

BEFORE THE PUBLIC SERVICE COMMISSION

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.

Docket No. 14-2563-01

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HEARING AND PROCEDURAL ORDER  
ADMINISTRATIVE LAW JUDGE REIF  
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PLACE: Heber M. Wells
160 East 300 South
Salt Lake City, UT

DATE: May 29, 2014

TIME: 8:15 a.m.

REPORTED BY: KELLIE PETERSON, RPR

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APPEARANCES

FOR THE DIVISION:

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FOR THE APPLICANT:

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ALSO APPEARING:

Joe Stultz

Ron Slusher

(Telephonically)

Bill Hunt

Chris Bunce

1 Hearing and Procedural Order

2 May 29, 2014

3 PROCEEDINGS

4 ADMINISTRATIVE LAW JUDGE REIF: Good

5 morning, everyone. My name is Melanie Reif and I serve as the
6 administrative law judge to the Utah Public Service Commission,
7 and this morning is the hearing in Docket 14-2563-01. This
8 matter is entitled, In the matter of the joint application of Ionex
9 Communications North, Inc., dba Birch Communications and
10 DishNET Wireline, LLC., dba Liberty-Bell Telecom for approval
11 to transfer assets and customers to Ionex Communications
12 North, Inc., dba Birch Communications.

13 Before we take appearances in this matter, I would
14 like to note that on the 14th of May, the Division filed a
15 response to the application that has been filed recommending
16 that this matter be heard on an informal basis, and the
17 Commission intends to do that, barring any objection to that.

18 Mr. Evans, is that acceptable to you?

19 MR. EVANS: Yes, it is.

20 ADMINISTRATIVE LAW JUDGE REIF: Okay, very
21 good. So we will be proceeding under the rule that cited by the
22 Division in their memo, and I do wish to note that the
23 corresponding statutes, which are 54-4-28 and 54-4-30, the first
24 addressing merger, consolidation, or a combination, and the
25 second addressing acquiring

1 properties of like utilities require that there be a hearing, so we
2 are proceeding accordingly.

3 So, again, welcome to all of you and thank you for
4 being here early this morning. As I promised, we will be done in
5 plenty of time for the proceeding that happens at 9:00 for any of
6 you that are planning to attend that, and let's start by taking
7 appearances. If you would please start, Mr. Evans.

8 MR. EVANS: I am William Evans for the joint
9 applications and with me today is Joe Stultz, also with the joint
10 applicants.

11 ADMINISTRATIVE LAW JUDGE REIF: Okay. And
12 could you also identify the callers and to the extent that you
13 may be calling them as witnesses today.

14 MR. EVANS: Yes. On the phone with us today is
15 William Hunt from DishNET Wireline dba Liberty-Bell; and Chris
16 Bunce from Ionex Communications North dba Birch
17 Communication; and Angela Collins, counsel at Cahill, Gordon &
18 Reindel for the applicants.

19 ADMINISTRATIVE LAW JUDGE REIF: Thank you.

20 MR. EVANS: If it pleases the LJ, we can call Mr.
21 Hunt and Mr. Bunce. They are prepared to testify about the
22 application.

23 OTHER SPEAKER: Excuse me, Your Honor, Mr.
24 Evans, can you get closer to the microphone? It is really hard
25 to hear you.

1 MR. EVANS: I seem to be right on it but I will try to
2 speak up. Thank you.

3 OTHER SPEAKER: Okay.

4 ADMINISTRATIVE LAW JUDGE REIF: That is
5 much better, thank you.

6 MR. EVANS: Okay, thanks.

7 ADMINISTRATIVE LAW JUDGE REIF: Is that
8 better for the callers? Were you able to hear Mr. Evans?

9 OTHER SPEAKER: Yes, thank you.

10 ADMINISTRATIVE LAW JUDGE REIF: Okay, great.
11 Mr. Evans, I think it would helpful for the record to at least have
12 one witness. If you wish to call both of them, that is not a
13 problem. I think that that would be helpful to establish the
14 record.

15 MR. EVANS: All right, thank you.

16 ADMINISTRATIVE LAW JUDGE REIF: Sure.
17 Morning, Mr. Jetter.

18 MR. JETTER: Thank you. Justin Jetter,
19 representing the Utah Division of Public Utilities, and with me
20 today is Ron Slusher, utility technical consultant for the Division
21 of Public Utilities, and he will testify in favor of the application.

22 ADMINISTRATIVE LAW JUDGE REIF: Thank you.
23 Mr. Evans, I will let you proceed since this is your application.

24 MR. EVANS: All right, thank you. This is an
25 application for approval of a transaction by which DishNET, dba

1 Liberty-Bell, will transfer its Utah customer base to Ionex. The
2 transfer includes certain customer accounts and receivables, a
3 certain customer, as well as vendor contracts, and certain
4 equipment and intellectual property.

5 Ionex will assume the service obligation for these
6 Utah customers who will be notified of the change, in
7 compliance with the FCC and Utah requirements, and who will
8 receive the same high quality services from Ionex that they had
9 previously received from Liberty-Bell.

10 Upon completion of the transaction, Ionex will
11 revise its Utah tariffs to cover the services to be provided to
12 these Utah customers, and when the customers have been
13 moved to Ionex, Liberty-Bell will no longer offer
14 telecommunications services in Utah.

15 The applicants have requested that the application
16 be considered under the informal procedure setout in the
17 Commission's rules but we also understand the necessity for a
18 hearing required under section 54-4-28 and 30 of the Utah code.

19 The notice of hearing in this matter states that the
20 parties should come prepared to provide testimony on whether
21 the proposed transaction is in the public interest, and to that
22 end, we have Mr. Hunt and Mr. Bunce on the telephone
23 prepared to offer short statements and to answer any questions
24 that the parties or the ALJ may have, so we are prepared and
25 ready to call witnesses, if it please the LJ.

1 ADMINISTRATIVE LAW JUDGE REIF: That would
2 be great, Mr. Evans. Would you like to call Mr. Hunt first or do
3 you have a preference?

4 MR. EVANS: Let's call Mr. Bunce first, but maybe
5 we should swear the witnesses together at the same time.

6 ADMINISTRATIVE LAW JUDGE REIF: Okay, Mr.
7 Hunt and Mr. Bunce, are you both on the line?

8 MR. BUNCE: Yes.

9 MR. HUNT: Yes.

10 ADMINISTRATIVE LAW JUDGE REIF: Okay. I am
11 going to swear you in now at the same time, so if you would
12 kindly raise your right hand; and do you swear that the
13 testimony you are about to give is the truth?

14 MR. HUNT: Yes. This is Bill Hunt from DishNET
15 Wireline, yes.

16 MR. BUNCE: And Chris Bunce, yes.

17 ADMINISTRATIVE LAW JUDGE REIF: Okay, thank
18 you very much. Mr. Evans, please proceed.

19 MR. EVANS: Thank you. Good morning, Mr.
20 Bunce.

21 MR. BUNCE: Morning.

22 MR. EVANS: Can you hear me okay?

23 MR. BUNCE: Yes, I can.

24 MR. EVANS: Good. For the record, would you
25 please state your name, business address, and your position at

1 lonex?

2 MR. BUNCE: Yes. My name is Chris Bunce,
3 B-U-N-C-E is my last name. I am senior vice president, legal
4 and general counsel for lonex and its parent company, Birch
5 Communications, Inc. My business address is 2323 Grand
6 Boulevard, Suite 925, Kansas City, Missouri, 64108.

7 MR. EVANS: And have you reviewed the joint
8 application requesting the transfer of DishNET customer base
9 to--

10 MR. BUNCE: I have.

11 MR. EVANS: --Liberty-Bell? Do you have personal
12 knowledge of the information contained in the application?

13 MR. BUNCE: Yes.

14 MR. EVANS: And is the information stated in the
15 joint application true and correct to the best of your knowledge?

16 MR. BUNCE: Yes, it is.

17 MR. EVANS: Are there any changes that need to
18 be made to the joint application?

19 MR. BUNCE: No.

20 MR. EVANS: On May 5th, did you cause to be filed
21 with the Commission a supplemental Exhibit 1 to the joint
22 application?

23 MR. BUNCE: Yes.

24 MR. EVANS: Can you please explain what is
25 supplemental Exhibit No. 1?

1 MR. BUNCE: Yes. That is a--it's a public notice
2 from the FCC acknowledging that Birch's domestic section 2-14
3 application that we filed with the FCC for approval of the same
4 transaction for which we are seeking approval today, the FCC
5 established a streamline pleading cycle for the application and
6 decided that we could proceed with the asset transfer on the
7 31st day following the notice, unless they notified us otherwise.

8 MR. EVANS: And have they notified you
9 otherwise?

10 MR. BUNCE: No, they haven't. So the public
11 notice was issued on May 2, 2014, which means it looks like we
12 can proceed with the transaction on June 2nd.

13 MR. EVANS: I see that the notice also provides
14 that interested parties may file comments on or before May 16,
15 2014. Have there been any comments filed?

16 MR. BUNCE: No.

17 MR. EVANS: So do you anticipate that the FCC
18 application will result in an approval?

19 MR. BUNCE: Yes, we do.

20 MR. EVANS: Can you please describe why the
21 proposed transfer of Liberty-Bell customer base to lonex is in
22 the public interest?

23 MR. BUNCE: Yes. Once the transfer of the
24 DishNET customers to lonex has been approved by the FCC and
25 the Utah Commission, lonex will serve these customers. We will

1 continue to offer them the same high quality services they have
2 been receiving, supported by Ionex and the Birch family of
3 companies' industry knowledge, technical expertise, and
4 financial strength.

5 The public interest will be served by promoting
6 competition among providers of telecom services in Utah while
7 accomplishing a transfer of service that will be seamless and
8 transparent to the customers. And Birch and Ionex have done
9 several of these transactions in the last few years and have had
10 great results.

11 MR. EVANS: Thank you, Mr. Bunce. I have no
12 more questions. Mr. Bunce is available for cross-examination.

13 MR. JETTER: No questions from the Division,
14 thank you.

15 ADMINISTRATIVE LAW JUDGE REIF: Thank you,
16 Mr. Jetter. One question for you, please, Mr. Bunce. This is
17 Melanie Reif, the ALJ speaking. Are you aware of any objection
18 that has been filed concerning the application?

19 MR. BUNCE: I am not of any governmental entity.

20 ADMINISTRATIVE LAW JUDGE REIF: I am sorry,
21 could you repeat that response?

22 MR. BUNCE: Yes, I am not aware of any
23 governmental entity. None, none of any type.

24 ADMINISTRATIVE LAW JUDGE REIF: Okay. So
25 are you aware of any objection that has been filed by a

1 nongovernmental entity?

2 MR. BUNCE: No.

3 ADMINISTRATIVE LAW JUDGE REIF: Okay.

4 MR. BUNCE: No, no, I don't -- none.

5 ADMINISTRATIVE LAW JUDGE REIF: Okay, thank
6 you. Thank you for that clarification. That is all.

7 MR. EVANS: If it please the LJ, let's call Mr. Hunt.
8 I think he will be disappointed if he couldn't offer his statement
9 this morning.

10 ADMINISTRATIVE LAW JUDGE REIF: Mr. Hunt,
11 you have been sworn in, so please proceed.

12 MR. EVANS: Good morning, Mr. Hunt. Oh, you
13 need to un-mute your phone if you haven't done so. Did we lose
14 Mr. Hunt?

15 ADMINISTRATIVE LAW JUDGE REIF: Mr. Hunt,
16 are you on the line?

17 MR. HUNT: Oh, no, I am here. I had the mute
18 button on.

19 ADMINISTRATIVE LAW JUDGE REIF: Okay, great.
20 Thank you.

21 MR. HUNT: I said a lot of really nice thoughts and
22 good stuff.

23 MR. EVANS: I am sorry we missed that. Mr. Hunt,
24 for the record, would you please state your name, business
25 address, and your position at DishNET?

1 MR. HUNT: It's William Patrick Hunt, H-U-N-T,
2 business address, 9601 South Meridian, M-E-R-I-D-I-A-N,
3 Boulevard, Englewood, and that is with an E,
4 E-N-G-L-E-W-O-O-D, Colorado, 80112, and I am the regulatory
5 director for DishNET Wireline.

6 MR. EVANS: And have you reviewed the joint
7 application that has been filed in this docket?

8 MR. HUNT: Yes.

9 MR. EVANS: Do you have personal knowledge of
10 the information contained in it?

11 MR. HUNT: Yes.

12 MR. EVANS: And is the information stated in the
13 joint application true and correct to the best of your knowledge?

14 MR. HUNT: It is.

15 MR. EVANS: Do you have any corrections or
16 changes that should be made to application?

17 MR. HUNT: No corrections or changes; one
18 clarification. I wasn't sure I heard the opening statement
19 correctly but after this transfer, Liberty-Bell, Liberty-Bell main
20 will go -- well, Dish will no longer offer services with Liberty-Bell
21 but we will continue to have our residential customer base that
22 we are providing the bundled service to, and DishNET will
23 continue. I don't know if I heard that's correctly or not.

24 MR. EVANS: Thank you for the clarification. Are
25 you aware of any opposition that has been filed to the joint

1 application in any jurisdiction?

2 MR. HUNT: No, no opposition has been filed with
3 the FCC or Colorado PUC. The other state we filed it was just a
4 notice in New Mexico, we received their acknowledgement of the
5 filing, and that no other action's necessary.

6 MR. EVANS: Okay. Can you--do you have a
7 statement of why this transaction is in the public interest?

8 MR. HUNT: Sure. Dish is--the business customer
9 base is predominantly small to medium sized business
10 customers. There are a few residential. I think there are less
11 than 30 customers in Utah. It's a very small amount. They
12 don't fit with where Dish is going to focus its residential voice
13 services, and that is the only market that we provide service in.
14 So we will be able to move these customers to another carrier,
15 who will be able to provide them the same quality of service and
16 give them innovative services and continue to serve that market.

17 MR. EVANS: All right. Thank you, Mr. Hunt. I have
18 no more questions and Mr. Hunt is now available for cross.

19 MR. JETTER: I have no questions, thank you.

20 ADMINISTRATIVE LAW JUDGE REIF: Thank you,
21 Mr. Jetter. No questions from the Commission.

22 MR. EVANS: All right. The applicants request the
23 ALJ receive into the record the application with Exhibits 1, 2 and
24 3 and the applicants' Supplemental Exhibit 1.

25 ADMINISTRATIVE LAW JUDGE REIF: Any

1 objections?

2 MR. JETTER: No objection.

3 ADMINISTRATIVE LAW JUDGE REIF: Okay. They
4 are so admitted.

5 MR. EVANS: Thank you. We have heard from the
6 applicants--well, that is all for our case. I think the Division
7 might have a witness they want to put on.

8 ADMINISTRATIVE LAW JUDGE REIF: Yes. Mr.
9 Jetter?

10 MR. JETTER: Thank you. The Division would like
11 to call Ron Slusher.

12 ADMINISTRATIVE LAW JUDGE REIF: Good
13 morning, Mr. Slusher.

14 MR. SLUSHER: Morning.

15 ADMINISTRATIVE LAW JUDGE REIF: Are you
16 ready to testify in morning?

17 MR. SLUSHER: Yes.

18 ADMINISTRATIVE LAW JUDGE REIF: And would
19 you kindly raise your right hand; do you swear the testimony you
20 are about to give is the truth?

21 MR. SLUSHER: I do.

22 ADMINISTRATIVE LAW JUDGE REIF: Thank you.
23 You may proceed.

24 MR. JETTER: Mr. Slusher, will you state your
25 name and occupation for the record?

1 MR. SLUSHER: My name is Ron Slusher, S as in
2 Sam, L-U-S-H-E-R. I am a utility technical consultant for the
3 Division.

4 MR. JETTER: Thank you. And have you reviewed
5 the application in the filed documents by the applicants?

6 MR. SLUSHER: I did.

7 MR. JETTER: And did you create and file the
8 document that is titled, the memorandum filed from the Division
9 of Public Utilities, with the date on the cover of May 13, 2014?

10 MR. SLUSHER: I did.

11 MR. JETTER: And does that still reflect accurately
12 reflect the Division's position on the application?

13 MR. SLUSHER: It does.

14 MR. JETTER: Do you have any corrections or edits
15 you would like to make to that?

16 MR. SLUSHER: I have none.

17 MR. JETTER: That, I would like to move to and
18 admit the Division's memorandum into the record.

19 ADMINISTRATIVE LAW JUDGE REIF: Any
20 objection?

21 MR. EVANS: No, thank you.

22 ADMINISTRATIVE LAW JUDGE REIF: It is so
23 admitted.

24 MR. JETTER: Thank you. Are you aware of any
25 opposition to the application?

1 MR. SLUSHER: I have not heard of any or seen
2 any.

3 MR. JETTER: Thank you. And, finally, do you
4 believe that approval of the joint application would be just,
5 reasonable, and in the public interest?

6 MR. SLUSHER: Yes.

7 MR. JETTER: I have no further questions, thank
8 you.

9 ADMINISTRATIVE LAW JUDGE REIF: Thank you,
10 Mr. Jetter. Any followup questions, Mr. Evans?

11 MR. EVANS: No, thank you very much.

12 ADMINISTRATIVE LAW JUDGE REIF: Okay, thank
13 you for your testimony.

14 MR. SLUSHER: Thank you.

15 ADMINISTRATIVE LAW JUDGE REIF: Mr. Evans,
16 do you wish to make any final statements?

17 MR. EVANS: We have heard from the applicants,
18 we have heard from the Division that the application is
19 unopposed and all who have offered testimony have said that it
20 is in the public interest, so unless there is something more that
21 the ALJ would like us to address, we will submit it for decision.
22 Thank you.

23 ADMINISTRATIVE LAW JUDGE REIF: Thank you,
24 Mr. Evans, and you are correct; the rule does, in fact, allow for
25 approval if no objection is raised, and the Commission will

1 presume that it is in the public interest. We appreciate the
2 testimony today.

3 I do have one question for you, given that the
4 transaction is scheduled to occur very quickly and the transcript
5 may not be back in time, usually it takes a number of days
6 before we get-- before we get the transcript, is that going to
7 cause any difficulty for you in this transaction?

8 MR. EVANS: I think that's a question that Ms.
9 Collins might want to respond to.

10 ADMINISTRATIVE LAW JUDGE REIF: Okay. And I
11 did want to note that there is an opportunity, and you can work
12 it out with the court reporter, if you need to expedite the
13 transcript, so--

14 MR. EVANS: Will there be an order coming before
15 the transcript? Are you waiting for the transcript to issue the
16 order?

17 ADMINISTRATIVE LAW JUDGE REIF: Typically,
18 we wait for the transcript because we rely on the transcript to
19 complete the order.

20 MR. EVANS: Okay. Well, maybe a bench order
21 would help.

22 MR. HUNT: Chris, I am sorry, do you want to
23 address the closing date?

24 MR. EVANS: Mr. Bunce, are you there?

25 MR. BUNCE: Yes. Angela, did you want to

1 address--

2 MS. COLLINS: Sure. Your Honor, Angela Collins
3 on behalf of Ionex. Right now, the parties anticipate closing in
4 mid June. Colorado, there's no need to approve the transaction
5 and are not expected to hear next week, so I am not sure about
6 the timing of the transcript and the order, but we still have--
7 there is no plan to close on Monday with the FCC approval, if
8 that was your intent, and we appreciate that.

9 ADMINISTRATIVE LAW JUDGE REIF: Okay.
10 Okay, then I think we have adequate time without needing to
11 consider expediting the transcript, but that is entirely your
12 choice, if you want to do that, but under normal circumstances, I
13 think we have adequate time and I think--

14 MR. EVANS: Unless there is some unanticipated
15 delay, I don't think we need to expedite the transcript.

16 ADMINISTRATIVE LAW JUDGE REIF: Okay, very
17 good. Thank you, everyone, and for those on the phone, thank
18 you for joining us. I wish you a very pleasant day and thank you
19 for being here.

20 MR. EVANS: Thank you.

21 ADMINISTRATIVE LAW JUDGE REIF: An order will
22 be coming. Thank you.

23 (The hearing was concluded at 8:37 a.m.)
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REPORTER'S CERTIFICATE

State of Utah)
)
County of Salt Lake)

I hereby certify that the witnesses in the foregoing hearing was duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said hearing was taken at the time and place herein named;

That the testimony of said witnesses was reported by me in stenotype and thereafter transcribed into typewritten form.

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the even thereof.

IN WITNESS WHEREOF, I set my hand this 4th day of June, 2014.

Kellie Peterson, RPR