

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

-----  
In the Matter of the Application for )  
Approval of the Transfer of Control of )  
Ionex Communications North, Inc., )  
Debtor-in-Possession )  
)

DOCKET NO. 06-2330-01  
ORDER APPROVING INDIRECT  
TRANSFER OF CONTROL

-----  
SYNOPSIS

The Commission finds the proposed indirect transfer of control of Ionex Communications North, Inc., to be in the public interest and approves the same.

-----  
ISSUED: March 23, 2006

By The Commission:

PROCEDURAL HISTORY

On February 22, 2006, Ionex Communications North, Inc., Debtor-in-Possession (“Ionex North” or “Company”) filed an Application for Approval of the Indirect Transfer of Control (“Application”) of Ionex North pursuant to *Utah Code Ann.* § 54-4-28. The Application states the corporate parent of Ionex North, Birch Telecom, Inc., Debtor-in-Possession (“Birch”) will soon emerge from the Chapter 11 reorganization process with control of Birch transferring to a new group of shareholders, resulting in an indirect transfer of control of Ionex North. The Company requests expedited treatment of the Application to permit consummation of the proposed transactions as soon as possible.

On March 8, 2006, the Division of Public Utilities (“Division”) filed a memorandum of its investigation of the proposed indirect transfer recommending approval of the same.

DISCUSSION, FINDINGS, AND CONCLUSIONS

Ionex North is a South Dakota corporation with its principal place of business in Kansas City, Missouri. Its ultimate parent, Birch, through its twenty-eight direct and indirect subsidiaries, provides small and medium-sized business customers with comprehensive voice and data services. In Utah, Ionex North is authorized to provide facilities-based and resold local and interexchange telecommunications services pursuant to a Certificate of Public Convenience and Necessity (“Certificate”) issued by the Commission in Docket No. 00-2300-01 on October 24, 2000.

Beginning in 2004, Birch began to experience liquidity problems due, in part, to price competition, customer turnover, and changes in federal telecommunications policies. Unable to negotiate a prepackaged restructuring agreement with certain lenders and stockholders, Birch and its subsidiaries each filed voluntary petitions for relief with the United States Bankruptcy Court for the District of Delaware under Chapter 11 of the U.S. Bankruptcy Code on August 12, 2005.

Pursuant to the Reorganization Plan, control of Birch and, consequently, the indirect control of Ionex North, will transfer from the existing shareholders of Birch to the shareholders of a resulting Birch entity. This transfer of control will be transparent to Ionex North’s Utah customers. The Reorganization Plan, moreover, contemplates that the existing Ionex North management team will remain in place upon emergence from the reorganization process.

Ionex North asserts the indirect transfer of control serves the public interest because the Company’s exit from the bankruptcy process will sustain and increase competition in the telecommunications market by strengthening the financial status of Ionex North. The

customers of Ionex North will continue to receive service under the same rates, terms, and conditions as they currently do. The change in ownership will not result in a change of carrier for Ionex North customers or in any transfer of authorizations. Ionex North does not intend to change its name post-reorganization.

*Utah Administrative Code* Rule 746-110-1, authorizes the Commission to adjudicate a matter informally under *Utah Code Ann.* § 63-46b-5 when the Commission “determines that the matter can reasonably be expected to be unopposed and uncontested.” We note that a month has passed since Ionex North filed its Application yet no party has sought intervention in this matter. We therefore view this matter as unopposed and uncontested and conclude it is in the public interest to proceed informally without hearing. Pursuant to Rule 746-110-2, we conclude good cause exists to waive the 20-day tentative period for an order issued in an informally adjudicated proceeding. Accordingly, this order will become effective on the date of issuance.

Based upon the evidence submitted by Ionex North, as well as the Division’s recommendation, and pursuant to *Utah Code Ann.* § 54-4-28, we find and conclude that the proposed indirect transfer of control will not harm and can provide benefits to the State of Utah, its citizens, or the Utah customers of Ionex North and is in the public interest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. This matter be, and it is, converted to an informal proceeding pursuant to §63-46b-4(3), UCA 1953, as amended.
2. The proposed indirect transfer of control of Ionex Communications North, Inc., is approved.

3. The transfer herein effected be, and it is, effective the date of this Order.

Pursuant to Utah Code §§63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the effective date of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code §§63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 23<sup>rd</sup> day of March, 2006.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#48235