

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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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 )  
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DOCKET NO. 13-2563-04  
ORDER APPROVING TRANSFER OF  
CUSTOMERS AND CERTAIN ASSETS

ISSUED: October 9, 2013

By The Commission:

This matter is before the Commission on the joint application of Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and Lightyear Network Solutions, LLC (“Lightyear”) (collectively, “Applicants”) for approval pursuant to which Ionex will acquire the customers and substantially all telecommunications assets of Lightyear. Applicants filed for Commission approval on August 14, 2013. The application contains all the information required by Utah Admin. Code R746-349-7(A)(1).<sup>1</sup>

Pursuant to Utah Code Ann. § 54-4-30, the Commission issued a notice of application and notice of hearing on August 15, 2013, allowing for the submission of comments by any interested party regarding the application. No comments or objections were received.

On September 3, 2013, in response to a Commission action request, the Division of Public Utilities (“Division”) submitted a recommendation to approve the application. The Division’s memo states: “The Division . . . has reviewed the joint application between Ionex . . . and Lightyear . . . and believes that the transfer of control is in the public interest. . . . As a result

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<sup>1</sup> At hearing, Applicants supplemented their joint application with testimony and exhibits. In addition, a post-hearing filing was made on September 27, 2013, noting that on September 26, 2013, the FCC issued a Public Notice that Section 214 Domestic Authorization has been granted for this transaction. Taken together, these filings satisfy Utah Admin. Code R746-349-7(A)(1).

of the acquisition, . . . Ionex will be able to provide the telecom services that were being provided by Lightyear without interruption to the current customers.”<sup>2</sup>

On September 23, 2013, the Administrative Law Judge (“ALJ”) for the Commission held a hearing, pursuant to Utah Code Ann. § 54-4-30. William J. Evans appeared on behalf of the Applicants and was joined, telephonically, by Angela Collins, counsel for Applicants; Christopher Bunce, Junior Vice President and General Counsel for Ionex; and John Greive, Vice President and General Counsel for Lightyear. Justin Jetter, Utah Assistant Attorney General, appeared for the Division, and was accompanied by Ron Slusher, Utility Technical Consultant for the Division.

The ALJ took administrative notice of the memorandum filed by the Division recommending approval and accepted into evidence several supplemental exhibits submitted by Applicants. Mr. Bunce testified on behalf of Ionex and offered the following summary of why the transaction is in the public interest:

Lightyear has a very limited presence in Utah, serving only 45 residential customers of which 41 are long distance customers only and 19 business customers of which 15 are long distance only. The transaction will advance Ionex’s economic efficiency and allow us to achieve certain economies of scale, which would put us in a position both to expand the offerings available to Utah customers and to bring our services to a broader customer base. Of course, robust competition in telecommunication services is in itself a public interest, and as a result of this acquisition we hope to be well[-]positioned as a competitive provider in Utah. As stated in our application, the transaction will be conducted in a way that is virtually transparent to our . . . customers except that their billing will now be handled by us. They will continue to receive the same service offerings, rates, terms and conditions and quality of service that they currently receive.

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<sup>2</sup> Division Memo at 1-2, filed September 3, 2013.

Transcript of Hearing at 14, lines 5-20. Mr. Greive offered the following testimony on behalf of Lightyear as to why the transaction is in the public interest:

The transfer of Lightyear's assets and customers to [Ionex advance] . . . economic efficiency, enhance competition in Utah among competitive local exchange carriers and bring customers the benefits of both. Lightyear's customers will receive from Ionex the same services and quality of service[s] they've come to expect without any interruption. There's no change to service offerings, rates or terms of conditions. Every customer will receive notification of the change, but otherwise the change of providers should be virtually transparent to them. I believe that this transfer to Ionex is in the public interest and the Commission should approve it.

Id. at 18, lines 19-25; 19, lines 1-4.

Mr. Slusher testified on behalf of the Division in support of the application. Mr. Slusher further testified that "approval of this application is just and reasonable[,] and is in the public interest. Id. at 21, lines 17-19. No one appeared at the hearing objecting to the application.

Under Utah Admin. Code R746-349-7, "[i]f no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order." Utah Admin. Code R746-349-7(A)(3). Because there is no objection to the granting of the application, the Commission thus presumes the application for approval of the transfer of customers and certain assets is in the public interest. Moreover, the Division's memoranda and testimony provide additional support for approval of the application.

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ORDER

For the foregoing reasons, the Commission approves the transfer of customers and certain assets of Lightyear Network Solutions, LLC to Ionex Communications North, Inc. dba Birch Communications.

DATED at Salt Lake City, Utah, this 9<sup>th</sup> day of October, 2013.

/s/ Melanie A. Reif  
Administrative Law Judge

Approved and confirmed this 9<sup>th</sup> day of October, 2013, as the Order Approving Transfer of Customers and Certain Assets issued by the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#247754

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.

CERTIFICATE OF SERVICE

I CERTIFY that on the 9<sup>th</sup> day of October, 2013, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic-Mail:

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