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BEFORE THE  
TENNESSEE REGULATORY AUTHORITY

Application of Birch Telecom of the South, )  
Inc. and Birch Communications, Inc. for )  
Approval of Financing Arrangements )

Docket No. 12-00140

**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:

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Cahill Gordon & Reindel LLP  
1990 K Street, NW, Suite 950  
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202-862-8900 (telephone)  
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4. In April 2011, Birch entered into a Commitment Letter ("First 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]** **[REDACTED]** **[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]** **[REDACTED]** **[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. In May 2012, Birch entered into a second Commitment Letter ("Second Commitment Letter") with Bank of America to re-finance approximately **[BEGIN CONFIDENTIAL]** **[REDACTED]** **[END CONFIDENTIAL]** of outstanding loans and commitments under its Senior Credit Facilities, and to increase such Senior Credit Facilities by **[BEGIN CONFIDENTIAL]** **[REDACTED]** **[END CONFIDENTIAL]** (the "Increased Senior Credit Facilities"), for a total of **[BEGIN CONFIDENTIAL]** **[REDACTED]**

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

[END CONFIDENTIAL] in senior credit facilities (“Total Senior Credit Facilities”). A portion of the proceeds of the Increased Senior Credit Facilities were used to pay down Birch’s Senior Subordinated Notes by [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. Those financing arrangements were deemed approved on June 7, 2012 in Docket No. 12-00045. A copy of the Second Commitment Letter is attached as Exhibit A.<sup>4</sup>

6. The Second Commitment Letter contained an “accordion” provision permitting Birch, from time to time, to increase the Total Senior Credit Facilities in an aggregate amount of up to [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] subject to the satisfaction of certain conditions (“Accordion”). The per annum interest rates applicable to the credit facilities made available by the Accordion are expected to be the same as those applicable to the Increased Senior Credit Facilities.

7. Birch now seeks authority to avail itself of the Accordion as it deems necessary in the future. To the extent Birch exercises all of its authority under the Accordion, its Total Senior Credit Facilities would equal [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. Exercise of the Accordion would not affect Birch’s Senior Subordinated Notes.

8. The additional credit facilities made available by the Accordion will be used by Birch for a variety of purposes, including capital expenditures, future acquisitions, general working capital purposes, and other lawful corporate purposes. Birch’s Total Senior Credit Facilities, including any additional credit facilities made available under the Accordion, will continue to be secured by a first priority lien on the stock and substantially all of the assets of Birch and Birch’s directly and indirectly owned subsidiaries (including Birch Telecom), as well

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

as substantially all of the assets of Birch's parent. 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 Total Senior Credit Facilities.

9. 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.

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

11. 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.**



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Dated: November 8, 2012

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

**VERIFICATION**

I, Edward R. James, III, CFO 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.

November 9, 2012  
Date

Edward James  
Name: Edward R. James, III

Title: CFO Birch Communications, Inc.

Subscribed and sworn to before me this 9<sup>th</sup> day of November, 2012

Sharyl D. Fowler  
Notary Public



**EXHIBITS**

**Exhibit A     Second Commitment Letter\***

**Exhibit B     Financial Statements\***

\*Submitted pursuant to Request for Confidential Treatment.

**PUBLIC VERSION**

**EXHIBIT A\***  
**Second Commitment Letter**

\*Submitted pursuant to Request for Confidential Treatment.



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

\*Submitted pursuant to Request for Confidential Treatment