

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 24, 2014

IN RE:

APPLICATION OF BIRCH TELECOM OF THE SOUTH,
INC. D/B/A BIRCH COMMUNICATIONS OF THE
SOUTH AND BIRCH COMMUNICATIONS, INC. FOR
APPROVAL OF FINANCING ARRANGEMENTS

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DOCKET NO.
14-00046

ORDER APPROVING FINANCING ARRANGEMENTS

This matter came before Vice Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin Bennett of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on June 16, 2014, for consideration of the *Application of Birch Telecom of the South, Inc. dba Birch Communications of the South and Birch Communications, Inc. for Approval of Financing Arrangements* ("Application"). The *Application* was filed on April 22, 2014, by Birch Telecom of the South, Inc. ("Birch Telecom") and Birch Communications, Inc. ("Birch") (together, "Applicants").

Birch Telecom is a Delaware corporation. Pursuant to Authority Order in Docket No. 00-00341, issued on July 20, 2000, Birch Telecom is authorized to provide local exchange and interexchange telecommunications services in Tennessee. Birch is a Georgia corporation and the immediate parent of Birch Telecom. Birch is also authorized to provide local exchange and interexchange telecommunications services in Tennessee pursuant to Authority Order in Docket No. 99-00644 issued on December 3, 1999, and Authority Order in Docket No. 09-00029, issued on April 27, 2009.

THE APPLICATION

In Docket No. 11-00047, the TRA approved a financing transaction where Bank of America served as the sole administrative agent for Birch to obtain credit facilities from various financial institutions.¹ The TRA has approved several modifications to the financing arrangements, most recently an increase in available credit facilities in Docket No. 13-00152.²

The Applicants now seek approval to enter into a new financing arrangement to borrow additional funds in senior secured credit facilities (“Senior Credit Facilities”) with PNC Bank, National Association serving as the sole administrative agent. The Senior Credit Facilities will consist of a revolving credit facility, a term loan facility and an accordion provision. The interest rate applicable to the Senior Credit Facilities is expected to be consistent with market conditions for similar financing transactions as of closing. Birch intends to use a portion of the proceeds of the Senior Credit Facilities to pay off its existing credit facilities with Bank of America. The remaining proceeds will be used for planned acquisitions and other lawful corporate purposes.

The *Application* states that approval of the proposed financing transaction will not result in a change in the rates or terms and conditions of service. In addition, the proposed financing will have no effect on the operations of the entities certificated in Tennessee, and no transfer of certificate, authorization, assets or customers will occur as a result of the Applicants’ participation in the proposed financing transaction.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-109 (2004) provides:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue

¹ See *In re: Application of Birch Telecom of the South, Inc. and Birch Communications, Inc. for Approval of Financing Arrangements*, Docket No. 11-00047, *Order Approving Financing Arrangements* (May 25, 2011).

² See *In re: Application of Birch Telecom of the South, Inc. dba Birch Communications of the South and Birch Communications, Inc. for Approval of Financing Arrangements*, Docket No. 13-00152, *Order Approving Financing Arrangements* (February 18, 2014).

maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

At a regularly scheduled Authority Conference held on June 16, 2014, the panel voted unanimously to approve the *Application* and made the following findings:

1. The proposed financing transactions are subject to Authority approval pursuant to Tenn. Code Ann. § 65-4-109 (2004).

2. The proposed financing transactions are being made in accordance with laws enforceable by this agency.

3. The purpose of the transactions is in the public interest because it will strengthen the Applicants' ability to compete in the marketplace for telecommunications services in Tennessee.

IT IS THEREFORE ORDERED THAT:

1. Birch Telecom of the South, Inc. and Birch Communications, Inc. are authorized to enter into the financing arrangements described in the *Application of Birch Telecom of the South, Inc. dba Birch Communications of the South and Birch Communications, Inc. for Approval of Financing Arrangements*.

2. The authorization and approval given hereby shall not be used by any party, including but not limited to, any lending party for the purpose of inferring an analysis or assessment of the risks involved.

3. This decision is not intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof.

Vice Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin Bennett concur.

ATTEST:



Earl R. Taylor, Executive Director