

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**July 22, 2010**

<b>IN RE:</b>	)	
	)	
<b>APPLICATION OF BIRCH TELECOM OF THE</b>	)	<b>DOCKET NO.</b>
<b>SOUTH, INC. AND BIRCH COMMUNICATIONS, INC.</b>	)	<b>10-00078</b>
<b>FOR APPROVAL OF FINANCING ARRANGEMENTS</b>	)	

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**ORDER APPROVING FINANCING ARRANGEMENTS**

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This matter came before Chairman Sara Kyle, Director Kenneth C. Hill, 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 June 7, 2010 for consideration of the *Application of Birch Telecom of the South, Inc. and Birch Communications, Inc. for Approval of Financing Arrangements* ("Application") filed on April 28, 2010 by Birch Communications, Inc. ("Birch Communications") and Birch Telecom of the South, Inc. ("Birch Telecom") (collectively, "Applicants").

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.

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, *Order Approving a Name Change*, issued on April 27, 2009. Birch Communications is the ultimate parent of Birch Telecom.

### **THE PROPOSED FINANCING TRANSACTIONS**

On January 5, 2010, the Authority issued an Order in Docket No. 09-00179 granting the Applicants' request for approval of certain financing transactions with Knight Libertas LLC ("Knight"). This financing transaction between the Applicants and Knight was never consummated.

The Applicants are now seeking authority to enter into a similar financing transaction with certain other lenders ("Lenders"), which will allow Birch Communications to obtain senior secured term loans from the Lenders and/or their affiliates under terms that have been designated as proprietary in nature. Applicants anticipate that the use of proceeds from the Loans will be used towards current debt and payment obligations, as well for general corporate purposes, including future acquisitions and general working capital. The *Application* asserts that the Loans will be secured by a lien on substantially all of the assets of the Applicants, including Applicants' assets in Tennessee, and other subsidiaries of Birch Communications. Specifically, the Loan Facilities will be secured by a first-priority perfected lien on all present and future property and assets of Birch Communications, and its subsidiaries. The *Application* states that the Applicants and certain other subsidiaries of Birch Communications will jointly and severally secure the debt.

The *Application* states that the proposed financing transaction will not result in any operational changes in the state of Tennessee and will have no effect on the regulated services or the tariff conditions provided by the Applicants. In addition, the proposed financing

arrangements will have no effect on the operations of the entities certificated in Tennessee. The *Application* states that no transfer of certificate, authorization, assets or customers will occur as a result of the Applicants' participation in the proposed financing arrangements. Immediately following the Applicants' execution of the financing arrangements, the 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 arrangements will be transparent to 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 June 7, 2010, the panel voted unanimously to approve the *Application* and made the following findings:

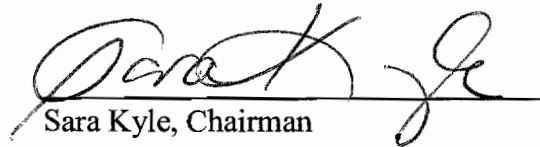
1. The proposed financing arrangements are subject to Authority approval pursuant to Tenn. Code Ann. § 65-4-109 (2004).
2. The proposed financing arrangements are being made in accordance with laws enforceable by this agency.
3. The proposed financing arrangements are in the public interest because it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

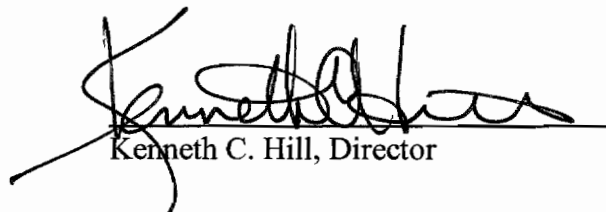
**IT IS THEREFORE ORDERED THAT:**

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

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

  
Kenneth C. Hill, Director

  
Mary W. Freeman, Director