

WC 12-33

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
BIRCH COMMUNICATIONS, INC.,)
Assignee)
and)
)
ASTRO TEL, INC.,)
Assignor)
)
Application for Consent to Transfer Control of Assets)
pursuant to Section 214 of the Communications Act)
of 1934, as Amended)
_____)

WC Docket No. _____

FCC/US BANK FEB 07 2012

APPLICATION

Birch Communications, Inc. ("Birch") and Astro Tel, Inc. ("Astro Tel") (collectively, the "Applicants") hereby request authority from the Federal Communications Commission ("Commission") pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214, and Sections 1.763, 63.03, and 63.04 of the Commission's rules, 47 C.F.R. §§ 1.763, 63.03, and 63.04, to transfer control of certain Astro Tel assets to Birch,¹ excluding the Commission authorizations held by Astro Tel.

I. REQUEST FOR STREAMLINED TREATMENT OF APPLICATION

The Applicants respectfully request streamlined treatment of this Application pursuant to Section 63.03 of the Commission's rules. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2) of the Commission's rules because: (1) the proposed transaction will result in Birch having a market share in the interstate interexchange market of less than ten

¹ *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, 17 FCC Rcd 5517, ¶ 59 (2002) (finding that asset acquisitions should be treated as transfers of control under the Commission's domestic Section 214 rules).

percent (10%); (2) Birch will provide competitive telephone exchange services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) neither the Applicants nor any of their affiliates are regulated as dominant with respect to any service.

II. APPLICANTS

A. Birch Communications, Inc. (FRN: 0005044375)

Birch is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. Birch has authority to provide interstate and international telecommunications services.² Birch's wholly-owned subsidiary, Birch Communications of Virginia, Inc., operates pursuant to Birch's international 214 authority and is registered to provide interstate telecommunications services.³ Birch's wholly-owned subsidiary, Birch Telecom, Inc., has authority to provide international telecommunications services.⁴ The following wholly-owned subsidiaries of Birch Telecom, Inc. operate pursuant to Birch Telecom Inc.'s international authority and also provide interstate telecommunications services: Birch Telecom of the South, Inc., Birch Telecom of the West, Inc., Birch Telecom of the Great Lakes, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas Ltd., LLP, Birch Telecom of Kansas, Inc., Birch Communications of the Northeast, Inc., Ionex Communications, Inc., Ionex Communications South, Inc., and Ionex Communications

² IB File No. ITC-214-19970926-00584, FCC Filer ID 815113.

³ FCC Filer ID 828502.

⁴ IB File No. ITC-214-19990701-00441.

North, Inc.⁵ The customers associated with this transaction will be served by Birch Telecom of the South, Inc.

Birch and its wholly-owned subsidiaries either offer service or are certificated to offer telecommunications services as competitive local exchange carriers and intrastate interexchange carriers in the following 38 states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming.

B. Astro Tel, Inc. (FRN: 0008779878)

Astro Tel is a Florida corporation with headquarters at 820 1st Street West, Bradenton, Florida, 34208. Astro Tel is registered to provide interstate telecommunications services.⁶ Astro Tel is certified as a competitive local exchange carrier and intrastate interexchange carrier in the state of Florida.

III. DESCRIPTION OF THE TRANSACTION

On December 21, 2011, Birch and Astro Tel entered into an Asset Purchase Agreement (“Agreement”) pursuant to which Birch will purchase certain assets and customers of Astro Tel (the “Transaction”). The Agreement was submitted to the United States Bankruptcy Court for the Middle District of Florida (Case No. 8:10-bk-29992-MGW), and was approved by the

⁵ Birch Telecom of the South, Inc. (FCC Filer ID 820616), Birch Telecom of the West, Inc. (FCC Filer ID 827985), Birch Telecom of the Great Lakes, Inc. (FCC Filer ID 826636), Birch Telecom of Missouri, Inc. (FCC Filer ID 819422), Birch Telecom of Oklahoma, Inc. (FCC Filer ID 820061), Birch Telecom of Texas LTD LLP (FCC Filer ID 819948), Birch Telecom of Kansas, Inc. (FCC Filer ID 807993), IONEX Communications, Inc. (FCC Filer ID 815376), Birch Communications of the Northeast, Inc. (FCC Filer ID 828483), Ionex Communications South, Inc. (FCC Filer ID 808443), Ionex Communications North, Inc. (FCC Filer ID 815082).

⁶ FCC Filer ID 828771 (under Astrotel, Inc.).

bankruptcy court on January 4, 2012. A copy of the bankruptcy court's order is attached as Exhibit 1. Pursuant to the Agreement, Birch will purchase the following assets from Astro Tel: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. Birch, however, will not assume any of Astro Tel's pre-closing liabilities or obligations.

The transaction concerns customers currently receiving service from Astro Tel in Florida. Any affected customers will receive notice of the Transaction as necessary under Commission and state customer notification requirements. The ownership structure of Birch will not be affected by the Transaction. The assets to be purchased do not include the Commission authorization held by Astro Tel. Consummation of the Transaction is contingent on, among other things, receipt of all necessary regulatory approvals.

IV. PUBLIC INTEREST STATEMENT

The proposed Transaction furthers the public interest, convenience, and necessity. Approval of the Transaction is in the public interest because it will advance economic efficiency by enabling Birch to expand its own business and achieve economies of scale. These benefits are expected to strengthen Birch's ability to expand its offerings and services to a broader customer base. The Transaction will enable Birch to strengthen its competitive position to the benefit of consumers and the telecommunications marketplace. In addition, the existing customers of Astro Tel will benefit as they will now have access to the expanded service offerings available from Birch.

Furthermore, the Transaction will be conducted in a manner that will be transparent to Astro Tel's current customers. Upon consummation of the Transaction and after completion of the customer transfer, Birch will provide Astro Tel's current customers with the same service quality they have come to expect and all billing will be handled by Birch using the Birch name.

Astro Tel's 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.

Applicants will also provide prior written notice of the Transaction to current customers as required by Section 64.1120(e) of the Commission's rules and applicable state customer notice rules.

Finally, the proposed Transaction does not present any anticompetitive issues. After consummation of the Transaction, Birch's total share of the interstate interexchange market will be less than ten percent (10%). In addition, there are many other interexchange carriers operating on a nationwide basis.

V. INFORMATION REQUIRED BY SECTION 63.04 OF THE COMMISSION'S RULES

In support of this Application, the Applicants submit the following information pursuant to Section 63.04(a) of the Commission's rules:

- (1) Name, address, and telephone number of each Applicant:

Birch Communications, Inc. (FRN: 0005044375)
3060 Peachtree Road NW, Suite 1065
Atlanta, GA 30305
877-772-4724

Astro Tel, Inc. (FRN: 0008779878)
820 1st Street West
Bradenton, Florida, 34208
941-256-9205

- (2) Birch is a Georgia corporation. Astro Tel is a Florida corporation.

(3) Correspondence concerning this Application should be sent to:

For Astro Tel	For Birch
Barlow Keener Keener Law Group 259 Walnut Street Newton, MA 02460 617-671-1202 (telephone) 617-795-2702 (facsimile) bk@keenerlawgroup.com	Angela F. Collins Cahill Gordon & Reindel LLP 1990 K Street, NW, Suite 950 Washington, DC 20006 202-862-8930 (telephone) 202-862-8958 (facsimile) acollins@cgrdc.com

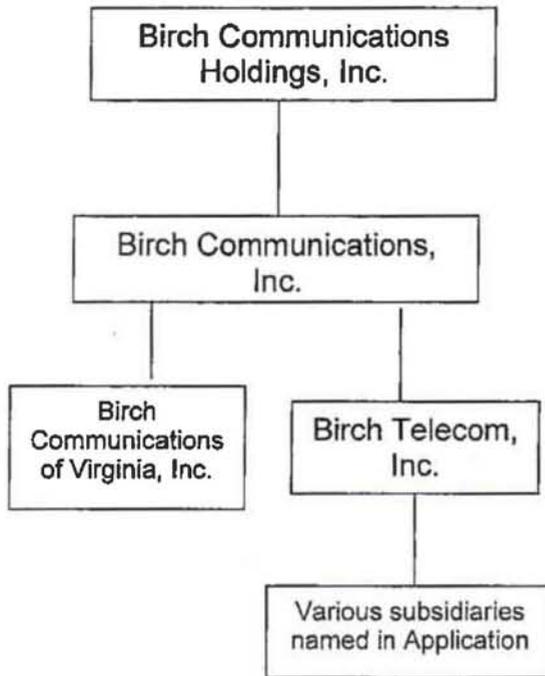
(4) The following entities and individuals hold a ten percent (10%) or greater direct or indirect ownership interest in Birch:

Birch Communications Holdings, Inc. ("Birch Holdings") owns a 100% voting and equity interest in Birch. Birch Holdings is a Georgia corporation whose principal business is telecommunications holdings. The address for Birch Holdings is 3060 Peachtree Road, NW, Suite 1065, Atlanta, GA 30305. The following entities and individuals hold a ten percent (10%) or greater direct or indirect ownership interest in Birch Holdings: (1) Holcombe Green, a U.S. citizen, owns a 66% voting and equity interest in Birch Holdings and (2) R. Kirby Godsey, a U.S. citizen, owns a 32% voting and equity interest⁷ in Birch Holdings. The business address for both Mr. Green and Mr. Godsey is 3060 Peachtree St., NW, Suite 1060, Atlanta, GA 30305.

No officer or director of Birch or Birch Holdings is also an officer or director of any foreign carrier. Other than as set forth in this Application, no other entity or individual owns a ten percent (10%) or greater direct or indirect equity or voting interest in Birch or Birch Holdings. None of the entities or individuals holding an interest in Birch or Birch Holdings hold any interests in other telecommunications-related entities. Birch does not have any interlocking

⁷ R. Kirby Godsey holds his percentage through his individual holdings and through the R. Kirby Godsey 2008 Grantor Retained Annuity Trust.

directorates with a foreign carrier,⁸ nor will Birch have any such directorates after consummation of the Transaction. Below is Birch's organizational chart:



(5) The Applicants certify, pursuant to Sections 1.2001 through 1.2003 of the Commission's rules that they are not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

- (6) A description of the Transaction is set forth in Section III.
- (7) A description of the geographic areas served is set forth in Section II.
- (8) A statement regarding streamlined treatment is set forth in Section I.
- (9) There are no other Commission applications related to the Transaction.
- (10) The Applicants are not requesting any special consideration.
- (11) The Applicants are not requesting any waivers.
- (12) The public interest statement is set forth in Section IV.

⁸ As defined by 47 C.F.R. § 63.09(d).

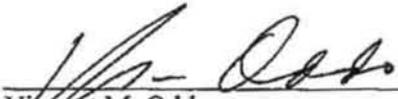
WHEREFORE, for the forgoing reasons, Applicants respectfully request that the Commission act expeditiously to approve the proposed Transaction.

Respectfully submitted,

ASTRO TEL, INC.

BIRCH COMMUNICATIONS, INC.

Mike Ray
Chief Executive Officer
Astro Tel, Inc.
820 1st Street West
Bradenton, Florida, 34208



Vincent M. Oddo
President/Chief Executive Officer
Birch Communications, Inc.
3060 Peachtree Road NW, Suite 1065
Atlanta, GA 30305

Barlow Keener
Keener Law Group
259 Walnut Street
Newton, MA 02460
617-671-1202 (telephone)
617-795-2702 (facsimile)
bk@keenerlawgroup.com

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-255-0185 (facsimile)
acollins@cgrdc.com

Dated: February 6, 2012

WHEREFORE, for the forgoing reasons, Applicants respectfully request that the Commission act expeditiously to approve the proposed Transaction.

Respectfully submitted,

ASTRO TEL, INC.



Mike Ray
Chief Executive Officer
Astro Tel, Inc.
820 1st Street West
Bradenton, Florida, 34208

Barlow Keener
Keener Law Group
259 Walnut Street
Newton, MA 02460
617-671-1202 (telephone)
617-795-2702 (facsimile)
bk@keenerlawgroup.com

BIRCH COMMUNICATIONS, INC.

Vincent M. Oddo
President/Chief Executive Officer
Birch Communications, Inc.
3060 Peachtree Road NW, Suite 1065
Atlanta, GA 30305

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-255-0185 (facsimile)
acollins@cgrdc.com

Dated: February 6, 2012

Exhibit 1

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:)	Case No. 8:10-bk-29992-MGW
)	
Astro Tel, Inc.)	Chapter 11
Debtor.)	(Jointly Administered)
)	
_____ /)	
)	
)	

**ORDER AUTHORIZING AND APPROVING
(1) ASSET PURCHASE AGREEMENT, (2) SALE OF
ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES
TO BIRCH COMMUNICATIONS, INC. AND (3) CERTAIN RELATED RELIEF**

This matter came before the Court on Debtor's Motion to Authorize and Approve Sale of Assets Free and Clear of Lien Claims, Interests and Encumbrances for Entry of an Order ECF No. 216. Debtor having executed that certain Asset Purchase Agreement with Birch Communications, Inc. ("Buyer") appended hereto as Exhibit A (including all exhibits and attachments thereto, the "Purchase Agreement"); Buyer having been determined by the Debtor to have submitted the highest and best offer for the Acquired Assets a preliminary hearing having been held on December 19, 2011 (the "Preliminary Sale Hearing") and a final hearing on the Sale Motion having been held on January 4, 2012 (the "Final Sale Hearing" and, together with the Preliminary Sale Hearing, the "Sale Hearings"); all interested parties having been afforded an opportunity to be heard with respect to the Sale Motion and all relief related thereto; the Court having reviewed and considered (i) the Sale Motion, (ii) the Purchase Agreement, (iii) the

objections thereto, and (iv) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearings; it appearing that due notice of the Sale Motion and the Sale Hearings, has been provided and it appearing that the relief requested in the Sale Motion and approval of the sale to Buyer of the Acquired Assets identified in the Purchase Agreement is in the best interests of the Debtor, its estate, creditors, and other parties in interest; and based on the Sale Motion, the statements of counsel, the record of the Sale Hearings and the record in this case, the Court having determined and concluded as follows.

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Notwithstanding Bankruptcy Rules 6004(h), 7062 and 9014, the Court expressly finds that there is no reason for delay in the implementation of this Order and the closing of the Transactions (as defined herein), and expressly directs judgment as set forth herein.

C. The statutory predicates for the relief sought in the Sale Motion are sections 105(a), 363(b), (f) and (m) and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"), and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

D. Proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearings, and the transactions contemplated by the Purchase Agreement and this Order (the "Transactions") has been provided in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code and Rules 2002, 6004 and 9014 of the Bankruptcy Rules, such notice was good and sufficient, and appropriate under the particular circumstances, and no other or further notice of the Sale Motion, the Sale Hearings, or the Transactions is or shall be required.

E. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearings and (ii) the representations of counsel made on the record at the Sale Hearings, the Debtor has marketed the Acquired Assets and conducted the sale process in order to maximize value for the benefit the Debtor's estate and creditors.

F. No consents or approvals, other than those expressly provided for in the Purchase Agreement, are required for the Debtor to consummate such transactions.

G. Approval of the Purchase Agreement and consummation of the Transactions at this time are in the best interests of the Debtor, its creditors, its estate, and other parties in interest.

H. The Debtor has demonstrated good, sufficient, and sound business purpose and justification for the sale contemplated by this Order pursuant to section 363(b) of the Bankruptcy Code.

I. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities.

J. The Purchase Agreement was negotiated, proposed and entered into by the Debtor and Buyer without collusion, in good faith, and from arm's-length bargaining positions. The Debtor and Buyer have not engaged in any conduct that would cause or permit the Purchase Agreement or any part of the Transactions to be avoided under section § 363(n) of the Bankruptcy Code.

K. Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. Buyer will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the Transactions.

L. The consideration provided by Buyer for the Acquired Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest or best offer for the Acquired Assets and (iii) constitutes reasonably equivalent value and fair consideration for the Acquired Assets.

M. The Purchase Agreement must be approved and consummated promptly in order to preserve the value of the Acquired Assets.

N. The transfer of the Acquired Assets to Buyer will be a legal, valid, and effective transfer of such assets and will vest Buyer with all right, title, and interest of the Debtor to such assets free and clear of (i) all claims and interests, including, without limitation, any charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, third party interest or other restriction or limitation of any kind (collectively,

the "Encumbrances") and (ii) all debts arising under or out of, in connection with, or in any way relating to, any acts of the Debtor, claims (as defined in section 101(5) of the Bankruptcy Code), rights or causes of action (whether in law or in equity, including any rights or causes of action based on theories of transferee or successor liability under any law, statute or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), obligations, demands, guaranties, rights, contractual commitments, restrictions, interests and matters of any kind or nature whatsoever, whether arising prior to or subsequent to the commencement of the Debtor's bankruptcy case and whether imposed by agreement, understanding, law, equity or otherwise.

O. The Debtor may sell the Acquired Assets free and clear of all Encumbrances of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those nondebtor parties with claims or interests in the Acquired Assets who did not object, or who withdrew their objections, to the Purchase Agreement or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

P. The transfer of the Acquired Assets to Buyer will not subject Buyer to any liability whatsoever with respect to the operation of the Debtor's businesses (collectively, the "Business") prior to the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity, including, without limitation, any theory of antitrust, successor, or transferee liability.

Q. Buyer would not have entered into the Purchase Agreement, and would not consummate the Transactions contemplated thereby, if the sale of the Acquired Assets were not free and clear of all Encumbrances relating to the Acquired Assets, the operation of the Business prior to the closing of the Transactions or the transfer of the Acquired Assets, or if Buyer would, or in the future could, be liable for any such Encumbrances or any other liabilities as described in the Purchase Agreement.

R. The Debtor (i) has full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Transactions have been duly and validly authorized by all necessary corporate action of the Debtor, (ii) has all of the corporate power and authority necessary to consummate the Transactions contemplated by the Purchase Agreement, (iii) has taken all actions necessary to authorize and approve the Purchase Agreement and the consummation by the Debtor of the Transactions contemplated thereby and (iv) have all consents and approvals, other than those expressly provided for in the Purchase Agreement, that are required for the Debtor to consummate such transactions. The Acquired Assets constitute property of the Debtor's estate and title thereto is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED THAT:

General Provisions

1. The Sale Motion is **GRANTED** to the extent provided herein.

2. The findings of fact set forth above and conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

3. All objections to the entry of this Order or the relief provided herein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

4. Notice of the Sale Hearings was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

5. The sale of the Acquired Assets and the consideration provided by Buyer under the Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

Approval of the Purchase Agreement

6. The Purchase Agreement, and all of the terms and conditions thereof, is hereby approved. The Debtor and the Buyer reserve the right to amend, supplement or revise the schedules and exhibits to the Purchase Agreement by mutual consent at any time prior to the Closing.

7. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor is authorized and directed to consummate the Transactions pursuant to and in accordance with the terms and conditions of the Purchase Agreement.

8. The Debtor is authorized and directed to execute and deliver, and empowered to perform under, consummate and implement the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take all further actions as may be requested by Buyer for the purpose of assigning, transferring, granting, conveying and conferring to Buyer or reducing to possession, the Acquired Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement.

Transfer of Acquired Assets

9. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Acquired Assets shall be transferred to Buyer, and upon consummation of the Transactions (the "Closing") shall be, free and clear of any Encumbrances, with all such Encumbrances of any kind or nature whatsoever to attach to the net proceeds of the Transactions ultimately attributable to the property against or in which the holder of an Encumbrance may claim in the order of their priority, with the same validity, force and effect which they now have, subject to any claims and defenses the Debtor may possess with respect thereto.

10. Except as expressly permitted or otherwise specifically provided by the Purchase Agreement or this Order, all persons and entities, including, but not

limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, holding Encumbrances of any kind or nature whatsoever against or in the Debtor or the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Acquired Assets, the operation of the Business prior to the Closing Date, or the transfer of the Acquired Assets to Buyer, hereby are forever barred, estopped, and permanently enjoined from asserting against Buyer, its successors or assigns, property, or assets, such persons' or entities' Encumbrances.

11. The transfer of the Acquired Assets to Buyer pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer of such assets, and shall vest Buyer with all right, title, and interest of the Debtor in and to such assets free and clear of all Encumbrances of any kind or nature whatsoever.

12. Any sales Tax, use Tax, personal property Tax or similar Tax attributable to the sale or transfer of the Acquired Assets shall be the responsibility of, and shall be paid by, the Debtor.

Assumption and Assignment of Agreement with Verizon

13. Notwithstanding anything else contained in this Order or the Purchase Agreement, only the terms set forth in this paragraph 13 shall govern the

assumption and assignment of the existing executory contract (the "Verizon Contract") between the Debtor and Verizon Florida LLC ("Verizon")¹:

(a) Upon receipt of the Verizon Cure (as defined below), and conditioned upon the Debtor's satisfaction of its obligations under sub-paragraph (c) below, the Verizon Contract shall be deemed assumed by the Debtor pursuant to section 365 of the Bankruptcy Code, and assigned to the Buyer as of the date of the Closing, or such earlier date as may be agreed upon among the Debtor, the Buyer and Verizon. Contemporaneously with such assumption and assignment, and by no later than the date thereof, the Debtor shall pay to Verizon, by wire transfer and pursuant to instructions to be provided by Verizon, the sum of \$489,515.50 (the "Verizon Cure") (the Verizon pre-petition claim of \$538,958.55, less \$49,443.05, representing the undisputed sum owed by Verizon to the Debtor for pre-petition charges), which sum shall be deemed to cure all existing, pre-petition payment defaults under the Verizon Contract. The Debtor shall retain the undisputed sum of \$49,443.05 referenced above, which sum shall be credited against and correspondingly reduce the Base Purchase Price payable to the Debtor by the Buyer as provided in Article 3 of the Purchase Agreement. Upon the Debtor's compliance with its obligation to pay the Verizon Cure as provided

¹ Specifically, in 2002, the Debtor (which at that time was called Eagle Telecommunications, Inc.) adopted the existing ICA between Verizon Florida Inc. (now Verizon Florida LLC) and WinStar Wireless of Florida Inc. Later, in 2003, Eagle then chose to adopt two specific sections -- concerning DS1 lines and combinations thereof -- from a different ICA between Verizon and Budget Phone, Inc. Consequently, the relationship between the Debtor and Verizon is governed by the Winstar ICA, with the exception that provision of DS1 lines in particular is governed by the applicable section of the Budget Phone ICA.

herein, both the Debtor's obligation to pay the Verizon Cure to Verizon, and Verizon's payment obligation to the Debtor or the Buyer with respect to the undisputed sum of \$49,443.05 referenced above, shall be satisfied in full. Upon Verizon's receipt of the Verizon Cure, and except as otherwise provided below in this paragraph 13 (including, without limitation, sub-paragraphs (c), (e) and (f)), the Debtor and Verizon, on behalf of themselves and any persons or entities claiming through them, shall be deemed to have mutually released and forever discharged one another from any and all claims, debts, credits, demands or causes of action, known or unknown, at law or in equity, present or future, fixed or contingent, that accrued or arose at any time prior to the Petition Date in these cases, including, without limitation, any claims for charges or credits associated with the provision of telecommunications services and facilities and any avoidance actions under Chapter 5 of the Bankruptcy Code. Within five (5) business days after the Closing, the Debtor shall cause Adversary Proceeding No. 11-00941-MGW pending before this Court to be voluntarily dismissed with prejudice.

(b) From and after the date of assignment of the Verizon Contract, the Buyer shall be responsible for all charges accruing for services and facilities provided by Verizon on and after the date of assignment. For the avoidance of doubt, Buyer shall have no liability with respect to, and Verizon expressly waives and releases Buyer from, any claims, debts, credits, demands or causes of action, known or unknown, at law or in equity, present or future, fixed or contingent, that

accrued or arose under the Verizon Contract at any time prior to the assignment of the Verizon Contracts to Buyer; similarly, and except as otherwise provided below in this paragraph 13, Buyer waives and releases Verizon from any claims, debts, credits, demands or causes of action, known or unknown, at law or in equity, present or future, fixed or contingent, that accrued or arose under the Verizon Contract at any time prior to the assignment of the Verizon Contracts to Buyer.

(c) Pending its assumption of the Verizon Contract and assignment thereof to the Buyer, the Debtor shall remain current on its post-petition obligations to Verizon and shall otherwise comply with all of its obligations under the Stipulation and Consent Order Establishing Adequate Assurance of Payment to Verizon Florida LLC (the "366 Stipulation") [Docket No. 45]. Nothing contained herein constitutes a waiver of the Debtor's right to dispute Verizon's post-petition charges or a determination as to the validity of any such disputes.

(d) Upon the assumption and assignment of the Verizon Contract to the Buyer, in the event that the Buyer wishes to terminate the Verizon Contract after assignment by the Debtor and transfer the services provided thereunder to an existing agreement between the Buyer and Verizon in the state of Florida, the Buyer shall provide written notice of such intent to Verizon (in care of William G. Cummings), and the Buyer shall submit appropriate Local Service Requests and/or Access Service Requests to Verizon in order to effectuate such transfer of services. Verizon shall waive and/or issue credits to the Buyer sufficient to offset

any non-recurring charges that the Buyer may incur in connection with the transfer of services to the Buyer's existing Verizon agreement in Florida. The Buyer shall have sixty (60) days after the Closing to assess the merits of any claim concerning the disputed accounts receivable allegedly owed by Verizon to the Debtor totaling \$51,341.95 (representing alleged accounts receivable of \$100,785 as of November 17, 2011, less the undisputed sum of \$49,443.05 referenced and provided to be retained by the Debtor and credited against the Base Purchase Price payable by the Buyer in sub-paragraph (a) of this paragraph above). Unless the Buyer has initiated litigation against Verizon to collect this disputed receivable within the 60-day period referenced immediately above, any claim by the Buyer concerning this disputed receivable shall be deemed automatically waived and released by the Buyer.

(e) Provided that Verizon has received the Verizon Cure and that the Debtor has complied with its obligations under sub-paragraph (c) above, Verizon shall return to the Debtor, within 45 days after the Closing Date, the deposit it received under the 366 Stipulation. In addition, and to the extent that the Debtor has rendered payment to Verizon in advance for services that are to be provided after the Closing, Verizon shall refund to the Debtor the post-Closing portion of any such advance payment, and the Buyer shall be responsible to compensate Verizon for such post-Closing services.

(f) In addition to its right to the return of the deposit and any advance payments for post-Closing services as set forth in sub-paragraph (e) of this

paragraph 13 and notwithstanding the releases set forth in sub-paragraph (a) of this paragraph 13, the Debtor has not assigned to the Buyer, expressly reserves and has not released its rights or claims in connection with (i) its pending objection to the portion of Verizon's pre-petition proof of claim that is comprised of \$28,836.67 in alleged post-arbitration, pre-petition charges [Docket No. 134] (the "Claim Objection"); (ii) the pending action in the District Court for the Middle District of Florida, Tampa Division, Case No. 8:11-cv-02224-VMC-TBM; or (iii) the pending appeal of an arbitration award in the Florida Second District Court of Appeal, Case No. 2D11-2723 and any related or subsequent proceeding arising out of such appeal (the "Arbitration Appeal"), which relates to \$510,121.68 of Verizon's pre-petition proof of claim (\$502,960.90 in principal plus \$7,160.98 in pre-petition interest); or (iv) the Debtor's FCC Complaint against Verizon sent to Verizon counsel pursuant to the FCC notice requirement; and Verizon reserves all rights and defenses with respect to such objections or claims in items (i), (ii), (iii) and (iv). In the event that a final, non-appealable decision is reached in connection with either the Claim Objection or the Arbitration Appeal that is in favor of the Debtor, and consequently reduces the sum of the Verizon Cure that was paid to Verizon pursuant to sub-paragraph (a) of this paragraph 13 above, then Verizon shall be obligated to refund a corresponding portion of the Verizon Cure to the Debtor.

(g) The terms of this paragraph 13 constitute written confirmation by Verizon of the terms under which it will agree to assignment of the Verizon

Contract, and shall satisfy the Debtor's obligation under paragraph 9.5 of the Purchase Agreement to obtain Verizon's written consent.

Additional Provisions

14. On the Closing Date of the Transactions, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its Encumbrances with respect to the Acquired Assets, if any, as such Encumbrances may have been recorded or may otherwise exist.

15. This Order (a) shall be effective as a determination that, on the Closing Date, all Encumbrances of any kind or nature whatsoever existing with respect to the Debtor or the Acquired Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of such assets or contracts.

16. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary