



# PUBLIC NOTICE

**Federal Communications Commission**  
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Washington, D.C. 20554

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**DA 15-539**  
**Released: May 5, 2015**

## **DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF ORBITCOM, INC. BY BIRCH COMMUNICATIONS, INC.**

### **PLEADING CYCLE ESTABLISHED**

**WC Docket No. 15-102**

**Comments Due: May 19, 2015**

**Reply Comments Due: May 26, 2015**

Birch Communications, Inc. (Birch) and OrbitCom, Inc. (OrbitCom) (collectively, the Applicants) filed a domestic application<sup>1</sup> pursuant to section 214 of the Communications Act of 1934, as amended (Act), requesting authority to transfer certain OrbitCom assets to Birch.

OrbitCom, a South Dakota corporation, is a competitive local exchange carrier, and offers or is certified to offer competitive local exchange, intrastate toll, intrastate interexchange, interstate interexchange, or data services to residential and business customers in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

Birch, a Georgia corporation, and its wholly owned subsidiaries are competitive local exchange carriers, and offer or are certified to offer competitive local exchange, intrastate toll, intrastate interexchange, interstate interexchange, or data services to residential and business customers in the District of Columbia and in 50 states.<sup>2</sup> Birch is wholly owned by Birch Communications Holdings, Inc. (Birch Holdings). The following U.S. citizens hold a ten percent or greater direct or indirect ownership interest in Birch Holdings: Holcombe Green, (53 percent voting and equity interest) and R. Kirby Godsey (21 percent voting and equity interest).<sup>3</sup>

Pursuant to an Asset Purchase Agreement, Birch will purchase certain assets and customers of OrbitCom. Specifically, Birch will obtain certain customer accounts and receivables, certain customer

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<sup>1</sup> 47 C.F.R. § 63.03; *see* 47 U.S.C. § 214. Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

<sup>2</sup> *See* Application at 2-3 for a complete list of Birch's operating subsidiaries.

<sup>3</sup> R. Kirby Godsey holds his percentage through his individual holdings and through the R. Kirby Godsey 2008 Grantor Retained Annuity Trust. Mr. Green and Mr. Godsey also hold interests in Tempo Telecom, LLC (Tempo), a reseller of prepaid wireless voice and data services throughout the United States.

agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. Applicants assert that the proposed transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.<sup>4</sup>

Domestic Section 214 Application filed for the Transfer of Certain Assets of OrbitCom, Inc. to Birch Communications, Inc., WC Docket No. 15-102 (filed April 27, 2015).

## **GENERAL INFORMATION**

The transfer of assets 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 application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before May 19, 2015**, and reply comments **on or before May 26, 2015**. Pursuant to section 63.52 of the Commission's rules, 47 C.F.R. § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.

**In addition, provide one copy of each pleading to each of the following:**

- 1) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, [dennis.johnson@fcc.gov](mailto:dennis.johnson@fcc.gov) or (202) 418-1413 (facsimile);
- 2) Myrva Freeman, Competition Policy Division, Wireline Competition Bureau, [myrva.freeman@fcc.gov](mailto:myrva.freeman@fcc.gov) or (202) 418-1394;
- 3) David Krech, Policy Division, International Bureau, [david.krech@fcc.gov](mailto:david.krech@fcc.gov) or (202) 418-2824 (facsimile);
- 4) Jim Bird, Office of General Counsel, [jim.bird@fcc.gov](mailto:jim.bird@fcc.gov).

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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to

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<sup>4</sup> 47 C.F.R. 63.03(b)(2)(i).

such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

For further information, please contact Myrva Freeman at (202) 418-1506 or Dennis Johnson at (202) 418-0809.

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