

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

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Joint Application of Birch Communications, )  
 Inc., Birch Telecom of the South, Inc. dba )  
 Birch Communications and Birch )  
 Communications Holdings, Inc. for Approval )  
 of a *Pro Forma* Internal Reorganization of )  
 Birch Communications, Inc. )

T.R.A. DOCKET ROOM

Docket No. 10-00124

**JOINT APPLICATION**

Pursuant to Tenn. Code Ann. § 65-4-113, Birch Telecom of the South, Inc. dba Birch Communications (“Birch Telecom”), Birch Communications, Inc. (“Birch”), and Birch Communications Holdings, Inc. (“Birch Holdings”) (collectively, the “Applicants”) hereby respectfully request approval from the Tennessee Regulatory Authority (“Authority”) for approval of a *pro forma* internal reorganization whereby all shares in Birch will be transferred to Birch Holdings. The change in control is *pro forma* in nature because the current shareholders of Birch will become the shareholders of Birch Holdings and will hold shares in the same percentage as currently held in Birch. There will be no change in the ultimate ownership of Birch Telecom or Birch, and the transaction will be transparent to customers. Applicants respectfully submit the following in support of this Application:

**I. DESCRIPTION OF THE APPLICANTS**

**A. Birch Telecom of the South, Inc. dba Birch Communications**

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

<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

**B. Birch Communications Inc.**

Birch is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. Birch is authorized to provide local exchange and interexchange telecommunications services in Tennessee.<sup>2</sup> Birch is the ultimate parent of Birch Telecom. Birch and its subsidiaries provide telecommunications services in 32 states.

**C. Birch Communications Holdings, Inc.**

Birch Holdings is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. As a result of this transaction, Birch Holdings will become the sole shareholder of Birch. Birch Holdings will conduct no business other than holding the equity of Birch and any activities reasonably related thereto.

**II. DESIGNATED CONTACTS**

Correspondence concerning this Application should be directed to:

Angela F. Collins  
Cahill Gordon & Reindel LLP  
1990 K Street, NW, Suite 950  
Washington, DC 20006  
202-862-8930 (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

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*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).

816-300-3322 (telephone)  
chris.bunce@birch.com

### III. DESCRIPTION OF THE TRANSACTION

As part of this corporate restructuring, each current Birch shareholder will transfer its shares to Birch Holdings, as a contribution to the capital of Birch Holdings. In exchange, Birch Holdings will issue to each shareholder a like number of shares in Birch Holdings. As a result of the reorganization, Birch Holdings will become the sole shareholder of Birch, and the current shareholders of Birch will become the shareholders of Birch Holdings. There will be no change in the ultimate ownership of Birch or Birch Telecom, as the same owners will continue to own Birch Holdings after consummation of the transaction. For the Authority's convenience, pre- and post-transaction organizational charts are set forth in **Exhibit 1**.<sup>3</sup> Applicants' most recent financial statements are included as **Exhibit 2**.<sup>4</sup>

Following the proposed reorganization, the customers of Birch and Birch Telecom will continue to receive high-quality service under the same rates, terms, and conditions. The proposed transaction will not involve a change in the operating authority or tariffs of Birch or Birch Telecom in Tennessee. As such, the transaction will be transparent to Tennessee customers. Further, the *pro forma* internal reorganization will not result in a change of either company's management or operations.

In addition to Tennessee, Applicants are seeking approval of the reorganization from the state commissions in California, Colorado, Georgia, Indiana, Louisiana, Mississippi, New Jersey, New York, Ohio, Pennsylvania, and Texas. Applicants have not been denied approval from any state commission. Approval of the transaction by the Federal Communications Commission is

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<sup>3</sup> Filed pursuant to a request for confidential treatment.

<sup>4</sup> Filed pursuant to a request for confidential treatment.

not required.<sup>5</sup>

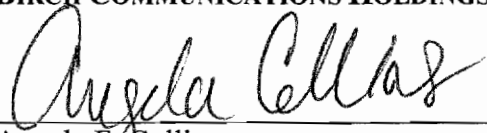
#### IV. PUBLIC INTEREST CONSIDERATIONS

Approval of this Application is in the public interest. The reorganization will allow Applicants to realize significant financial and operational benefits, which will strengthen the ability of both Birch and Birch Telecom to compete in the market for telecommunications services in Tennessee. Immediately following the *pro forma* internal reorganization, both Birch and Birch Telecom will continue to provide high-quality service to customers under the same Birch name, with no change in their rates, terms, or conditions of service. Further, Birch and Birch Telecom will continue to be led by the same experienced management teams. As a result, the proposed transaction will be seamless and transparent to customers in Tennessee.

WHEREFORE, for the reasons stated above, Applicants respectfully request that the Authority act expeditiously to approve the proposed *pro forma* corporate reorganization.

Respectfully submitted,

**BIRCH TELECOM OF THE SOUTH, INC. DBA  
BIRCH COMMUNICATIONS, INC.  
BIRCH COMMUNICATIONS, INC.  
AND  
BIRCH COMMUNICATIONS HOLDINGS, INC.**



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

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

Dated: June 15, 2010

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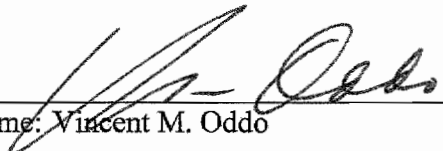
<sup>5</sup> 47 C.F.R. § 63.24(d).

STATE OF GEORGIA           )  
  )  
COUNTY OF BIBB           )

**VERIFICATION**

I, Vincent M. Oddo, President/CEO 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.

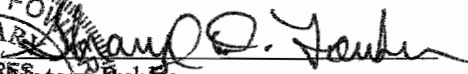
6/9/10  
Date

  
Name: Vincent M. Oddo

Title: President/CEO, Birch  
Communications, Inc.

Subscribed and sworn to before me this 8<sup>th</sup> day of June 2010



  
Notary Public

## **EXHIBITS**

**Exhibit 1                      Pre- and Post-Transaction Organizational Charts\***

**Exhibit 2                      Financial Statements\***

\*Submitted pursuant to Request for Confidential Treatment.

## **EXHIBIT 1**

### **PRE- AND POST-TRANSACTION ORGANIZATIONAL CHARTS\***

\* Submitted pursuant to Request for Confidential Treatment.

## **EXHIBIT 2**

### **FINANCIAL STATEMENTS\***

\* Submitted pursuant to Request for Confidential Treatment.