

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

RECEIVED

2010 SEP 20 PM 3:35

AUGUSTINE HOUSE
65 AUSTIN FRIARS
LONDON, ENGLAND EC2N 2HA
(011) 44.20.7920.9800
FAX: (011) 44.20.7920.9825

T.R.A. DOCKET ROOM

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

September 17, 2010

Via Federal Express

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

10-00190

Re: Joint Application of Birch Telecom of the South, Inc. dba Birch Communications and American Fiber Network, Inc. for Approval to Transfer Assets and Customers of American Fiber Network, Inc. to Birch Telecom of the South, Inc. dba Birch Communications

Dear Ms. Dillon:

Birch Telecom of the South, Inc. dba Birch Communications and American Fiber Network, Inc. (collectively, the "Applicants") hereby enclose an original and thirteen (13) copies of the **PUBLIC VERSION** of the above-referenced Application, as well as an original and thirteen (13) copies of their Request for Confidential Treatment. Pursuant to their Request for Confidential Treatment, Applicants also submit the **CONFIDENTIAL VERSION** of the Application in a sealed envelope marked "Confidential." In addition, enclosed is the application fee.

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 TELECOM OF THE SOUTH, INC.
DBA BIRCH COMMUNICATIONS

Enclosures

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

RECEIVED
20 SEP 20 PM 3:56

T.R.A. DOCKET ROOM

Joint Application of Birch Telecom of the)
South, Inc. dba Birch Communications and)
American Fiber Network, Inc. for Approval to)
Transfer Assets and Customers of American)
Fiber Network, Inc. to Birch Telecom of the)
South, Inc. dba Birch Communications)

Docket No. 10-00190

JOINT APPLICATION

Pursuant to Tenn. Code Ann. § 65-4-112 and Tenn. Comp. R. & Regs. 1220-4-2-.56(d), Birch Telecom of the South, Inc. dba Birch Communications (“Birch” or “Purchaser”) and American Fiber Network, Inc. (“Seller” or “AFN”) (Birch and AFN collectively, the “Applicants”) hereby request that the Tennessee Regulatory Authority (“Authority”) approve the transfer of substantially all of AFN’s telecommunications assets and Tennessee customer base to Birch (the “Transaction”). Applicants submit the following in support of this Joint Application:

I. DESCRIPTION OF THE APPLICANTS

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

Birch is a Delaware 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.¹ Birch is a wholly-owned subsidiary of Birch Communications, Inc., a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305, which is also authorized to provide local exchange and

¹ 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).

interexchange telecommunications services in Tennessee.² Birch provides the most recent financial statements of its parent Birch Communications, Inc. in Exhibit 1.³

B. American Fiber Network, Inc.

AFN is a Delaware corporation with headquarters located at 9401 Indian Creek Parkway, Suite 280, Overland Park, Kansas 66210. AFN is authorized to provide local exchange and interexchange services.⁴

II. DESIGNATED CONTACTS

For the purposes of this Joint Application, inquiries, or copies of any correspondence, orders, or other materials should be directed as follows:

For Birch Telecom of the South, Inc.

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

For American Fiber Network, Inc.

Douglas C. Bethell
American Fiber Network, Inc.
9401 Indian Creek Parkway, Suite 280
Overland Park, KS 66210
913-338-2658 (telephone)
913-338-5285 (facsimile)
doug.bethel@afnltd.com

III. DESCRIPTION OF TRANSFER OF ASSETS AND CUSTOMERS

On September 3, 2010, Birch Communications, Inc. agreed to purchase AFN's assets and customer base pursuant to a Sale Agreement pursuant to Article 9 of the Uniform Commercial Code ("Agreement"). A copy of the Agreement is set forth in Exhibit 2.⁵ The assets to be

² 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).

³ Filed pursuant to a request for confidential treatment.

⁴ 07-00150 (Sept. 10, 2007).

⁵ Filed pursuant to a request for confidential treatment.

purchased include customer accounts, accounts receivable, customer agreements and contracts, vendor agreements and contracts, and intellectual property. The ownership structure of Birch will not be affected by the Transaction. Upon consummation of the Transaction and after completion of the customer transfer, Birch will provide AFN customers with the same service quality they have come to expect and all billing will be handled by Birch using the Birch name. Consummation of the Transaction is contingent on, among other things, receipt of all necessary regulatory approvals.

Following approval of the proposed Transaction, Birch will revise its tariffs as necessary to incorporate the Seller's current services and rates so that the affected customers will continue to receive the same services that they currently receive without any changes to the service offerings, rates, or terms and conditions. Birch will not impose any fees on customers for the transfer to Birch. As required by Tennessee Rule 1220-4-2-.56(d)(4), Birch agrees to provide thirty (30) day written notice to the affected customers of any rate increase that may affect their service up to ninety (90) days from the transfer date.

AFN currently serves *****START CONFIDENTIAL*****

*****END CONFIDENTIAL***** customers in Tennessee. All AFN customers will be transferred to Birch. The proposed transfer date is December 1, 2010. Applicants will provide a joint notice of the transfer to AFN customers via U.S. First Class Postage at least thirty (30) days prior to the transfer in accordance with the requirements of Tennessee Rule 1220-4-2-.56(d) and Federal Communications Commission ("FCC") rules. The Applicants will include the logo or name of AFN on both the letterhead and exterior envelope. A draft of the customer notice is set forth in **Exhibit 3**. The Applicants will supplement this Joint Application with a copy of the self-certification filed with the FCC once completed.

Upon completion of the Transaction and the migration of customers, Seller will no longer offer telecommunications services in Tennessee. After Seller determines that it no longer needs its authorization for operational or billing purposes, Seller will surrender its authorization and cancel its tariffs in a separate filing.

In addition to Tennessee, Applicants are seeking approval of the Transaction from the Federal Communications Commission and the state commissions in California, Colorado, Delaware, Florida, Georgia, Indiana, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, and Virginia. These applications are pending, and Applicants have not been denied approval from any state commission.

III. PUBLIC INTEREST ANALYSIS

Approval of the Transaction is in the public interest. As discussed above, current AFN customers will be given prior written notice of the transfer of their account, in compliance with Tennessee and federal customer notice rules. Following consummation of the Transaction, Birch will continue to offer high quality services to Tennessee residents, as is supported by its industry knowledge, technical expertise, and financial strength. As a result, the proposed Transaction will be transparent to customers and will not have a negative impact on the public interest, services to Tennessee customers, or competition.

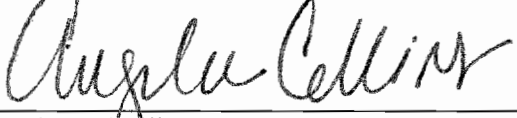
WHEREFORE, for the reasons stated above, Applicants respectfully request that the Authority grant all authority necessary for AFN to transfer substantially all of its assets and Tennessee customers to Birch.

Respectfully submitted,

AMERICAN FIBER NETWORK, INC.

Douglas C. Bethell
President
American Fiber Network, Inc.
9401 Indian Creek Pkwy, St. 280
Overland Park, KS 66210
913-338-2658 (telephone)
913-338-5285 (facsimile)
doug.bethel@afnltd.com

BIRCH TELECOM OF THE SOUTH, INC.



Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
202-862-8958 (facsimile)
acollins@cgrdc.com

Counsel for Birch Telecom of the South, Inc.

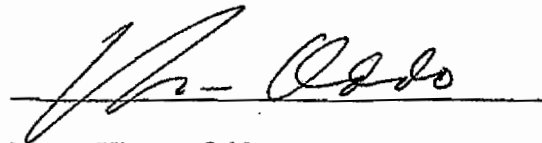
Dated: September 17, 2010

STATE OF GEORGIA)

COUNTY OF BIBB)

VERIFICATION


I, Vincent M. Oddo, being first duly sworn, do hereby certify, depose and state that I am President/Chief Executive Officer for Birch Communications, Inc., that I am authorized to make this verification on behalf of Birch Communications, Inc., and that the contents with respect to Birch Communications, Inc. is true and correct to the best of my knowledge, information and belief.



Name: Vincent Oddo

Title: President/Chief Executive Officer
Birch Communications, Inc.

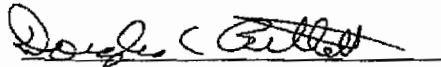
Subscribed and sworn to before me this 7th day of Sept 2010


Notary Public

STATE OF Kansas)
)
COUNTY OF Johnson)

VERIFICATION

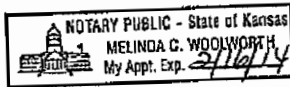
I, Douglas C. Bethell, being first duly sworn, do hereby certify, depose and state that I am President for American Fiber Network, Inc. ("AFN"), that I am authorized to make this verification on behalf of AFN, and that the contents with respect to AFN are true and correct to the best of my knowledge, information and belief.

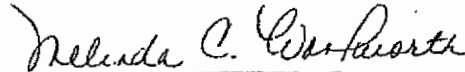


Name: Douglas C. Bethell

Title: President
American Fiber Network, Inc.

Subscribed and sworn to before me this 9 day of SEPTEMBER 2010




Notary Public

EXHIBITS

Exhibit 1	CONFIDENTIAL - Financial Information*
Exhibit 2	CONFIDENTIAL – Purchase Agreement*
Exhibit 3	Customer Notice Letters

* Submitted pursuant to a request for confidential treatment.

EXHIBIT 1

CONFIDENTIAL – Financial Information*

* Submitted pursuant to a request for confidential treatment.

EXHIBIT 2

CONFIDENTIAL – Purchase Agreement*

* Submitted pursuant to a request for confidential treatment.

EXHIBIT 3

Draft Customer Notice Letter



IMPORTANT NOTICE
REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES

Dear _____

Birch Communications ("Birch") and American Fiber Network, Inc. ("AFN") are pleased to announce that Birch will acquire AFN's local and long distance telephone customers. Subject to approval by the Federal Communications Commission and state regulators, Birch will replace AFN as your current telecommunications service provider on or after **[30 DAYS]** (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all services previously provided to you by AFN. Birch is excited about the opportunity to provide your telecommunications service(s) and looks forward to a long and successful business relationship.

Please rest assured, the transition will have little or no impact on your current services, nor will there be any interruption of your service. The agreement between Birch and AFN has been structured so that the transfer of service will be virtually seamless other than the possibility of a minor change to your voice mail service for which you will receive additional information.¹ There may be instances, however, where there are service or rate structure dissimilarities that Birch cannot accommodate with its existing systems (e.g., customers currently utilizing a message or measured local service plan). In those cases, Birch will transition you in a neutral manner and **with no increase to your regular monthly recurring charges**. You will retain all other service rates, features, terms, and conditions of service and your telephone phone number. You will not incur any charges for the transfer of services to Birch and **no action is required from you to continue your telecommunications service(s) with Birch**. You will receive your first billing statement from Birch starting with your **[INSERT MONTH]** or **[INSERT MONTH]** bill. As in the past, you are responsible for paying all bills rendered to you by AFN during the transition of service. Birch is required to advise you that if Birch changes any rates within ninety (90) days following the transfer of your service, Birch will provide you with a notice of the rate change thirty (30) days prior to the change date.

You do have the right to select a different carrier for the telecommunications service(s) at issue. If you choose to switch to an alternate carrier for services, you may incur a fee from the alternate carrier for the transfer of services to that alternate carrier.

¹ It will be necessary for you to reset your password and re-record your message greeting(s). Additionally, saved messages at the time of the transfer will no longer be retained. Birch will provide further details in a follow-up letter.

In addition, should you have a term commitment with AFN and you disconnect services or transfer to another carrier prior to the end of that term, you will be liable for any early termination charges. If you select a local telephone service provider other than Birch, you should also contact your current long distance provider to ensure that your current long distance plan is not changed.

Please note that if you are a customer of AFN on the Transfer Date, your account will automatically be transferred to Birch. Please note that any preferred carrier "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer of your services to another carrier will be over-ridden for purposes of this transaction and will need to be reinstated by you by contacting your local exchange carrier after the transfer is complete.

If you have any questions about this transaction or your service or billing prior to the actual Transfer Date, you should contact AFN at **800-864-0583**.

If you have any questions regarding this transaction or your service or billing after the actual Transfer Date, you should contact Birch at **888-275-0777**.

About Birch Communications - Headquartered in Atlanta, Georgia, Birch Communications is one of the largest competitive local exchange carriers in its 38-state southeast, southwest, midwest and northeast regions serving residential and business customers. Birch was the first in its class to deploy its own private IP network utilizing soft switch technology to deliver innovative, high quality, affordable voice and broadband communications services to small and medium business customers.

AFN thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

American Fiber Network, Inc. and
Birch Communications