



STATE OF DELAWARE
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May 8, 2014

MEMORANDUM

PUBLIC VERSION

TO: The Chair and Members of the Commission

FROM: Vincent O. Ikwuagwu, Public Utilities Analyst

SUBJECT: IN THE MATTER OF THE JOINT APPLICATION OF CBeyond COMMUNICATIONS, LLC AND BIRCH COMMUNICATIONS OF THE NORTHEAST, INC. d/b/a BIRCH COMMUNICATIONS FOR APPROVAL TO PARTICIPATE IN FINANCING ARRANGEMENTS AND TRANSFER OF CONTROL
(FILED APRIL 21, 2014) - PSC DOCKET NO. 14-143

Application

Cbeyond Communications, LLC (“Cbeyond”) and Birch Communications of the Northeast, Inc. d/b/a Birch Communications (“Birch”) (Cbeyond and Birch collectively, the “Applicants”) on April 21, 2014 filed an application seeking Delaware Public Commission approval to enter into a financing transaction (the “Financing”) and to transfer the control of Cbeyond Communications to Birch Communications, Inc. (“BCI”, the parent company of Birch. The financing part will allow BCI to enter into new financing arrangements with PNC Bank, National Association (“PNC”) to obtain up to *****[BEGIN CONFIDENTIAL]*** [END CONFIDENTIAL]***** in senior credit facilities which include a **[BEGIN CONFIDENTIAL]*** [END CONFIDENTIAL]***** revolving credit facility, a *****[BEGIN CONFIDENTIAL]*** [END CONFIDENTIAL]***** senior secured term loan facility, and *****[BEGIN CONFIDENTIAL]*** [END CONFIDENTIAL]***** accordion provision. The financing will close simultaneously with the closing of the underlying transfer of control and the per annum interest rates applicable to the Total Senior Credit Facilities are expected to be consistent with market conditions for similar financing transactions as of its closing.

Applicant

Birch Communication of the Northeast, Inc.

Birch Communication is a Delaware corporation with principal offices located in Atlanta, Georgia. Birch Communication is a wholly-owned subsidiary of Birch Communications, Inc. (“BCI”), a Georgia corporation with headquarters in Atlanta Georgia. BCI and its subsidiaries provide telecommunications services in Delaware by Order No. 7859 dated November 10, 2010 in PSC Docket No. 10-262.

Cbeyond Communications, LLC

Cbeyond is a Delaware limited liability company with corporate headquarters at 320 Interstate Parkway SE, Suite 300, Atlanta, GA 30339. Cbeyond is authorized by the Commission in PSC Docket No. 10-168 by Order No. 7786 to provide telecommunications services throughout the State of Delaware.

Transaction- Transfer of Control

On April 19, 2014, Cbeyond, Inc., BCI and Hawks Merger Sub entered into an Agreement and Plan of Merger (the “Agreement”). Pursuant to the Agreement, Hawks Merger Sub will merge into Cbeyond, Inc., with Cbeyond as the surviving corporation. Cbeyond, Inc. will continue its existence as wholly owned subsidiary of BCI. BCI will directly own 100% of the stock of Cbeyond, Inc. and indirectly own 100% of the membership interest in Cbeyond. This will result in BCI acquiring ultimate control of Cbeyond.

The proposed Transaction does not involve the assignment of either Cbeyond’s or Birch’s telecommunications certifications or its customers. All current Delaware customers of Birch and Cbeyond will continue to be served by their respective companies pursuant to the individual certifications. They will continue to receive the same services at the same rates and term and conditions and their invoices will continue to come from Birch or Cbeyond as the case may be.

Transaction – Financing

Birch and Cbeyond , in its capacity as subsidiaries of BCI, seek approval for BCI to enter into a new financing arrangement with PNC Bank, National Association (“PNC”) for PNC to act as the sole administrative agent for BCI to obtain up to *****[BEGIN CONFIDENTIAL]***** up to **[END CONFIDENTIAL]***** in senior credit facilities (“Senior Credit Facilities”) from various financial institutions. The Senior Credit Facilities include a *****[BEGIN CONFIDENTIAL]*** [END CONFIDENTIAL]***** revolving senior secured credit facility, a

*** [BEGIN CONFIDENTIAL] ***[END CONFIDENTIAL]*** senior secured term loan facility, and a ***[BEGIN CONFIDENTIAL]*** ***[END CONFIDENTIAL]*** accordion provision.

The per annum interest rate applicable to the Senior Credit Facilities is expected to be consistent with market conditions for similar financing transactions at closing. BCI intends to use the proceeds of the Senior Credit Facilities to pay off existing credit facilities with Bank of America. These financing arrangements will provide Financing with funding to maintain and expand Applicant's network and services. These improved financial arrangements will enable Applicants to continue delivering services to new markets, allowing more consumers to benefit from their competitive services. All of BCI subsidiaries, including Birch and Cbeyond, will act as guarantors under the Senior Credit Facilities

Public Interest

The Applicants asserts that the public interest will be served and that the terms and conditions of the transaction are reasonable. The proposed Transactions are a part of the companies' ongoing efforts to manage their maturity profile and continue to strengthen their overall credit profile and their ability to compete in the market for telecommunications services in Delaware. Applicants expect the financing arrangements will provide greater access to capital, and enable Birch and Cbeyond to introduce innovative products and services and to respond better to the competitive telecommunications environment in Delaware. Applicants will continue to provide high-quality communications services to their customers without interruption and without immediate change in rates, terms, or conditions. Further, the Applicants asserts that the Transaction will not adversely affect the customers in Delaware.

Staff Recommendations

Applications seeking financing approval by large multi-state resellers of competitive intrastate telecommunications services come under the provisions of *26 Del. C. §215* because the companies are deemed to be public utilities. Cbeyond Communications, LLC and Birch Communications of the Northeast, Inc. d/b/a Birch Communications has represented that the financing transaction and its guaranty of such financing is in accordance with law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications to become effective by not acting upon the applications within the 30 days as set forth in *26 Del. C. §215(d)*. The result seems appropriate under these circumstances. Therefore, Staff recommends that the Commission not act on this application. This will have the effect, under *26 Del. C. §215(d)*, of the application being deemed to be approved. Within a reasonable time after all of the steps of the transaction have been completed, Cbeyond and Birch Communications will send Staff verification that the proposed financing transaction and guaranties have been completed.