



Agenda Date: 2/20/13
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 VERIFIED JOINT PETITION)
OF BIRCH COMMUNICATIONS, INC. AND COVISTA,) ORDER OF APPROVAL
INC. FOR APPROVAL TO TRANSFER ASSETS AND)
CUSTOMERS TO BIRCH COMMUNICATIONS, INC.) DOCKET NO. TM12121085

Parties of Record:

Angela F. Collins, Esq., Cahill Gordon & Reindel LLP, Counsel for Birch Communications, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Norman Klugman, Acting President, Covista, Inc.

BY THE BOARD:

On December 20, 2012, Birch Communications, Inc. ("Birch") and Covista, Inc. ("Covista") (collectively, "Petitioners") filed a verified petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:3-7, for approval or such authority as may be necessary to consummate a Transaction between Birch and Covista through which Birch will acquire the assets and customers of Covista. Upon consummation of the proposed transaction, Covista will surrender its authorization and cancel its tariff in a separate filing. Birch will file any necessary tariff revisions to incorporate Covista's current services and rates so that Covista customers will continue to receive services under the same terms, rates, and conditions that they currently receive without any immediate changes.

BACKGROUND

Birch is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. In New Jersey, Birch was authorized to provide local exchange and interexchange services on July 1, 2009. See In the Matter of the Verified Petition of Birch Communications, Inc. for Approval to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE09040307, Order dated July 1, 2009. Birch has approximately 4045 residential lines and 1397 business lines in New Jersey. The company states it has no employees in New Jersey. Petitioners state that on November 30, 2012, Birch and Covista entered into an Asset Purchase Agreement ("Agreement") pursuant to which Birch will purchase certain assets and customers of Covista.

Covista is a New Jersey corporation with headquarters located at 225 East 8th Street, Suite 400, Chattanooga, TN 37416. Covista is authorized by the Board to provide local exchange telecommunications services in New Jersey. Covista received its authority in Docket No. TE98060339, Order dated October 9, 1998. Covista has no employees in New Jersey and has approximately 7111 customer accounts in New Jersey.

DISCUSSION

According to the petition, on November 30, 2012, Birch and Covista entered into an Agreement pursuant to which Birch will purchase certain assets and customers of Covista. Pursuant to the Agreement, Birch will purchase certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. Birch will not assume any of Covista's pre-closing liabilities and obligations. Birch will acquire approximately 7111 customer accounts in New Jersey. After consummation of the transaction, Birch will provide Covista customers with the same service quality as before and handle all billing.

Petitioners have also complied with Mass Migration guidelines at N.J.A.C. 14:10-12.1 et. seq., and will provide customers a 60-day and a 30-day notification. This notice would inform customers of the transfer and that they have the right to choose another carrier. Petitioners have requested a modification of mass migration guidelines at N.J.A.C. 14:10-12.7(a) to provide Staff with a list of end users at least 60 days prior to departure. Staff has determined that a modification of this requirement should be granted since there are no priority end users involved in this migration.

According to the petition, Birch will also file any necessary tariff revisions to incorporate Covista's current services and rates so that affected customers will continue to receive the same services that they currently receive without any immediate changes to their service offerings, rates or terms and conditions. Birch will provide services to Covista customers utilizing its existing interconnection agreements, 911 arrangements, and numbering arrangements.

As a result, the proposed transaction will be transparent to customers and will not have a negative impact on the public interest, services to New Jersey customers, or competition.

FINDINGS AND CONCLUSION

Under N.J.S.A. 48:3-7, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to any of its employees. However, those obligations do not apply here.

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to New Jersey customers or the rates they pay. Nor will there be a negative impact on competition. The Board also concludes that a modification of mass migration N.J.A.C. 14:10-12.7(a) as proposed by Petitioners is in the best interest of the parties.

Accordingly, after careful review of this matter, the Board **FINDS** that the Transaction will have no negative impact on competition, employees, or the rates to customers. The Board also

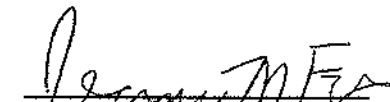
FINDS that the asset and customer transfer will have no negative impact on the provision of safe, adequate and proper service and will positively benefit competition. Furthermore, the Board **FINDS** that the transfer will likely have a net positive benefit to the customers in the State.

Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, **FINDS** that the asset and customer transfer is in accordance with the law and in the public interest. The Board **HEREBY APPROVES** the request by Petitioners for the Transaction. Finally, the Board **FURTHER ORDERS** that the approval in this Order shall become null and void and of no effect to the extent that the approved Transaction has not been effected prior to August 31, 2013. The Board **HEREBY ORDERS** that Petitioners shall notify the Board of the closing of the proposed transaction within ten (10) days of consummation of the transfer. This Order shall become effective upon the service thereof, in accordance with N.J.S.A. 48:2-40.

DATED: 2/20/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

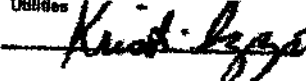

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA 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 Verified Joint Petition of Birch Communications, Inc. and Covista, Inc. for Approval to Transfer Assets and Customers to Birch Communications, Inc.

Docket No. TM12121085

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