



Agenda Date: 1/20/10  
Agenda Item: IVB

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

**TELECOMMUNICATIONS**

IN THE MATTER OF THE PETITION OF BIRCH )  
COMMUNICATIONS, INC. FOR APPROVAL TO )  
ISSUE SECURITIES ) ORDER  
DOCKET NO. TF09110896

Chérie R. Kiser Esq. Cahill Gordon & Reindel LLP 1990 K Street, N.W. Suite 950 Washington,  
D.C. 20006

(SERVICE LIST ATTACHED)

BY THE BOARD:

On November 4, 2009, Birch Communications, Inc., a Georgia corporation, ("Birch" or "Petitioner"), filed a petition with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:3-7 and 48:3-9 requesting approval to issue and sell secured notes.

Birch and its subsidiaries provide local exchange and inter-exchange telecommunications services to both business and residential customers in 32 states. The Board granted Birch authorization to provide local exchange and inter-exchange services on July 1, 2009, in Docket No. TE09040307.

Birch plans to enter into a Purchase Agreement, which will allow Birch to issue and sell to Knight Libertas LLC ("Purchaser") up to \$120,000,000 of secured notes due in 2015 ("Securities") at an interest rate between five percent (5%) and fifteen percent (15%) depending on market conditions at the time the Purchase Agreement is signed. The monies received by Birch for the sale of the Securities will be made available immediately and will be used toward current debt and payment obligations as well as for general corporate purposes including future acquisitions. The Securities will be secured by a first-priority senior security interest in the assets of Birch and certain Birch subsidiaries. There are no inter-company transactions that accompany this transaction. Birch and its subsidiaries will jointly and severally secure the debt.

The purpose of the transaction is to pay off a portion of existing indebtedness and to provide Birch ongoing financing for working capital. Any accounting of the transaction will reflect the debt repayment and financing.

Petitioner states that the financing is in the public interest because the financing will allow Birch to strengthen its ability to compete in the New Jersey market by giving Birch access to greater financial resources. Birch asserts that the proposed transaction will not result in any changes to Birch's rates or services in New Jersey.

The Division of Rate Counsel has reviewed this matter and by letter dated January 5, 2010, recommends that the Board approve this petition.

After review, the Board FINDS that the proposed transaction is consistent with the applicable law and is not contrary to the public interest, and therefore HEREBY AUTHORIZES Petitioner to participate in the financing arrangements described herein.

This Order is issued subject to the following provisions

1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting the Petitioner.
2. The Petitioner shall notify the Board, within five business days, of any material changes in the Purchase Agreement and shall provide complete details of such transactions including any anticipated effects upon service in New Jersey.
3. The Petitioner shall notify the Board of any material default on the terms of the Purchase Agreement within five business days of such occurrence.
4. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of the Petitioner's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
5. Petitioner should undertake financing in a manner that achieves the lowest reasonable cost of capital to customers.
6. The authority granted in this Order shall become null and void and of no effect with respect to any portion thereof which is not exercised by December 31, 2010.

7. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by the Petitioner.

DATED: 1/21/10

BOARD OF PUBLIC UTILITIES  
BY:

  
ELIZABETH RANDALL  
ACTING PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
JEANNE M. FOX  
COMMISSIONER

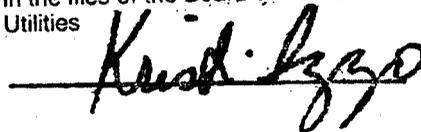
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

ATTEST:

  
CARMEN DIAZ  
ACTING SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**SERVICE LIST**

**In the Matter of the Petition of Birch Communications, Inc. to Issue Securities**

**Docket No. TF09110896**

**SERVICE LIST**

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