

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIRCH COMMUNICATIONS OF KENTUCKY, )  
LLC REQUEST FOR TRANSFER OF ETC ) CASE NO.  
DESIGNATION OF SE ACQUISITIONS, LLC ) 2013-00296

ORDER

On July 19, 2013, Birch Communications of Kentucky, LLC ("Birch") submitted a petition for the transfer of SE Acquisitions', LLC d/b/a Lightyear Network Solutions of Kentucky's ("SouthEast") Eligible Telecommunications Carrier ("ETC") designation to Birch. SouthEast has been granted ETC designation by the Commission.<sup>1</sup>

Birch is a wholly owned subsidiary of Birch Communications, Inc. ("BCI") and was formed in order to serve the former customers of SouthEast. Birch has notified the Commission of its intention to provide local exchange and long distance telecommunications service in Kentucky on July 17, 2013. SouthEast is a wholly owned subsidiary of Lightyear Network Solutions, LLC ("Lightyear"), which provides local exchange, long distance and Internet services to customers in eastern Kentucky with a headquarters in Pikeville, Kentucky.

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<sup>1</sup> Case No. 2002-00080, *SouthEast Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier* (Ky. PSC Nov. 26, 2002), Case No. 2009-00005, *Supplemental Petition of Southeast Telephone, Inc., for Designation as an Eligible Telecommunications Carrier in Additional Service Areas* (Ky. PSC Jan. 28, 2009) and Case No. 2010-00340, *Joint Petition for the Transfer of the Eligible Telecommunications Carrier Designation of SouthEast Telephone, Inc. to SE Acquisitions, LLC* (Ky. PSC Sept. 27, 2010).

On May 10, 2013, BCI and Lightyear entered into an Asset Purchase Agreement pursuant to which BCI will purchase certain assets and customers of Lightyear and its subsidiary SouthEast, including certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. Upon consummation of the transaction and after completion of the customer transfer, Birch will provide service to all Kentucky customers of SouthEast with the same rates, terms, and conditions of service as provided by SouthEast and all billing will be under the Birch name.

Birch has requested that the Commission transfer the ETC designation of SouthEast to Birch for the purposes of receiving federal and state universal service support for those areas in which SouthEast was previously designated as an ETC. Birch is presently not designated as an ETC in Kentucky, and is requesting that the ETC designation be changed to Birch for the previously approved areas served by SouthEast. In accordance with terms of the asset purchase agreement, the transfer of the ETC designation is necessary for completion of the transaction.

The Commission must determine whether Birch meets the requirements under 47 U.S.C. § 214 and applicable Federal Communications Commission's ("FCC") rules to be designated as an ETC in the requested areas. Commission approval of the transaction and customer transfer of SouthEast is unnecessary — the FCC must approve the transfer.<sup>2</sup> The Commission, however, does require a demonstration of

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<sup>2</sup> On June 18, 2013, the parties to the Transaction filed a joint application with the FCC pursuant to 47 U.S.C. § 214, and 47 C.F.R. § 1.763, 63.03, 63.04, 63.18, and 63.24(e), to assign and/or transfer control of certain Lightyear and SouthEast assets to BCI and its operating subsidiaries. *Domestic Section 214 Application Filed for the Acquisition of Certain Assets and Customers of Lightyear Network Solutions, LLC and SE Acquisitions, LLC by Birch Communications, Inc. and Birch Telecom, Inc.*, WC Docket No. 13-164, Public Notice, DA 13-1486 (rel. July 1, 2013).

whether Birch meets the requirements of the Act to be designated an ETC.

Birch states that it will abide by the commitments made by SouthEast in its ETC application. Specifically, consistent with 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(d), Birch has committed to offer the services that are supported by federal universal service support mechanisms either by using its own facilities or a combination of its own facilities and resale of another carrier's services. Birch has committed to make these services available throughout the ETC designated areas upon reasonable request, and to advertise the availability of such services and the charges for those services using media of general distribution. In addition, Birch has committed to continue to participate in the federal Lifeline program in compliance with the FCC's current and future requirements.

Birch has committed to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended" as required under 47 U.S.C. § 254(e) and has committed, pursuant to 47 C.F.R. §§ 54.313 and 54.314, to certify annually that it is in compliance with this requirement. Birch also has committed to report certain information to the FCC and the Universal Service Administrative Company ("USAC") for the area in which it is designated as an ETC pursuant to 47 C.F.R. §54.209.

Birch has also committed to comply with and follow the FCC's newly adopted and specific requirements for Lifeline advertising and marketing.<sup>3</sup> Birch has acknowledged the requirements in the Commission's recent Order adopting Lifeline practices and

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<sup>3</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Dkt. Nos, 11-42 et al., CC Dkt. No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("Lifeline Reform Order").

annual recertifications and has committed to complying with those requirements.<sup>4</sup>

47 C.F.R. § 54.202(a)(4) requires a common carrier seeking ETC designation for Lifeline support to demonstrate it is financially and technically capable of providing Lifeline Service in compliance with the FCC's rules. Birch has been providing service in compliance with the applicable FCC Rules throughout the United States for more than 13 years. Based upon this, the Commission finds that Birch has demonstrated its financial and technical capability to provide service.

The Commission finds that reliance on Birch's commitments to meet these requirements is reasonable and consistent with the public interest and 47 U.S.C. § 214. The FCC may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used only for the provision, maintenance, and upgrading of facilities and services in the areas in which it is designated as an ETC. Birch will be required to provide such records and documentation to the FCC and USAC upon request. We emphasize that if Birch fails to fulfill the requirements of the Act, the FCC and the Commission's rules, and the terms of this order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.

Based upon the foregoing, the Commission finds that the transfer of the ETC designation of SouthEast to Birch for those areas in which SouthEast was previously designated as an ETC should be approved.

IT IS THEREFORE ORDERED that:

1. The transfer of the ETC designation of SouthEast to Birch for those areas in which SouthEast was previously designated as an ETC is approved to be effective

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<sup>4</sup> Administrative Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).

upon completion of the asset purchase agreement.

2. During the current certification period, Birch shall be eligible to receive federal and state Universal Service Fund support.

3. Birch shall offer low-income universal support services to consumers in its service area.

4. Birch shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another ETC.

5. Pursuant to 47 C.F.R. § 54.201(i), Birch shall be precluded from offering universal service support exclusively through the resale of another carrier's services.

6. Birch shall advertise the availability of and charges for these services using media of general distribution.


7. Birch shall comply with the annual certifications required by 47 C.F.R. §§ 54.313 and 54.314

8. Birch shall comply with the annual certification process for Lifeline customers in accordance 47 C.F.R. § 54.416.

9. A copy of this Order shall be served upon the FCC and the Universal Service Administrative Company.

10. Birch shall file, upon or before the completion of the asset purchase agreement, the informational letter required by Administrative Case No. 370, Exemptions for Providers of Local Service Other Than Incumbent Local Exchange Carriers (Ky. PSC Jan. 8, 1998).

By the Commission

ENTERED   
AUG 12 2013  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

Case No. 2013-00296

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