

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

April 22, 2013

IN RE:	)	
	)	
JOINT APPLICATION FOR APPROVAL TO	)	DOCKET NO.
TRANSFER ASSETS AND CUSTOMERS OF	)	12-00154
COVISTA, INC. TO BIRCH TELECOM OF THE	)	
SOUTH, INC.	)	

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ORDER APPROVING ASSET TRANSFER  
AND CUSTOMER NOTIFICATION LETTER

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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 March 13, 2013 for consideration of the *Joint Application* filed by Birch Telecom of the South, Inc. (“Birch”) and Covista, Inc. (“Covista”) (Birch and Covista together “Joint Applicants”) for approval to transfer the assets and customers of Covista to Birch.

**The Joint Application**

Birch, a Delaware corporation, is authorized to provide local exchange and interexchange telecommunications services in Tennessee pursuant to an Authority Order issued on July 20, 2000 in Docket No. 00-00341. Covista is authorized to provide competitive and interexchange services as a competitive carrier pursuant to an Authority Order issued on May 14, 2004 in Docket No. 03-00459.

On November 30, 2012, the Joint Applicants entered into an Asset Purchase Agreement where Birch will purchase certain assets and customers from Covista. On December 19, 2012, Birch and Covista filed the *Joint Application* seeking Authority approval to transfer the assets and customer base

from Covista to Birch. Consistent with TRA Rules regarding a transfer of customers, the Joint Applicants also seek Authority approval of the customer notification letter. The *Joint Application* states that Birch will revise its tariffs as necessary to incorporate Covista's current rates and services so that affected customers will continue to receive the same services without any change to service offering, rates, or terms and conditions. Upon completion of the transaction, Covista will no longer offer telecommunications services in Tennessee. After Covista determines it no longer needs its authorization for operational or billing services it will surrender its certificate and cancel its tariffs in a separate filing.

On February 19, 2013, the Joint Applicants filed a *Supplement to the Joint Application* ("Supplement") which states that Birch's d/b/a name in Tennessee was incorrect in the *Joint Application* and asks that it be changed to the correct name of Birch Communications of the South.<sup>1</sup> In addition, the Joint Applicants request a waiver of the pre-approval requirement contained in the TRA Rules stating that "[t]he revised notice was sent to Covista's existing Tennessee customers during the week of February 4, 2013. The customer transfer is scheduled to occur the week of March 18, 2013. Accordingly, Birch and Covista request a waiver of the requirement that their customer notice be pre-approved."<sup>2</sup>

### **Findings and Conclusions**

Tenn. Code Ann. § 65-4-112 (2004) applies to the transaction described in the *Joint Application* because it results in the merger of certain assets from one Tennessee certificated carrier to another. Regarding the transfer of authority, Tenn. Code Ann. § 65-4-112 (2004) states:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority, even though power to take such action

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<sup>1</sup> *Supplement to Joint Application* (February 19, 2013).

<sup>2</sup> *Id.*

has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Because the transaction involves a transfer of customers, TRA Rule 1220-4-2-.56(2)(d) also applies to the transaction. The rule provides:

1. The acquiring telecommunications service provider shall provide the Authority a copy of the self-certification letter it shall file with the Federal Communications Commission ("FCC"), as required in CC Docket No. 00257, certifying that the customer transfer is in compliance with all FCC regulations governing such transactions.
2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

At the regularly scheduled Authority Conference held on March 13, 2013, the panel considered the *Joint Application*. The panel found that the proposed transfer of assets is in the public interest because Covista's customers will not experience any change in their service. The panel also found that Covista's customers had received the requisite 30-day notice before the transfer, and the letter filed with the Authority on February 19, 2013 otherwise complies with TRA Rule 1220-4-2-.56(2)(d). Thereafter, the panel voted unanimously to: (1) approve the asset transfer described in the *Joint Application* pursuant to Tenn. Code Ann. § 65-4-112 (2004), contingent upon approval of the

Federal Communications Commission; (2) waive the pre-approval requirement for the customer notification letter; and (3) consistent with TRA Rule 1220-4-2-.56(2)(d), approve the customer notification letter filed on February 19, 2013.

**IT IS THEREFORE ORDERED THAT:**

1. The transfer of assets as described in the *Joint Application* and discussed herein is approved, contingent upon approval by the Federal Communications Commission. The Applicants should file with the Tennessee Regulatory Authority any documentation from the Federal Communications Commission regarding subsequent action on the transfer.

2. The Pre-approval requirement for the customer notification letter is waived, and the customer notification letter filed on February 19, 2013 is approved.

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

**ATTEST:**

  
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Earl R. Taylor, Executive Director