



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 16-265
March 10, 2016

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE
ACQUISITION OF CERTAIN ASSETS OF PRIMUS TELECOMMUNICATIONS, INC.,
DEBTOR-IN-POSSESSION, BY BIRCH COMMUNICATIONS, INC.**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 16-43

Comments Due: March 24, 2016
Reply Comments Due: March 31, 2016

Birch Communications, Inc. (Birch) and Primus Telecommunications, Inc., Debtor-in-Possession (Primus), (collectively, the Applicants) filed an application pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.03 of the Commission's rules, requesting approval for the transfer of certain Primus assets to Birch.¹

Primus, a Delaware corporation, is a competitive local exchange carrier (LEC) and offers, or is certified to offer, service in California, Florida, Iowa, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Puerto Rico, and the District of Columbia. Primus also offers, or is certified to offer, intrastate interexchange services in Puerto Rico and in all 50 states with the exception of Alaska.

Birch, a Georgia corporation, provides interstate and international telecommunications services. Birch and its wholly owned subsidiaries are competitive LECs and offer, or are certified to offer, competitive telecommunications services in Puerto Rico, the District of Columbia, and in all 50 states. Birch Communications Holdings, Inc. (Birch Holdings), a Georgia corporation, owns a 100 percent of the voting and equity interest in Birch. The following U.S. entities and individuals hold a ten percent or greater direct or indirect ownership interest in Birch Holdings: Holcombe Green (62 percent interest) and R. Kirby Godsey (23 percent interest).

On January 18, 2016, Birch and Primus entered into an Asset Purchase Agreement (Agreement) pursuant to which Birch will purchase certain assets and customers of Primus, including certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. Applicants state that Birch will not assume any of Primus' pre-closing liabilities or obligations. Applicants further state that on January 21, 2016,

¹ See 47 C.F.R § 63.03; 47 U.S.C. § 214. Applicants also filed applications for the transfer of authorizations associated with international services. Any action on this domestic Section 214 application is without prejudice to Commission action on other related, pending applications.

Primus filed a petition under Chapter 15 of the United States Bankruptcy Code.² On February 1, 2016, Primus notified the Commission of the *pro forma* assignment of its domestic Section 214 registration from Primus Telecommunications, Inc. to Primus Telecommunications, Inc., debtor-in-possession. Applicants state that Primus will continue to operate as debtor-in-possession in the ordinary course of business.

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.³

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Primus Telecommunications, Inc. by Birch Communications, Inc., WC Docket No. 16-43 (filed Feb. 3, 2016).

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 March 24, 2016**, and reply comments **on or before March 31, 2016**. 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 assets 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, e-mail one copy of each pleading to each of the following:

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.Johnson@fcc.gov
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov;
- 4) David Krech, International Bureau, david.krech@fcc.gov;

² *In re* PT Holdco, Inc., *et al.*, Case No. 16-10131 (LSS) (D.Del. Jan. 21, 2016). Applicants filed a supplement to their application on March 9, 2016 attaching an order issued by the United State Bankruptcy Court for the District of Delaware on March 4, 2016, which recognizes and enforces on the order issued by the Ontario Superior Court of Justice (Commercial List), determining that the orders issued by that court are recognized in full and given full force and effect in the United States.

³ 47 C.F.R. § 63.03(b)(2)(i).

5) Sumita Mukhoty, International Bureau, sumita.mukhoty@fcc.gov.

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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 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 Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809.

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