

05153300 - 0510  
22251533 - 0505

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

RECEIVED

AUG 14 2002

PUBLIC SERVICE  
COMMISSION

-----	x	
	:	
In re:	:	Chapter 11
	:	
BIRCH TELECOM, INC., et al.	:	Case No. 02-12218 (JCA)
	:	
Debtors.	:	Jointly Administered
-----	x	

**DECLARATION OF FRANK TURNER, PRINCIPAL OF SENIOR LENDERS' ADMINISTRATIVE AGENT, IN SUPPORT OF DEBTORS' MOTION FOR MODIFICATION OF THE ORDER AUTHORIZING THE DEBTORS TO PAY OFFICERS' SALARIES IN THE ORDINARY COURSE OF BUSINESS**

I, FRANK TURNER, do hereby declare as follows:

1. I am an Authorized Signatory of Lehman Commercial Paper Inc., the administrative agent (the "Administrative Agent") for the syndicate of banks, financial institutions and other entities (the "Senior Lenders") which have provided the Senior Credit Facility (as defined below) for Birch Telecom, Inc. ("Birch") and all of the subsidiary debtors and debtors in possession in the above-captioned cases (collectively with Birch, the "Debtors" or the "Company"). I submit this declaration in support of Debtors' Motion for Modification of the Order Authorizing the Debtors to Pay Officers' Salaries in the Ordinary Course of Business filed on or about August 7, 2002 (the "Motion"). I have been working with the Birch entities on behalf of the Administrative Agent since November of 2001. With respect to the facts described in this declaration, I have either personal knowledge or such information was provided to me by personnel working under my supervision, and if called upon to testify, I could and would testify competently thereto.

2. In December 1999, the Debtors, the Administrative Agent and the Senior Lenders entered into a credit agreement which provides for a seven-year term loan facility and a seven-year revolving credit loan facility (the "Senior Credit Facility"). As of July 29, 2002, the Debtors were indebted to the Senior Lenders in the approximate amount of \$199 million pursuant to the Senior Credit Facility. The Senior Lenders' claim is secured by a perfected first priority security interest in substantially all of the Debtors' assets and capital stock.

3. The Motion pertains to the Court's Order (defined in footnote 2 of the Motion, the "Order") which, inter alia, granted the Debtors the authority to compensate their managers at a rate not to exceed \$100,000 on an annual basis, and denied them the authority to pay managers' wages that had accrued and were owing as of the petition date. In summary, the Debtors are seeking the authority to pay their management team at the compensation rate provided for in their respective employment contracts. The pre-packaged Chapter 11 Plan of Reorganization filed with this Court on July 29, 2002 (the "Plan") contemplates the assumption of those employment agreements and the retention of the Birch management team following the Company's emergence from chapter 11. The Plan strikes a negotiated balance of myriad issues, including the compensation of current management in accordance with their employment contracts to induce them to continue in their present capacity throughout these chapter 11 cases and thereafter.

4. The Debtors' pre-packaged Plan, which has been accepted by both classes of impaired claims, pays all other claims in full, and assumes all executory contracts, depends in significant measure on the cohesion of the current management team during this period of transition. The Plan is the result of eight months of negotiation by all of the interested parties, each of whom was represented by counsel and financial advisers and all of whom have agreed

that the Plan represents their best prospect of maximizing their recovery under the circumstances.

5. The Administrative Agent is concerned that the Debtors' ability to reorganize pursuant to the Plan may be jeopardized if the Debtors are unable to honor their contracts with their management team through the Plan confirmation hearing that is set for September 16, 2002, approximately five weeks from today.

6. Beginning in November 2001, the Administrative Agent and its outside financial advisor, Policano & Manzo, have negotiated extensively with the Debtors and their professional advisors with respect to the terms of a consensual restructuring plan. In the course of these negotiations and other meetings with the Debtors, the Administrative Agent has observed and evaluated the skills and capabilities of the Debtors' management in the context of assessing the feasibility of a plan. On the whole, the Administrative Agent believes that the Debtors' current managers are capable, loyal, hardworking, and dedicated.

7. As the result of these negotiations, the Debtors formulated the Plan. Under the Plan, the Senior Credit Facility will be restructured by, *inter alia*, reducing the amount outstanding thereunder from approximately \$199 million to \$100 million. In addition, approximately \$99 million will be exchanged for approximately 80% of the equity of the reorganized Debtors. Notwithstanding the outstanding defaults under the Senior Credit Agreement entitling the Administrative Agent to declare all indebtedness thereunder to be immediately due and payable, the Senior Lenders unanimously voted in support of the Plan pursuant to a solicitation conducted by the Debtors prior to the filing of these cases.

8. Maintaining the stability of the Debtors' business by retaining current management was a key consideration in the decision of the Administrative Agent and the Senior

Lenders to support the Plan. The Administrative Agent believes that keeping the Debtors' management in place and committed is critical to the confirmation and implementation of the Plan.

9. The Administrative Agent and its financial advisors also have reviewed the management team's compensation levels and have concluded that they are competitive within the Debtors' industry and geographic region. The Administrative Agent and its financial advisors also believe that, under the circumstances, management's compensation levels are fair and reasonable.

10. In addition, based on the professional experience of the Administrative Agent and its advisors, the Administrative Agent is concerned that if the Motion is not heard on an expedited basis, some or all of the management team may promptly seek other employment opportunities, causing instability at this critical juncture and thereby jeopardizing the Debtors' ability to reorganize. The Debtors' ability to expeditiously replace some or all of their management team under the circumstances is uncertain. The Administrative Agent is also concerned that without a stable, dedicated management team in place, the Debtors' may lose other employees, customers and suppliers, thereby jeopardizing their ability to continue operations.

11. If the Debtors were to cease their business operations, the Administrative Agent believes that any recovery the Senior Lenders may receive likely would be substantially less than that which is provided for in the Plan. Indeed, the Debtors' Disclosure Statement, filed in conjunction with the Plan on July 29, 2002, indicates that in a liquidation, the Senior Lenders would suffer a loss of between \$177-\$188 million. The Administrative Agent believes that the Senior Lenders' prospects for recovery are dramatically enhanced if the Debtors are restructured

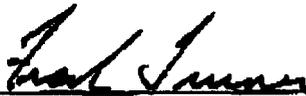
pursuant to the Plan.

12. The Administrative Agent believes that permitting the Debtors to honor all prepetition and postpetition obligations to their management would help preserve the value of the Debtors' business during these reorganization efforts (including the value of the Senior Lenders' collateral). In particular, based on the professional experience of the Administrative Agent and its financial advisors, the Administrative Agent believes that the reduction in compensation levels and denial of prepetition accrued amounts under the Order may substantially undermine the Debtors' efforts to retain their management team and to reorganize in accordance with the Plan.

13. For these reasons, the Administrative Agent respectfully supports the relief requested in the Motion, including the request for expedited consideration of the Motion.

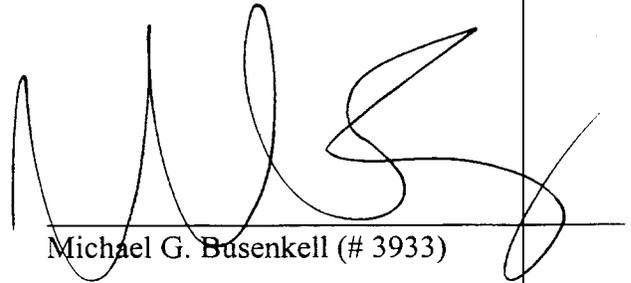
Pursuant to 28 U.S.C. § 1746, I declare, under the penalty of perjury, that the above statements are true and correct.

Dated: August 9, 2002

  
\_\_\_\_\_  
FRANK TURNER

Certificate Of Service

I, Michael G. Busenkell, certify that I am not less than 18 years of age, and that service of the foregoing **Declaration Of Frank Turner, Principal Of Senior Lenders' Administrative Agent, In Support Of Debtors' Motion For Modification Of The Order Authorizing The Debtors To Pay Officers' Salaries In The Ordinary Course Of Business** was made on August 9, 2002 upon the parties on the attached service list in the manner indicated.



Michael G. Busenkell (# 3933)

## SERVICE LIST

### VIA HAND DELIVERY

Robert S. Brady, Esquire  
Young Conaway Stargatt & Taylor  
1000 West Street, 17th Flr.  
Wilmington, DE 19801

District Director SPF  
Internal Revenue Service  
409 Silverside Road  
Wilmington, DE 19809

Mark S. Kenney  
U.S. Trustee's Office  
844 King Street  
Suite 2313  
Lockbox 35  
Wilmington, DE 19801-3519

Laurie Selber Silverstein, Esq.  
Potter Anderson & Corroon LLP  
1313 N. Market Street, 6th Flr.  
P.O. Box 951  
Wilmington, DE 19899

### VIA FIRST CLASS U.S. MAIL

Gina Sutton  
Level 3 Communications, LLC  
Dept. #182  
Denver, CO 80291-0182

Director of Revenue  
State of Missouri  
P.O. Box 155  
Jefferson City, MO 65105-0155

Michelle Tyler  
Aschinger Electric  
P.O. Box 775546  
Fenton, MO 63177-5546

Nancy Kinsey  
SMS/800  
P.O. Box 8122  
Bridgewater, NJ 08812

Stan Foy  
Alabama PSC  
RSA Union Bldg., Ste. 850  
100 North Union Street  
P.O. Box 304260  
Montgomery, AL 36130

Tom Dorman  
Executive Director  
ATTN: Tariff Branch  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602-0615

Brandon Frey  
Louisiana Public Service Commission  
One American Place  
Suite 1630  
P.O. Box 91154  
Baton Rouge, LA 70821-9154

Cliff Snodgrass, Esq.  
Missouri Public Service Commission  
Governor Office Building  
P.O. Box 360  
Jefferson City, MO 65102-0360

Thomas A. Peterson  
Birch Telecom, Inc.  
2020 Baltimore Avenue  
Kansas City, MO 64108

Kara Gilmore  
Birch Telecom, Inc.  
2020 Baltimore Avenue  
Kansas City, MO 64108

Martin Flics, Esquire  
Latham and Watkins  
885 Third Avenue  
Suite 1000  
New York, NY 10022

Gregg D. Josephson, Esquire  
Latham and Watkins  
885 Third Avenue  
Suite 1000  
New York, NY 10022

Kelley A. Cornish, Esquire  
Sidley Austin Brown & Wood  
75 Third Avenue  
New York, NY 10022

Michael S. Stamer, Esquire  
Akin Gump Strauss Hauer & Feld, LLP  
590 Madison Avenue  
New York, NY 10022

VIA FIRST CLASS U.S. MAIL

Jane Schweiger, Esquire  
Wells Fargo Bank, NA  
Corporate Trust Department  
Sixth and Marquette  
Minneapolis, MN 55479-0069

Michael G. Slade  
Corporate Trust Officer  
Wells Fargo Bank, NA  
Sixth and Marquette  
Minneapolis, MN 55479-0069

Michael Berman  
Securities & Exchange Commission  
15th & Pennsylvania Ave., NW  
Room 6318 Mail Stop 6-6  
Washington, DC 20020

Susanne Larson  
Internal Revenue Service  
Insolvency Group  
31 Hopkins Plaza, Rm. 1150  
Baltimore, MD 21201

Stuart E. Schiffer, Esquire  
U.S. Dept. of Justice  
Civil Div., Commerc. Lit. Branch  
950 Pennsylvania, NW  
Room 3607  
Washington, DC 20530

Patricia H. Schrage  
Securities & Exchange Commission  
NY Office Branch/Reorgan.  
233 Broadway  
New York, NY 10279

Suzanne C. Leslie  
SBC Telecommunications, Inc.  
One SBC Plaza, Suite 2900  
208 S. Akard Street  
Dallas, TX 75202

Abe Boykin  
Southwestern Bell  
208 S. Akard  
9th Floor  
Dallas, TX 75202

Dinetta C. Lykes  
Bell South  
1 Chase Corporate Center  
Suite 300  
Birmingham, AL 35244

Patrick Graham  
Williams Communications  
One Technology Center  
Tulsa, OK 74103

Richard Waresback  
MCI Worldcom  
6929 N. Lakewood Avenue  
Maildrop 1.2-108E  
Tulsa, OK 74117

Tom Carrol  
NECA  
80 S. Jefferson Road  
Whippany, NJ 07981

Karen Dyrness  
AT&T  
300 Atrium Drive  
Mailbox 4W015  
Somerset, NJ 08873-4105

John Heist  
CCA Financial, Inc.  
7275 Glen Forest Drive  
Richmond, VA 23226

Universal Service Adm. Co.  
12902 Federal System Park Dr  
Fairfax, VA 22033-4412

Mike Geiger  
TSI Telecommunications  
201 N. Franklin Street  
Suite 700  
Tampa, FL 33602

Nancy Ruocco  
Avaya  
211 Mt. Airy Road  
Basking Ridget, NJ 07920

Kathy Duvall  
NTS Communications  
5307 West Loop 289  
Lubbock, TX 79414

Carolee Leiseth  
NEC America, Inc.  
6555 N. State Hwy. 161  
Irving, TX 75039-2402

Pat Hernandez  
Adelphia Business  
266 N. Main Street  
Suite 100  
Wichita, KS 67201-0337

Jason Naumeimer  
Certegy Check Services  
11601 Roosevelt Blvd.  
St. Petersburg, FL 33716

Theresa Thomas  
Anderson Performance Improvement  
12181 Margo Avenue South  
Hasting, MN 55033

Paula Schlossenberg  
FishNet Security  
1710 Walnut  
Kansas City, MO 64108

Mai Jager  
Vodavi Communications Systems  
4717 E. Hilton Avenue  
Suite 400  
Phoenix, AZ 85034-6402

Melanie Wilcom  
Sprint  
600 New Century Parkway  
New Century, KS 66031

Kylie Hurtig  
Alltel  
Building 4, Second Floor  
One Allied Drive  
Little Rock, AK 72202-2099

AMEX  
20002 N. 19th Avenue A-21  
CPC Remittances  
Phoenix, AZ 85027-4250

Nadia Roy  
Recruitsoft Inc.  
636 Morris Avenue  
Suite 3-B  
Short Hills, NJ 07078

Charlie Pogue  
Associates Solutions, Inc.  
8115 Shawnee Mission Pkwy.  
Suite 100  
Merriam, KS 66202

Amber Prewitt  
Broadwing Communications Services  
1122 S. Capital of Texas Hwy.  
Austin, TX 78746

Janet Pitcock  
NAMS2000  
500 Chestnut, Suite 500  
Abilene, TX 79602

Anequia Carr  
Xerox Corp (Dallas, TX)  
800 Phillips Road  
Webster, NY 14580

Jeanette Steele  
IKON  
1005 Ikon Drive  
Jefferson City, MO 65102

Elesha Jackson  
Arch Wireless  
6330 Commerce Drive  
Irving, TX 75063

Karen Alford  
Datacom Warranty  
3015 Windward Plaza  
Suite 575  
Alpharetta, GA 30005

Debbie Griffith  
Pitney Bowes  
1313 N. Atlantic  
Spokane, WA 99201-2203

Percy Sanders  
Netopia, Inc.  
2470 Mariner Square Loop  
Alameda, CA 94501

Cynthia Kurtz  
Signalcom  
188 Hunters Green Lane  
Eureka, MO 63025

Kevin Otoole  
Inter-Tel Integrated Systems  
120 N. 44th Street  
Phoenix, AZ 85034

Joe Samples  
Joseph Samples  
330 Bee Caves #650-235  
Austin, TX 78746

Mark Grube  
McCormack-Payton Storage  
4800 East 119th Street  
Grandview, MO 64030

Michael Funk  
Intellisoft Corp.  
7007 College Boulevard  
Suite 720  
Overland Park, KS 66211

Marlene H. Dortch  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Joe McIlvain  
California Public Utilities Commission  
Docket Office  
505 Van Ness Avenue  
San Francisco, CA 94102

Tom Williams  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Lilian Johnson  
Georgia Public Service Commission  
244 Washington Street, SW  
Atlanta, GA 30334

Mark Hanson  
Illinois Commerce Commission  
Chief Clerk's Office  
527 E. Capital Avenue  
Springfield, IL 62701

Joseph Southerland  
Indiana Utility Regulatory Com.  
Indiana Gov. Center South  
302 W. Washington, Ste E-306  
Indiana, IN 46204

Jeff Wagaman  
Executive Director  
Kansas Corporation Comm.  
1500 Southwest Arrowhead  
Topeka, KS 66604

Dorothy Wideman  
Michigan Public Service Commission  
6545 Mercantile Way  
Suite 7  
Lansing, MI 48911

Randy Tew  
Mississippi Public Service Commission  
501 North West Street  
201-A Woolfolk St. Office Bldg  
Jackson, MS 39201

Geneva Thigpen, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

Dan Fullen, Esq.  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215-3793

Bob Allen, Esq.  
Oklahoma Corporate Commission  
Public Utilities Division  
P.O. Box 52000-2000  
Oklahoma City, OK 73152-2000

Gary B. Walsh  
Public Service Comm. Of S. Carolina  
101 Executive Center Drive  
Saluda Building  
Center G Office Park  
Columbia, SC 29210

Rosie Gregory  
Tennessee Regulatory Authority  
460 James Robertson Pkwy.  
Nashville, TN 37243-0505

Garvez Cunningham  
Public Utility Commission of Texas  
Central Records  
1701 N. Congress Avenue  
Auston, TX 78711

Lynda L. Dorr  
Public Service Comm. Of Wisconsin  
610 North Whitney Way  
Madison, WI 53707

Darryl S. Laddin, Esq.  
Frank N. White, Esq.  
Arnall Golden Gregory, LLP  
2800 One Atlantic Center  
1201 W. Peachtree St.  
Atlanta, GA 30309-3450

Mark J. Kalla, Esq.  
Chris Lenhart, Esq.  
Dorsey & Whitney  
50 S. Sixth Street  
Minneapolis, MN 55402-1498