

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 25, 2011

IN RE:

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

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**DOCKET NO.
11-00047**

ORDER APPROVING FINANCING ARRANGEMENTS

This matter came before Chairman Mary W. Freeman, 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 May 9, 2011 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 April 5, 2011 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 immediate 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

In October 2010, Birch entered into a Commitment Letter with Bank of America, N.A. ("Bank of America") for Bank of America to act as the sole administrative agent for Birch to obtain

senior secured credit facilities (“Senior Credit Facilities”) from various financial institutions (“Lenders”). The TRA approved the \$75 million financing transaction in Docket No. 10-00203. Birch now seeks to amend that financing approval to modify the amount, structure of the transaction and the applicable interest rates. Birch also requests permission to enter into a second financing transaction to issue senior subordinated unsecured notes (“Senior Subordinate Notes”).

Both the Senior Credit Facilities and the Senior Subordinate Notes will be used by Birch for a variety of purposes, including capital expenditures, future acquisitions, general working capital purposes, and other lawful corporate purposes. The Senior Credit Facilities will be secured by a first priority lien on the stock and substantially all of the assets of Birch, Birch’s parent, and Birch’s other directly and indirectly owned subsidiaries. The Senior Subordinated Notes will be guaranteed on a senior subordinated and unsecured basis by Birch Communications Holdings, Inc., the parent of Birch, and all subsidiaries acting as guarantors under the Senior Credit Facilities.

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. 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 May 9, 2011, 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 purpose of the transactions is in the public interest because they will strengthen the Applicants' ability to compete in the marketplace 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


Kenneth C. Hill, Director


Sara Kyle, Director