

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 30, 2013

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.
12-00140

ORDER APPROVING FINANCING ARRANGEMENTS

This matter came before Vice-Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director David F. Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 17, 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 November 13, 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 Docket No. 12-00045, the TRA authorized Birch to enter into financing transactions under its Senior Credit Facilities to refinance outstanding debt, and the financing transaction was approved

by the TRA based upon a Commitment Letter with Bank of America. The Commitment Letter contained an accordion provision (“Accordion”) allowing Birch to increase the amount outstanding under the Senior Credit Facilities subject to meeting certain conditions. In this Application, Birch is seeking approval to utilize the Accordion and increase its indebtedness under the Senior Credit Facilities.

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 *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 December 17, 2012, the panel voted unanimously to approve the *Application* and made the following findings:

1. The proposed financing transactions are subject to Authority approval pursuant to Tenn. Code Ann. § 65-4-109 (2004).

2. The proposed financing transactions are being made in accordance with laws enforceable by this agency.

3. The purpose of the transactions is in the public interest because it 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.

Vice-Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director