

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Joint Application of  
Ionex Communications North, Inc. Dba Birch  
Communications and Lightyear Network  
Solutions, LLC for Approval of the Transfer  
of Customers and Certain Assets.

Docket No. 13-2563-04

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HEARING

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TAKEN AT: Heber M. Wells Building  
160 East 300 South, Room 451  
Salt Lake City, Utah 84111  
  
DATE: Monday, September 23, 2013  
  
TIME: 9:00 a.m. to 9:14 a.m.  
  
TRANSCRIPT PREPARED BY: Kelly Thacker

## APPEARANCES

FOR IONEX COMMUNICATION NORTH, INC. dba BIRCH  
COMMUNICATIONS and LIGHTYEAR NETWORK SOLUTIONS,  
LLC:

WILLIAM J. EVANS, ESQ.

PARSONS BEHLE & LATIMER

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Suite 1800

Salt Lake City, Utah 84145

FOR DIVISION OF PUBLIC UTILITIES:

JUSTIN JETTER, ESQ.

UTAH ATTORNEY GENERAL'S OFFICE

160 East 300 South

5th Floor

Salt Lake City, Utah 84111

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18  
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21  
22  
23  
24  
25

## INDEX

WITNESS

PAGE

CHRISTOPHER BUNCE

Examination by Mr. Evans

7

JOHN GRIEVE

Examination by Mr. Evans

16

RONALD SLUSHER

Examination by Mr. Jetter

20

1                                   Hearing

2                                   September 23, 2013

3                                   PROCEEDINGS

4                                   THE COURT: Good morning, everyone. Do I still  
5                                   have the callers on the line?

6                                   MS. COLLINS: Yes, Angela Collins is here.

7                                   MR. BUNCE: Chris Bunce is here.

8                                   MR. GREIVE: John Greive is here.

9                                   THE COURT: Terrific. Great. My apologizes for  
10                                  the technical snafus this morning, and welcome. We're on the  
11                                  record, so to speak. We are recording this proceeding and we'll  
12                                  have it transcribed after the fact. The parties have indicated  
13                                  that that is acceptable given that our court reporter is not  
14                                  present this morning. My name is Melanie Reif and I am the  
15                                  administrative law judge for the Utah Public Service  
16                                  Commission. This morning we are hearing docket number 13-  
17                                  2563-04. This matter is entitled In The Matter of the Joint  
18                                  Application of Ionex Communications North Inc. dba Birch  
19                                  Communications and Lightyear Network Solutions, LLC for  
20                                  Approval of Transfer of Customers and Certain Assets. Could  
21                                  we start by taking appearances, please, starting with you Mr.  
22                                  Evans? And if you'd kindly indicate who is also attending by  
23                                  phone. And if you would please spell their names; that would  
24                                  be real helpful for the court reporter.

25                                  MR. EVANS: Okay. I'm William Evans of Parsons

1 Behle and Latimer here for the joint applicants Ionex  
2 Communications North Inc, dba Birch Communications and  
3 Lightyear Network Solutions LLC. On the phone is Angela  
4 Collins, A-n-g-e-l-a C-o-l-l-i-n-s. She is counsel for the joint  
5 applicants. Also Christopher Bunce, that's spelled B-u-n-c-e.  
6 He is with Ionex Communications North dba Birch and John  
7 Greive, spelled G-r-e-i – J-o-h-n G-r-e-i-v-e, here for Lightyear.

8 THE COURT: Thank you. Mr. Jetter.

9 MR. JETTER: Thank you. Justin Jetter  
10 representing the Utah Division of Public Utilities, and with me is  
11 Ron Slusher, division Utah--excuse me--division utility technical  
12 consultant.

13 THE COURT: Thank you. Mr. Evans, the  
14 Commission has received your notification, filed with the  
15 Commission on August 14, 2013. And given that you're the  
16 applicant, we'll let you proceed with your presentation this  
17 morning.

18 MR. EVANS: Okay. Thank you. On August 14,  
19 2013, Ionex Communications North Inc dba Birch  
20 Communications and Lightyear Network Solutions LLC filed a  
21 joint notification of a pending transaction by which Ionex will  
22 acquire the customers and certain assets of Lightyear. For the  
23 purposes of the hearing today we'll refer to Ionex as Ionex,  
24 although they are also doing business as Birch and the parent  
25 company is also called Birch. So we will refer to them by Ionex

1 and include in that any reference to Birch.

2 The notice of application for approval and notice of  
3 comment and notice of this hearing was issued on August 15.  
4 This transaction is subject to the provisions at Section 54-4-30  
5 of the Utah code. Ionex and Lightyear both wish to present  
6 testimony and exhibits today to fulfill the requirements of that  
7 section as the Commission has specified in the Commission's  
8 rule 746-349-7. So if I may, I can call witnesses and we can  
9 proceed with the examination if Your Honor will swear them?

10 THE COURT: Yes, sir, Mr. Evans. One quick  
11 question before we proceed with the testimony, and there was  
12 some issue of this in an earlier docket.

13 MR. EVANS: Uh-huh.

14 THE COURT: Do you wish to clarify that this is an  
15 application as opposed to a notification?

16 MR. EVANS: Yes. Thank you. The filing was  
17 entitled notification. Under 54-4-30 of the code we're required  
18 to have this hearing and treat this as an application. So we  
19 would request that this be treated as an application and we will,  
20 through testimony and exhibits presented today, fill in those  
21 blanks and make sure the requirements of the rule have been  
22 met.

23 THE COURT: Okay. Thank you very much. And--

24 MR. EVANS: Let's call Christopher Bunce.

25 THE COURT: Okay. Mr. Bunce, are you on the

1 line?

2 MR. BUNCE: Yes.

3 THE COURT: Okay. Would you kindly raise your  
4 right hand, please?

5 MR. BUNCE: Yes.

6 THE COURT: And do you swear that the testimony  
7 you're about to give today is the truth?

8 MR. BUNCE: Yes.

9 THE COURT: Thank you, sir. You may proceed,  
10 Mr. Evans.

11 MR. EVANS: Thank you.

12 CHRISTOPHER BUNCE, having first been duly  
13 sworn, testified upon his oath as follows:

14 DIRECT EXAMINATION

15 BY-MR.EVANS:

16 Q. Good morning, Mr. Bunce. Can you hear me  
17 alright?

18 A. Yes.

19 Q. Okay. For the record, would you please state your  
20 name, business address and your position at Ionex or Birch?

21 A. Yes. My name's Christopher Bunce, Junior Vice  
22 President, legal and general counsel for Ionex and its parent  
23 company First Communication, Inc. My office address is 2300  
24 Main Street, Suite 340, Kansas City, Missouri, 64108.

25 Q. And how long have you held that position?

1           A.     I've been general counsel for Birch Telecom and its  
2 subsidiaries since 2006 and Birch Communication Inc since  
3 February, 2008. Prior to that, I held other positions at Birtch  
4 and Ionex and I've worked with other telecom companies prior to  
5 2000.

6           Q.     Have you reviewed the joint notification filed by  
7 Ionex and Lightyear in this docket?

8           A.     Yes.

9           Q.     And do you have personal knowledge of the matters  
10 set out in the notification?

11          A.     Yes.

12          Q.     But you're not the officer who signed the verified  
13 notification, are you?

14          A.     (Inaudible)

15          Q.     So for the purposes of your testimony today then,  
16 do you adopt the statements made in the notification as your  
17 own?

18          A.     I do.

19          Q.     Are there any changes or corrections that should be  
20 made to the joint notification?

21          A.     No, but I would like to supplement (inaudible).

22          Q.     Okay. And to the extent that approval is required  
23 from the Public Service Commission, as opposed to merely a  
24 notification, are you asking the Commission to approve this  
25 transaction pursuant to the rule 746-349-7?



1 A. (Inaudible)

2 Q. Is Ionex serving as an incumbnent local exchange  
3 carrier anywhere in the state of Utah?

4 A. No.

5 Q. Are Ionex and Lightyear required to file for Section  
6 214 authority with the Federal Communications Commission?

7 A. Yes.

8 Q. Has that been done?

9 A. Yes, it has.

10 Q. And has the FCC issued a notice that Section 214  
11 authority has been granted?

12 A. (Inaudible)

13 Q. And the international authorization issued on July  
14 25, 2013; is that correct?

15 A. (Inaudible)

16 MR. EVANS: Your Honor, may I approach and  
17 hand out an exhibit?

18 THE COURT: Yes. Thank you for offering.

19 BY MR. EVANS

20 Q. Okay, I've handed out Joint Exhibit 1. Mr. Bunce,  
21 do you have a copy of that exhibit in front of you?

22 A. I do.

23 Q. Can you describe what these documents are,  
24 please?

25 A. Yes. These all relate back to the application of

1 (inaudible) the transaction. The first document is an application  
2 that Birch/Lightyear filed with the FCC. The second document is  
3 a letter from our counsel to the FCC supplementing the original  
4 application, the application for approval of the Lightyear  
5 transaction, also seeking approval for Birch to acquire certain  
6 assets (inaudible), LLC. The supplement was a response to a  
7 phone call from the FCC in which the FCC requested more  
8 information about which competitors are offering (inaudible)  
9 services in areas (inaudible) has been serving. It does not  
10 pertain to the Lightyear transaction but it is among the  
11 documents and it's mentioned in a footnote. It's included here  
12 so that the Commission has a complete record of the FCC  
13 proceeding. The third document is the grant of international  
14 authorizations from the FCC and the number of docket. Our  
15 docket is the first entry appearing on Page 5 of this document.  
16 The fourth document is a notice that the domestic authorization  
17 has been removed from Streamline Treatment. And the fifth  
18 document, which pre-dates the fourth document, is the notice  
19 that both the domestic and international authorization were  
20 originally placed by Streamline.

21 Q. Thank you. So why was the domestic authorization  
22 taken out of Streamline Treatment?

23 A. The FCC had some question about Lightyear's  
24 universal service report which it wanted to resolve before  
25 granting domestic authorization.

1 Q. And do you know the status of the FCC's inquiry  
2 into the universal service reports?

3 A. Yeah, the FCC and Lightyear have been negotiating  
4 the terms of a consent decree that will resolve the universal  
5 service reporting issue (inaudible).

6 Q. Will Ionex be required to meet reporting obligations  
7 under the consent decree once the acquisition of Lightyear is  
8 consummated?

9 A. Yes, we're working with the FCC to finalize the  
10 terms of our agreement to comply with the consent decree.

11 Q. And do you anticipate that the FCC domestic  
12 authorization will be granted soon?

13 A. I do. We expect that this will be resolved sometime  
14 this week.

15 Q. Is there a closing date set for this transaction with  
16 Lightyear?

17 A. Yes, it's scheduled to close on September 27th.

18 Q. Do any state commissions, other than Utah, require  
19 Ionex and Lightyear to seek approval of this transaction?

20 A. Yes, approval's required in several states; most  
21 require only notification.

22 Q. Have you filed notification in all the states that  
23 require notification?

24 A. Yes.

25 Q. And have you filed for approval in all the states that

1 require approval?

2 A. Yes, we have.

3 MR. EVANS: May I?

4 THE COURT: Yes. Thank you.

5 BY MR. EVANS

6 Q. Mr. Bunce, I have just handed out what we have  
7 marked as Ionex Lightyear Joint Exhibit 2. Do you have a copy  
8 of this in front of you?

9 A. I do.

10 Q. Can you describe briefly what this document  
11 contains, please?

12 A. Yeah. These are the applications of the  
13 commission decisions approving the applications in California,  
14 Colorado, Minnesota, and Nebraska.

15 Q. And have you received--in addition to receiving  
16 approval in these states, have you received approvals in any  
17 other states?

18 A. Yes, we've received approvals from all states where  
19 approval is required except for Pennsylvania, Utah, West  
20 Virginia and Oklahoma.

21 Q. Okay.

22 A. And we're still waiting for Arizona to grant our  
23 application for a certification of (inaudible) necessity.

24 Q. Okay. Thank you.

25 THE COURT: Sure. Thank you.

1 BY MR. EVANS

2 Q. Mr. Bunce, I've handed out Lightyear--  
3 Ionex/Lightyear Joint Exhibit 3. Do you have a copy of that in  
4 front of you?

5 A. I do.

6 Q. Can you explain what this document is please?

7 A. Yes. This is a major (inaudible) requirement for  
8 this transaction. It shows the status of the FCC application and  
9 the applications or notifications that we have filed with the state  
10 commissions.

11 Q. Is this an accurate representation of the status of  
12 regulatory approvals as of today?

13 A. I believe so, yes.

14 Q. And do you expect to have received approval from  
15 all states before the closing date?

16 A. If they don't all come in before September 27th,  
17 2013, we'll close the transaction as to the states in which we  
18 have received approval and pick up the remaining states later in  
19 another closing.

20 Q. Have you received or are you aware of any notices  
21 or correspondence from any of these remaining states denying  
22 your application for approval?

23 A. No.

24 Q. Have you received or are you aware of any  
25 opposition from third parties or from the public with respect to

1 any state or federal application?

2 A. No.

3 Q. Can you please offer a summary of why you believe  
4 this transaction is in the public interest?

5 A. Yes, I can. Lightyear has a very limited presence  
6 in Utah, serving only 45 residential customers of which 41 are  
7 long distance customers only and 19 business customers of  
8 which 15 are long distance only. The transaction will advance  
9 lonex's economic efficiency and allow us to achieve certain  
10 economies of scale, which would put us in a position both to  
11 expand the offerings available to Utah customers and to bring  
12 our services to a broader customer base. Of course, robust  
13 competition in telecommunication services is in itself a public  
14 interest, and as a result of this acquisition we hope to be well  
15 positioned as a competitive provider in Utah. As stated in our  
16 application, the transaction will be conducted in a way that is  
17 virtually transparent to our (inaudible) customers except that  
18 their billing will now be handled by us. They will continue to  
19 receive the same service offerings, rates, terms and conditions  
20 and quality of service that they currently receive.

21 Q. Thank you, Mr. Bunce.

22 MR. EVANS: Mr. Bunce is now available for cross.

23 THE COURT: Thank you. Mr. Jetter, any  
24 questions?

25 MR. JETTER: I have no questions, Your Honor.

1 Thank you.

2 THE COURT: Mr. Bunce, I just have one question  
3 for you and it relates to the consent decree that you're waiting  
4 for from the FCC. Did I understand you correctly that that is  
5 expected imminently, and do you have any more information on  
6 when you're expecting that?

7 MR. BUNCE: The best information I have is last  
8 Friday they were looking for--they were looking for Birch to sign  
9 off on a three year requirement--reporting requirement that were  
10 in the consent decree that would be required of Lightyear but for  
11 this acquisition transaction. So Birch agreed and was  
12 discussing last week the nature of that. And as of Friday--we  
13 were informed that if we got that information to them as of last  
14 Friday, then they would--then they would still, to the best  
15 information, be able to provide that approval prior to September  
16 27th, the anticipated closing date.

17 THE COURT: Okay. Thank you. I don't have any  
18 further questions. Mr. Evans?

19 MR. EVANS: Let's call John Greive, please.

20 THE COURT: Mr. Greive, are you on the line?

21 MR. GREIVE: Yes, I am.

22 THE COURT: Thank you, sir. Could you please  
23 raise your right hand?

24 MR. GREIVE: Okay.

25 THE COURT: And do you swear that the testimony

1 you're about to give is the truth?

2 MR. GREIVE: Yes, I do.

3 THE COURT: Thank you.

4 JOHN GRIEVE, having first been duly sworn,  
5 testified upon his oath as follows:

6 DIRECT EXAMINATION

7 BY-MR.EVANS:

8 Q. Good morning, Mr. Greive. For the record, would  
9 you please state your name, business address and your  
10 position at Lightyear Network Solutions.

11 A. I'm John Greive, Vice President and general  
12 counsel for Lightyear Network (inaudible). My office address is  
13 1901 East Point Parkway, Louisville, Kentucky, 40223.

14 Q. And how long have you held that position at  
15 Lightyear?

16 A. I've been general counsel for Lightyear and its  
17 subsidiaries since 2004. Prior to that, I was general counsel for  
18 Lightyear's predecessor company.

19 Q. Have you reviewed the joint notification filed by  
20 Ionex and Lightyear in this docket?

21 A. Yes, I have.

22 Q. And do you have personal knowledge of the matters  
23 set out in the notification?

24 A. Yes, I do.

25 Q. Are you the officer from Lightyear who signed the



1 verified notification?

2 A. Yes.

3 Q. Mr. Greive, to the extent that approval is required  
4 from the Utah Commission, as opposed to notification, are you  
5 asking the Commission to approve this transaction pursuant to  
6 Rule 746-349-7?

7 A. Yes, I am.

8 Q. Is Lightyear Network Solutions serving as an iliac  
9 anywhere in the state of Utah?

10 A. No, it is not.

11 Q. Were you present on the telephone and did you  
12 hear Mr. Bunce's testimony this morning?

13 A. Yes.

14 Q. Apart from the information contained in the exhibits  
15 and the information offered by Mr. Bunce, do you have any  
16 changes or corrections to make to the joint application?

17 A. No, I don't have any changes or corrections but I  
18 can update the Commission on the status of the domestic  
19 authorization at the FCC.

20 Q. Please, tell us what - please update us.

21 A. Yes. Lightyear's been subject to an FCC  
22 investigation with respect to the timing of its universal service  
23 reporting of payments in 2008. We've been in discussions with  
24 the FCC in the last several months and have reached a  
25 resolution. We agree that it is subject to a consent decree that

1 should be issued sometime this week. When that decree is  
2 issued, the domestic portion of the application will also be  
3 granted. And we expect that to occur soon, within the next few  
4 days.

5 Q. Okay. Have you received or are you aware of any  
6 opposition from third parties or the public to the FCC  
7 application?

8 A. No, I am not.

9 Q. Have you received or are you aware of any  
10 opposition from third parties or the public to any application for  
11 approval filed with any state commission?

12 A. No.

13 Q. Are you--have you received or are you aware of  
14 notices or correspondence from state commissions denying the  
15 application?

16 A. No, I'm not.

17 Q. Mr. Greive, will you please offer a summary of why  
18 you believe this transaction's in the public interest?

19 A. The transfer of Lightyear's assets and customers to  
20 Birch, Inc's economic efficiency, enhance competition in Utah  
21 among competitive local exchange carriers and bring customers  
22 the benefits of both. Lightyear's customers will receive from  
23 Ionex the same services and quality of service they've come to  
24 expect without any interruption. There's no change to service  
25 offerings, rates or terms of conditions. Every customer will

1 receive notification of the change, but otherwise the change of  
2 providers should be virtually transparent to them. I believe that  
3 this transfer to Ionex is in the public interest and the  
4 Commission should approve it.

5 Q. Okay. Thank you.

6 MR. EVANS: Mr. Greive is available for cross  
7 examination.

8 THE COURT: Mr. Jetter, any questions?

9 MR. JETTER: I have no questions. Thank you.

10 THE COURT: I have no questions.

11 MR. EVANS: Okay. I would request that Ionex  
12 Lightyear Joint Exhibits 1 through 3 be received into evidence.

13 THE COURT: Any objection?

14 MR. JETTER: No objections.

15 THE COURT: Okay. They are so admitted.

16 (JOINT EXHIBITS NOS 1, 2, 3 ARE RECEIVED INTO  
17 EVIDENCE)

18 THE COURT: Any other witnesses?

19 MR. EVANS: No other witnesses for us.

20 THE COURT: Okay. Mr. Greive, thank you for your  
21 testimony. You are excused. Mr. Jetter?

22 MR. JETTER: Thank you, Your Honor. The  
23 Division would like to call our witness Ron Slusher.

24 THE COURT: Mr. Slusher, thank you. Do you  
25 swear that the testimony you're about to give is the truth?

1 MR. SLUSHER: Yes.

2 THE COURT: Thank you. You may proceed.

3 MR. JETTER: Thank you.

4 RON SLUSHER, having first been duly sworn,  
5 testified upon his oath as follows:

6 DIRECT EXAMINATION

7 BY-MR.JETTER:

8 Q. Mr. Slusher, would you please state your name and  
9 occupation for the record?

10 A. Ron Slusher. S as in Sam-l-u-s-h-e-r. I'm a utility  
11 technical consultant for the Division of Public Utilities.

12 Q. Thank you. Mr. Slusher, have you had an  
13 opportunity to review the joint notification of transfer between  
14 Ionex, Birch Communications and Lightyear Network Solutions?

15 A. Yes, I have.

16 Q. And did you prepare a memorandum filed by the  
17 Division of Public Utilities dated August 30th, 2013?

18 A. Yes, I did.

19 Q. Have you had an opportunity to review the three  
20 joint exhibits labeled Ionex/Lightyear Joint Exhibits 1, 2 and 3  
21 respectively?

22 A. Yes, I did.

23 Q. And has anything in those exhibits caused you to  
24 change any of your opinions in your memo filed August 30th,  
25 2013?

1 A. They have not.

2 Q. And so in light of those exhibits as well as all the  
3 filings of this docket, does the recommendation made in your  
4 memorandum remain the recommendation of the Division of  
5 Public Utilities?

6 A. It does.

7 MR. JETTER: I think at this time I'd like to request  
8 that we take--take judicial--or I guess administrative notice of  
9 the Division's memo.

10 THE COURT: So noted, Mr. Jetter.

11 MR. JETTER: Thank you.

12 BY MR. JETTER

13 Q. Mr. Slusher, did you treat this joint notification in  
14 the same way that you've treated applications and consider it an  
15 application?

16 A. Yes, I did.

17 Q. Do you believe that approval of this application is  
18 just and reasonable and is in the public interest?

19 A. Yes.

20 Q. Are you aware of any opposition from any party to  
21 approval of this?

22 A. Have not seen or heard of any opposition.

23 Q. Thank you. Is there anything else that you would  
24 like to add to the record today?

25 A. No.

1 Q. Thank you. With that, I have no further questions.

2 THE COURT: Thank you, Mr. Jetter. Thank you,  
3 Mr. Slusher. Any questions?

4 MR. EVANS: No, thank you.

5 THE COURT: Okay. No questions either from the  
6 Commission. Is there anyone here today who wishes to raise  
7 any issue or objection regarding the pending application?  
8 Hearing no objection, the Commission assumes there is none  
9 and Mr. Evans are there any questions before we conclude this  
10 hearing?

11 MR. EVANS: No, just to comment that if no  
12 objection to the transaction is submitted that the Commission  
13 will presume that it is in public interest and so we would--having  
14 no objections or intervention in this docket, request that the  
15 notification be treated as an application and that it be approved.

16 THE COURT: Yes, sir. We will do so. We will do  
17 so once we get the transcript transcribed, and we'll hopefully  
18 get that underway here shortly. I, again, apologize for the delay  
19 regarding that issue this morning and thank you for your  
20 patience and we'll be off the record and we'll have an order for  
21 you in due course. Thank you.

22 MR. EVANS: Thank you.

23 (PROCEEDING CONCLUDED)  
24  
25

## 1 CERTIFICATE

2  
3 STATE OF UTAH )

4 : ss.

5 Salt Lake County )  
6

7 I, Jayme Mackay, do hereby certify that the  
8 foregoing pages contain a true and accurate transcript of the  
9 electronically recorded proceedings and was transcribed by me  
10 to the best of my ability from the audio files furnished to me.  
11

12 DATED this 25th day of September, 2013.  
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16 Jayme Mackay  
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