 and in Docket No. 09-00029 issued on April 27, 2009.²

THE PROPOSED FINANCING TRANSACTIONS

According to the *Application*, the Applicants plan to enter into a Purchase Agreement which will allow Birch Communications to issue and sell to Knight Libertas LLC (“Purchaser”) secured notes due in 2015 at an interest rate that will be set depending on market conditions.³ Applicants anticipate that the use of proceeds from the sale of the securities will be used towards current debt and payment obligations, as well for general corporate purposes, including future acquisitions. Pursuant to the Purchase Agreement, the securities will be secured by a first-priority senior security interest in the assets of Applicants and other subsidiaries of Birch Communications. The *Application* states that Applicants and certain other subsidiaries of Birch Communications will jointly and severally secure the debt. Applicants state that Tennessee assets will be pledged as collateral to secure any debt obligations for the financing arrangements.⁴

The *Application* states the proposed financing transaction will not result in any operational changes in the state of Tennessee. In addition, the proposed financing will have no effect on the operations of the entities certificated in Tennessee. The *Application* states that no

² See *In re: Petition of Access Integrated Networks, Inc. for a Certificate of Public Convenience and Necessity as a Competing Telecommunications Service Provider*, Docket No. 99-00644. See also *In re: Petition of Access Integrated Networks, Inc. d/b/a Birch Communications of the Southeast to Change Their Name to Birch Communications, Inc.*, Docket No. 09-00029.

³ Terms and conditions, such as the specific amount of financing Applicants will receive and the interest rate, remain subject to ongoing negotiations with Purchaser and may change based on market conditions at the time of closing. The Applicant filed the details of the financing transaction as confidential information.

⁴ *Data Response*, p. 1 (November 12, 2009).

transfer of certificate, authorization, assets or customers will occur as a result of Applicants' participation in any debt financing transaction. Immediately following Applicants' execution of the financing arrangements, Applicants will continue to provide service to their respective Tennessee customers pursuant to their respective authorizations with no change in the rates or terms and conditions of service as currently provided. The proposed financing transaction will be transparent to customers. The Applicants state that the financing transaction will serve the public interest by providing the Applicants with access to greater financial resources, thereby enabling Applicants to not only strengthen their ability to compete in the Tennessee telecommunications marketplace but also to introduce innovative products and services to the benefit of Tennessee customers.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-109 (2004) provides:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

At a regularly scheduled Authority Conference held on December 14, 2009, the panel voted unanimously to approve the *Application* and made the following findings:


1. The proposed financing transaction is subject to Authority approval pursuant to Tenn. Code Ann. § 65-4-109 (2004).
2. The proposed financing transaction is being made in accordance with laws enforceable by this agency.
3. The proposed financing transaction is in the public interest because it will strengthen the Applicants' ability to compete in the Tennessee telecommunications marketplace.

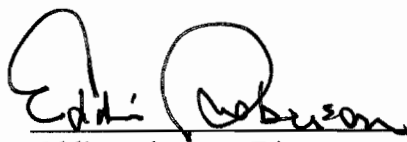
IT IS THEREFORE ORDERED THAT:

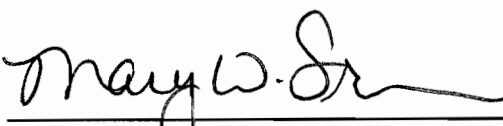
1. Birch Telecom of the South, Inc. and Birch Communications, Inc. are authorized to enter into the financing transaction described in the *Application of Birch Telecom of the South, Inc. and Birch Communications, Inc. for Approval of Financing Arrangements and Related Transactions*.

2. The authorization and approval given hereby shall not be used by any party, including but not limited to, any lending party, for the purpose of inferring an analysis or assessment of the risks involved.

3. This decision is not intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof.


Sara Kyle, Chairman


Eddie Roberson, Director


Mary W. Freeman, Director