

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 7, 2010

IN RE:

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

**DOCKET NO.
10-00153**

ORDER APPROVING FINANCING ARRANGEMENTS

This matter came before Chairman Mary W. Freeman, Director Eddie Roberson and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 23, 2010 for consideration of the *Application of Birch Telecom of the South, Inc. and Birch Communications, Inc. for Approval of Financing Arrangements* ("Application"). The *Application* was filed on July 27, 2010 by Birch Telecom of the South, Inc. ("Birch Telecom") and Birch Communications, Inc. ("Birch") (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 is a Georgia corporation and the ultimate parent of Birch Telecom. In Tennessee, Birch 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 Authority Order in Docket No. 09-00029 (name change) issued on April 27, 2009.

THE APPLICATION

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 and other purchasers senior subordinate notes (“Notes”) and warrants. The Notes would come due in 2015 or 2016. 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. Applicants anticipate that the use of proceeds from the Notes will be used for a variety of purposes, including the repayment of certain debt obligations, future acquisitions and general working capital purposes. The *Application* asserts the Notes will be secured by a second lien on substantially all of the assets of the Applicants, including Applicants’ assets in Tennessee, and Birch’s other directly and indirectly owned subsidiaries.

The *Application* states 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. There will be no change in the rates or terms and conditions of service as a result of the financing transaction. In addition, the proposed financing 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 Applicants’ participation in the proposed financing transaction.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-109 (2004) provides:

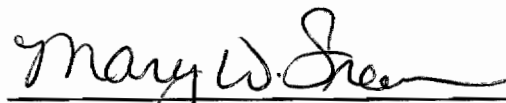
No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after 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 August 23, 2010, the panel voted unanimously to approve the *Application* and made the following findings:

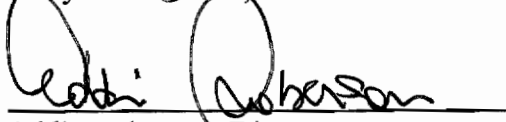
1. The proposed financing arrangements are subject to Authority approval pursuant to Tenn. Code Ann. § 65-4-109 (2004).
2. The proposed financing arrangements are being made in accordance with laws enforceable by this agency.
3. The proposed financing arrangements are in the public interest because they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

IT IS THEREFORE ORDERED THAT:

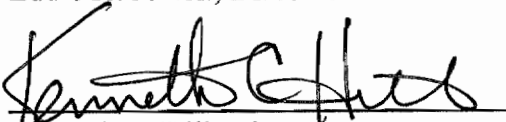
1. Birch Telecom of the South, Inc. and Birch Communications, Inc. are authorized to enter into the financing arrangements described in the *Application of Birch Telecom of the South, Inc. and Birch Communications, Inc. for Approval of Financing Arrangements*.
2. The authorization and approval given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



Mary W. Freeman, Chairman



Eddie Roberson, Director



Kenneth C. Hill, Director