

**CAHILL GORDON & REINDEL LLP**

SUITE 950


1990 K STREET, N.W.

WASHINGTON, D.C. 20006-1181

EIGHTY PINE STREET  
NEW YORK, N.Y. 10005-1702  
(212) 701-3000  
FAX: (212) 269-5420

TELEPHONE (202) 862-8900  
FACSIMILE (202) 862-8958

AUGUSTINE HOUSE  
6A. AUSTIN FRIARS  
LONDON, ENGLAND EC2N 2HA  
(011) 44.20.7920.9800  
FAX (011) 44.20.7920.9825

ANGELA F. COLLINS | 202-862-8930 |  acollins@cgrdc.com

July 23, 2010

**Via Federal Express**

Ms. Sharla Dillon  
Docket Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

DOCKET NO.

10-00153

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

Dear Ms. Dillon:

Birch Telecom of the South, Inc. and Birch Communications, Inc. (collectively, "Applicants") hereby enclose an original and thirteen (13) copies of the **PUBLIC VERSION** of their Application for Approval of Financing Arrangements, as well as an original and thirteen (13) copies of their Request for Confidential Treatment. Pursuant to their Request for Confidential Treatment, Applicants also submits a **CONFIDENTIAL VERSION** of the Application in a sealed envelope marked "Confidential." In addition, please find enclosed a twenty-five dollar (\$25.00) application fee for each Applicant.

Please date stamp the extra copies of the Application and Request for Confidential Treatment, and return them in the enclosed envelope. If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



Angela F. Collins

Counsel for Birch Communications, Inc. and  
Birch Telecom of the South, Inc.

Enclosures

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

RECEIVED

JUL 27 PM 12:53

T.R.A. DOCKET ROOM

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

Docket No. \_\_\_\_\_

**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. ("Birch Telecom") and Birch Communications, Inc. ("Birch") (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 is authorized to provide local

<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).

 **ORIGINAL**

exchange and interexchange telecommunications services in Tennessee.<sup>2</sup> Birch is the ultimate parent of Birch Telecom.<sup>3</sup>

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. In July 2010, Birch plans to enter into a Securities Purchase Agreement (“Agreement”) pursuant to which Birch would intend to issue and sell to BIA Digital Partners SBIC II LP (“BIA DP”) and other purchasers (collectively, the “Purchasers”) up to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of senior subordinate notes due in 2015 or 2016 (depending on certain conditions) (“Notes”) having an interest rate of [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] and warrants. Attached as **Exhibit A** is a draft Term Sheet, which provides the material terms and conditions

---

<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).

<sup>3</sup> On June 17, 2010, Applicants submitted an Application for Approval of a *Pro Forma* Internal Reorganization that is now pending before the Authority in Docket No. 100124. The instant Application has no effect on Applicants’ June 17, 2010 application.

of the financing transaction for which Applicants seek approval.<sup>4</sup>

5. The monies received by Birch for the sale of the Notes and warrants will be made available immediately upon execution and delivery of the Agreement. The proceeds of Notes will be used for a variety of purposes, including the repayment of certain debt obligations, future acquisitions, and general working capital purposes. The Notes will be secured by a second lien on substantially all of the assets of Applicants, including Applicants' assets in Tennessee, and Birch's other directly and indirectly owned subsidiaries. Attached as **Exhibit B** are the current financial statements detailing the financial condition of Birch before and after the proposed transaction.<sup>5</sup>

6. 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 Applicants' participation in the proposed financing transaction. There will be no transfer of certificates, authorizations, assets, or customers as a result of Applicants' participation in the proposed financing transactions, and the transaction will have no effect on the regulated services or the tariff conditions provided by Applicants in Tennessee.

7. 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.

---

<sup>4</sup> Filed under seal pursuant to a Request for Confidential Treatment. Applicants are 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 and Birch Telecom to continue deploying expanded service offerings to customers.

<sup>5</sup> Filed under seal pursuant to a Request for Confidential Treatment.

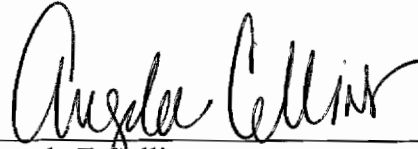
8. Approval of this Application is in the public interest. The financing will allow Applicants to strengthen their ability to compete in the market for telecommunications services in Tennessee by giving Applicants access to greater financial resources. These resources will enable it to introduce innovative 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.

9. 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 August 30, 2010. Expedited treatment in this situation is crucial due to the exigent circumstances resulting from the rapidly changing market conditions in the financial industry. If 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  
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

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

Dated: July 23, 2010

STATE OF **GEORGIA**

COUNTY OF **FULTON**

)  
)  
)

**VERIFICATION**

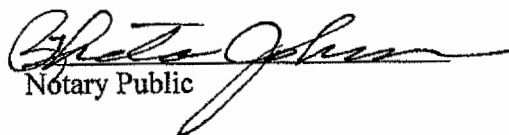
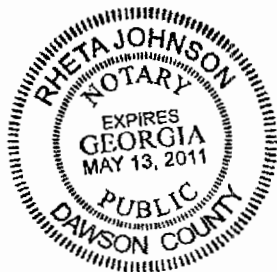
I, Vincent M. Oddo, President/CEO of Birch Communications, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.



Name: Vincent M. Oddo

Title: President/CEO

Subscribed and sworn to before me this 20 day of July 2010

  
Notary Public

**EXHIBITS**

**Exhibit A      Term Sheet\***

**Exhibit B      Financial Statements\***

\*Submitted pursuant to Request for Confidential Treatment.



## **EXHIBIT A\***

\*Submitted pursuant to Request for Confidential Treatment.

**EXHIBIT B\***

\*Submitted pursuant to Request for Confidential Treatment.