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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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 No. 15-2563-01

Place: PUBLIC SERVICE COMMISSION
160 East 300 South, #451
Salt Lake City, Utah

Date: June 19, 2015
9:03 a.m.

Reporter: Vickie Larsen, CSR/RMR

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A P P E A R A N C E S

BEFORE: Administrative Law Judge Melanie Reif

For the Joint Applicants:

William J. Evans
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For the Utah Division of Public Utilities:

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Also Present (via telephone):

Meredith More
Angela Collins
Chris Bunce
Brad VanLeur

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-oOo-

1 June 19, 2015

2 P R O C E E D I N G S

3

4 JUDGE REIF: Good morning everyone. We
5 are on the record. And I am Melanie Reif, the ALJ for
6 the Utah Public Service Commission. And thank you
7 very much for being here this morning.

8 Let's start with taking appearances,
9 starting with you, Mr. Evans.

10 MR. EVANS: Thank you. I am William
11 Evans of Parsons, Behle & Latimer, here for the joint
12 applicants, Ionex Communications North, Inc., d/b/a
13 Birch Communications, and OrbitCom, Inc.

14 MR. JETTER: And I am Justin Jetter. I
15 represent the Utah Division of Public Utilities. And
16 I will be proffering the evidence from the Division
17 today. Thank you.

18 THE JUDGE: Thank you. Good morning.
19 Good morning, Mr. Jetter.

20 Mr. Evans, I'll let you go first. This
21 is your application. And I do know that you have some
22 parties on the telephone, so if we need to swear any
23 of those in I'd be happy to do that.

24 MR. EVANS: Thank you. Yes. On the
25 telephone is Angela Collins, counsel for Ionex/Birch.

1 Meredith More, counsel for OrbitCom. Chris Bunce, a
2 witness for Ionex/Birch. And Brad VanLeur, a witness
3 for OrbitCom.

4 This is an application seeking the
5 commission's approval of a transaction in which Ionex
6 will acquire the customers and assets of OrbitCom here
7 in Utah. We have filed an application and attached to
8 the application are Exhibits A, B, and --

9 TELEPHONE PARTICIPANT: Is there a way to
10 put Mr. Evans closer to a microphone?

11 MR. EVANS: Yep. I can speak up. It
12 gets loud in the room but --

13 TELEPHONE PARTICIPANT: That's better.
14 Thanks.

15 MR. EVANS: Attached to the application
16 are three exhibits that we've designated A, B, and C.
17 They are the customer notice that is intended to send
18 to customers who are -- who will be transferred. The
19 FCC combined foreign and domestic Section 214
20 application. And Exhibit C is the application filed
21 in the State of Colorado for approval of this
22 transaction.

23 Under the Public Service Commission's
24 rules, the applicants are to submit to the Commission
25 copies of notices, correspondence, or orders from

1 other federal agencies or state utility regulatory
2 agencies reviewing the transaction.

3 We have, accordingly, made three
4 supplemental filings since the date of the
5 application.

6 The first was on May 12th in which we
7 filed supplemental Exhibits 1 and 2. On May -- I'm
8 sorry -- on June 10th we filed supplemental Exhibits 3
9 through 6. And on June 17th we filed supplemental
10 Exhibits 7 and 8. We will ask our witness from Ionex
11 to identify those exhibits in his testimony.

12 This is a routine application and it is
13 presumed that it's in the public interest, unless
14 there are those who oppose. Nevertheless, we're
15 required to make a record, and the purpose here today
16 is to put our witnesses on record in support of this
17 application.

18 So we can begin by calling the first
19 witness, if we're ready.

20 JUDGE REIF: Thank you, Mr. Evans.

21 Mr. Bunce is who you want to call,
22 correct?

23 MR. EVANS: Yes, let's call Mr. Bunce.

24 JUDGE REIF: Mr. Bunce, are you on the
25 line, sir?

1 MR. BUNCE: Yes.

2 JUDGE REIF: Okay. I'm going to swear
3 you in, so if you'd kindly raise your right hand.

4

5 CHRIS BUNCE,
6 called as a witness, having been duly sworn,
7 was examined and testified as follows:

8

9 JUDGE REIF: Very good.

10

11 DIRECT EXAMINATION

12 BY MR. EVANS:

13 Q. Good morning, Mr. Bunce. For the record,
14 would you state your name, business address, and your
15 position at Ionex Communications North, Inc.

16 A. Yes. My name is Christopher Bunce. Last
17 name is B-U-N-C-E. I'm senior vice president of legal
18 and general counsel for Ionex, as well as its parent
19 company, Birch Communications, Inc.

20 My office address is 2323 Grand
21 Boulevard, Suite 925, Kansas City, Missouri 64108.

22 Q. And how long have you held that position?

23 A. I've been general counsel for Birch
24 Telecom, Inc. and its subsidiaries since 2006. Prior
25 to that I held other positions at Birch and Ionex, as

1 well as positions with other telecom companies prior
2 to the year 2000.

3 Q. Have you reviewed the joint application
4 on file here in Utah?

5 A. Yes.

6 Q. And do you have personal knowledge of the
7 matters set out in the application?

8 A. Yes.

9 Q. But you are not the officer of the
10 company who signed the verified application, are you?

11 A. No. The verification for Ionex was
12 submitted by Vincent Oddo, the president and CEO of
13 Birch and its subsidiaries, including Ionex. But I am
14 fully informed of the details of this transaction and
15 the facts contained in the application.

16 Q. For the purposes of your testimony today,
17 then, do you adopt the statements made in the
18 application as your own?

19 A. Yes, I do.

20 Q. And are there any changes or corrections
21 that should be made to the joint application?

22 A. No corrections or changes, but we've
23 updated the application with several supplemental
24 exhibits that were submitted to the Commission, as you
25 noted earlier.

1 Q. Okay. We will go over those.

2 Is Ionex asking the Commission to approve
3 this transaction pursuant Rule 746-349-7?

4 A. Yes.

5 Q. And is Ionex serving as an incumbent
6 local exchange carrier anywhere in the state of Utah?

7 A. No, it is not.

8 Q. Are Ionex and OrbitCom required to file
9 for domestic and international Section 214 authority
10 with the Federal Communications Commission?

11 A. Yes.

12 Q. And has that been done?

13 A. Yes.

14 Q. And I direct your attention to Exhibit B
15 filed with the application.

16 Can you tell us what this is.

17 A. Yes. This is a joint application of
18 Ionex's parent, Birch Communications, Inc. and
19 OrbitCom, Inc. for Section 214 authority. It was
20 filed with the FCC on April 27th, 2015.

21 Q. And is this for both domestic and
22 international authority?

23 A. Yes.

24 Q. Do you have in front of you the document
25 that was submitted to the Utah Commission as

1 **supplemental Exhibit No. 1?**

2 A. Yes.

3 **Q. Can you tell us what this is, please.**

4 A. This is the FCC's notice accepting the
5 Birch/OrbitCom application for streamline treatment,
6 which the FCC issued on May 5th, 2015.

7 **Q. And would you please look at the document**
8 **that was submitted as supplemental Exhibit 2 and tell**
9 **us what --**

10 A. Yes.

11 **Q. -- tell us what this is.**

12 A. This is the FCC's notice stating that the
13 application of Birch and OrbitCom for international
14 214 authority had been accepted for streamline
15 treatment.

16 **Q. And since then has the FCC approved the**
17 **applications for domestic and international**
18 **Section 214 authority?**

19 A. Yes. Supplemental Exhibit 3 is the FCC's
20 notice of approval of our domestic Section 214
21 application. It is dated June 5th, 2015. And
22 supplemental Exhibit 4, which is dated May 28, 2015,
23 is the FCC's approval of the international Section 214
24 authority.

25 **Q. Thank you.**

1 **Do any state commissions, other than**
2 **Utah, require Ionex and OrbitCom to obtain approval**
3 **before closing this transaction?**

4 A. Yes. Approval's required in Colorado,
5 Iowa, Minnesota, and Nebraska, as well as Utah. Other
6 states require only notification.

7 **Q. And have you filed -- have you filed**
8 **notifications in all states that require it?**

9 A. Yes.

10 **Q. And do you have a copy of Exhibit C to**
11 **the application in front of you?**

12 A. Yes.

13 **Q. Can you describe what this is, please.**

14 A. Yes. This is the joint application of
15 Ionex and OrbitCom that was filed in Colorado.

16 **Q. And did Ionex and OrbitCom cause similar**
17 **applications to be filed in Iowa, Minnesota, and**
18 **Nebraska?**

19 A. Yes.

20 **Q. And have you received approvals from any**
21 **of these other states?**

22 A. Yes, we've received approvals from all of
23 them.

24 **Q. And can you identify what has been**
25 **submitted to the Commission as supplemental Exhibit 5.**

1 A. Yes. Five is the order of the Iowa
2 Utility Board approving the transfer of customers from
3 OrbitCom to Birch dated May 27th, 2015.

4 **Q. And supplemental Exhibit 6, please.**

5 A. It's -- that's the order of the Minnesota
6 Public Utility Commission dated June 3rd, 2015,
7 approving the transfer of the customers.

8 **Q. We have also filed supplemental**
9 **Exhibits 7 and 8. That was two days ago on Wednesday.**
10 **Can you identify what these are, please.**

11 A. Yes. Supplemental Exhibit 7 is the
12 Colorado order approving the transaction issued on
13 June 15, 2015. And supplemental Exhibit 8 is the
14 Nebraska approval dated June 17, 2015.

15 **Q. Have you received or are you aware of any**
16 **opposition from third parties or the public with**
17 **respect to any state or federal application for**
18 **approval of this transaction?**

19 A. No.

20 **Q. Can you please offer a summary of why you**
21 **believe this transaction is in the public interest.**

22 A. Certainly. OrbitCom is a small-size
23 company in Utah serving only a handful of residential
24 and business customers, some of which receive long
25 distance service only. This transaction will advance

1 Ionex's economic efficiency and allow it to achieve
2 certain economies of scale which should put us in a
3 position to both expand the offerings available for
4 these customers and to bring our services to a broader
5 customer base.

6 Of course robust competition, intel
7 communication services is, in itself, in the public
8 interest, and as a result of this acquisition we hope
9 to improve our position as a competitive provider in
10 Utah.

11 As stated in the application, the
12 transaction will be conducted in a way that is
13 virtually transparent to OrbitCom's customers, except
14 that their billings will now be handled by Ionex.
15 They will continue to receive the same service
16 offerings, rates, terms and conditions, and quality of
17 service they received from OrbitCom.

18 MR. EVANS: Okay. Thank you, Mr. Bunce.

19 Mr. Bunce is now available for cross.

20 JUDGE REIF: Mr. Jetter, do you have any
21 questions?

22 MR. JETTER: Good morning, Mr. Bunce.
23 This is Justin Jetter. I'm the attorney that
24 represents the Utah Division of Public Utilities. I
25 just have one question for you.

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CROSS-EXAMINATION

BY MR. JETTER:

Q. Is there any jurisdiction in which this application or a similar application for this same transfer of customers to Ionex has been denied?

A. No, sir.

MR. JETTER: Okay. Thank you. That was the only question that I had this morning. Thank you.

JUDGE REIF: Mr. Evans, was there another witness you wanted to call?

MR. EVANS: Yes. We'd like to call Mr. VanLeur.

JUDGE REIF: Mr. VanLeur, are you on the line?

MR. VANLEUR: Yes.

JUDGE REIF: Good morning, sir. I'd like to swear you in now. Could you please raise your right hand.

BRAD VANLEUR,
called as a witness, having been duly sworn,
was examined and testified as follows:

JUDGE REIF: Thank you.

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DIRECT EXAMINATION

BY MR. EVANS:

Q. Good morning, Mr. VanLeur. Can you hear me okay?

A. Yes, I can.

Q. For the record, please state your name, business address, and your position at OrbitCom.

A. I am Brad VanLeur, spelled V, as in Victor, A-N, capital L-E-U-R. President of OrbitCom, Inc. My office address is 1701 North Louise Avenue, Sioux Falls, South Dakota 57107.

JUDGE REIF: Mr. VanLeur, could you please speak up.

THE WITNESS: Yes.

JUDGE REIF: That's much better. Thank you.

Q. BY MR. EVANS: And how long have you held that position at OrbitCom, Inc.?

A. Approximately 13 years.

Q. Okay. And have you reviewed the joint application filed by Ionex and OrbitCom in Utah?

A. Yes, I have.

Q. And do you have personal knowledge of the matters set out in the application?

1 A. Yes.

2 Q. Are you the officer from OrbitCom, Inc.,
3 who signed the verified application?

4 A. Yes.

5 Q. Is OrbitCom requesting the Commission
6 approve this transaction pursuant to the procedures
7 set out at Rule 746-349-7?

8 A. Yes.

9 Q. Is OrbitCom serving as an incumbent local
10 exchange carrier anywhere in the state of Utah?

11 A. No, it is not.

12 Q. Were you present on the telephone and did
13 you hear Mr. Bunce's testimony this morning?

14 A. Yes, I did.

15 Q. Apart from the information contained in
16 the supplemental exhibits and in his testimony, do you
17 have any changes or corrections to make to the joint
18 application?

19 A. No, I don't have any changes or
20 corrections.

21 Q. Have you received or are you aware of any
22 opposition from third parties or the public to the FCC
23 application?

24 A. No.

25 Q. Have you received or are you aware of any

1 opposition from third parties or the public to the --
2 to any application filed for approval with any state
3 public utilities commission?

4 A. No.

5 Q. Or have you received or are you aware of
6 notices of correspondence from the FCC or any state
7 denying the application for approval of this
8 transaction?

9 A. No.

10 Q. Can you please offer a summary of why you
11 believe this transaction is in the public interest.

12 A. Yes. The transfer of OrbitCom's
13 assets/customers to Ionex will advance economic
14 efficiency, enhance competition in Utah among
15 competitive local exchange carriers, and bring to
16 customers the benefits of both.

17 OrbitCom's customers will receive from
18 Ionex the same services and quality of service they
19 have come to expect without any interruption and with
20 no change to service offerings, rates, terms, or
21 conditions.

22 Every customer will receive notice of the
23 change, but otherwise the change in providers should
24 virtually be transparent. I believe that this
25 transfer to Ionex is in the public interest and ask

1 the Commission to approve it.

2 MR. EVANS: Thank you, Mr. VanLeur.

3 Mr. VanLeur is available for cross.

4 JUDGE REIF: Mr. Jetter, any questions?

5 MR. JETTER: I have no questions for

6 Mr. VanLeur. Thank you.

7 JUDGE REIF: Thank you.

8 Mr. Evans, unless you have additional
9 questions, Mr. VanLeur is...

10 MR. EVANS: No more questions. Thank
11 you.

12 JUDGE REIF: Okay. Thank you.

13 Thank you, Mr. VanLeur.

14 Mr. Jetter.

15 MR. JETTER: Thank you, Your Honor. The
16 Division is here without a witness today, and if I
17 may, I would like to just proffer into the record on
18 behalf of the Division that the memorandum filed by
19 Ron Slusher, May 14th, 2015, that is written in favor
20 of approving the application filed by the joint
21 applicants in this docket remains the position of the
22 Division and the Division supports approval of this
23 application.

24 The Division believes that approval would
25 be just, reasonable, and in the public interest, and

1 the Division's not aware of any opposition to this.
2 We haven't received any customer complaints or -- or
3 any other third-party opposition. So we are -- we are
4 not aware of any opposition or any reason why we would
5 oppose.

6 JUDGE REIF: Thank you, Mr. Jetter.

7 Mr. Evans, do you have any questions of
8 Mr. Jetter?

9 MR. EVANS: No. But if I might now ask
10 that the application and exhibits and the supplemental
11 Exhibits 1 through 8 be received into the record.

12 JUDGE REIF: Okay. And why don't I make
13 this even more efficient.

14 What I'll do is I'll take administrative
15 notice of the joint application, the supplemental
16 Exhibits 1 through 8, as well as the Division's
17 memorandum which was filed on May 18th. And so all of
18 those are -- are now in the record.

19 And just for clarification sake, I do
20 want to make sure that there's no objection of
21 Mr. Jetter providing, on behalf of his client, the
22 position of the Division this morning.

23 MR. EVANS: No objection to that.

24 JUDGE REIF: Okay. Thank you.

25 Is there anything else that needs to come

1 before the Commission this morning?

2 MR. EVANS: Nothing here.

3 JUDGE REIF: Okay. All right. Well,
4 we'll wait for the transcript and proceed with the
5 order approving in light of the fact that there is no
6 objection.

7 And just to clarify to make the record
8 clear, I do want to give the opportunity to anybody
9 who is here who hasn't already stated anything, so if
10 you would like to say anything and you haven't already
11 done so, please raise your hand.

12 And seeing no indication of that, I wish
13 to note that there's no one here present who objects.

14 So thank you everyone for being here this
15 morning, and to our callers who called in and who very
16 helpfully spoke very clearly and helped our court
17 reporter out a great deal. So thank you so much.
18 Have a very nice day.

19 MR. EVANS: Thank you.

20 MR. JETTER: Thank you.

21 (The hearing was concluded at 9:23 a.m.)

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Reporter's Certificate

State of Utah)
County of Salt Lake)

I, Vickie Larsen, Certified Shorthand Reporter and Registered Merit Reporter, in the State of Utah, do hereby certify:

THAT the foregoing proceedings were taken before me at the time and place set forth herein; that the witness was duly sworn to tell the truth, the whole truth, and nothing but the truth; and that the proceedings were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

THAT the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

IN WITNESS WHEREOF, I have subscribed my name this 23rd day of June, 2015.


Vickie Larsen, CSR/RMR

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