

The Public Utilities Commission of Ohio
TELECOMMUNICATIONS FILING FORM
(Effective: 01/20/2011)

This form is intended to be used with most types of required filings. It provides check boxes with rule references for the most common types of filings. It does not replace or supersede Commission rules in any way.

In the Matter of the Application of Birch Telecom of the Great Lakes, Inc.)
to Transfer Control of Cbeyond Communications, LLC)
)
)

TRF Docket No. 90- 9134

Case No. 14 - 0753 - **TP** - ACO

NOTE: Unless you have reserved a Case #, leave the "Case No" fields BLANK.

Name of Registrant(s) Birch Telecom of the Great Lakes, Inc. d/b/a Birch Communications

DBA(s) of Registrant(s) Birch Communications

Address of Registrant(s) 2323 Grand Blvd., Suite 925, Kansas City, MO 64108

Company Web Address www.birch.com

Regulatory Contact Person(s) Chris Bunce Phone 816-300-3000 Fax 816-300-3350

Regulatory Contact Person's Email Address chris.bunce@birch.com

Contact Person for Annual Report Angela Hoke Phone 816-300-1049

Address (if different from above) _____

Consumer Contact Information Tara Jackson Phone 816-300-1677

Address (if different from above) _____

Motion for protective order included with filing? ☐ Yes ☒ No

Motion for waiver(s) filed affecting this case? ☐ Yes ☒ No [Note: Waivers may toll any automatic timeframe.]

Notes:

Section I and II are Pursuant to Chapter 4901:1-6 OAC

Section III – Carrier to Carrier is Pursuant to 4901:1-7 OAC, and Wireless is Pursuant to 4901:1-6-24 OAC.

Section IV – Attestation

(1) Indicate the Carrier Type and the reason for submitting this form by checking the boxes below.

(2) For requirements for various applications, see the identified section of Ohio Administrative Code Section 4901 and/or the supplemental application form noted.

(3) Information regarding the number of copies required by the Commission may be obtained from the Commission's web site at www.puco.ohio.gov under the docketing information system section, by calling the docketing division at 614-466-4095, or by visiting the docketing division at the offices of the Commission.

(4) An Incumbent Local Exchange Carrier (ILEC) offering basic local exchange service (BLES) outside its traditional service area should choose CLEC designation when proposing to offer BLES outside its traditional service area or when proposing to make changes to that service.

All Filings that result in a change to one or more tariff pages require, at a minimum, the following exhibits.

Exhibit	Description:
A	The tariff pages subject to the proposed change(s) as they exist before the change(s)
B	The Tariff pages subject to the proposed change(s), reflecting the change, with the change(s) marked in the right margin.
C	A short description of the nature of the change(s), the intent of the change(s), and the customers affected.
D	A copy of the notice provided to customers, along with an affidavit that the notice was provided according to the applicable rule(s).

Section I – Part I - Common Filings

Carrier Type <input type="checkbox"/> Other (explain below)	<input type="checkbox"/> For Profit ILEC	<input type="checkbox"/> Not For Profit ILEC	<input type="checkbox"/> CLEC
Change terms & conditions of existing BLES	<input type="checkbox"/> ATA <u>1-6-14(H)</u> (Auto 30 days)	<input type="checkbox"/> ATA <u>1-6-14(H)</u> (Auto 30 days)	<input type="checkbox"/> ATA <u>1-6-14(H)</u> (Auto 30 days)
Introduce non-recurring charge, surcharge, or fee to BLES			<input type="checkbox"/> ATA <u>1-6-14(H)</u> (Auto 30 days)
Introduce or Increase Late Payment	<input type="checkbox"/> ATA <u>1-6-14(I)</u> (Auto 30 days)	<input type="checkbox"/> ATA <u>1-6-14(I)</u> (Auto 30 days)	<input type="checkbox"/> ATA <u>1-6-14(I)</u> (Auto 30 days)
Revisions to BLES Cap.	<input type="checkbox"/> ZTA <u>1-6-14(F)</u> (0 day Notice)		
Introduce BLES or expand local service area (calling area)	<input type="checkbox"/> ZTA <u>1-6-14(H)</u> (0 day Notice)	<input type="checkbox"/> ZTA <u>1-6-14(H)</u> (0 day Notice)	<input type="checkbox"/> ZTA <u>1-6-14(H)</u> (0 day Notice)
Notice of no obligation to construct facilities and provide BLES	<input type="checkbox"/> ZTA <u>1-6-27(C)</u> (0 day Notice)	<input type="checkbox"/> ZTA <u>1-6-27(C)</u> (0 day Notice)	
Change BLES Rates	<input type="checkbox"/> TRF <u>1-6-14(F)</u> (0 day Notice)	<input type="checkbox"/> TRF <u>1-6-14(F)(4)</u> (0 day Notice)	<input type="checkbox"/> TRF <u>1-6-14(G)</u> (0 day Notice)
To obtain BLES pricing flexibility	<input type="checkbox"/> BLS <u>1-6-14(C)(1)(c)</u> (Auto 30 days)		
Change in boundary	<input type="checkbox"/> ACB <u>1-6-32</u> (Auto 14 days)	<input type="checkbox"/> ACB <u>1-6-32</u> (Auto 14 days)	
Expand service operation area			<input type="checkbox"/> TRF <u>1-6-08(G)(0 day)</u>
BLES withdrawal			<input type="checkbox"/> ZTA <u>1-6-25(B)</u> (0 day Notice)
Other* (explain) _____			

Section I – Part II – Customer Notification Offerings Pursuant to Chapter 4901:1-6-7 OAC

Type of Notice	Direct Mail	Bill Insert	Bill Notation	Electronic Mail
<input type="checkbox"/> 15-day Notice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> 30-day Notice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Date Notice Sent:				

Section I – Part III –IOS Offerings Pursuant to Chapter 4901:1-6-22 OAC

IOS	Introduce New	Tariff Change	Price Change	Withdraw
<input type="checkbox"/> IOS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section II – Part I – Carrier Certification - Pursuant to Chapter 4901:1-6-08, 09 & 10 OAC

Certification	ILEC (Out of Territory)	CLEC	Carrier's Not Offering BLES	CESTC	CETC
* See Supplemental form	<input type="checkbox"/> ACE <u>1-6-08</u> * (Auto 30- day)	<input type="checkbox"/> ACE <u>1-6-08</u> * (Auto 30 day)	<input type="checkbox"/> ACE <u>1-6-08</u> * (Auto 30 day)	<input type="checkbox"/> ACE <u>1-6-10</u> (Auto 30 day)	<input type="checkbox"/> UNC <u>1-6-09</u> * (Non-Auto)

*Supplemental Certification forms can be found on the Commission Web Page.

Section II – Part II – Certificate Status & Procedural

Certificate Status	ILEC	CLEC	Carrier's Not Offering BLES
Abandon all Services		<input type="checkbox"/> ABN <u>1-6-26</u> (Auto 30 days)	<input type="checkbox"/> ABN <u>1-6-26</u> (Auto 30 days)
Change of Official Name *	<input type="checkbox"/> ACN <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> ACN <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)
Change in Ownership *	<input type="checkbox"/> ACO <u>1-6-29(E)</u> (Auto 30 days)	<input checked="" type="checkbox"/> ACO <u>1-6-29(E)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)
Merger *	<input type="checkbox"/> AMT <u>1-6-29(E)</u> (Auto 30 days)	<input type="checkbox"/> AMT <u>1-6-29(E)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)
Transfer a Certificate *	<input type="checkbox"/> ATC <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> ATC <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)
Transaction for transfer or lease of property, plant or business *	<input type="checkbox"/> ATR <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> ATR <u>1-6-29(B)</u> (Auto 30 days)	<input type="checkbox"/> CIO <u>1-6-29(C)</u> (0 day Notice)

* Other exhibits may be required under the applicable rule(s). ACN, ACO, AMT, ATC, ATR and CIO applications see the 4901:1-6-29 Filing Requirements on the Commission's Web Page for a complete list of exhibits.

Section III – Carrier to Carrier (Pursuant to 4901:1-7), and Wireless (Pursuant to 4901:1-6-24)

Carrier to Carrier	ILEC	CLEC
Interconnection agreement, or amendment to an approved agreement	<input type="checkbox"/> NAG <u>1-7-07</u> (Auto 90 day)	<input type="checkbox"/> NAG <u>1-7-07</u> (Auto 90 day)
Request for Arbitration	<input type="checkbox"/> ARB <u>1-7-09</u> (Non-Auto)	<input type="checkbox"/> ARB <u>1-7-09</u> (Non-Auto)
Introduce or change c-t-c service tariffs,	<input type="checkbox"/> ATA <u>1-7-14</u> (Auto 30 day)	<input type="checkbox"/> ATA <u>1-7-14</u> (Auto 30 day)
Request rural carrier exemption, rural carrier suspension or modification	<input type="checkbox"/> UNC <u>1-7-04 or 05</u> (Non-Auto)	
Changes in rates, terms & conditions to Pole Attachment, Conduit Occupancy and Rights- of-Way.	<input type="checkbox"/> UNC <u>1-7-23(B)</u> (Non-Auto)	
Wireless Providers See <u>4901:1-6-24</u>	<input type="checkbox"/> RCC [Registration & Change in Operations]	<input type="checkbox"/> NAG [Interconnection Agreement or

Section IV. – Attestation

Registrant hereby attests to its compliance with pertinent entries and orders issued by the Commission.

AFFIDAVIT
Compliance with Commission Rules

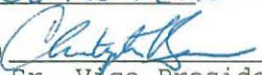
I am an officer/agent of the applicant corporation, Birch Telecom of the Great Lakes, Inc., and am authorized to make this statement on its behalf.
Christopher J. Bunce
(Name)

Please Check ALL that apply:

☐ I attest that these tariffs comply with all applicable rules for the state of Ohio. I understand that tariff notification filings do not imply Commission approval and that the Commission's rules as modified and clarified from time to time, supersede any contradictory provisions in our tariff. We will fully comply with the rules of the state of Ohio and understand that noncompliance can result in various penalties, including the suspension of our certificate to operate within the state of Ohio.

☐ I attest that customer notices accompanying this filing form were sent to affected customers, as specified in Section II, in accordance with Rule 4901:1-6-7, Ohio Administrative Code.

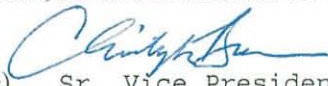
I declare under penalty of perjury that the foregoing is true and correct.

Executed on (Date) 4/22/14 at (Location) 2323 Grand Blvd St. 925 KC MO 64108
*(Signature and Title)  (Date) 4/22/14
Sr. Vice President & General Counsel

- This affidavit is required for every tariff-affecting filing. It may be signed by counsel or an officer of the applicant, or an authorized agent of the applicant.

VERIFICATION

I, **Christopher J. Bunce** verify that I have utilized the Telecommunications Filing Form for most proceedings provided by the Commission and that all of the information submitted here, and all additional information submitted in connection with this case, is true and correct to the best of my knowledge.

*(Signature and Title)  (Date) 4/22/14
Sr. Vice President & General Counsel
*Verification is required for every filing. It may be signed by counsel or an officer of the applicant, or an authorized agent of the applicant.

Send your completed Application Form, including all required attachments as well as the required number of copies, to:

Public Utilities Commission of Ohio
Attention: Docketing Division
180 East Broad Street, Columbus, OH 43215-3793
Or

Make such filing electronically as directed in Case No 06-900-AU-WVR

EXHIBITS REQUIRED FOR 4901:1-6-29 O.A.C. FILINGS

- 1) **Exhibit A** contains the Certification from the Ohio Secretary of State and the Certificate of Good Standing.
- 2) **Exhibit B** contains the list of names, addresses, and phone numbers of Birch's officers and directors.
- 3) **Exhibit C** contains the description of and rationale for the transfer of control.
- 4) Customer notice of this Transaction is not necessary under 4901:1-6-7 OAC as this Transaction will not result in any material change in the rates, terms, or conditions of service and will be transparent to customers.
- 5) **Exhibit D** contains the pre- and post-transactional corporate organizational charts.

EXHIBIT A

Certification from the Ohio Secretary of State and Certificate of Good Standing

DATE DOCUMENT NO DESCRIPTION
1. 11/19/1999 19992800320 FLJ FOREIGN LICENSE FOR PROFIT

	FILING	EXFED	PENALTY	CERT	COPY
	100.00	0.00	0.00	5.00	0.00
TOTAL	100.00	0.00	0.00	5.00	0.00

Return To:
DIAMOND ACCESS
ATTN L VAIDO
16 E BROAD ST STE 800
COLUMBUS, OH 43215-0000

cut along the dotted line



The State of Ohio Certificate

Secretary of State - J. Kenneth Blackwell

1117085

It is hereby certified that the Secretary of State of Ohio has custody of the business records for BIRCH TELECOM OF OHIO, INC. and that said business records show the filing and recording of:

Document(s)
FOREIGN LICENSE FOR PROFIT

Document(s) Note:
19992800320

*Authorization to transact business in Ohio is hereby given, until
surrender, expiration or cancellation of this license.

United States of America
State of Ohio
Office of the Secretary of State



Witness my hand and the seal of the Secretary
of State at Columbus, Ohio, This 8th day of
October, A.D. 1999

J. Kenneth Blackwell
J. Kenneth Blackwell
Secretary of State

United States of America
State of Ohio
Office of the Secretary of State

I, Jennifer Brunner, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign business entities; that said records show BIRCH TELECOM OF THE GREAT LAKES, INC., a Delaware corporation, having qualified to do business within the State of Ohio on October 08, 1999 under License No. 1117085 is currently in GOOD STANDING upon the records of this office.



*Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 26th day of May, A.D. 2010*

A handwritten signature in cursive script, reading "Jennifer Brunner".

Ohio Secretary of State

Validation Number: Y2010146MCE411

EXHIBIT B

Officers and Directors

All officers and directors may be contacted at the corporate headquarters.

Officers:

Vincent M. Oddo

President and Chief Executive Officer

Chris Aversano

Executive Vice President and Chief Operating Officer

Edward James III

Senior Vice President, and Chief Financial Officer

Christopher J. Bunce

Senior Vice President, Legal, General Counsel and Secretary

Christopher Ramsey

Senior Vice President – Chief Sales and Marketing Officer

Directors:

R. Kirby Godsey

Holcombe Green, Jr.

Vincent M. Oddo

EXHIBIT C

Description of the Transaction and Public Interest Considerations

Cbeyond Communications, LLC (“Cbeyond”) and Birch Telecom of the Great Lakes, Inc. d/b/a Birch Communications (“Birch”) (Cbeyond and Birch collectively, the “Parties”), hereby seek approval from the Public Utilities Commission of Ohio (“Commission”) of the transfer of control of Cbeyond to Birch’s parent company, Birch Communications, Inc. (“BCI”) (the “Transaction”).

I. DESCRIPTION OF THE PARTIES

A. Birch Telecom of the Great Lakes, Inc. dba Birch Communications

Birch is a Delaware corporation with headquarters located at 2323 Grand Blvd., Suite 925, Kansas City, Missouri 64108. Birch is authorized by the Commission to provide competitive local exchange and interexchange services in the State of Ohio.¹ Birch is a wholly owned subsidiary of BCI, a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. BCI and its subsidiaries are authorized to provide telecommunications services to both business and residential customers in 50 states and the District of Columbia.

B. Cbeyond Communications, LLC

Cbeyond is a Delaware limited liability company with corporate headquarters at 320 Interstate North Parkway SE, Suite 300, Atlanta, GA 30339. Cbeyond was authorized to provide telecommunications services in Ohio under Certificate No. 90-9359. The parent company of Cbeyond is Cbeyond, Inc.

¹ Certification Number 90-9134; Case Nos. 00-1042-TP-ACE and 07-0738-TO-ATA.

II. DESIGNATED CONTACTS

Correspondence concerning this matter should be directed to:

For Cbeyond

William Weber, General Counsel
Cbeyond Communications, LLC
320 Interstate North Parkway SE
Suite 300
Atlanta, GA 30339
678-370-2327 (telephone)
william.weber@cbeyond.net

For Birch

Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, NW, Suite 950
Washington, DC 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)
acollins@cahill.com

III. DESCRIPTION OF THE TRANSACTION

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 with and into Cbeyond, Inc., with Cbeyond, Inc. as the surviving corporation. As a result of the merger, the separate corporate existence of Hawks Merger Sub will cease, and Cbeyond, Inc. will continue its existence as a wholly owned subsidiary of BCI. BCI will directly own 100% of the stock of Cbeyond, Inc. and indirectly own 100% of the membership interests of Cbeyond. The Transaction will result in BCI acquiring ultimate control of Cbeyond. For the Commission's convenience, pre- and post-Transaction corporate organizational structure charts depicting the transfer of control are provided as **Exhibit D**. Consummation of the Transaction is contingent on, among other things, receipt of all necessary regulatory approvals.

The proposed Transaction does not involve the assignment of Birch's or Cbeyond's telecommunications authorizations or its customers. All current customers of Birch will continue to be served by Birch pursuant to its existing authorization. All current customers of Cbeyond will continue to be served by Cbeyond pursuant to its existing authorizations. Customers of Cbeyond will continue to receive their existing services at the same or similar rates, terms and conditions

without any immediate changes. The proposed Transaction will be transparent to the customers of Cbeyond. Cbeyond's existing customers will continue to receive service under the "Cbeyond" name as a result of the proposed Transaction, and all billing and correspondence will reflect the "Cbeyond" name. Accordingly, customer notice is not required under Ohio or Federal Communications Commission ("FCC") rules because there will be no change in service provider from the customer's perspective.

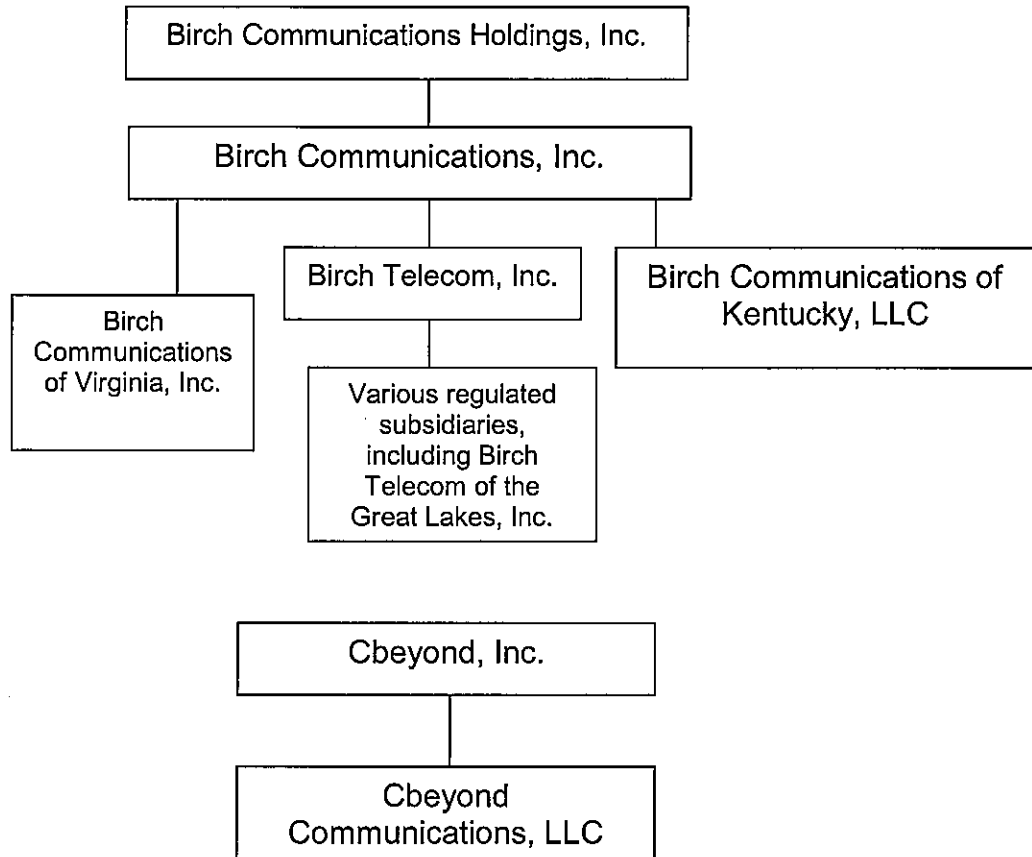
IV. PUBLIC INTEREST ANALYSIS

Approval of the proposed Transaction serves the public interest. The proposed Transaction will ensure that affected customers enjoy continuity of high-quality telecommunications service. Following the Transaction, the affected customers will continue to receive services consistent with the quality of services currently provided by Cbeyond that will be supported by Birch's experienced and well-qualified management team. As a result, the proposed Transaction will be transparent to Cbeyond's customers. Consequently, the proposed Transaction will not have a negative impact on the public interest, services to Ohio customers, or competition.

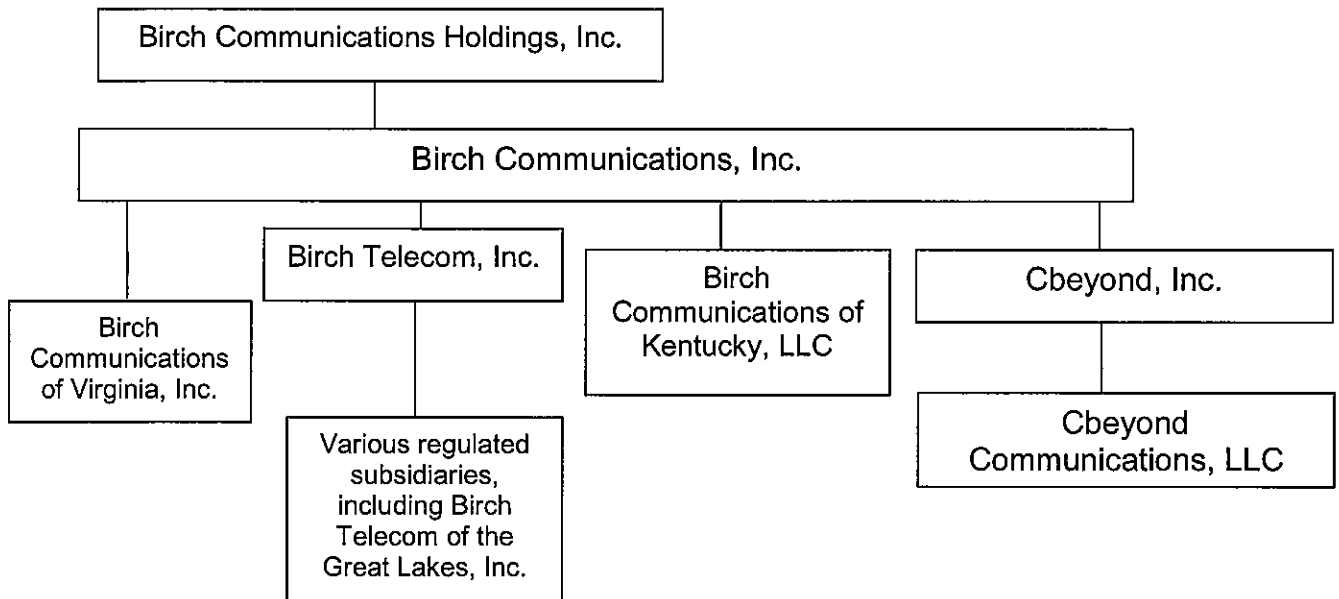
EXHIBIT D

Corporate Organizational Charts

Pre-Transaction:



Post-Transaction:



This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/22/2014 7:13:18 PM

in

Case No(s). 14-0753-TP-ACO

Summary: Application Application of Birch Telecom of the Great Lakes, Inc. to Transfer Control of Cbeyond Communications, LLC electronically filed by Angela F Collins on behalf of Birch Telecom of the Great Lakes, Inc.