

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

APPLICATION OF)
BIRCH COMMUNICATIONS, INC.)
FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY) **Docket No.**
TO PROVIDE FACILITIES BASED)
LOCAL EXCHANGE SERVICES)

**APPLICATION OF BIRCH COMMUNICATIONS, INC.
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

Comes now the Petitioner, Birch Communications, Inc. (“Birch” or “Applicant”) and petitions the South Dakota Public Utilities Commission (the “Commission”) for a Certificate of Public Convenience and Necessity to operate as a telephone utility and to provide competitive telecommunications services pursuant to 20:10:32:03 of the Rules of the South Dakota Public Utilities Commission. Birch seeks authority to operate as a provider of competitive local exchange and long distance services. Birch has the financial, managerial, and technical qualifications to provide telecommunications services in South Dakota, and approval of this Application is in the public interest.

1. Name of Applicant

The Applicant’s legal name is Birch Communications, Inc. The address of its principal office and telephone number is:

Birch Communications, Inc.
320 Interstate North Parkway SE
Atlanta, GA 30339
678-424-2400 (telephone)
678-424-2501 (facsimile)
866-424-5100 (toll free)
www.birch.com (website)

2. Business Structure

Birch was incorporated in the state of Georgia on March 28, 1996. A copy of Birch's Articles of Incorporation is attached as **Attachment A**.

3. Use of d/b/a (Doing Business As) Name

Not applicable.

4. Location of Principal Office and Registered Agent in South Dakota

Birch will not have an office located in South Dakota. Birch's registered agent in South Dakota is:

Corporation Service Company
503 South Pierre Street
Pierre, SD 57501

5. Authority to Transact Business in South Dakota

Birch is in the process of registering as a foreign corporation with the South Dakota Secretary of State.

6. Experience Providing Telecommunications Services

Birch and its affiliates have offered telecommunications services for more than 20 years. Applicant currently is authorized to provide telecommunications services in the 9-state BellSouth region (Alabama, Georgia, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee), Arkansas, Montana, New Jersey, and Pennsylvania. Affiliates of Applicant are authorized to provide local exchange and/or interexchange services in all other states and the District of Columbia. Birch is also seeking authority in Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Maine, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, Rhode Island, Utah, Vermont, West Virginia, Wisconsin, and Wyoming concurrently with this Application.

Birch's wholly owned subsidiary, Ionex Communications North, Inc. ("Ionex"), currently is authorized to provide local exchange and interexchange services in South Dakota in Docket TC96-083 (October 22, 1996). This Application is being filed in connection with an internal corporate reorganization pursuant to which Birch will serve large business customers located in South Dakota while Ionex will serve residential and single-line business customers located in South Dakota.

7. Owners and Affiliates

Birch is wholly owned by Birch Communications Holdings, Inc. The following are the major stockholders in Birch Communications Holdings, Inc.:

- (1) R. Kirby Godsey, a U.S. citizen, owns 24% of Birch Communications Holdings, Inc.
- (2) Holcombe T. Green, Jr., a U.S. citizen, owns 62% of Birch Communications Holdings, Inc. Mr. Green also holds another 3.5% of Birch Communications Holdings, Inc. as the Trustee of various annuity trusts.

Below are Birch's affiliates that are authorized to provide telecommunications services in the United States.

Birch Telecom of Kansas, Inc.
Birch Telecom of Missouri, Inc.
Birch Telecom of Oklahoma, Inc.
Birch Telecom of Texas LTD LLP
Birch Telecom of the Great Lakes, Inc.
Birch Telecom of the South, Inc.
Birch Telecom of the West, Inc.
IONEX Communications South, Inc.
IONEX Communications North, Inc.
IONEX Communications, Inc.
Birch Communications of the Northeast, Inc.
Birch Communications of Virginia, Inc.
Birch Communications of Kentucky, LLC
Cbeyond Communications, LLC
Tempo Telecom, LLC

8. A list and specific description of the types of services the applicant seeks to offer and how the services will be provided including:

a. Information indicating the classes of customers the applicant intends to serve:

Birch intends to serve large business customers. This Application is being filed in connection with an internal corporate reorganization pursuant to which Birch will serve large business customers located in South Dakota while Ionex will serve residential and single-line business customers located in South Dakota.

b. Information indicating the extent to and time-frame by which applicant will provide service through the use of its own facilities, the purchase of unbundled network elements, or resale:

Birch intends to start providing service upon approval of its Application by the South Dakota Public Utilities Commission.

c. A description of all facilities that the applicant will utilize to furnish the proposed local exchange services, including any facilities of underlying carriers:

Applicant will not own any switching or other facilities in South Dakota, but does utilize facilities and switches located in other portions of its operating service territory. Applicant will utilize a mix of its own facilities (located in other states), unbundled network elements (“UNEs”) or UNE-replacement services from incumbent local exchange carriers (“ILECs”), and other ILEC-provided services to provide local exchange and interexchange services in South Dakota.

d. Information identifying the types of services it seeks authority to provide by reference to the general nature of the service:

Birch intends to offer telecommunications services, including local exchange and interexchange voice services. The local exchange services to be offered will include access to 911 and E-911 emergency services, access to operator services, access to interexchange service, and access to directory assistance.

9. A service area map or narrative description indicating with particularity the geographic area proposed to be served by the applicant:

Birch intends to offer its services statewide.

10. Information regarding the technical competence of the applicant to provide its proposed local exchange services including:

a. A description of the education and experience of the applicant's management personnel who will oversee the proposed local exchange services:

Please see **Attachment B** for the biographies of Birch management overseeing the services subject to this Application.

b. Information regarding policies, personnel, or arrangements made by the applicant which demonstrates the applicant's ability to respond to customer complaints and inquiries promptly and to perform facility and equipment maintenance necessary to ensure compliance with any commission quality of service requirements:

The telephone number for customer inquiries and complaints is provided by Birch on the customer bill. Birch's customer service department may be accessed through a toll-free number: 866-424-5100. Customer service is available from 7:00 am to 5:00 pm Eastern (Monday-Friday) and 8:00 am to 5:00 pm Eastern (Saturday). End user repair services are available seven days a week, twenty-four hours a day.

11. Information explaining how the applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator services, interexchange services, directory assistance, and telecommunications relay services:

Birch will rely on its agreements with underlying carriers, such as CenturyLink, to provide access to 911 and E-911, operator services, interexchange services, directory assistance, and telecommunications relay services.

12. Financial Qualifications

Birch is financially qualified to operate as a provider of facilities-based and resold intrastate local and interexchange telecommunications services in South Dakota. Birch's

financial statements are provided as confidential **Attachment E**. Birch requests the Commission grant confidential treatment to its financial statements submitted as confidential pursuant to ARSD 20:10:01:41. Birch requests confidential treatment of the financial statements because they contain confidential information regarding the financial condition of Birch, which is not a publicly-traded company. The information provided in the financial statements is proprietary, sensitive, commercial, and financial information that is not publicly available and, if released, could be used by competitors of Birch to cause competitive harm. Birch seeks confidential treatment throughout the time period in which the Commission reviews Birch's Application. Once its review is complete, Applicant kindly requests that the Commission destroy such financial documents.

13. Interconnection to provide proposed local exchange services

Birch has existing interconnection and commercial agreements in place with CenturyLink. Ionex also has existing interconnection and commercial agreements in place with CenturyLink. Birch expects it will utilize those agreements to provide local exchange services in South Dakota.

14. A description of how the applicant intends to market its local exchange services, its target market, whether the applicant engages in multilevel marketing, and copies of any company brochures that will be used to assist in sale of the services.

Birch will market directly to large business customers located in South Dakota.

15. If the applicant is seeking authority to provide local exchange service in the service area of a rural telephone company, the date by which the applicant expects to meet the service obligations imposed pursuant to § 20:10:32:15 and applicant's plans for meeting the service obligations.

Applicant does not seek authority to provide local exchange service in the service area of a rural telephone company at this time, and requests waiver of the service obligations imposed pursuant to § 20:10:32:15.

16. A list of the states in which the applicant is registered or certified to provide telecommunications services, whether the applicant has ever been denied registration or certification in any state and the reasons for any such denial, a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in the states where it is registered or certified, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable.

As noted above, Applicant currently is authorized to provide telecommunications services in the 9-state BellSouth region (Alabama, Georgia, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee), Arkansas, Montana, New Jersey, and Pennsylvania. Affiliates of Applicant are authorized to provide local exchange and/or interexchange services in all other states and the District of Columbia. Birch is also seeking authority in Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Maine, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, Rhode Island, Utah, Vermont, West Virginia, Wisconsin, and Wyoming concurrently with this Application. Birch has not been denied registration or certification in any state to date.

17. The names, addresses, telephone numbers, E-mail addresses, and facsimile numbers of the applicant's representatives to whom all inquiries must be made regarding customer complaints and other regulatory matters.

Regulatory matters generally

Sharyl Fowler
Manager, Regulatory Administration
115 Gateway Drive
Macon, GA 31210
478-475-9800 (telephone)
478-405-3112 (facsimile)
sharyl.fowler@birch.com

Complaints

Angela Howard
Paralegal, Response Specialist
2323 Grand Boulevard, Suite 925
Kansas City, MO 64108
816-300-1428
complaints@birch.com

18. Information concerning how the applicant plans to bill and collect charges from customers who subscribe to its proposed local exchange services.

Birch does not utilize a third-party for billing its services. Birch plans to bill and collect charges in South Dakota in the same manner as Ionex does today.

19. Information concerning the applicant's policies relating to solicitation of new customers and a description of the efforts the applicant shall use to prevent the unauthorized switching of local service customers by the applicant, its employees, or agents.

Birch has detailed anti-slamming measures in place and routinely uses third-party verification ("TPV") to verify carrier change requests in accordance with federal and state requirements. After TPV is used to verify a carrier change request, Birch customer service personnel often conduct recorded, follow-up conversations with the customer to confirm the switch and for quality assurance purposes.

20. The number and nature of complaints filed against the applicant with any state or federal commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered.

See Attachment C.

21. Information concerning how the applicant will make available to any person information concerning the applicant's current rates, terms, and conditions for all of its telecommunications services.

Information concerning Birch's rates, terms, and conditions will be available on the company's website (www.birch.com) and will be furnished to any person upon request.

22. Information concerning how the applicant will notify a customer of any materially adverse change to any rate, term, or condition of any telecommunications service being provided to the customer. The notification must be made at least thirty days in advance of the change.

Birch will provide notice on customer bills of any materially adverse change to any rate, term, or condition of any telecommunications service being provided to the customer. The bill notice will be provided at least thirty days in advance of the change taking effect.

23. A written request for waiver of those rules believed to be inapplicable.

Applicant will not be competing directly with rural telephone companies to provide end-user local exchange services and requests waiver of the service obligations imposed pursuant to § 20:10:32:15. In addition, Applicant will not offer any prepaid services, including prepaid calling cards, and will not require any deposits from its retail customers. Therefore, Applicant requests a waiver of providing a surety bond pursuant to ARSD 20:10:32:06.01.

24. Federal tax identification number and South Dakota sales tax number.

Birch's federal tax identification number is 58-2233012. Birch's South Dakota Sales Tax Number will be obtained and provided to the Commission as a supplement to this Application.

25. Other information requested by the commission needed to demonstrate that the applicant has sufficient technical, financial, and managerial capabilities to provide the local exchange services it intends to offer consistent with the requirements of this chapter and other applicable rules and laws.

Birch will provide any additional information as requested by the Commission. Birch is a well-established communications service provider with decades of experience operating in the U.S. communications market. Birch's financial, technical, and managerial qualifications are a matter of record with the Commission, which has reviewed Birch's respective qualifications to operate on previous occasions in connection with Ionex.

26. Compliance with ARSD 20:10:32:04

Applicant will serve notice of its Application on local exchange carriers in South Dakota in the format set forth in **Attachment D**, and will supplement this Application with a Certificate of Service indicating such.

WHEREFORE, Birch Communications, Inc. respectfully requests that the Commission grant a Certificate of Public Convenience and Necessity to provide telecommunications services in the State of South Dakota.

Respectfully submitted,

BIRCH COMMUNICATIONS, INC.



Angela F. Collins
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Washington, DC 20006
202-862-8900 (telephone)
866-814-6582 (facsimile)

Dated: November 29, 2017

Its Attorneys

CERTIFICATE OF SERVICE

I, Angela F. Collins, CERTIFY that on the 29th day of November, 2017, a true and correct copy of the foregoing was served upon the following as indicated below:

By E-File:

Ms. Patricia Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Capitol Building, 1st Floor
Pierre, SD 57501



Angela F. Collins
Counsel for Birch Communications, Inc.