



Agenda Date: 7/19/13
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 PETITION OF BIRCH)
COMMUNICATIONS, INC. FOR APPROVAL TO)
UNDERTAKE FINANCING TRANSACTIONS) ORDER
DOCKET NO. TF13050432

Parties of Record:

Angela F. Collins Esq., Cahill Gordon & Reindel LLP for the Petitioner
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On April 27, 2011, the New Jersey Board of Public Utilities ("Board") issued an Order in Docket TF10100780 granting the petition of Birch Communications, Inc. ("Birch" or "Petitioner"), a Georgia corporation, for approval to enter into certain financing transactions with Bank of America, N.A. ("Bank of America"). Specifically, Bank of America was to act as the sole administrative agent for Birch to obtain up to \$45 million in senior secured credit facilities ("Senior Credit Facilities") from various financial institutions ("Lenders"). The Board also approved a second financing arrangement that would allow Birch to obtain \$25 million of senior subordinated unsecured notes ("Senior Subordinated Notes").

On July 18, 2012, in Docket No. TF12050438, the Board approved Birch's request for approval to re-finance approximately \$40 million of outstanding loans and commitments under its Senior Credit Facilities with Bank of America to increase such Senior Credit Facilities by up to an additional \$35 million (the "Increased Senior Credit Facilities") pursuant to a Second Commitment Letter for a total of \$75 million in senior credit facilities. Birch indicated that it intended to use a portion of the proceeds of the Increased Senior Credit Facilities to pay down its Senior Subordinated Notes by up to \$10 million.

The Second Commitment Letter contained an "accordion" provision permitting Birch, from time to time, to increase the Total Senior Credit Facilities in an aggregate amount of up to \$20 million subject to the satisfaction of certain conditions ("Accordion"). The per annum interest rates applicable to the credit facilities made available by the Accordion would be the same as those applicable to the Increased Senior Credit Facilities. To the extent Birch exercised all of its authority under the Accordion, its total senior credit facilities would equal \$95 million. The Board approved Birch's ability to exercise the accordion on December 19, 2012 in Docket No. TF12111008.

On May 30, 2013, Birch filed a Verified Petition seeking approval to re-finance its outstanding loans and commitments with Bank of America to bring its total senior credit facilities (if all options are exercised) to approximately \$150 million. Birch intends to use a portion of the proceeds from the re-financing to pay-off its remaining Senior Subordinated Notes. The remaining proceeds will be used by Birch for future planned acquisitions and other lawful corporate purposes. The new per annum interest rates applicable to the re-financing are expected to be consistent with market conditions for similar financing transactions as of closing.

The re-financed senior credit facilities will continue to be secured by a first priority lien on the stock and substantially all of the assets of Birch and Birch's directly and indirectly owned subsidiaries, as well as substantially all of the assets of Birch's parent. There are no intercompany transactions that accompany this transaction. Any accounting of the transaction will reflect the debt repayment and financing.

Birch and its subsidiaries are authorized to provide local exchange and interexchange telecommunications services to both business and residential customers in the District of Columbia and 48 states. The Board granted Birch authorization to provide local exchange and interexchange services on July 1, 2009, in Docket No. TE09040307.

Petitioner states that approval of these financing transactions is in the public interest because the financing will allow Birch to strengthen its ability to compete in the New Jersey market by giving Birch access to greater financial resources at lower interest rates. Birch has no employees in New Jersey. Birch asserts that the proposed transaction will not result in any changes to Birch's rates or services in New Jersey.

The Division of Rate Counsel has reviewed this matter and by letter dated June 5, 2012, has no objection to the Board's approval of the Petitioner's request under its Petition.

After review, the Board **FINDS** that the proposed transaction is consistent with the applicable law and is not contrary to the public interest, and therefore **HEREBY AUTHORIZES** Petitioner to participate in the financing arrangements described herein.

This Order is issued subject to the following provisions:

1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting the Petitioner.
2. The Petitioner shall notify the Board, within five business days, of any material changes in the financing transaction documents and shall provide complete details of such transactions including any anticipated effects upon service in New Jersey.
3. The Petitioner shall notify the Board of any material default on the terms of the financing transaction documents within five business days of such occurrence.
4. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of


the Petitioner's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.

5. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
6. The approval in this Order shall become null and void and of no effect with respect to any portion thereof which is not exercised by December 31, 2013.

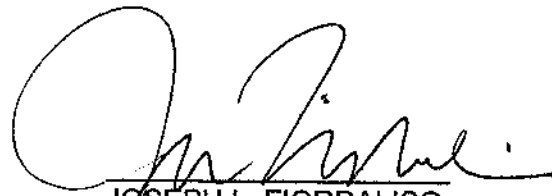
This Order shall be effective on July 29, 2013.

DATED: 7/19/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
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 Petition Of Birch Communications, Inc. For Approval To Undertake
Financing Transactions**

DOCKET NO. TF13050432

SERVICE LIST

Kristi Izzo
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625

Mark Beyer
Chief Economist
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Robert Wojciak
Economist office
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Anthony Centrella, Director
Division of Telecommunications
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-003

Jose Rivera-Benitez, Esq.
Assistant Deputy Public Advocate
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-003

Ayelet Hirschhorn, Esq., DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029

Alex Moreau, Esq., DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029

Angela F. Collins, Senior Attorney
Cahill Gordon & Reindel, LLP
1990 K Street, N.W.
Suite 950
Washington, D.C. 20006