



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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Internet: <http://www.fcc.gov>
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DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF CBEYOND COMMUNICATIONS, LLC TO BIRCH COMMUNICATIONS, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 14-64

Comments Due: May 16, 2014

Reply Comments Due: May 23, 2014

On April 22, 2014, Birch Communications, Inc. (BCI), Birch Telecom, Inc. (Birch Telecom) (together, Birch), and Cbeyond Communications, LLC (Cbeyond) (collectively, Applicants) filed an application pursuant to section 63.03 of the Commission's rules to transfer control of Cbeyond to BCI.¹

Cbeyond, a Delaware limited liability company, offers or is certified to offer competitive local exchange (LEC), intrastate, and interstate services in multiple states.² BCI, a Georgia corporation, and its wholly owned subsidiary, Birch Telecom, a Delaware corporation, offer or are certificated to offer through operating subsidiaries competitive LEC, intrastate, and interstate services in the District of Columbia and 50 states. Birch Communications Holdings, Inc. (Birch Holdings), a Georgia corporation, owns a 100 percent equity and voting interest in BCI. Applicants state that the following U.S citizens hold a five percent or greater equity and voting interest in Birch Holdings: Holcombe Green (53 percent), R. Kirby Godsey (21 percent), and Vincent Oddo (7 percent). Applicants further state that these individuals hold interests in Tempo Telecom, LLC, a nationwide reseller of prepaid wireless voice and data services.³

Pursuant to the terms of the proposed transaction, BCI will own 100 percent of the stock in Cbeyond resulting in BCI acquiring ultimate control of the company. Applicants assert that the proposed

¹ 47 C.F.R § 63.03; *see* 47 U.S.C. § 214. Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² The states are Arizona, California, Colorado, Delaware, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Virginia, Washington, and the District of Columbia.

³ Birch has also filed a pending domestic section 214 application to acquire certain customers of dishNET Wireline, LLC, a competitive telecommunications carrier. *Birch Communications, Inc. and Birch Telecom, Inc. and dishNET Wireline, LLC Application for Consent to Assign Assets and/or Transfer Control of Assets*, WC Docket No. 14-65 (filed Apr. 22, 2014).

transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.⁴

Domestic Section 214 Application Filed for the Transfer of Control of Cbeyond Communications, LLC to Birch Communications, Inc., WC Docket No. 14-64 (filed Apr. 22, 2014).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before May 16, 2014**, and reply comments **on or before May 23, 2014**. Pursuant to section 63.52 of the Commission's rules, 47 C.F.R. § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.⁵

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) Jodie May, Competition Policy Division, Wireline Competition Bureau, jodie.may@fcc.gov;
- 3) David Krech, Policy Division, International Bureau, david.krech@fcc.gov; and
- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte*

⁴ 47 C.F.R. § 63.03(b)(2)(i).

⁵ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

⁶ 47 C.F.R. §§ 1.1200 *et seq.*

presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Tracey Wilson at (202) 418-1394 or Jodie May at (202) 418-0913.

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