

CAHILL GORDON & REINDEL LLP

SUITE 950

1990 K STREET, N.W.

WASHINGTON, D.C. 20006-1181

EIGHTY PINE STREET
NEW YORK, N.Y. 10005-1702
(212) 701-3000
FAX: (212) 269-5420

TELEPHONE (202) 862-8900
FACSIMILE (202) 862-8958

AUGUSTINE HOUSE
6A AUSTIN FRIARS
LONDON, ENGLAND EC2N 2HA
(011) 44.20.7920.9800
FAX: (011) 44.20.7920.9825

ANGELA F. COLLINS | 202-862-8900 | acollins@cahill.com

July 1, 2013

Via Federal Express and Electronic Filing

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

Re: Docket 13-00089 – Response to Data Request No. 1

Dear Ms. Dillon:

Birch Telecom of the South, Inc. dba Birch Communications of the South (“Birch”) and Lightyear Network Solutions, LLC (“Lightyear”) (Birch and Lightyear collectively, the “Applicants”), hereby submit an original and four (4) copies and an electronic copy of the following response to Data Request No. 1 regarding the Joint Application for Approval to Transfer Assets and Customers (“Joint Application”) filed with the Tennessee Regulatory Authority (“Authority”) in the above-referenced docket.

- 1. Have the applicants made a similar filing with the FCC? If so, list any action taken and the associated docket number. If a schedule to complete the review of the filing has been established by the FCC, provide such with your response.**

The Applicants filed their Application for Consent to Transfer Control of Assets pursuant to Section 214 of the Communications Act of 1934, as Amended with the FCC on June 18, 2013 (“FCC Application”). The FCC Application can be found in WC Docket No. 13-164. On July 1, 2013 the FCC issued a Public Notice regarding the FCC Application, which states that the transfer will be automatically approved August 1, 2013. This Public Notice is enclosed as **Attachment 1**.

2. **Provide a copy of the self-certification letter filed with the FCC in CC Docket No. 00-257 regarding transfer of customers.**

The Applicants have not yet filed a self-certification letter with the FCC regarding this transaction in CC Docket No. 00-257. In accordance with 47 C.F.R. § 64.1120(e), the Applicants will file a self-certification letter no later than 30 days prior to the proposed transfer. The transfer is planned to occur on or around September 15, 2013. The Applicants will provide a copy of the self-certification letter to the Authority once it is submitted to the FCC.

3. **Provide a customer notification letter that includes language reflecting TRA Rule 1220-42-.56(2)(d)(4) that requires 30 day notice of any price increase that may impact the customer up to 90 days after the transfer.**

The updated customer notification letter is enclosed as **Attachment 2**.

Please date stamp the extra copy of this response and return it in the enclosed, postage-paid 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. d/b/a Birch Communications of the
South

Attachments

Attachment 1

FCC Public Notice



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 13-1486
Released: July 1, 2013

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN
ASSETS OF LIGHTYEAR NETWORK SOLUTIONS, LLC AND SE ACQUISITIONS, LLC BY
BIRCH COMMUNICATIONS, INC. AND BIRCH TELECOM, INC.**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 13-164

Comments Due: July 15, 2013

Reply Comments Due: July 22, 2013

On June 18, 2013, Birch Communications, Inc. (Birch), Birch Telecom, Inc. (Birch Telecom) (together, Birch), Lightyear Network Solutions, LLC (Lightyear), and SE Acquisitions, LLC (SE) (collectively, Applicants) filed an application pursuant to section 63.03 of the Commission's rules¹ to transfer certain assets of Lightyear and SE to Birch.

Lightyear, a Kentucky limited liability company, offers or is certified to offer competitive local exchange (LEC) and interexchange services nationwide, including in the District of Columbia and Puerto Rico, with the exception of Alaska.² SE, a Kentucky limited liability company, is a subsidiary of Lightyear and is certified to offer competitive LEC and interexchange services in Kentucky.

BCI, a Georgia corporation, and its wholly owned subsidiary, Birch Telecom, a Delaware corporation, offer or are certificated to offer through their operating subsidiaries competitive LEC and interexchange services in the District of Columbia and 48 states with applications pending in Arizona and West Virginia. Birch Communications Holdings, Inc. (Birch Holdings), a Georgia corporation, owns a 100 percent equity and voting interest in BCI. Applicants state that Holcombe Green, a U.S. citizen, holds a 66 percent equity and voting interest, and R. Kirby Godsey, a U.S. citizen, holds a 32 percent equity and voting interest in Birch Holdings. Applicants further state that these individuals hold interests in Tempo Telecom, LLC, a reseller of prepaid wireless voice and data services in 18 states.

¹ 47 C.F.R. § 63.03; *see* 47 U.S.C. § 214. Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications. Applicants filed a supplement to their domestic section 214 application on July 1, 2013.

² Applicants state that Lightyear is not certified to provide local services in the District of Columbia, Puerto Rico, Arizona, Connecticut, Delaware, Wyoming, or South Dakota.

Pursuant to the terms of the proposed transaction, Birch will purchase certain assets and customers of Lightyear and SE, including customer accounts and contracts. Applicants assert that the proposed transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.³

Domestic Section 214 Application Filed for the Acquisition of Certain Assets and Customers of Lightyear Network Solutions, LLC and SE Acquisitions, LLC by Birch Communications, Inc. and Birch Telecom, Inc., WC Docket No. 13-164 (filed June 18, 2013).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before July 15, 2013**, and reply comments **on or before July 22, 2013**. Pursuant to section 63.52 of the Commission's rules, 47 C.F.R. § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.⁴

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) Jodie May, Competition Policy Division, Wireline Competition Bureau, jodie.may@fcc.gov;
- 3) David Krech, Policy Division, International Bureau, david.krech@fcc.gov; and
- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two

³ 47 C.F.R. § 63.03(b)(2)(i).

⁴ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

⁵ 47 C.F.R. §§ 1.1200 *et seq.*

business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Tracey Wilson at (202) 418-1394 or Jodie May at (202) 418-0913.

- FCC -

Attachment 2

Customer Notification Letter



IMPORTANT NOTICE
REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES

Dear _____

Birch Communications of the South ("Birch") and Lightyear Network Solutions ("Lightyear") are pleased to announce that Birch is acquiring Lightyear's local telephone and long distance telephone customers, as well as certain other customers receiving additional types of services from Lightyear. Subject to approval by the Federal Communications Commission and state regulators as necessary, Birch will replace Lightyear 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 Lightyear. 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 Lightyear 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**

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.

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 Lightyear during 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 Lightyear 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 Lightyear 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 Lightyear at: **800-393-7300**.

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

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

Sincerely,

Lighyear Network Solutions 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 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.