

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 10, 2010

IN RE:

**JOINT APPLICATION OF BIRCH COMMUNICATIONS,
INC., BIRCH TELECOM OF THE SOUTH, INC. D/B/A
BIRCH COMMUNICATIONS, AND BIRCH
COMMUNICATIONS HOLDINGS, INC. FOR APPROVAL
OF A *PRO FORMA* INTERNAL REORGANIZATION OF
BIRCH COMMUNICATIONS, INC.**

**DOCKET NO.
10-00124**

ORDER APPROVING *JOINT APPLICATION*

This matter came before Chairman Mary W. Freeman, Director Eddie Roberson and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 27, 2010 for consideration of the *Joint Application* filed on June 17, 2010 by Birch Telecom of the South, Inc. d/b/a Birch Communications ("Birch Telecom"), Birch Communications, Inc. ("Birch"), and Birch Communications Holdings, Inc. ("Birch Holdings") (collectively, the "Applicants") requesting approval of a *pro forma* internal reorganization whereby all shares in Birch will be transferred to Birch Holdings.

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 and Birch Holdings are both Georgia corporations. In Tennessee, Birch is authorized to provide local exchange and interexchange telecommunications services pursuant to Authority Orders in Docket No. 99-00644 issued on December 3, 1999 and in Docket No. 09-00029, *Order*

Granting Approval of Name Change, issued on April 27, 2009. Birch is the ultimate parent of Birch Telecom. Birch and its subsidiaries provide telecommunications services in thirty-two states.

THE JOINT APPLICATION

As part of a 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 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.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-113(a) (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, which in pertinent part, states as follows:

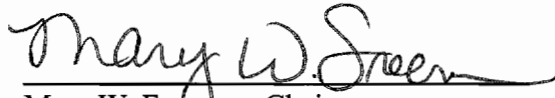
Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

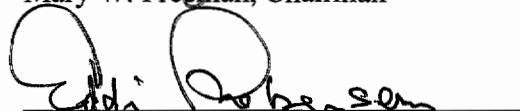
Based on the filings in this docket, the panel found that the internal reorganization serves the public interest because it will allow the Applicants to realize significant financial and operational benefits, which should strengthen their ability to compete in the market for telecommunications

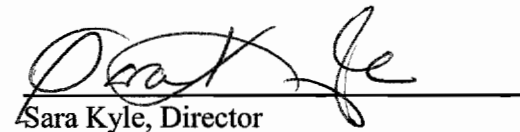
services in Tennessee. After the transaction has been completed, the companies will continue to serve customers under the same Birch name and at the same rates, terms, and conditions of service as at the present. There will be no change in the ultimate ownership of Birch or Birch Telecom as a result of the transaction, and the companies will continue to be led by the same experienced management teams. Thereafter, based on the record and the aforementioned findings, the panel voted unanimously to approve the *Joint Application* pursuant to Tennessee Code Annotated § 65-4-113.

IT IS THEREFORE ORDERED THAT:

The *Joint Application* of Birch Telecom of the South, Inc. d/b/a Birch Communications, Birch Communications, Inc., and Birch Communications Holdings, Inc. is approved.


Mary W. Freeman, Chairman


Eddie Roberson, Director


Sara Kyle, Director