

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

December 15, 2010

IN RE:)	
)	
JOINT APPLICATION OF BIRCH TELECOM OF)	
THE SOUTH, INC. D/B/A BIRCH COMMUNICATIONS)	
AND AMERICAN FIBER NETWORK, INC. FOR)	DOCKET NO.
APPROVAL TO TRANSFER ASSETS AND)	10-00190
CUSTOMERS OF AMERICAN FIBER NETWORK,)	
INC. TO BIRCH TELECOM OF THE SOUTH, INC.)	
D/B/A BIRCH COMMUNICATIONS)	

**ORDER APPROVING ASSET TRANSFER
AND CUSTOMER NOTIFICATION LETTER**

This matter came before Director Eddie Roberson, Director Kenneth C. Hill 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 November 22, 2010 for consideration of the *Joint Application* filed on September 20, 2010 by American Fiber Network, Inc. (“AFN” or “Seller”) and Birch Telecom of the South, Inc. d/b/a Birch Communications (“Birch” or “Purchaser”) (Birch and AFN collectively, the “Applicants”).

Birch is a Delaware corporation and a wholly-owned subsidiary of Birch Communications, Inc. (“Birch Parent”), a Georgia corporation that is authorized to provide local exchange and interexchange telecommunications services in Tennessee pursuant to Authority Orders in Docket No. 99-00644 issued on December 3, 1999 and Docket No. 09-00029 issued on April 27, 2009. In Tennessee, Birch is authorized to provide local exchange and interexchange telecommunications services pursuant to Authority Order in Docket No. 00-00341 issued on July 20, 2000.

AFN is a Delaware corporation. In Tennessee, AFN is authorized to provide local exchange and interexchange services pursuant to Authority Order in Docket No. 07-00150 issued on September 10, 2007.

THE JOINT APPLICATION

On September 3, 2010, Birch Parent agreed to purchase AFN's assets and customer base pursuant to a Sale Agreement. The *Joint Application* asserts the assets to be purchased include customer accounts, accounts receivables, 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, and all billing will be handled by Birch using the Birch name.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-112 (2004) applies to the transaction described in the *Joint Application* because it results in the merger of certain assets from one Tennessee certificated carrier to another. Regarding the transfer of authority, Tenn. Code Ann. § 65-4-112 (2004) states:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Because the transaction involves a transfer of customers, TRA Rule 1220-4-2-.56(2)(d) additionally applies to the transaction. The rule provides:

1. The acquiring telecommunications service provider shall provide the Authority a copy of the self-certification letter it shall file with the Federal Communications Commission ("FCC"), as required in CC Docket No. 00257, certifying that the customer transfer is in compliance with all FCC regulations governing such transactions.
2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.

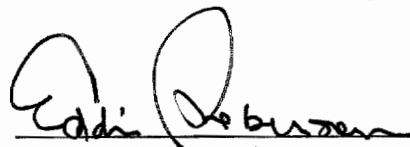
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

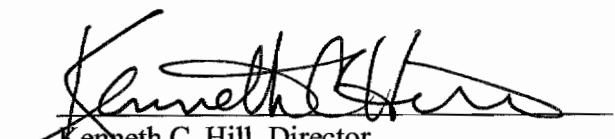
The panel found that the proposed transfer of assets is in the public interest because there will be no changes for AFN's customers. The panel also found that the customer notification letter filed with the Authority on September 20 2010 conforms with TRA Rule 1220-4-2-.56(2)(d). Thereafter, the panel unanimously voted: (1) to approve the asset transfer described in the *Joint Application* pursuant to Tenn. Code Ann. § 65-4-112 (2004), contingent upon approval of the Federal Communications Commission; and (2) consistent with TRA Rule 1220-4-2-.56(2)(d), to approve the customer notification letter filed on September 20, 2010.

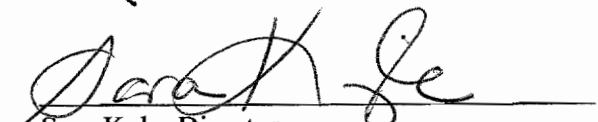
IT IS THEREFORE ORDERED THAT:

1. The transfer of assets as described in the *Joint Application* and discussed herein is approved, contingent upon approval by the Federal Communications Commission. The Applicants should file with the Tennessee Regulatory Authority any documentation from the Federal Communications Commission regarding subsequent action on the transfer.

2. The customer notification letter filed on September 20, 2010 is approved.


Eddie Roberson, Director


Kenneth C. Hill, Director


Sara Kyle, Director