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**BEFORE THE PUBLIC SERVICE
COMMISSION OF UTAH**

In the matter of the Application of Ionex)
Communications North, Inc. dba Birch)
Communications for Certificate of Public)
Convenience and Necessity to provide)
telecommunications services in the state of)
Utah)

Docket No. _____

APPLICATION FOR CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

Ionex Communications North, Inc. dba Birch Communications (“Ionex” or “Applicant”),
by its undersigned counsel and pursuant to Chapter 8b of Title 54 of the Utah Code, Utah
Admin. Code §§ 746-100 *et. seq.*, and the rules and regulations of the Utah Public Service
Commission (“Commission”), hereby respectfully applies for a Certificate of Public
Convenience and Necessity to Provide Telecommunications Services in the State of Utah. The
Applicant submits the following information in support of this Application:

1. Applicant’s legal name is Ionex Communications North, Inc. dba Birch
Communications. Its principal place of business is located at:

2300 Main Street, Suite 340
Kansas City, MO 64108
816-300-3000 (telephone)
1-888-772-4724 (toll-free)
816-300-3350 (facsimile)
www.birch.com

2. R746-349-3(A)(16). Proof of authority to conduct business. Ionex is a South Dakota corporation with its corporate headquarters located at 2300 Main Street, Suite 340, Kansas City, MO 64108. Ionex is a subsidiary of Birch Communications, Inc., a Georgia corporation. A copy of Ionex's articles of incorporation and bylaws are attached as **Exhibit 1**. A copy of Ionex's authority to transact business in the state of Utah as a foreign corporation is attached as **Exhibit 2**. A copy of Ionex's registration of its business name is attached as **Exhibit**

3.

3. Communications related to this Application should be directed to:

Angela F. Collins
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1990 K St. NW, Suite 950
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202-862-8930 (telephone)
866-814-6583 (facsimile)
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4. Questions regarding ongoing operations should be directed to:

Tara Jackson
Senior Manager – Legal, Regulatory, Security and Fraud
2300 Main Street, Suite 340
Kansas City, MO 64108
816-300-3000 (telephone)
816-300-3350 (facsimile)
tara.jackson@birch.com

5. Ionex's registered agent in Utah is:

Corporation Service Company
2180 South 1300 East, Suite 650
Salt Lake City, UT 84106

6. R746-349-3(A)(3). Facilities to be used. Ionex will not own any switching or other facilities in Utah, but will utilize facilities and switches located in other portions of its operating service territory. Ionex will utilize a mix of its own facilities, unbundled network

elements (UNEs) or UNE-replacement services from incumbent local exchange carriers (ILECs), and other ILEC-provided services to provide local exchange and interexchange services in Utah. Applicant already has an existing interconnection agreement in place with Qwest; Applicant will seek to add Utah to that existing agreement.

7. R746-349-3(A)(4). Services to be offered.

7(a). R746-349-3(A)(4)(a). Classes of customers. Ionex proposes to offer local exchange and interexchange telecommunications services to both residential and business customers in the state of Utah.

7(b). R746-349-3(A)(4)(a). Location of service. Ionex seeks authority to offer interexchange and local exchange service statewide, with the exception of exchange areas with less than 5,000 access lines that are owned or controlled by an ILEC with fewer than 30,000 total access lines in accordance with Utah Code Ann. § 54-8b-2.1(3) and (4).

7(c). R746-349-3(A)(4)(c). Services offered. Ionex seeks authority to provide all types of resold- and facilities-based interexchange and local exchange service to and from all points in Utah that are or become open to competition. Ionex is specifically seeking authorization as a facilities- and reseller-based provider of interexchange and local exchange services in the service area of Qwest. The Applicant does seek statewide authority so that it may expand to the service areas of other future or existing LECs when they become open to competition.

8. R746-349-3(A)(5). Access to standard services. Ionex will have interconnection agreements with Qwest, and will obtain services such as operator services, directory assistance, directory listings, and emergency services such as 911 and E911. Ionex has existing interconnection agreements with Qwest and will seek to add Utah to those agreements.

9. R746-349-3(A)(7). Professional experience and education of managerial personnel and personnel who will have responsibilities for Utah operations. Ionex does not plan to operate an office in Utah. Ionex's existing management team will handle Utah operations from its offices in Missouri and Georgia. The resumes of Ionex's officers and directors are attached as **Exhibit 4**.

10. R746-349-3(A)(1), R746-349-3(A)(9)-(12). Financial ability. Ionex has sufficient financial ability and access to capital to provide the proposed telecommunications services in Utah.

10(a). R746-349-3(A)(9). Chart of Accounts. Ionex's chart of accounts, including account numbers, names and brief descriptions is attached as **Exhibit 5**. The information provided in **Exhibit 5** is proprietary and confidential. As such it has been submitted separately, under seal, in an envelope marked "**Confidential--Subject to Utah Rule R746-100-16.**" Ionex respectfully requests that this sensitive trade secret information be treated as confidential and not made available for public inspection, absent prior permission from Ionex.

10(b). R746-349-3(A)(10)(a)-(d). Financial statements. Ionex and its affiliates have been providing telecommunications services since 1996 and are authorized to provide telecommunications services in 42 states and the District of Columbia. This provision and expansion of service have provided a solid financial basis for Ionex to operate and expand its business. Financial statements demonstrating Ionex's financial ability, along with an attestation as to their accuracy, integrity, and objectivity, are attached as **Exhibit 6**. The information provided in **Exhibit 6** is proprietary and confidential. As such it has been submitted separately, under seal, in an envelope marked "**Confidential – Subject to Utah Public Service Commission Rule R746-100-16.**" Ionex respectfully requests that this sensitive trade secret information be

treated as confidential and not made available for public inspection, absent prior permission from Ionex.

10(c). R746-349-3(A)(11)(b). Sufficient projected and verifiable cash flow. See Section 11, below.

10(d). R746-349-3(A)(2), R746-349-3(A)(11)(c). Bond requirement. Ionex respectfully requests a waiver of the bond requirement in R746-349-3(A)(2). Ionex will not require advance customer deposits in the state of Utah, and has a strong financial position and thus the risk to Utah customers is limited.

11. R746-349-3(A)(12). Five-year projection of expected operations.

11(a). R746-349-3(A)(12)(a). Income and cash flow statements. Ionex's pro forma income statements and pro forma cash flow statements are attached as **Exhibit 7**. The information provided in **Exhibit 7** is proprietary and confidential. As such it has been submitted separately, under seal, in an envelope marked "**Confidential-Subject to Utah Rule R746-100-16.**" Ionex respectfully requests that this sensitive trade secret information be treated as confidential and not made available for public inspection, absent prior permission from Ionex.

11(b). R746-349-3(A)(12)(b). Types of technology to be deployed in Utah. Ionex will not own any switching or other facilities in Utah, but will utilize its facilities and switches located in other portions of its operating service territory. Ionex will utilize a mix of its own facilities, unbundled network elements (UNEs) or UNE-replacement services from incumbent local exchange carriers (ILECs), and other ILEC-provided services to provide local exchange and interexchange services in Utah. Applicant already has an existing interconnection agreement in place with Qwest. Applicant will seek to add Utah to that existing agreement.

11(c). R746-349-3(A)(12)(c). Maps of proposed locations of facilities. As stated above, Ionex will not own a switching or other facilities in Utah, and thus this is not applicable.

12. R746-349-3(A)(6), R746-349-3(A)(13). Implementation schedule. Ionex proposes to begin providing services in Utah as soon as it is authorized to do so.

13. R746-349-3(A)(1), R746-349-3(A)(14). Sufficient managerial and technical ability to provide telecommunications services. Ionex is technically and managerially qualified to provide the services for which authority is requested in this Application. Ionex offers a variety of products, services, and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services. Ionex and its affiliates have been offering telecommunications services since 1996. Ionex’s management team has more than 100 years combined experience operating a telecommunications business.

Further, Ionex and its affiliates currently are certified to provide telecommunications services in 43 states: Alabama, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Rhode Island, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin, and Wyoming. Ionex and its affiliates currently have pending applications for authority to provide telecommunications service in Connecticut, Idaho, and Nevada. Neither Ionex nor its affiliates have been denied an application for authority to operate telecommunications services.

14. R746-349-3(A)(1), R746-349-3(A)(15). Public interest. Ionex's entry into the Utah marketplace would be in the public interest. Ionex's entry into the local and long distance market will increase the competitive pressure felt by the existing local and interexchange carriers, spurring them to lower costs and improve services. Numerous companies in Utah will compete with Ionex, if granted authorization to provide service in Utah, thus increasing competitive choice for consumers.

15. R746-349-3(A)(17). Complaints or investigations of unauthorized switching, or other illegal activities of the applicant or any of its affiliates. See **Exhibit 8** for this information.

16. R746-349-3(A)(17). Written policies regarding the solicitation of new customers and efforts to prevent unauthorized switching. Ionex has detailed anti-slamming measures in place and routinely uses third-party verification ("TPV") to verify carrier change requests in accordance with federal and state requirements. After TPV is used to verify a carrier change request, Ionex customer service personnel often conduct recorded, follow-up conversations with the customer to confirm the switch and for quality assurance purposes.

Ionex takes slamming allegations very seriously. It is Ionex's policy to deal directly with the customer and take any necessary action prior to a complaint being filed. In 2008, Ionex modified its TPV script to have the customer specifically confirm each of the services to be switched. Ionex further revised its TPV script in September 2010 to have the customer explicitly acknowledge that each of the telephone numbers associated with its account will be switched to Ionex. Ionex customer service personnel also continue to conduct recorded, follow-up conversations with new customers to confirm the switch and verify that the customer understands Ionex will now serve as its carrier for all applicable services and all applicable telephone numbers.

WHEREFORE, Ionex Communications North, Inc. dba Birch Communications respectfully requests that the Commission grant a Certificate of Public Convenience and Necessity to provide telecommunications services in the state of Utah.

Respectfully submitted,
IONEX COMMUNICATIONS NORTH, INC.
DBA BIRCH COMMUNICATIONS

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Birch Communications

Dated this 5th day of March, 2013