



PUBLIC NOTICE

Federal Communications Commission
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DA 06-482
Released: February 27, 2006

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF BIRCH TELECOM, INC., DEBTOR-IN-POSSESSION, TO THE SHAREHOLDERS OF THE NEWLY REORGANIZED BIRCH TELECOM

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-45

Comments Due: March 13, 2006

Reply Comments Due: March 20, 2006

On February 17, 2006, Birch Telecom, Inc., Debtor-in-Possession (“Birch DIP”) and the shareholders of the newly reorganized Birch Telecom (together “Applicants”), pursuant to sections 63.03 and 63.04 of the Commission’s rules,¹ requested authority to transfer control of the domestic section 214 authorizations held by certain subsidiaries of Birch DIP from Birch DIP to the shareholders (“New Birch Shareholders”) of the newly reorganized Birch Telecom (“New Birch”) pursuant to a Third Amended Joint Reorganization Plan (the “Reorganization Plan”) proposed by Birch DIP.² Subject to bankruptcy court approval, the Reorganization Plan authorizes Birch DIP to emerge from bankruptcy court protection with a new capital structure as New Birch.

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission’s rules. Immediately following the transaction: (1) New Birch will have a market share in the interstate, interexchange market of less than 10%; and (2) New Birch and its affiliates will provide competitive telephone exchange services exclusively in geographic areas served by dominant local exchange carriers. With respect to section 63.03(b)(2)(i), the Applicants and their affiliates are not dominant with respect to any service.³

¹ See 47 C.F.R. §§ 63.03, 63.04.

² Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ See 47 C.F.R. § 63.03(b)(2)(i).

Birch DIP, a Delaware corporation, is a holding company and, through its twenty-eight direct and indirect subsidiaries, provides small and medium-sized businesses with voice and data services, including local dial tone, long distance, “911” services, call waiting, high-speed Internet access, web hosting, and other services such as virtual networking.⁴ Birch DIP currently serves customers in twenty-five states.⁵

New Birch, a Delaware corporation, and its subsidiaries will provide the same telecommunications services that Birch DIP and its subsidiaries currently provide. Each of the New Birch subsidiaries possessing a section 214 authorization will be either directly or indirectly owned and controlled by New Birch. The following entities will hold a 10% or greater interest in New Birch: UBS Willow Fund LLC, a domestic company (29.4%); Strategic Value Master Fund Ltd. c/o State Street Cayman Trust Co., a Cayman Islands limited company (26.2%); and Banc of America Strategic Solutions, Inc., a domestic corporation (10.3%).

Once the Reorganization Plan has been approved by the bankruptcy court and the conditions under the Reorganization Plan have been satisfied, Birch DIP will emerge from bankruptcy with a new capital structure as New Birch. Pursuant to the Reorganization Plan, all of Birch DIP’s outstanding indebtedness will be extinguished and certain of Birch DIP’s creditors will receive equity in New Birch. Following the reorganization of Birch DIP, no single shareholder will control New Birch. Moreover, all of the New Shareholders were also shareholders of Birch DIP.

Applicants state that the proposed transaction serves the public interest because: (1) Birch DIP’s emergence from bankruptcy court protection will not adversely affect competition in any of the markets in which Birch currently provides service; (2) New Birch will continue to provide service to all of the customers of Birch DIP without interruption; (3) New Birch will continue to hold authority to operate and expects to retain all customer contracts currently held by Birch DIP; and (4) there will be no change in the terms, conditions, or price of service, and no detrimental change in customer service.

⁴ The following are the Birch DIP subsidiaries that provide telecommunications services under blanket domestic section 214 authority: American Local Telecommunications, L.L.C., a Texas company; Birch Telecom of Kansas, Inc., a Kansas corporation; Birch Telecom of Missouri, Inc., a Delaware corporation; Birch Telecom of Oklahoma, Inc., a Delaware corporation; Birch Telecom of the South, Inc., a Delaware corporation; Birch Telecom of Texas Ltd., L.L.P., a Texas company; Birch Telecom of the Great Lakes, Inc., a Delaware corporation; Birch Telecom 1996, Inc., a Delaware corporation; Ionex Communications, Inc., a Kansas corporation; Ionex Communications North, Inc., a South Dakota corporation; Ionex Communications South, Inc., a Texas corporation; and Telecom Resources, Inc., a Texas corporation.

⁵ Through various subsidiaries, Birch DIP is certificated to offer telecommunications services in all fifty states and provides facilities-based and resold telecommunications services in twenty-five states, including Alabama, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, and Wyoming.

GENERAL INFORMATION

The transfer of control 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. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before March 13, 2006** and **reply comments on or before March 20, 2006**.⁶ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.⁷ Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers 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, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** 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 appears in the caption of this proceeding, filers 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). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

⁶ See 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

The Commission's contractor 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, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

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

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: tracey.wilson-parker@fcc.gov;
- (3) Adam Kirschenbaum, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C211, Washington, D.C. 20554; e-mail: adam.kirschenbaum@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@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, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CYB402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

For further information, please contact Tracey Wilson-Parker at (202) 418-1394, or Adam Kirschenbaum at (202) 418-7280.

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