

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Ionex)
Communications North, Inc. dba Birch) DOCKET NO. 13-2563-01
Communications for Certificate of Public)
Convenience and Necessity to Provide) REPORT AND ORDER
Telecommunications Services in the State of)
Utah)

ISSUED: April 5, 2013

SYNOPSIS

By this Report and Order, the Commission converts this matter to an informally adjudicated matter. Additionally, the Commission approves the application of Ionex Communications North, Inc. dba Birch Communications for a Certificate of Public Convenience and Necessity authorizing applicant to compete as a Competitive Local Exchange Carrier within Utah.

By The Commission:

PROCEDURAL HISTORY

Ionex Communications North, Inc. dba Birch Communications (“Applicant”) filed its application on March 8, 2013, seeking a certificate of public convenience and necessity (“Certificate”) for authority to compete as a telecommunications corporation providing facilities-based and resold local exchange, access, and interexchange telecommunications service throughout all of Utah. The application contains detailed information regarding the technical, financial, and managerial resources and abilities of Applicant to provide the public telecommunication services it seeks to offer.

On April 4, 2013, the Division of Public Utilities (“Division”) filed a memorandum recommending approval of the application. The Division has reviewed verified financial statements showing Applicant to have a positive net worth and to have ample working capital. The Division believes Applicant’s management team has adequate experience in the telecommunications industry. The Division reports Applicant seeks authority as a reseller of local exchange services in the service areas of CenturyLink and any other existing or future local exchange carrier providing service in Utah. Applicant represents it intends to negotiate with CenturyLink for an interconnection agreement. Applicant, according to the Division, does not plan to construct any facilities in the state. Applicant represents it will provide access to local exchange, toll, operator services, directory assistance, directory listings, and emergency services such as 911 and E911 either through facilities-based interconnection or through resale services purchased directly from CenturyLink.

As noted in the Division’s memorandum, Applicant asserts approval of its application will serve the public interest, enhance competition, and expand customer options. According to Applicant, it has had several complaints over the past three years and all have been resolved without sanctions imposed against the Applicant. Applicant states it has implemented policies and procedures concerning solicitation of new customers. These policies require customers sign a contract authorizing the Applicant to provide telecommunications services.

The Division recommends the Commission waive the requirement that Applicant file proof of a \$100,000 bond, because Applicant will not require customer deposits or prepayments of any kind.

The Division expects the application will be unopposed and uncontested; therefore, the Division recommends the Commission adjudicate this application informally per Utah Administrative Code R746-110-1.

In light of the foregoing, the Commission enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. This matter can be reasonably expected to be unopposed and uncontested. There are no intervenors and no opposition to the application.
2. Applicant has filed sworn statements or other supporting documents containing the necessary information in support of the application.
3. Applicant has demonstrated it is qualified to do business in Utah.
4. Applicant requests the Commission grant the Certificate authorizing it to provide public telecommunications services within Utah.
5. Applicant initially proposes to provide public telecommunications service in Utah, within the CenturyLink service area, and that is the extent to which Applicant is granted authority through this order. If Applicant wants to provide public telecommunications service outside of the CenturyLink service area, Applicant must submit a new application demonstrating that granting Applicant additional service area is in the public interest.
6. Applicant will utilize its managerial expertise to support its Utah operations.

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7. Applicant has sufficient technical resources and abilities to provide the public telecommunications services it desires to offer.
8. Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses, and to implement its business plans.
9. In providing intrastate services, Applicant will be subject to competition from other certified telecommunications service providers.
10. Applicant's service offerings will provide customers with a wider range of choice in meeting their telecommunications needs and will support the development of competition.
11. Applicant will not require customer deposits or offer any prepaid services in Utah.
12. Applicant has applied for waiver of the \$100,000 bond.

CONCLUSIONS OF LAW

1. This matter should be adjudicated informally, without a hearing.
2. Applicant meets each of the statutory requirements of Utah Code Ann. §§ 54-8b-1.1 *et seq.* for the requested Certificate.
3. The requested exemption from the \$100,000 bond requirement is in accord with Commission practice, and is in the public interest.
4. Issuance of the requested Certificate to provide public telecommunications services, as described in the application, is in accord with the legislative policy set forth in Utah Code Ann. §§ 54-8b-1.1 *et seq.*, and is in the public interest.

5. Restricting the Applicant's Certificate to exclude those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state is in the public interest.

ORDER

The Commission, in light of the Findings and Conclusions above, ORDERS:

- a. The application shall be adjudicated informally;
- b. Applicant is granted the Certificate attached hereto as Exhibit A, which exhibit is incorporated by reference into this Order, as if set forth here;
- c. Applicant shall provide reports to the Commission and to the Division as set forth in Exhibit B, which exhibit is incorporated by reference into this Order, as if set forth here;
- d. The reporting requirements in Exhibit B shall be binding upon Applicant until modified by the Commission;
- e. Applicant shall be exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B;
- f. The bond requirement is waived;
- g. Any person may file a protest prior to this order's effective date (20 days from its issuance) and, if the Commission finds the protest to be meritorious, the effective date shall be suspended pending further proceedings. Otherwise, this order shall take effect 20 days from its issuance.

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DATED at Salt Lake City, Utah this 5th day of April, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#243152

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance 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 Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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EXHIBIT A

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Ionex
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Communications for a Certificate of Public
Convenience and Necessity to Provide
Telecommunications Services in the State of
Utah

DOCKET NO. 13-2563-01

CERTIFICATE 2563

ISSUED: April 5, 2013

By The Commission:

The Public Service Commission of Utah, pursuant to Utah Code Ann. § 54-8b-2.1, issues a Certificate of Public Convenience and Necessity authorizing Ionex Communications North, Inc. dba Birch Communications to provide public telecommunications service within the State of Utah, excluding those local exchanges of less than 5,000 access lines that are owned or controlled by an incumbent telephone corporation with fewer than 30,000 lines in the state.

DATED at Salt Lake City, Utah, this 5th day of April, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary

EXHIBIT B

I. Annual Report: Ionex Communications North, Inc. dba Birch Communications (“Grantee”) shall file an Annual Report, on or before March 31 of each year, unless said Grantee requests and obtains an extension. The Annual Report shall contain the following:

A. **Annual Revenues** from operations attributable to the State of Utah by major service categories.

Such information shall be provided on a “Total Utah” and “Utah Intrastate” basis. “Total Utah” will consist of the total of interstate and intrastate revenues. “Utah Intrastate” will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

1. private line and special access,
2. business local exchange,
3. residential local exchange,
4. measured interexchange, and
5. vertical services.

Business local exchange, residential local exchange and vertical service revenue shall be reported by geographic area, to the extent feasible.

B. **Annual Expenses and Estimated Taxes** attributed to operations in the State of Utah.

Year End Balances by Account for Property, Plant, Equipment, Annual Depreciation, and Accumulated Depreciation for telecommunications investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

- C. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business.

These financial statements shall at a minimum include an income statement, balance sheet, and statement of cash flows.

- D. **List of Services** offered to customers and the geographic areas in which those services are offered.

This list shall be current and shall be updated whenever a new service is offered or a new area is served.

- E. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.

- F. **Number of Messages and Minutes of Services** for measured services billed to end users.

- G. **List of Officers and Responsible Contact Personnel** updated annually.

- H. **Chart of Accounts.**

In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee shall also work with

the Division in good faith to develop a method of estimating intrastate expenses and investments.

II. Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations. Grantee shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

§ 54-3-8, § 54-3-19	Prohibitions of discrimination
§ 54-7-12	Rate increases or decreases
§ 54-4-21	Establishment of property values
§ 54-4-24	Depreciation rates
§ 54-4-26	Approval of expenditures

B. Waivers of Regulations

R746-340-2(D)	Uniform System of Accounts (47 C.F.R. 32)
R746-340-2(E)(1)	Tariff filings required
R746-340-2(E)(2)	Exchange maps
R746-344	Rate case filing requirements

R746-401	Reporting of construction, acquisition and disposition of assets
R746-405	Tariff formats
R746-600	Accounting for post-retirement benefits

III. Obligations with Respect to Provision of Services. Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

- A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.
- B. Grantee will only be responsible for the operation and maintenance of services that it provides.

IV. Modification: It is anticipated that, to the extent the foregoing requirements impact competitive entry or impact effective competition, they will be subject to the rule making requirements of Utah Code Ann. § 54-8b-2.2. In such case, the provisions set forth herein shall be superseded by any such rule adopted by the Commission.

CERTIFICATE OF SERVICE

I CERTIFY that on the 5th day of April, 2013, a true and correct copy of the foregoing REPORT AND ORDER was served upon the following as indicated below:

By Electronic-Mail:

Angela F. Collins (acollins@cahill.com)

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By Hand-Delivery:

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