

WILLIAM J. EVANS (5276)
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
bevans@parsonsbehle.com

BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of Joint Application of Ionex Communications North, Inc. dba Birch Communications and OrbitCom, Inc. for Approval to Transfer Assets and Customers to Ionex Communications North, Inc. dba Birch Communications

Docket No. _____

JOINT APPLICATION

Pursuant to Utah Code Ann. § 54-4-30 and Utah Admin. Code R746-349-7, Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and OrbitCom, Inc. (“OrbitCom”) (Ionex and OrbitCom collectively, the “Applicants”) hereby respectfully request that the Utah Public Service Commission (“Commission”) approve the transfer of substantially all of OrbitCom’s telecommunications assets and Utah customer base to Ionex (the “Transaction”). Applicants submit the following in support of this Joint Application:

I. DESCRIPTION OF PARTIES

A. Ionex Communications North, Inc. dba Birch Communications

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 Commission to provide local exchange and interexchange telecommunications services in Utah.¹ Ionex is not an

¹ Docket No. 13-2563-01.

incumbent local exchange carrier (“ILEC”) in Utah. Ionex is a wholly-owned subsidiary of Birch Communications, Inc. (“BCI”), a Georgia corporation with principal offices located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305.

B. OrbitCom

OrbitCom is a South Dakota corporation with corporate headquarters at 1701 N. Louise Ave., Sioux Falls, South Dakota, 57107. OrbitCom is authorized to provide telecommunications services in Utah.² OrbitCom is not an ILEC in Utah.

II. DESIGNATED CONTACTS

For the purposes of this Joint Application, inquiries, or copies of any correspondence, orders, or other materials should be directed as follows:

OrbitCom:

Meredith A. Moore
Cutler Law Firm, LLP
100 N. Phillips Ave., 9th Floor
Sioux Falls, SD 57104
605-335-4950 (telephone)
605-335-4961 (facsimile)
meredithm@cutlerlawfirm.com

For Ionex:

Williams J. Evans
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
801-532-1234 (telephone)
bevans@parsonsbehle.com

III. DESCRIPTION OF THE TRANSACTION

On April 24, 2015, BCI and OrbitCom entered into an Asset Purchase Agreement (“Agreement”) pursuant to which BCI will purchase certain assets and customers of OrbitCom. Pursuant to the Agreement, BCI will purchase the following assets from OrbitCom: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. Neither BCI or Ionex will assume any of OrbitCom’s pre-closing liabilities or obligations.

² Docket No. 05-2462-01.

Ionex will make any necessary revisions to its rates, terms, and conditions to incorporate OrbitCom's current services and rates so that affected customers will continue to receive the same services that they currently receive without any immediate changes to their service offerings or rates. 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 OrbitCom's customers with the same service quality they have come to expect and all billing will be handled under the Ionex name.

The proposed transfer will affect all of OrbitCom's current Utah customers, none of whom will experience any material change to the terms and conditions of their services as a result of this transfer. The transfer will occur upon the receipt of all necessary regulatory approvals. The Parties will provide notice to affected customers in accordance with state requirements and the rules and regulations of the Federal Communications Commission. A draft customer notice letter is attached as **Exhibit A**.

Upon completion of the Transaction and the migration of customers to Ionex, OrbitCom will no longer offer telecommunications services in Utah. After OrbitCom determines that it no longer needs its Utah authorizations for operational or billing purposes, OrbitCom will surrender its authorizations in a separate filing. The Parties respectfully request that OrbitCom's authorization and any existing tariffs remain in place until OrbitCom separately requests such cancellation. The contact listed above for OrbitCom will address any required post-Transaction filing requirements for OrbitCom.

The Applicants are also seeking approval of this Transaction from the FCC, where the Applicants expect the Transaction will receive streamlined treatment. The Applicants are also

seeking approval from the state regulatory commissions in Colorado, Iowa, Minnesota, and Nebraska, and are filing notice of the Transaction with the state regulatory commissions in Arizona, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Washington, and Wyoming

IV. INFORMATION REQUIRED BY R746-394-7

Pursuant to R746-394-7(1), Applicants provide the following information:

- (a) Applicants confirm that none of the Applicants or their affiliates is an ILEC in Utah.
- (b) Applicants confirm that the Applicants seek approval of the application pursuant to the informal adjudication process set forth in R746-394-7.
- (c) A detailed description of the Transaction is provided in Section III above.
- (d) A copy of Applicants Domestic Section 214 Application filed with the FCC is provided as **Exhibit B**. Due to the repetitive nature of the state regulatory filing, Applicants have attached as **Exhibit C** a copy of only the Colorado filing (excluding exhibits). Applicants will provide any additional filings that the Commission or parties request.
- (e) The Applicants have not yet received any orders from any federal agency or state regulatory commission from which Applicants are seeking approval for the Transaction. To the extent requested by the Commission, Applicants will provide any orders or similar actions approving or denying approval of the Transaction as they become available.

V. REQUEST FOR WAIVER OF SLAMMING RULES

As noted above, Utah customers of OrbitCom will be notified of the proposed Transaction and the change in their telecommunications provider to Ionex by means of a notice substantially in the form provided in **Exhibit A**. Applicants respectfully request, to the extent necessary, that the Commission grant a waiver of Utah Code Ann. § 54-8b-18 and Utah Admin.

Code R746-349-5 and any other applicable state anti-slamming regulation to the extent it may be inconsistent with the FCC's rules regarding the transfer of customer bases provided in 47 C.F.R § 64.1120(e).

VI. THE TRANSACTION IS IN THE PUBLIC INTEREST

Approval of the Transaction is in the public interest. The Transaction will result in the assignment of OrbitCom customers to a financially stable company that will continue to provide telecommunications services to such assigned customers without interruption. Ionex's operations will be overseen by a well-qualified management team with substantial telecommunications experience and technical expertise. As discussed above, OrbitCom's existing customers will be given prior written notice of the transfer of their account to Ionex, in compliance with Utah and federal customer notice rules. Following consummation of the Transaction, Ionex will continue to offer high quality services to Utah residents, as is supported by its industry knowledge, technical expertise, and financial strength. As a result, the proposed Transaction will be seamless and transparent to customers and will not have a negative impact on the public interest, services to Utah customers, or competition.

VII. CONCLUSION

WHEREFORE, for the forgoing reasons, Applicants respectfully request that the Commission act expeditiously to approve the proposed Transaction.

Dated this 28th of April, 2015

/s/ William J. Evans
Williams J. Evans
Parsons Behle & Latimer
Attorneys for Ionex Communications North, Inc.
dba Birch Communications

Exhibit A

Customer Notice

Exhibit B

FCC Domestic Section 214 Application

Exhibit C

Colorado Application