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PUBLIC SERVICE
COMMISSION

July 18, 2013

Mr. Jeffrey DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RE: *Birch Communications of Kentucky, LLC's Notice of Planned Asset Purchase and Request for Transfer of ETC Designation of SE Acquisitions, LLC.*

Dear Mr. DeRouen:

On May 10, 2013, Birch Communications, Inc. ("BCI"), and Lightyear Network Solutions, LLC ("Lightyear") entered into an Asset Purchase Agreement ("Agreement") pursuant to which Birch will purchase certain assets and customers of Lightyear and its subsidiary SE Acquisitions, LLC d/b/a Lightyear Network Solutions of Kentucky ("SouthEast") including certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property ("Transaction"). BCI (Utility ID 5011600) and Lightyear (Utility ID 22251046) each provide competitive services in Kentucky, as does SouthEast (Utility ID 5056610).

The Transaction, which requires certain FCC and other state approvals,¹ involves Lightyear customers in 49 states and the District of Columbia (with the exception of Alaska), and customers that currently receive services from SouthEast in Kentucky. Applicants are also providing prior written notice of the Transaction to current customers as required by Section

¹ On June 18, 2013, the parties to the Transaction filed a joint application with the Federal Communications Commission pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214, and the Commission's rules, 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). The streamlined pleading cycle closes on July 22, 2013.

64.1120(e) of the FCC's rules and decisions of this Commission.² The existing Kentucky customers of Lightyear will be served by BCI's subsidiary, Birch Telecom of the South, Inc. ("Birch Telecom") (Utility ID 22251533). The existing Kentucky customers of SouthEast will be served by BCI's subsidiary, Birch Communications of Kentucky, LLC ("Birch"), a newly formed entity that registered with the Commission on July 17, 2013.

While Commission approval of the Transaction and customer transfer itself is not required, the assignment of SouthEast's customers includes a unique aspect that requires prompt action from the Commission. At the consummation of the Transaction, SouthEast will have ended its provision of local residential services, ***including to approximately 4000 Lifeline customers***. Birch can and will assume responsibility for serving these low-income customers and providing them equivalent Lifeline benefits if it is an Eligible Telecommunications Carrier ("ETC") upon the closing of the Transaction, which is expected in September. Unless Birch is designated an ETC, it will be unable to provide the tariff discounts for low income customers included in the SouthEast tariff that it will otherwise adopt when the Transaction closes. Accordingly, Birch requests expedited review of this request.

The Commission has previously transferred ETC Designations for carriers already providing Lifeline service.³ Indeed, the current SouthEast became an ETC by agreeing to assume the obligations of another ETC that was exiting the Service Area as part of its reorganization under Chapter 11 of the Bankruptcy Code.⁴ Although no bankruptcy issue is present in the Transaction, the public interest in maintaining established Lifeline service is identical. Furthermore, even when Lifeline service was not at issue the Commission has provided expedited consideration of other customer base transfers when it found a need to prevent service interruptions for residential local service.⁵

Upon consummation of the Transaction and after completion of the customer transfer, Birch Telecom and Birch will provide the all Kentucky customers of Lightyear and SouthEast with the same service quality they have come to expect and all billing will be handled by Birch Telecom and Birch using the Birch name. These customers will continue to receive the same services that they currently receive without any immediate changes to the service offerings, rates, or terms and conditions. As noted above, the parties to the Transaction are providing prior written notice of the Transaction to current Lightyear and SouthEast customers in Kentucky as

² The Kentucky Commission has ruled that a carrier transferring an entire customer base in compliance with the FCC's bulk transfer rules will remain in compliance with Kentucky law. *Waiver Request of AT&T Communications of the South Central States*, Case No. 2007-00215 (July 27, 2007) (approving automatic migration after a merger and citing the FCC's Bulk Migration rule, 47 C.F.R. § 64.1120(c)).

³ *New Cingular Wireless PCS, LLC Notice of Acquisition and Request for Transfer of Eligible Telecommunications Carrier Designation*, Case No. 2008-00077 (April 14, 2008) (permitting AT&T Mobility, which had not previously qualified as an ETC, to "abide by the commitments made by American Cellular Corporation" and receive ETC status in the areas already served by the wireless carrier that AT&T Mobility had acquired); *Joint Petition for the Transfer of the Eligible Telecommunications Carrier Designation of SouthEast Telephone, Inc. to SE Acquisitions, LLC*, Case No. 2010-00340 (September 27, 2010) ("*Southeast ETC Transfer Order*").

⁴ *Southeast ETC Transfer Order*.

⁵ *Waiver Request of AT&T Communications of the South Central States*, Case No. 2007-00215 (July 27, 2007) (approving automatic migration of local service customers of AT&T Communications to BellSouth Telecommunications, related to a corporate reorganization).

required by Section 64.1120(e) of the FCC's rules and decisions of this Commission. Unless Birch is able to provide service as an ETC, however, it will need to also notify the existing Lifeline customers of SouthEast that Lifeline services are being discontinued.

Birch is presently not an ETC in Kentucky and requests that the ETC designation of SouthEast be transferred to Birch, effective upon close of the Transaction, to enable SouthEast's customers to continue to receive Lifeline benefits. Birch will abide by the commitments made by SouthEast in its ETC application in Case No. 2010-00340, including any reporting requirements unmodified by subsequent Commission or FCC orders. At this time, Birch expects to provide Lifeline services to SouthEast customers as currently provided, using primarily the same operational and customer service personnel. SouthEast's Lifeline customers will see no difference in the services they currently receive today, and the transfer of the Lifeline service to Birch will be seamless.

Further, consistent with 47 U.S.C. § 214(e)(1)(A) of the Act and 47 C.F.R. § 54.201(d) of the Federal Communications Commission's ("FCC") rules, Birch commits to offer the services that are supported by federal universal service support mechanisms, either using its own facilities or a combination of its own facilities and resale of another carrier's services 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 commits to continue to participate in the federal Lifeline program in compliance with the FCC's requirements as they exist today and as they may be modified in the future. To the extent applicable, Birch will also meet the requirements under 47 U.S.C. § 254(e) to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended" and will, as required by 47 C.F.R. § 54.313 and 54.314, certify annually that it is in compliance with this requirement. In addition, Birch will meet applicable reporting requirements 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.

Additionally, Birch acknowledges the Commission's recent revisions to its ETC designation requirements promulgated in Administrative Case No. 2012-00146, *Lifeline Reform*, Order (May 1, 2012) ("*KPSC Lifeline Order*"), as well as the FCC's new and revised rules adopted as part of its own reform proceeding.⁶ For example, the FCC adopted specific requirements for Lifeline advertising in its *Lifeline Reform Order* with which Birch will comply. Within the deadline provided in the *Lifeline Reform Order*, Birch will include the following information regarding its Lifeline service on all marketing materials describing the service: (1) it is a Lifeline service, (2) Lifeline is a government assistance program, (3) the service is non-transferable, (4) only eligible consumers may enroll in the program, (5) the program is limited to one discount per household; (6) documentation necessary for enrollment; (7) Birch's name (the ETC); and (8) notice that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program. These statements will be included in all print, audio, video and web materials used after the close of the Transaction to describe or enroll new customers in Birch's Lifeline service offering, as

⁶ 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*").

well as Birch's application forms and certification forms. This specifically includes Birch's website and other marketing materials. Birch further acknowledges the recent guidance from the FCC's Wireline Competition Bureau concerning the 2013 Lifeline Recertification Process.⁷ Finally, if the Commission approves the transfer of ETC designation, Birch will file an appropriate tariff adoption notice to include the Lifeline benefits description in SouthEast's Kentucky Tariff No. 1. At some point in the future, Birch may seek to transfer those adopted tariff provisions into its own tariff, but such process would be transparent to its existing customers.

Section 54.202(a)(4) of the FCC's rules 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. The FCC stated that the "relevant considerations" for satisfying this requirement would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states. Birch easily satisfies these criteria. Birch affiliates have provided service in Kentucky and throughout the United States for more than thirteen years.⁸ At this time, Birch and its affiliates are authorized to offer telecommunications services in 49 states, with an application pending in Arizona. Financial and technical abilities to provide service have been fully established by this long-standing market presence.

Transfer of SouthEast's ETC designation to Birch is consistent with the Act, the Commission's universal service orders, and the public interest. Birch respectfully requests the Commission to give expedited treatment to this request, to enable Birch to give appropriate and timely guidance to the low income customers affected by the sale of SouthEast's assets.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'DRB', with a long horizontal line extending to the right.

Douglas F. Brent

DFB: jms
Enclosures

⁷ *Lifeline and Link Up Reform and Modernization et al.*, WC Dkt. Nos. 11-42, Public Notice, DA 13-1188 (rel. May 22, 2013).

⁸ Birch Telecom of the South, Inc. filed its notice of intent to provide service in Kentucky on April 28, 2000.