



# PUBLIC NOTICE

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**DA 02-2021**  
**Released: August 15, 2002**

## DOMESTIC SECTION 214 APPLICATION FILED FOR CONSENT TO TRANSFER CONTROL OF BIRCH TELECOM, INC.

### STREAMLINED PLEADING CYCLE ESTABLISHED

**WC Docket No. 02-229**

On July 31, 2002, Birch Telecom, Inc., Debtor-in-Possession (“Birch DIP”), and Birch Telecom, Inc. (“Birch”)<sup>1</sup> (collectively, “Applicants”), pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (the “Act”), filed an application for approval to transfer control of Birch DIP, and indirect control of the section 214 authority held by Birch DIP’s operating subsidiaries, to Birch.<sup>2</sup>

Applicants assert that this application is subject to streamlined processing under section 63.03(b)(2)(i) of the Commission’s rules because the Applicants are not dominant with respect to any telecommunications services offered; the proposed transaction would result in the transferee having a market share in the interstate, interexchange market of less than 10 percent; and the transferee would provide competitive telephone exchange services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction.<sup>3</sup>

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<sup>1</sup> For convenience purposes, the name “Birch” refers to Birch Telecom, Inc. prior to the *pro forma* transfer of control to Birch DIP as well as after transfer of control from Birch DIP out of bankruptcy.

<sup>2</sup> On July 29, 2002, Birch and all of its subsidiaries filed for bankruptcy protection simultaneously in the U.S. Bankruptcy Court for the District of Delaware. The following subsidiaries of Birch DIP are certificated to provide telecommunications services: American Local Telecommunications, L.L.C. (Texas); Birch Telecom of the Great Lakes, Inc. (Illinois, Indiana, Michigan, Ohio, Wisconsin); Birch Telecom of Kansas, Inc. (Kansas); Birch Telecom of Missouri, Inc. (Missouri); Birch Telecom of Oklahoma, Inc. (Oklahoma); Birch Telecom of the South, Inc. (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee); and Birch Telecom of Texas Ltd., L.L.P. (Texas). Each of these subsidiaries are wholly owned by Birch, with the exception of Birch Telecom of Texas, Ltd., L.L.P., of which Birch is a Limited Partner with a 99 percent interest, and Birch Texas Holdings, Inc. is the General Partner with a 1 percent interest.

<sup>3</sup> 47 C.F.R. section 63.03(b)(2)(i).

The Applicants have elected to commence a chapter 11 case under the Bankruptcy Code. Upon the filing of its bankruptcy case, control of Birch shifted from BTI Ventures, LLC (“BTI”) (a wholly owned subsidiary of the investment firm Kohlberg, Kravis, Roberts & Co. (“KKR”)) to Birch DIP.<sup>4</sup> In conjunction with its bankruptcy filing, Birch DIP proposed a plan of reorganization (the “Reorganization Plan”), for which Birch DIP has solicited and received sufficient votes from its current senior lenders and senior note holders to enable the Reorganization Plan to be confirmed by the U.S. Bankruptcy Court for the District of Delaware. Pursuant to the Reorganization Plan, BTI will forfeit both *de jure* and *de facto* control of Birch DIP, and the shareholders generally of Birch will assume control of the company. Birch does not anticipate any adverse effect on its customers as a result of the reorganizations, including any changes to its rates and quality of service.

BTI currently owns approximately 90 percent of the shares of outstanding capital stock in Birch DIP.<sup>5</sup> BTI also controls a majority of Birch DIP’s board of directors. Upon implementation of the Reorganization Plan, unless it elects to participate in the Equity Offer, BTI’s equity share will be reduced to approximately zero, and no single shareholder will own a majority of the voting stock of Birch. Upon completion of the Reorganization Plan, approximately 100 percent of Birch’s capital stock will be owned by a diffuse group of investment banks.<sup>6</sup> The remainder of Birch will be owned in varying amounts by holders of Birch’s 14 percent Senior Notes due 2008, existing management and, if they elect to purchase shares of Birch’s common stock pursuant to the terms of the Equity Offer, holders of Birch’s existing preferred stock.. As no single shareholder will possess *de jure* or *de facto* control of Birch, control will rest in the shareholders generally of Birch. The corporate organization chart will remain unchanged pre- and post-restructuring.

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<sup>4</sup> On July 30, 2002, Birch, as Debtor-in-Possession, submitted notification to the Commission of the *pro forma* transfer of control as required under new section 63.03(d) of the Commission’s Rules.

<sup>5</sup> BTI, the controlling party prior to the *pro forma* transfer of control to Birch DIP, does not provide telecommunications services, but its affiliates, NewSouth Communications (“NewSouth”) and Birch DIP do. NSHI Ventures, LLC, a wholly owned subsidiary of KKR, has an approximately 55 percent equity ownership interest in NewSouth. Because KKR wholly owned both BTI and NSHI Ventures, LLC, NewSouth is an affiliate of Birch DIP. New South offers domestic competitive local long distance telecommunications services throughout the areas served by BellSouth: North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Louisiana, Kentucky, and Mississippi. It is anticipated that, post-restructuring, Birch will no longer be affiliated with NewSouth. Birch DIP’s operating subsidiaries currently provide domestic local and long distance telecommunications services for residential as well as small and mid-sized business customers in Alabama, Georgia, Kansas, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

<sup>6</sup> The investment banks to own five percent or greater equity in Birch, and their approximate post-restructuring equity share (rounded to the nearest 1 percent) are as follows: LB 1 Group, Inc. (25 percent), Bear Sterns Corporate Lending, Inc. (10 percent), Bank of America, N.A. (8 percent), Banker’s Trust Company (8 percent), LT Holdco I, L.L.C. (8 percent), Fleet National Bank (6 percent), IBM Credit Corporation (6 percent), Morgan Stanley Dean Witter Investment (5 percent), and Lehman Brothers (5 percent).

The Applicants state that the Reorganization Plan proposes a major restructuring of Birch DIP's financial obligations and capital structure, which is critical to its continuation as a viable enterprise. Applicants state that Birch DIP's financial condition and overall creditworthiness will improve, thereby enhancing its ability to make the necessary expenditures to continue to compete effectively in the telecommunications market.

The Applicants anticipate no adverse impact on service to any of the customers of Birch DIP as a result of this reorganization. Birch DIP plans no change to the company's name, service to Birch DIP's customers will not be interrupted as a result of the bankruptcy filings, and Birch DIP does not anticipate any changes to rates or quality of service. Applicants state that this transaction is essential to the preservation of Birch's core business and will permit the company to continue bringing quality service to its customer base.

### **GENERAL INFORMATION**

The transfer of control application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days and reply comments within 21 days** of this notice.<sup>7</sup> Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31<sup>st</sup> day after the date of this notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding,

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<sup>7</sup> See 47 C.F.R. section 63.03(a).

commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionx, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) the Commission's duplicating contractor, Qualex International, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: [qualexint@aol.com](mailto:qualexint@aol.com); facsimile: (202) 863-2898; phone: (202) 863-2893.
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: [twilson@fcc.gov](mailto:twilson@fcc.gov), and
- (3) Bill Dever, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: [wdever@fcc.gov](mailto:wdever@fcc.gov); and
- (4) Nandan Joshi, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: [njoshi@fcc.gov](mailto:njoshi@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

For further information, please contact Tracey Wilson, at (202) 418-1394 or Bill Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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