



Agenda Date: 7/18/12
Agenda Item: IVA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF BIRCH)
COMMUNICATIONS, INC. FOR APPROVAL TO)
UNDERTAKE FINANCING TRANSACTIONS) ORDER
DOCKET NO. TF12050438

Parties of Record:

Angela F. Collins Esq. Cahill Gordon & Reindel LLP
Stefanie A. Brand, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On April 27, 2011, the New Jersey Board of Public Utilities ("Board") issued an Order in Docket TF10100780 granting the petition of Birch Communications, Inc. ("Birch" or "Petitioner"), a Georgia corporation, for approval to enter into certain financing transactions with Bank of America, N.A. ("Bank of America"). Specifically, Bank of America was to act as the sole administrative agent for Birch to obtain up to \$45 million in senior secured credit facilities ("Senior Credit Facilities") from various financial institutions ("Lenders"). The Board also approved a second financing arrangement that would allow Birch to obtain \$25 million of senior subordinated unsecured notes ("Senior Subordinated Notes").

On May 23, 2012, Birch filed a request for approval to issue debt in the amount of \$75 million. Part of the proceeds will be used to re-finance approximately \$40 million of outstanding loans and commitments under its Senior Credit Facilities with Bank of America and to increase such Senior Credit Facilities by up to an additional \$35 million (the "Increased Senior Credit Facilities"). Birch intends to use a portion of the proceeds of the Increased Senior Credit Facilities to pay down its Senior Subordinated Notes by up to \$10 million. In connection with the foregoing, Birch intends to seek certain amendments to the terms of its Senior Subordinated Notes to make such terms more favorable to Birch. The new per annum interest rates applicable to the Increased Senior Credit Facilities and the Senior Subordinated Notes are expected to be consistent with market conditions for similar financing transactions as of closing.

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 inter-exchange services on July 1, 2009, in Docket No. TE09040307.

The Increased Senior Credit Facilities will be used by Birch for a variety of purposes, including capital expenditures, future acquisitions, general working capital purposes, and other lawful corporate purposes. The Increased 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 continue to be guaranteed on a senior subordinated and unsecured basis by Birch's parent 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 approval of these financing transactions 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 at lower interest rates. Birch 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 June 20, 2012 has no objection to approval of Petitioners request under its Verified 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 financing transaction documents 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 financing transaction documents 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.

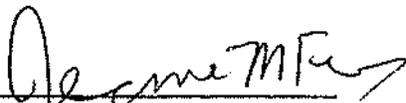
5. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
6. The approval in this Order shall become null and void and of no effect with respect to any portion thereof which is not exercised by December 31, 2012.

This Order shall be effective on July 28, 2012.

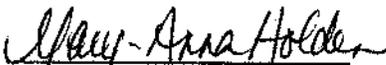
DATED: 7/18/12

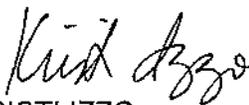
BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

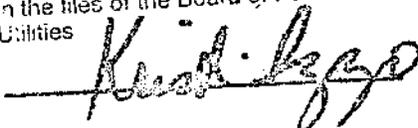

JEANNE M. FOX
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
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. to Undertake Financing
Transactions**

Docket No. TF12050438

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