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ANGELA F. COLLINS | 202-862-8930 | acollins@cahill.com

June 4, 2013

Via Federal Express

Chairman, Tennessee Regulatory Authority
c/o Sharla Dillon, Dockets and Records Manager
460 James Robertson Parkway
Nashville, Tennessee 37243

DOCKET NO.

13-00085

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

Dear Ms. Dillon:

Birch Telecom of the South, Inc. dba Birch Communications of the South and Ernest Communications, 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 of the South

Enclosures

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

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

Docket No. _____

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 of the South (“Birch”) and Ernest Communications, Inc. (“Ernest”) (Birch and Ernest collectively, the “Applicants”) hereby request that the Tennessee Regulatory Authority (“Authority”) approve the transfer of substantially all of Ernest’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 of the South

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. (“BCI”), a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305, which is also authorized to provide local

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).

exchange and interexchange telecommunications services in Tennessee.² Birch provides the most recent financial statements of BCI in Exhibit 1.³

B. Ernest Communications, Inc.

Ernest is a Georgia corporation with headquarters at 5275 Triangle Parkway, Suite 150, Norcross, Georgia, 30092. Ernest is authorized to provide telecommunications services in Tennessee.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

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 Ernest

Paul Masters
President
Ernest Communications, Inc.
5275 Triangle Parkway, Suite 150
Norcross, GA 30092

III. DESCRIPTION OF TRANSFER OF ASSETS AND CUSTOMERS

On May 30, 2013, BCI and Ernest entered into an Asset Purchase Agreement pursuant to which BCI will purchase the following assets from Ernest: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts,

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 Docket No. 98-00649.

certain equipment, and certain intellectual property. BCI, however, will not assume any of Ernest's pre-closing liabilities or obligations.

A copy of the Asset Purchase Agreement is set forth in Exhibit 2.⁵ The ownership structure of BCI and Birch will not be affected by the Transaction. Upon consummation of the Transaction and after completion of the customer transfer, Birch will provide Ernest 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 Ernest'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).

Ernest currently has approximately *****START CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL***** customer lines in Tennessee. All Ernest customers will be transferred to Birch. The proposed transfer date is on or around September 1, 2013. Applicants will provide a joint notice of the transfer to Ernest 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

⁵ Filed pursuant to a request for confidential treatment.

or name of Ernest on both the letterhead and exterior envelope. A draft of the customer notice is set forth in **Exhibit 3**. The Applicants will supplement this Joint Application with a copy of the envelope used to mail the customer notices once the notices have been mailed.

Upon completion of the Transaction and the migration of customers, Ernest will no longer offer telecommunications services in Tennessee. After Ernest determines that it no longer needs its authorization for operational or billing purposes, Ernest will surrender its authorization and cancel its tariffs in a separate filing. The Applicants respectfully request that Ernest's authorization and any existing tariffs remain in place until Ernest separately requests such cancellation.

In addition to Tennessee, Applicants are seeking approval of the Transaction from the Federal Communications Commission and the state commissions in California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, New Jersey, New York, Oklahoma, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West 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 proposed Transaction serves the public interest. The proposed Transaction will ensure that affected customers enjoy continuity of high-quality telecommunications service. As discussed above, customers will be given prior written notice of the transfer of their account to Birch, in compliance with the FCC's customer notice rules. Following the Transaction, the affected customers will continue to receive services consistent with the quality of services currently provided by Ernest that will be supported by Birch's

experienced and well-qualified management team. As a result, the proposed Transaction will be transparent to Ernest's customers. Consequently, the proposed Transaction will not have a negative impact on the public interest, services to Tennessee customers, or competition.

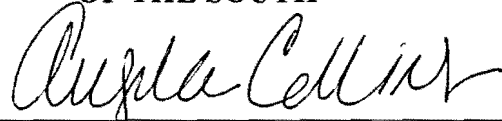
WHEREFORE, for the reasons stated above, Applicants respectfully request that the Authority grant all authority necessary for Ernest to transfer substantially all of its assets and Tennessee customers to Birch.

Respectfully submitted,

ERNEST COMMUNICATIONS, INC.

Paul Masters
President
Ernest Communications, Inc.
5275 Triangle Parkway, Suite 150
Norcross, GA 30092
770-242-9069 (telephone)
770-448-2645 (facsimile)

**BIRCH TELECOM OF THE SOUTH, INC.
DBA BIRCH COMMUNICATIONS
OF THE SOUTH**



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.
dba Birch Communications of the South

Dated: June 4, 2013

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.

5/30/2013
Date


Name: Vincent M. Oddo

Title: President/CEO
Birch Communications, Inc.

Subscribed and sworn to before me this 30th day of May


Notary Public



STATE OF

Georgia

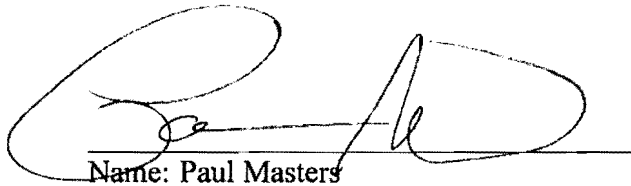
COUNTY OF

Gwinnett

VERIFICATION

I, Paul Masters, President of Ernest 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.

5/31/13
Date


Name: Paul Masters

Title: President
Ernest Communications, Inc.

Subscribed and sworn to before me this 31st day of May, 2013

Sannie C. Gillaspie
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 of the South ("Birch") and Ernest Communications ("Ernest") are pleased to announce that Birch is acquiring Ernest's local telephone and long distance telephone customers, as well as certain other customers receiving additional types of services from Ernest. Subject to approval by the Federal Communications Commission and state regulators as necessary, Birch will replace Ernest as your current telecommunications service provider on or after **[30 DAYS AFTER LETTER DATE]**, 2013 (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all services previously provided to you by Ernest. 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 Ernest 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 **[MONTH]** 2013 or **[MONTH]** 2013 bill. As in the past, you are responsible for paying all bills rendered to you by Ernest during

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.

the transition of service.² Birch is required to advise you that if Birch changes any rates 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 Ernest 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 Ernest 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 Ernest at **800-456-8353**.

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

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

Sincerely,

Ernest Communications and
Birch Communications of the South

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

³ **About Birch** - Headquartered in Atlanta, Georgia, Birch Communications is one of the largest competitive local exchange carriers in its 48-state footprint, 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.

**BEFORE THE
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South, Inc. dba Birch Communications of the)
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Approval to Transfer Assets and Customers of)
Ernest Communications, Inc. to Birch Telecom)
of the South, Inc. dba Birch Communications)
of the South)

Docket No. _____

REQUEST FOR CONFIDENTIAL TREATMENT

Birch Telecom of the South, Inc. dba Birch Communications of the South (“Birch”) and Ernest Communications, Inc. (“Ernest”) (Birch and Ernest collectively, the “Applicants”) respectfully request that the Tennessee Regulatory Authority (“Authority”) grant protection from public disclosure and afford confidential treatment to the **CONFIDENTIAL** version of their Joint Application for Approval to Transfer Assets and Customers of Ernest to Birch (“Application”), including the financial information submitted as **Exhibit 1** to the Application, the transaction documents submitted as **Exhibit 2** to the Application, and the number of customers affected by the transaction (collectively, “Documents”). Applicants request that the Authority afford the highest level of protective treatment to the Documents and asks that the Documents be made available only to the Authority.

Applicants request confidential treatment of the Documents because they contain revenue information and the private terms and conditions for transaction, as well as confidential customer information and detailed, highly confidential information regarding the Applicants’ assets, liabilities, and financial condition. The information provided in the Documents is proprietary, sensitive, commercial, and financial information that is not publicly available and, if released, could be used by Applicants’ competitors to cause competitive harm. The potential harm to

Applicants is substantial, and the need for proprietary protection of this information outweighs any need for public disclosure at this time. As such, the Documents should be afforded protection from public inspection.

Disclosure of the Documents would have adverse competitive consequences for Applicants. Absent protection from disclosure, Applicants' competitors would have access to sensitive and private financial data and proprietary information of the Applicants, which are not publicly-traded companies. Because Applicants are operating in a highly competitive market, public availability of this information would adversely disadvantage Applicants. Release of this information to the public would cause undue economic damage and substantially harm Applicants' ability to compete in the marketplace.

Protection of the information provided in the Documents does not affect the public interest and does not restrict interested parties from participating in the administrative process. Furthermore, the harm that would result from disclosure of this information far outweighs the public interest in accessing this information.

All notices and inquiries concerning this request should be directed to:

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, NW, Suite 950
Washington, DC 20006
202-862-8900 (telephone)
866-814-6582 (facsimile)
acollins@cahill.com

Accordingly, and for the foregoing reasons, Applicants respectfully request that the Authority afford confidential treatment to the Documents. In the event that this request is denied, please provide the undersigned with notice of that determination prior to making the Documents available to the public. Applicants further request that the Authority stay the release

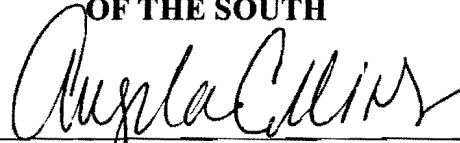
of the Documents until such time as an application for review of the determination is resolved. Disclosure of the Documents without affording Applicants an opportunity to contest a finding against confidentiality would prejudice Applicants and render moot any successful appeal.

Respectfully submitted,

ERNEST COMMUNICATIONS, INC.

Paul Masters
President
Ernest Communications, Inc.
5275 Triangle Parkway, Suite 150
Norcross, GA 30092

**BIRCH TELECOM OF THE SOUTH, INC.
DBA BIRCH COMMUNICATIONS
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Counsel for Birch Telecom of the South, Inc.
dba Birch Communications of the South

Dated: June 4, 2013