

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 21, 2012

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.
12-00045**

ORDER APPROVING FINANCING ARRANGEMENTS

This matter came before Tennessee Regulatory Authority (the "Authority" or "TRA") at a regularly scheduled Authority Conference held on June 7, 2012 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 May 24, 2012 by Birch Telecom of the South, Inc. ("Birch Telecom") and Birch Communications, Inc. ("Birch") (together, "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.

THE APPLICATION

In April 2011, Birch entered into a Commitment Letter with Bank of America, N.A. ("Bank of America") for it to act as the sole administrative agent for Birch to obtain 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 senior subordinated unsecured

notes ("Senior Subordinated Notes"). The TRA approved those financing transactions in Docket No. 11-00047.

Birch now seeks to re-finance a portion of the outstanding loans and commitments under its Senior Credit Facilities with Bank of America to increase such Senior Credit Facilities ("Increased Senior Credit Facilities."). The Increased Senior Credit Facilities will be used to pay down its Senior Subordinated Notes. Also, Birch will make certain amendments to its Senior Subordinated Notes to make the terms more favorable to Birch. The Increased Senior Credit Facilities will also 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 Telecom, 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 there will be no effect on the operations of the entities certificated in Tennessee and no transfer of certificate, authorization, assets or customers will occur as a result of the 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 June 7, 2012, 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.


Kenneth C. Hill, Chairman


Sara Kyle, Director


Mary W. Freeman, Director 6/08/12