

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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 of the)
Transfer of Assets and Customers to Ionex)
Communications North, Inc. dba Birch)
Communications)

DOCKET NO. 14-2563-01
ORDER APPROVING TRANSFER OF
CUSTOMERS AND CERTAIN ASSETS

ISSUED: June 10, 2014

This matter is before the Commission on the joint application of Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and dishNET Wireline, LLC dba Liberty-Bell Telecom (“dishNET”) (collectively, “Applicants”) for approval pursuant to which Ionex will acquire both the customer base that receives telecommunications services in Utah under the trade name Liberty-Bell Telecom and certain assets of Liberty-Bell Telecom. Applicants filed for Commission approval on April 22, 2014.¹ The application contains all the information required by Utah Admin. Code R746-349-7(A)(1).

Pursuant to Utah Code Ann. § 54-4-30, the Commission issued a notice of application and notice of hearing on April 29, 2014, allowing for the submission of comments by any interested party regarding the application. No comments or objections were received.

On May 14, 2014, 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

¹ Applicants filed a supplemental exhibit on May 5, 2014. The filing included a copy of a May 2, 2014, public notice from the Federal Communications Commission, establishing a streamlined process for the Domestic Section 214 Application Filed for the Acquisition of Certain Assets of dishNET by Ionex.

dishNET and believes that the transfer of control is in the public interest. As a result of the acquisition, the [Applicants] should be in a better position to provide expanded and advanced telecommunications services in the State....”²

On May 29, 2014, 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; Chris Bunce, Senior Vice President and General Counsel for Ionex; and William Hunt, Regulatory Director for DishNET. 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:

...Once the transfer of the DishNET customers to Ionex has been approved by the FCC and the Utah Commission, Ionex will serve these customers. We will continue to offer them the same high quality services they have been receiving, supported by Ionex and the Birch family of companies’ industry knowledge, technical expertise, and financial strength.

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

² Division Memo at 3, filed May 14, 2014.

Transcript of Hearing at 9, lines 23-25; id. at 10, lines 1-10. Mr. Hunt offered the following testimony on behalf of DishNET as to why the transaction is in the public interest:

...[T]he [DishNET] business customer base is predominantly small to medium sized business customers. There are a few residential[] [customers]. I think there are less than 30 customers in Utah. It's a very small amount. They don't fit with where Dish[NET] is going to focus its residential voice services, and that is the only market that we provide service in. So we will be able to move these customers to another carrier, who will be able to provide them the same quality service and give them innovative services and continue to serve that market.

Id. at 13, lines 8-16.

Mr. Slusher testified on behalf of the Division in support of the application. Mr. Slusher further testified that approval of the joint application is just and reasonable, and in the public interest. Id. at 16, lines 3-6. 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 certain assets and customers of Liberty-Bell Telecom to Ionex Communications North, Inc. dba Birch Communications.

DATED at Salt Lake City, Utah, this 10th day of June 2014.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 10th day of June, 2014, 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#256277

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 10th day of June, 2014, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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