

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

November 21, 2013

IN RE:

JOINT APPLICATION OF BIRCH TELECOM OF
THE SOUTH, INC. DBA BIRCH
COMMUNICATIONS OF THE SOUTH AND
LIGHTYEAR NETWORK SOLUTIONS, LLC FOR
APPROVAL TO TRANSFER ASSETS AND
CUSTOMERS OF LIGHTYEAR NETWORK
SOLUTIONS, LLC TO BIRCH TELECOM OF THE
SOUTH, INC. DBA BIRCH COMMUNICATIONS
OF THE SOUTH

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) DOCKET NO.
) 13-00089
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ORDER APPROVING ASSET TRANSFER

This matter came before Chairman James M. Allison, Vice Chairman Herbert H. Hilliard, and Director Kenneth C. Hill 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 Lightyear Network Solutions, LLC (“Lightyear”) (Birch and Lightyear together “Joint Applicants”).

Birch is a Delaware corporation and is a wholly-owned subsidiary of Birch Communications, Inc. (“BCI”).¹ 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. Lightyear is a Kentucky limited liability company and is

¹ 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.

authorized to provide telecommunications services in Tennessee pursuant to Authority Order in Docket No. 03-00634 issued on April 14, 2004.

JOINT APPLICATION

In the *Joint Application* filed on June 18, 2013, the Joint Applicants request approval to transfer the assets and customers of Lightyear to Birch. On May 10, 2013, BCI and Lightyear entered into an asset purchase agreement whereby BCI will purchase substantially all of Lightyear's telecommunications assets and Tennessee 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 Lightyear'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, Lightyear will no longer offer telecommunications services in Tennessee. After Lightyear 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 Lightyear's customers at least thirty days prior to the transfer. On July 1, 2013, the Joint Applicants filed 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 Lightyear's customers had received the requisite thirty-day notice before the transfer, and the sample customer notification letter filed with the Authority on July 1, 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.

Chairman James M. Allison, Vice Chairman Herbert H. Hilliard, and Director Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director