



State of Utah  
Department of Commerce  
Division of Public Utilities

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**MEMORANDUM**

**To:** Public Service Commission

**From:** Division of Public Utilities  
Chris Parker, Director  
Bill Duncan, Telecommunications / Water Manager  
Ron Slusher, Utility Technical Consultant

**Date:** May 13, 2014

**Re:** In the Matter of the Joint Application of Ionex Communications North, Inc. dba Birch Communications and dishNET Wireline, LLC dba Liberty-Bell Telecom for Approval to Transfer Assets and Customers to Ionex Communications North, Inc. dba Birch Communications, Docket Number 14-2563-01.

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**RECOMMENDATION (Approve):**

The Division has reviewed the joint application between Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and dishNET Wireline, LLC dba Liberty-Bell Telecom (“dishNET”) (together the “Applicants”) for Approval to Transfer Assets and Customers to Ionex Communications North, Inc. dba Birch Communications and believes that the transfer of control is in the public interest. As a result of the acquisition, the Companies should be in a better position to provide expanded and advanced telecommunications services in the State of Utah.

The Division expects that based on history that a filing of this type and with the information submitted by the company there will be no objections or opposition to this recommendation. Therefore, the Division request that this docket be adjudicated informally in accordance with R746-349-7.

**EXPLANATION:**

On or about April 22, 2014, Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and dishNET Wireline, LLC dba Liberty-Bell Telecom (“dishNET”) notified the Commission of a transaction, which will result in a transfer of control of dishNET to Ionex.

Ionex is a South Dakota corporation with principal offices located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. Ionex is authorized by the Public Service Commission to provide local exchange and interexchange telecommunications services in Utah under Docket number 13-2563-01 on April 05, 2013. They are a wholly-owned subsidiary Birch Communications, Inc. Birch Communications, Inc. (“BCI”) and its subsidiaries are currently authorized to provide local exchange telecommunications services in all 50 states and the District of Columbia.

dishNET is a Colorado limited liability company with corporate headquarters at 2460 W. 26th Ave., Suite 380-C, Denver, CO 80211. dishNET is authorized by the Public Service Commission to provide telecommunications services in the state of Utah under Docket number 09-2509-01 on September 21, 2009. dishNET is currently authorized to provide local exchange telecommunications services in all 47 states and the District of Columbia.

On April 18, 2014, BCI and dishNET entered into an Asset Purchase Agreement pursuant to which BCI will purchase the Liberty-Bell customer base and certain assets including certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. In Utah, Ionex will provide service to the affected customers. Which dishNET listed as 1800 business and residential customer as on the Annual Report, fiscal year 2013. Neither BCI nor Ionex will assume any of dishNET’s pre-closing liabilities or obligations.

The Applicants filed an Application for Consent to Assign Assets and/or Transfer Control of Assets Pursuant to Section 214 of the Communications Act of 1934 with the Federal Communications Commission (“FCC”) on April 21, 2014: WC Docket No. 14-65.

The transfer is scheduled to take place on or around June 2, 2014, assuming receipt of all necessary regulatory approvals.

The Liberty-Bell Customer Base will receive notice of the Transaction in accordance with state requirements and the rules and regulations of the Federal Communications Commission (“FCC”). A copy of the Applicants customer notice letter is attached as **Exhibit A**.

After dishNET determines that it no longer needs to maintain the Liberty-Bell Telecom trade name for operational or billing purposes, dishNET will cancel its trade name. dishNET will maintain its Utah authorizations, and will revise its tariff in a separate filing

The Applicants submit that the transaction described herein will serve the public interest and that following consummation of the pending transaction, Ionex will adopt the relevant grandfathered sections of the dishNET tariffs under which dishNET provides services to the Liberty-Bell customer base, and then will revise its own tariffs as necessary so that the Liberty-Bell customer base will continue to receive the same services that they currently receive without any immediate changes to their service offerings, rates, or terms and conditions. The ownership structure of BCI and Ionex will not be affected by the Transaction. Upon consummation of the transaction and after completion of the customer transfer, Ionex will provide the Liberty-Bell customer base

with the same high-quality service they have come to expect and all billing will be handled under the Birch name.

The Applicants further submit that the transaction will be conducted in a manner that will be largely transparent their customers. The transaction will not result in a change of carrier for customers or any assignment of authorizations, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers.

The Division has reviewed the joint application between Ionex and dishNET and believes that the transfer of control is in the public interest. As a result of the acquisition, the Companies should be in a better position to provide expanded and advanced telecommunications services in the State of Utah.

Cc. William P. Hunt, Director, Regulatory, dishNET Wireline d/b/a Liberty-Bell Telecom  
William J. Evans, Counsel for Joint Applicants, Parsons Behle & Latimer  
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