



Agenda Date: 4/27/11
Agenda Item: IVB

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF BIRCH)	MODIFYING ORDER DATED
COMMUNICATIONS, INC. FOR APPROVAL TO)	DECEMBER 6, 2010
UNDERTAKE FINANCING TRANSACTIONS)	
)	DOCKET NO. TF10100780
)	AMENDMENT NO. 1

Angela F. Collins Esq. Cahill Gordon & Reindel LLP 1990 K Street, N.W. Suite 950
Washington, D.C. 20006

BY THE BOARD:

On April 6, 2011, 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 amend an Order of Approval granted by the Board December 6, 2010 Docket No. TF10100780.

Birch and its subsidiaries provide local exchange and interexchange telecommunications services to both business and residential customers in 38 states. The Board granted Birch authorization to provide local exchange and interexchange services on July 1, 2009, in Docket No. TE09040307.

October 2010 Birch entered into a Commitment Letter with Bank of America, N.A. ("Bank of America") for Bank of America to act as the sole administrative agent for Birch to obtain up to \$75 million in senior secured credit facilities ("Senior Credit Facilities") from various financial institutions ("Lenders"). The Board approved that financing arrangement December 6, 2010 in Docket No. TF10100780. Birch now seeks to amend that financing approval to modify the structure of the transaction and the applicable interest rates. Under the modified arrangements, the aggregate amount of the financing will be less than the amount previously approved by the by the Board.

Birch has entered into a revised Commitment Letter with Bank of America, N.A., which will act as the sole administrative agent for Birch to obtain up to \$45 million in Senior Credit Facilities from various Lenders. The annual interest rate applicable to the Senior Credit Facilities is substantially similar to the interest rate previously approved by the Board and is expected to be consistent with market conditions for similar financing transactions as of closing.

Petitioner also requests approval to enter into a second financing arrangement to obtain \$25 million of senior subordinated unsecured notes ("Senior Subordinated Notes"). The interest rate applicable to the Senior Subordinated Notes is expected to be consistent with market conditions for similar financing transactions as of closing.

Both the Senior Credit Facilities and the Senior Subordinated Notes will be used by Birch for a variety of purposes, including capital expenditures, future acquisitions, working capital, and other general corporate purposes. The Senior Credit Facilities will be secured by first priority lien on the stock and substantially all of the assets of Birch, Birch's parent, and Birch's other directly and indirectly owned subsidiaries. The Senior Subordinated Notes will be guaranteed on a senior subordinated and unsecured basis by Birch's parent, Birch Communications Holdings, Inc., and all subsidiaries acting as guarantors under the Senior Credit Facilities. There are no intercompany transactions that accompany this transaction. Any accounting of the transaction will reflect the debt repayment and financing.

Petitioner states that the proposed transaction 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 states that it has no employees in New Jersey. 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 April 7, 2011, 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:

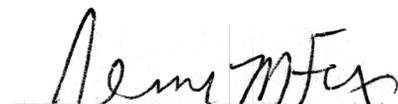
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting 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. 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.

6. The approval 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, 2011.

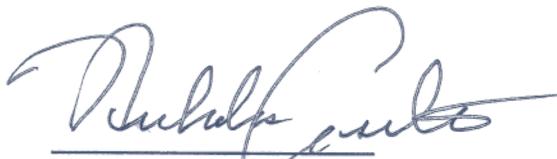
DATED: 4/27/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

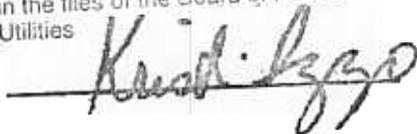

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

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



**In The Matter Of The Petition Of Birch Communications, Inc.
For Approval To Undertake Financing Transactions - DOCKET NO. TF10100780**

SERVICE LIST

Christopher Bunce
Vice President
Legal and General Counsel
Birch Communications, Inc.
2300 Main Street, Suite 600
Kansas City, MO 64108

Jose Rivera-Benitez, Esq.
Assistant Deputy Rate Counsel
Division of Rate Counsel
31 Clinton Street, 11th Floor
PO Box 46005
Newark, NJ 07101

Angela F. Collins
Senior Attorney
Cahill Gordon & Reindel LLP
1990 K Street, N.W. - Suite 950
Washington, D.C. 20006

Alex Moreau, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Mark Beyer
Chief Economist
Board of Public Utilities
Two Gateway Center - Suite 801
Newark, NJ 07102

Anthony Centrella, Director
Division of Telecommunications
Board of Public Utilities
Two Gateway Center – Suite 801
Newark, New Jersey 07102

Robert Wojciak
Economist Office
Board of Public Utilities
Two Gateway Center – Suite 801
Newark, NJ 07102

Stefanie A. Brand, Esq.,
Director
Division of Rate Counsel
31 Clinton Street - 11th Floor
P.O. Box 46005
Newark, New Jersey 07101