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DOCKET NO.
12-00154

December 18, 2012

Via Federal Express

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

RECEIVED
2012 DEC 19 AM 11:15
TRA DOCKET ROOM

Re: Joint Application of Birch Telecom of the South, Inc. dba Birch Communications and Covista, Inc. for Approval to Transfer Assets and Customers of Covista, Inc. to Birch Telecom of the South, Inc. dba Birch Communications

Dear Ms. Dillon:

Birch Telecom of the South, Inc. dba Birch Communications and Covista, Inc. (collectively, the "Applicants") hereby enclose an original and thirteen (13) copies of the **PUBLIC VERSION** of the above-referenced 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 the **CONFIDENTIAL VERSION** of the Application in a sealed envelope marked "Confidential." In addition, enclosed is the \$50.00 application fee.

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,



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

Enclosures

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

2012 DEC 13 AM 11:15

Joint Application of Birch Telecom of the)
South, Inc. dba Birch Communications and)
Covista, Inc. for Approval to Transfer Assets)
and Customers of Covista, Inc. to Birch)
Telecom of the South, Inc. dba Birch)
Communications)

Docket No. 12-00154

JOINT APPLICATION

Pursuant to Tenn. Code Ann. § 65-4-112 and Tenn. Comp. R. & Regs. 1220-4-2-.56(d), Birch Telecom of the South, Inc. dba Birch Communications (“Birch” or “Purchaser”) and Covista, Inc. (“Seller” or “Covista”) (Birch and Covista collectively, the “Applicants”) hereby request that the Tennessee Regulatory Authority (“Authority”) approve the transfer of substantially all of Covista’s telecommunications assets and Tennessee customer base to Birch (the “Transaction”). Applicants submit the following in support of this Joint Application:

I. DESCRIPTION OF THE APPLICANTS

A. Birch Telecom of the South, Inc. dba Birch Communications

Birch is a Delaware 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.¹ Birch is a wholly-owned subsidiary of Birch Communications, Inc., a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305, which is also authorized to provide local exchange and

¹ 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).

interexchange telecommunications services in Tennessee.² Birch provides the most recent financial statements of its parent Birch Communications, Inc. in **Exhibit 1**.³

B. Covista, Inc.

Covista, Inc. is a New Jersey corporation with headquarters located 225 East 8th Street, Suite 400 Chattanooga, TN. Covista is registered in Tennessee as a Competitive Local Exchange Carrier (CLEC).⁴

II. DESIGNATED CONTACTS

For the purposes of this Joint Application, inquiries, or copies of any correspondence, orders, or other materials should be directed as follows:

For Birch Telecom of the South, Inc.

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, NW, Suite 950
Washington, DC 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)
acollins@cahill.com

For Covista, Inc.

Norman Klugman, Acting President
Covista, Inc.
225 East 8th Street, Suite 400
Chattanooga, TN 37402
423-648-9610 (telephone)
423-648-9705 (facsimile)
nklugman@covista.com

III. DESCRIPTION OF TRANSFER OF ASSETS AND CUSTOMERS

On November 30, 2012, Birch and Covista entered into an Asset Purchase Agreement (“Agreement”) pursuant to which Birch will purchase certain assets and customers of Covista.

Pursuant to the Agreement, Birch will purchase the following assets from Covista: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor

² 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).

³ Filed pursuant to a request for confidential treatment.

⁴ ID # 115555

agreements and contracts, certain equipment, and certain intellectual property. Birch, however, will not assume any of Covista's pre-closing liabilities or obligations. A copy of the Agreement is set forth in Exhibit 2.⁵ The ownership structure of Birch will not be affected by the Transaction. Upon consummation of the Transaction and after completion of the customer transfer, Birch will provide Covista customers with the same service quality they have come to expect and all billing will be handled by Birch using the Birch name. Consummation of the Transaction is contingent on, among other things, receipt of all necessary regulatory approvals.

Following approval of the proposed Transaction, Birch will revise its tariffs as necessary to incorporate the Seller's current services and rates so that the affected customers will continue to receive the same services that they currently receive without any changes to the service offerings, rates, or terms and conditions. As required by Tennessee Rule 1220-4-2-.56(d)(4), Birch agrees to provide thirty (30) day written notice to the affected customers of any rate increase that may affect their service up to ninety (90) days from the transfer date. Birch also agrees to pay any fees associated with the transfer as required by Tennessee Rule 1220-4-2-.56(d)(3).

Covista currently has approximately *****START CONFIDENTIAL***** *****END CONFIDENTIAL***** customer accounts in Tennessee. All Covista customers will be transferred to Birch. The proposed transfer date is on or before March 29, 2013. Applicants will provide a joint notice of the transfer to Covista customers via U.S. First Class Postage at least thirty (30) days prior to the transfer in accordance with the requirements of Tennessee Rule 1220-4-2-.56(d) and Federal Communications Commission ("FCC") rules. The Applicants will include the logo or name of Covista on both the letterhead and exterior envelope. A draft of the

⁵ Filed pursuant to a request for confidential treatment.

customer notice is set forth in **Exhibit 3**. The Applicants will supplement this Joint Application with a copy of the self-certification filed with the FCC once completed.

Upon completion of the Transaction and the migration of customers, Seller will no longer offer telecommunications services in Tennessee. After Seller determines that it no longer needs its authorization for operational or billing purposes, Seller will surrender its authorization and cancel its tariffs in a separate filing.

In addition to Tennessee, Applicants are seeking approval of the Transaction from the Federal Communications Commission and the state commissions in California, Colorado, Connecticut, the District of Columbia, Delaware, Georgia, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, New Jersey, New York, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee and Virginia. These applications will be filed or are pending, and Applicants have not been denied approval from any state commission.

III. PUBLIC INTEREST ANALYSIS

Approval of the Transaction is in the public interest. As discussed above, current Covista customers will be given prior written notice of the transfer of their account, in compliance with Tennessee and federal customer notice rules. Following consummation of the Transaction, Birch will continue to offer high quality services to Tennessee residents, as is supported by its industry knowledge, technical expertise, and financial strength. As a result, the proposed Transaction will be transparent to customers and will not have a negative impact on the public interest, services to Tennessee customers, or competition.

WHEREFORE, for the reasons stated above, Applicants respectfully request that the Authority grant all authority necessary for Covista to transfer substantially all of its assets and Tennessee customers to Birch.


COVISTA, INC.

Norman Klugman, Acting President
Covista, Inc.
225 East 8th Street, Suite 400
Chattanooga, TN 37402
423-648-9610 (telephone)
423-648-9705 (facsimile)
nklugman@covista.com

Dated: December 18, 2012

Respectfully submitted,

BIRCH TELECOM OF THE SOUTH, INC.


Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)
acollins@cahill.com

Counsel for Birch Telecom of the South, Inc.

STATE OF GEORGIA)
)
COUNTY OF BIBB)

VERIFICATION

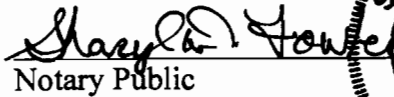
I, Vincent M. Oddo, President/CEO of Birch Communications, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.

12/12/12
Date


Name: Vincent M. Oddo

Title: President/CEO
Birch Communications, Inc.

Subscribed and sworn to before me this 12th day of Dec 2012


Notary Public



STATE OF

Tennessee)

COUNTY OF

Hamilton)

VERIFICATION

I, Norman Klugman, Acting President of Covista, 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.

12/13/2012

Date

Norman Klugman

Name: Norman Klugman

Title: Acting President
Covista, Inc.

Subscribed and sworn to before me this 13th day of December



Tamie Eustice

Notary Public

EXHIBITS

Exhibit 1	CONFIDENTIAL - Financial Information*
Exhibit 2	CONFIDENTIAL – Purchase Agreement*
Exhibit 3	Customer Notice Letters

* Submitted pursuant to a request for confidential treatment.

EXHIBIT 1

CONFIDENTIAL – Financial Information*

* Submitted pursuant to a request for confidential treatment.

EXHIBIT 2

CONFIDENTIAL – Purchase Agreement*

* Submitted pursuant to a request for confidential treatment.

EXHIBIT 3

Draft Customer Notice Letter



IMPORTANT NOTICE
REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES

Dear _____

Birch Communications ("Birch") and Covista are pleased to announce that Birch is acquiring Covista's local telephone and long distance telephone customers, as well as certain other customers receiving additional types of services from Covista. Subject to approval by the Federal Communications Commission and State regulators as necessary, Birch will replace Covista as your current telecommunications service provider on or after **[30 DAYS AFTER LETTER DATE]** (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all services previously provided to you by Covista. Birch is excited about the opportunity to provide your telecommunications service(s) and looks forward to a long and mutually rewarding business relationship.

Please rest assured, the transition will have little or no impact on your current services, nor will there be any interruption of your service. The agreement between Birch and Covista has been structured so that the transfer of service will be virtually seamless, other than the possibility of a minor change to your voice mail service for which you will receive additional information.¹ There, however, may be other changes to your service plan based on Birch's unique billing systems (e.g., customers currently utilizing a message or measured local service plan may be switched to a flat rate plan). In those cases, Birch will transition you in a neutral manner **with no increase to your regular monthly recurring charges**. You will retain all other service rates, features, terms, and conditions of service and your telephone number. Birch will not impose any charges for the transfer of your services to Birch and **no action is required from you to continue your telecommunications service(s) with Birch**. You will receive your first billing statement from Birch starting with your March 2013 or April 2013 bill. As in the past, you are responsible for paying all bills rendered to you by Covista during the transition of service.² Birch is required to advise you that if Birch changes any rates

¹ It will be necessary for you to reset your password and re-record your message greeting(s). Additionally, saved messages at the time of the transfer will no longer be retained. Birch will provide further details in a follow-up letter.

² Those customers interested in setting up online payments will be pleased to know Birch offers online payments and account updates.

within ninety (90) days following the transfer of your service, Birch will provide you with a notice of the rate change thirty (30) days prior to the change date.

You do have the right to select a different carrier for your telecommunications service(s). If you choose to switch to an alternate carrier for services, you may incur a fee from that alternate carrier for the transfer of services to that alternate carrier. If you select a local telephone service provider other than Birch, you should also contact your current long distance provider to ensure that your current long distance plan is not changed. Please note that if you are a customer of Covista on the Transfer Date as set forth above, your account will automatically be transferred to Birch. In addition, should you have a term commitment with Covista and you disconnect or transfer services to another carrier prior to the end of that term, you will be liable to Birch for any applicable early termination charges, subject to applicable law. Please note that when your service is transferred to Birch, any preferred carrier "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer of your services to another carrier will be over-ridden for purposes of this transaction and will need to be reinstated by you by contacting Birch after the transfer is complete.

If you have any questions regarding this transaction or questions about your service or billing prior to the Transfer Date set forth above, you should contact Covista at **866-454-7727**.

If you have any questions regarding this transaction, or questions about your service or billing after the Transfer Date set forth above, you should contact Birch at **888-772-4724**.³

Covista thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

Covista and
Birch Communications

³ **About Birch Communications** - Headquartered in Atlanta, Georgia, Birch Communications is one of the largest competitive local exchange carriers in its 38-state southeast, southwest, midwest and northeast regions serving residential and business customers. Birch was the first in its class to deploy its own private IP network utilizing soft switch technology to deliver innovative, high quality, affordable voice and broadband communications services to small- and medium-sized business customers.