

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**November 21, 2013**

<b>IN RE:</b>	)	
	)	
<b>JOINT APPLICATION OF BIRCH TELECOM OF</b>	)	<b>DOCKET NO.</b>
<b>THE SOUTH, INC. DBA BIRCH</b>	)	<b>13-00085</b>
<b>COMMUNICATIONS OF THE SOUTH AND</b>	)	
<b>ERNEST COMMUNICATIONS, INC. FOR</b>	)	
<b>APPROVAL TO TRANSFER ASSETS AND</b>	)	
<b>CUSTOMERS OF ERNEST COMMUNICATIONS,</b>	)	
<b>INC. TO BIRCH TELECOM OF THE SOUTH, INC.</b>	)	
<b>DBA BIRCH COMMUNICATIONS OF THE SOUTH</b>	)	

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**ORDER APPROVING ASSET TRANSFER**

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This matter came before Vice Chairman Herbert H. Hilliard, Director Robin Bennett, 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 July 15, 2013 for consideration of the *Joint Application* filed by Birch Telecom of the South, Inc. (“Birch”) and Ernest Communications, Inc. (“Ernest”) (Birch and Ernest together “Joint Applicants”).

Birch is a Delaware corporation and is a wholly-owned subsidiary of Birch Communications, Inc. (“BCI”).<sup>1</sup> In Tennessee, Birch is authorized to provide local exchange and interexchange telecommunications services pursuant to an Authority Order in Docket No. 00-00341 issued on July 20, 2000. Ernest is a Georgia corporation and is authorized to provide

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<sup>1</sup> Birch Communications, Inc. is also authorized to provide local exchange and interexchange telecommunications services in Tennessee pursuant to an Authority Order in Docket No. 99-00644 issued on December 3, 1999.

resold telecommunications services as a competitive carrier pursuant to an Authority Order in Docket No. 98-00649 issued on March 16, 1999.

### **JOINT APPLICATION**

In the *Joint Application* filed on June 5, 2013, the Joint Applicants request approval to transfer the assets and customers of Ernest to Birch. On May 30, 2013, BCI and Ernest entered into an asset purchase agreement whereby BCI will purchase certain assets from Ernest and acquire all of Ernest's customers. The *Joint Application* states that upon consummation of the transaction, and after completion of the customer transfer, Birch will revise its tariffs as necessary to incorporate Ernest'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, Ernest will no longer offer telecommunications services in Tennessee. After Ernest 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.

In addition, the Joint Applicants state that Birch will provide a joint notice of the transfer to Ernest's customers at least thirty days prior to the transfer and filed with the *Joint Application* a sample customer notification letter for pre-approval by the Authority in compliance with TRA Rule 1220-4-2-.56(2)(d).

### **FINDINGS AND CONCLUSIONS**

At the regularly scheduled Authority Conference held on July 15, 2013, the Authority found that Tenn. Code Ann. § 65-4-112 (2004) applies to this transaction 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 has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Based on the record, the panel found that the proposed transfer of assets is in the public interest. The panel also found that Ernest's customers had received the requisite thirty-day notice before the transfer, and the sample customer notification letter filed with the Authority on June 5, 2013 complied with the requirements of TRA Rule 1220-4-2-.56(2)(d)(2).

Therefore, the panel voted unanimously to 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 ("FCC") and the filing of the FCC self-certification letter concerning customer notification required by TRA Rule 1220-4-2-.56(2)(d)(1). The panel further directed that the Joint Applicants file with the Authority any documentation from the FCC regarding subsequent action on the transfer.

**IT IS THEREFORE ORDERED THAT:**

The *Joint Application*, and the transfer of assets described therein, is approved, contingent upon approval by the Federal Communications Commission and the filing of the FCC self-certification letter concerning customer notification required by TRA Rule 1220-4-2-.56(2)(d)(1). The Joint Applicants shall file with the Tennessee Regulatory Authority any documentation from the Federal Communications Commission regarding subsequent action on the transfer.

**Vice Chairman Herbert H. Hilliard, Director Robin Bennett, and Director David F. Jones concur.**

**ATTEST:**

  
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**Earl R. Taylor, Executive Director**