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BEFORE THE  
TENNESSEE REGULATORY AUTHORITY

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Application of Birch Telecom of the South,  
Inc. and Birch Communications, Inc. for  
Approval of Financing Arrangements

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Docket No. 10-00078

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

Pursuant to T.C.A. § 65-4-109, Birch Telecom of the South, Inc. and Birch Communications, Inc. (collectively, "Applicants"), by their attorneys, hereby respectfully request approval from the Tennessee Regulatory Authority ("Authority") to undertake financing transactions. Applicants respectfully submit the following in support of this Application:

1. Birch Telecom of the South, Inc. is a Delaware corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. Birch Telecom of the South, Inc. is authorized to provide local exchange and interexchange telecommunications services in Tennessee.<sup>1</sup>
2. Birch Communications, Inc. is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. Birch Communications, Inc. is authorized to provide local exchange and interexchange telecommunications services in Tennessee.<sup>2</sup> Birch Communications, Inc. is the ultimate parent of Birch Telecom of the South,

<sup>1</sup> Docket No. 00-00341 - *Application of Birch Telecom of the South, Inc. d/b/a Birch Communications of the South for a Certificate of Convenience and Necessity to Operate as a Competing Telecommunications Service Provider Within the State of Tennessee*, Initial Order Granting Certificate of Public Convenience and Necessity (July 20, 2000).

<sup>2</sup> Docket No. 99-00644 - *Application of Access Integrated Networks, Inc. for a Certificate of Public Convenience and Necessity as a Competing Telecommunications Service Provider*, Order Granting Certificate of Public Convenience and Necessity (Dec. 3, 1999); Docket No. 09-00029 - *Petition of Access Integrated Networks, Inc. d/b/a Birch Communications of the Southeast to Change Its Name to Birch Communications, Inc.*, Order Granting Approval of Name Change (Apr. 27, 2009).

Inc. Birch Communications, Inc. and its subsidiaries provide telecommunications services in 32 states.

3. Correspondence concerning this Application should be directed to:

Angela F. Collins  
Cahill Gordon & Reindel LLP  
1990 K Street, NW, Suite 950  
Washington, DC 20006  
202-862-8900 (telephone)  
202-862-8958 (facsimile)  
acollins@cgrdc.com

with a copy to:

Christopher Bunce  
Vice President, Legal and General Counsel  
Birch Communications, Inc.  
2300 Main Street, Suite 600  
Kansas City, MO 64108  
816-300-3322 (telephone)  
chris.bunce@birch.com

4. On January 5, 2010, the Authority issued an Order in Docket No. 09-00179 granting Applicants' request for approval of certain financing transactions with Knight Libertas LLC ("Knight"). Specifically, Applicants requested authority to issue and sell to Knight up to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of secured notes due in 2015 at an interest rate of [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] depending on market conditions.

5. The financing transaction between Applicants and Knight was never consummated; therefore, Applicants request that the Authority rescind the January 5, 2010 Order.

6. Applicants now seek authority to enter into a similar financing transaction with certain other lenders ("Lenders"), which will allow Birch Communications, Inc. to obtain senior

secured term loans from the Lenders and/or their affiliates up to an aggregate amount of

[BEGIN CONFIDENTIAL] [END CONFIDENTIAL] due in [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] at a per annum interest rate of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] ("Loans").

Attached as **Exhibit A**<sup>3</sup> is a draft Term Sheet, which provides the material terms and conditions of the financing transaction for which Applicants seek approval.

7. A portion of the monies received by Applicants under the Loans will be made available immediately, and the proceeds of Loans will be used towards current debt and payment obligations as well as for general corporate purposes, including future acquisitions and general working capital purposes. The Loans will be secured by a lien on substantially all of the assets of Applicants, including Applicants' assets in Tennessee, and other subsidiaries of Birch Communications, Inc. Attached as **Exhibit B**<sup>4</sup> are the current financial statements detailing the financial condition of Birch Communications, Inc.

8. In accordance with the requirements of the various states, Applicants are seeking approval for this transaction from the state commissions in Colorado, Georgia, Indiana, Nebraska, New York and Pennsylvania. Applicants have not been denied approval from any state commission from which it is seeking approval for the transaction. Approval of this financing transaction is not required by the Federal Communications Commission.

9. Applicants and the other subsidiaries of Birch Communications, Inc. will be jointly and severally liable for repayment of the debt, and the debt will be secured by a lien on substantially all of the assets of Applicants and the other subsidiaries of Birch Communications,

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<sup>3</sup> Filed under seal pursuant to a Request for Confidential Treatment. Birch is filing for approval prior to finalizing the transaction documents so that it will be able to access capital quickly, which in turn will allow Birch to continue deploying expanded service offerings to customers.

<sup>4</sup> Filed under seal pursuant to a Request for Confidential Treatment.

Inc. The purpose of the transaction is to pay off a portion of existing indebtedness and to provide Applicants ongoing financing for future acquisitions, working capital, and other general corporate purposes. Any accounting of the transaction will reflect the debt repayment and financing. The proposed transaction will not result in any operational changes in the state of Tennessee. There will be no change in the rates or terms and conditions of service as a result of the Applicants' participation in the proposed financing transaction. There will be no transfer of certificates, authorizations, assets, or customers as a result of the Applicants' participation in the proposed financing transactions, and the transaction will have no effect on the regulated services or the tariff conditions provided by the Applicants.

10. Approval of this Application is in the public interest. The financing will allow Applicants to strengthen their ability to compete in the market for telecommunications services in Tennessee by giving Applicants access to greater financial resources. These resources will enable it to introduce innovative products and services and to respond better to the competitive telecommunications environment. The proposed transaction will have no affect on the operations of the entities certificated in Tennessee.

11. Applicants respectfully request that this Application be reviewed by the Authority on an expedited basis, and ask the Authority to approve the Application no later than May 24, 2010. The proposed transaction with Lenders is similar to the transaction approved by the Authority's in the January 5, 2010 Order with the notable exception that [BEGIN  
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[END CONFIDENTIAL] approved in the Authority's January 5, 2010 Order.

12. In addition, expedited treatment in this situation is crucial due to the exigent circumstances resulting from the rapidly changing market conditions in the financial industry. If

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the Applicants are unable to secure approval from the Authority within an expedited timeframe, they may be unable proceed with the transaction. The loss of this financing may irreparably harm Applicants for numerous business and financial reasons, may weaken Applicants' ability to compete in the telecommunications services market, and may deprive consumers by impeding the deployment of innovative products and services. The Authority's expedited approval of this Application is therefore critical to ensuring that the above-referenced public interest benefits will accrue at the earliest possible date.

WHEREFORE, for the foregoing reasons, Applicants respectfully request that the Authority act expeditiously to approve the proposed transactions described herein.

Respectfully submitted,

**BIRCH TELECOM OF THE SOUTH, INC.**  
**BIRCH COMMUNICATIONS, INC.**

Christopher Bunce  
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202-862-8958 (facsimile)  
acollins@cgrdc.com

Dated: April 27, 2010

STATE OF MISSOURI )  
 )  
COUNTY OF JACKSON )

### VERIFICATION

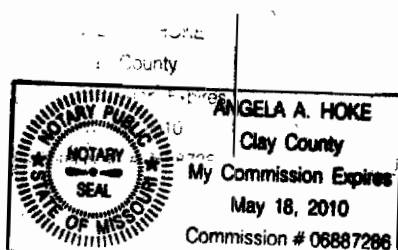
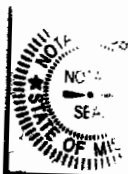
I, Christopher Bunce, Vice President, Legal & General Counsel of Birch Communications, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.




Name: Christopher Bunce

Title: Vice President, Legal & General  
Counsel

Subscribed and sworn to before me this 27<sup>th</sup> day of April



  
Notary Public

**EXHIBITS**

**Exhibit A     Term Sheet\***

**Exhibit B     Financial Statements\***

\*Submitted pursuant to Request for Confidential Treatment.

# **EXHIBIT A**

## **TERM SHEET\***

\*Submitted pursuant to Request for Confidential Treatment.



# **EXHIBIT B**

## **FINANCIAL STATEMENTS\***

\*Submitted pursuant to Request for Confidential Treatment.