

**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

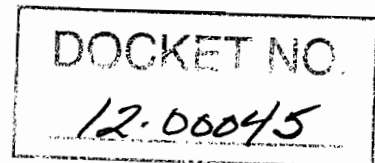
RECEIVED  
2012 MAY 24 PM 12:35  
AUGUSTINE HOUSE  
6A AUSTIN FRIARS  
LONDON, ENGLAND EC2N 2HA  
(020) 44 20 7920/800  
FAX: (020) 44 20 1420/825  
TRAFFIC DOCKET ROOM

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

May 23, 2012

**Via Federal Express**

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



**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 ("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 a **CONFIDENTIAL VERSION** of the Application in a sealed envelope marked "Confidential." In addition, please find enclosed a check in the amount of \$50.00 covering the \$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,

A handwritten signature in dark ink, appearing to read "Angela F. Collins". The signature is fluid and cursive, written over a horizontal line.

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

Enclosures

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

PUBLIC VERSION  
RECEIVED

MAY 24 PM 12:36

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 exchange and interexchange telecommunications services in Tennessee.<sup>2</sup> Birch is the immediate

<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).

<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).

parent of Birch Telecom. Attached as **Exhibit B** are Birch's current financial statements providing the financial condition of Birch before and after the proposed transaction.<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

4. In April 2011, 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 **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** in senior secured credit facilities ("Senior Credit Facilities") from various financial institutions ("Lenders"). At the same time, Birch also entered into a second financing arrangement to obtain **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of senior subordinated unsecured notes ("Senior Subordinated Notes"). Those financing arrangements were approved by the Authority on May 25, 2011 in Docket 11-00047.

5. Birch now seeks to re-finance approximately **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of outstanding loans and commitments under its Senior Credit Facilities with Bank of America to increase such Senior Credit Facilities by **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** (the "Increased Senior Credit Facilities"). Birch intends to use a portion of the proceeds of the Increased Senior Credit Facilities to pay down its Senior Subordinated Notes by **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]**. In connection with the foregoing, Birch intends to

---

<sup>3</sup> Exhibit B is being filed concurrently herewith under seal with a Request for Confidential Treatment.

seek certain amendments to the terms of its Senior Subordinated Notes to make such terms more favorable to Birch. The new per annum interest rates applicable to the Increased Senior Credit Facilities and the Senior Subordinated Notes are expected to be consistent with market conditions for similar financing transactions as of closing. Attached as Exhibit A is a draft Commitment Letter, which provides the material terms and conditions of the Increased Senior Credit Facilities for which Birch seeks approval.<sup>4</sup>

6. The Increased Senior Credit Facilities 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 Increased Senior Credit Facilities will be secured by first priority lien on the stock and substantially all of the assets of Birch, Birch Telecom, Birch's parent, and Birch's other directly and indirectly owned subsidiaries. The Senior Subordinated Notes will continue to 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.

7. 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.

8. In accordance with the requirements of the various states, Applicants are seeking approval for this transaction from the state commissions in Colorado, Delaware, Georgia,

---

<sup>4</sup> Exhibit A is being filed concurrently herewith under seal with a Request for Confidential Treatment.

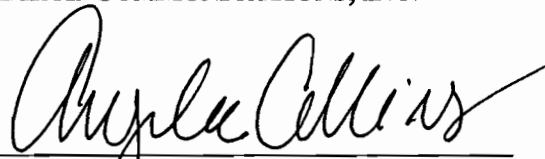
Indiana, Nebraska, New Jersey, New York, and Pennsylvania. Applicants have not been denied approval from any state commission from which they are seeking approval for the transaction. Approval of this financing transaction is not required by the Federal Communications Commission.

9. 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 at lower interest rates. These resources will enable them to introduce innovative products and services and to respond better to the competitive telecommunications environment. The proposed transaction will have no effect on the operations of the entities certificated in Tennessee.

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

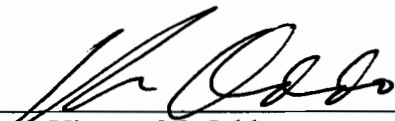
Dated: May 24, 2012

STATE OF **GEORGIA** )  
 )  
COUNTY OF **BIBB** )

**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.

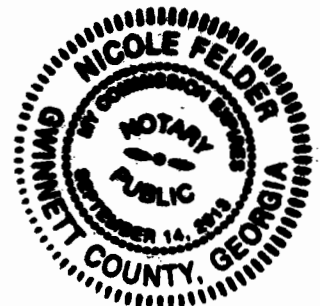
5/18/12  
Date

  
Name: Vincent M. Oddo

Title: President/CEO  
Birch Communications, Inc.

Subscribed and sworn to before me this 18<sup>th</sup> day of May 2012

  
Notary Public



**EXHIBITS**

**Exhibit A     Draft Commitment Letter\***

**Exhibit B     Financial Statements\***

\*Submitted pursuant to Request for Confidential Treatment.

**EXHIBIT A\***  
**Draft Commitment Letter**

\*Submitted pursuant to Request for Confidential Treatment.



**EXHIBIT B\***  
**Financial Statements**

\*Submitted pursuant to Request for Confidential Treatment