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State of Utah
Department of Commerce
Division of Public Utilities

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Director, Division of Public Utilities

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 14, 2015

Re: In the Matter of the 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 15-2563-01.

RECOMMENDATION (Approve):

The Division of Public Utilities (“Division”) has reviewed the joint application between Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and OrbitCom, Inc. (“OrbitCom”)(together the “Applicants”) and it appears that the Applicants have complied with the rules as required under Administrative Rule R746-394-7. The Division also believes that the public interest will be promoted by recommending that the Public Service Commission (“Commission”) allow the transfer of substantially all of OrbitCom’s telecommunications assets and Utah customer base to Ionex.

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 R746-394-7.

EXPLANATION:

On or about April 28, 2015, Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and OrbitCom, Inc. (“OrbitCom”) notified the Commission of a transaction, which will result in a transfer of control of OrbitCom to Ionex.

Ionex is a South Dakota corporation with principal offices located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. Ionex was given authority to provide local exchange and

interexchange telecommunications services in the State of Utah by the Commission on April 05, 2013, in Docket 13-2563-01. Ionex is a wholly-owned subsidiary of Birch Communications, Inc. (“BCI”).

OrbitCom is a South Dakota corporation with corporate headquarters at 1701 N. Louise Ave., Sioux Falls, South Dakota, 57107. OrbitCom was given authority to provide local exchange and interexchange telecommunications services in the State of Utah by the Commission on October 19, 2005, in Docket 05-2462-01. Neither Ionex nor OrbitCom are Incumbent Local Exchange Carriers (“ILECs”).

The Applicants state that on April 24, 2015, they entered into a purchase agreement whereby BCI, the parent company of Ionex, will purchase certain assets and customers of OrbitCom. The proposed transfer will affect all of OrbitCom’s current Utah customers. 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 Applicants submit that the transaction will be conducted in a manner that will be largely transparent their customers. In no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. 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.

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.

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 Applicants filed a Section 214 with the Federal Communications Commission (“FCC”) on or about May 05, 2015, listed under docket number DA-15-539. At the time of this recommendation, the FCC has not made a ruling in this case.

The Applicants submit that the transaction will serve the public interest and 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. 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.

Cc. Meredith A. Moore, Counsel for OrbitCom, Inc.
Williams J. Evans, Counsel for Ionex Communications North, Inc. dba Birch Communications
Justin Jetter, Assistant Attorney General, State of Utah
Cheryl Murray, Utility Analyst, Office of Consumer Services, State of Utah