

- 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
ORDER APPROVING TRANSFER OF
ASSETS AND CUSTOMERS

ISSUED: June 25, 2015

This matter is before the Commission on the joint application of Ionex Communications North, Inc. dba Birch Communications (Ionex) and OrbitCom, Inc. (OrbitCom) for approval to transfer the assets and customers of OrbitCom to Ionex.

The Commission issued notices of application, comment period, and hearing on April 30, 2015, allowing for the submission of comments by any interested party regarding the application. No comments or objections were received.

On May 18, 2015, 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 OrbitCom . . . [and] believes that . . . [the transfer of substantially all of OrbitCom's assets and customers is in] . . . the public interest[.]"¹

On June 19, 2015, the Administrative Law Judge for the Commission held a hearing in this docket. Bill Evans appeared on behalf applicants, and was joined telephonically by Meredith More, counsel for OrbitCom; Angela Collins, counsel for Ionex; Chris Bunce, counsel for Ionex; and Brad VanLeur, president for OrbitCom. Justin Jetter appeared for the Division.

¹ Division Memo at 1, filed May 18, 2015.

The applicants both testified in support of the application. In particular, Mr. Bunce offered the following summary on why this transaction is in the public interest:

OrbitCom is a small-size company in Utah serving only a handful of residential and business customers, some of which receive long distance service only. This transaction will advance Ionex's economic efficiency and allow it to achieve certain economies of scale which should put us in a position to both expand the offerings available for these customers and to bring our services to a broader customer base.

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

As stated in the application, the transaction will be conducted in a way that is virtually transparent to OrbitCom's customers, except that their billings will now be handled by Ionex. They will continue to receive the same service offerings, rates, terms and conditions, and quality of service they received from OrbitCom.²

Further, Mr. VanLeur testified:

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

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

Every customer will receive notice of the change, but otherwise the change in providers should virtually be transparent. I believe that this transfer to Ionex is in the public interest and ask the Commission to approve it.³

² Hr'g Tr. 11:22-25; 12:1-17, June 19, 2015.

³ Hr'g. Tr. 16:12-25; 17:1, June 19, 2015.

Mr. Jetter proffered the testimony of the Division. 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 presumes the application for approval of the transfer of customers and certain assets is in the public interest. Moreover, the Division’s memoranda and proffered testimony provide additional support for approval of the application.

ORDER

For the foregoing reasons, the Commission approves the transfer of assets and customers of OrbitCom, Inc. to Ionex Communications North, Inc. dba Birch Communications.

DATED at Salt Lake City, Utah, this 25th day of June, 2015.

/s/ Melanie A. Reif
Administrative Law Judge

DOCKET NO. 15-2563-01

- 4 -

Approved and confirmed this 25th day of June, 2015, as the Report and Order issued by the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#267132

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 25th day of June, 2015, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By E-Mail:

William J. Evans (bevans@parsonsbehle.com)
Counsel for Ionex Communications North, Inc. dba Birch Communications

Meredith A. Moore (meredithm@cutlerlawfirm.com)
Counsel for OrbitCom, Inc.

Brett N. Anderson (bretta@blackburn-stoll.com)

Vicki Baldwin (vbaldwin@parsonsbehle.com)

Sharon Bertelsen (bertelsens@ballardspahr.com)

Larry Bowman (larry.bowman@charter.com)

Brian W. Burnett (brianburnett@cnmlaw.com)

(cflregulatory@chartercom.com)

Eddie L. Cox (ecox@cut.net)

James Farr (james.farr@centurylink.com)

Amy Gross (agross@tminc.com)

Alan Haslem (ahaslem@mleainc.com)

Ray Hendershot (ray.hendershot@beehive.net)

William Huber (William.huber@questar.com)

Bill Hunt (williamp.hunt@dish.com)

David R. Irvine (Drirvine@aol.com)

Kristin L. Jacobson (Kristin.l.jacobson@sprint.com)

Brock Johansen (bjohansen@emerytelcom.com)

Dawn Kubota (kubotad@ballardspahr.com)

Jasen Lee (jlee@desnews.com)

Kirk Lee (kirk.lee@ftr.com)

Shirley Malouf (srmalouf@stoel.com)

Jennifer H. Martin (jhmartin@stoel.com)

Steve Mecham (sfmecham@cnmlaw.com)

Roger Moffitt (roger.moffitt@att.com)

Gregory Monson (gbmonson@stoel.com)

Sharon Mullin (smullin@att.com)

Thorvald Nelson (tnelson@hollandhart.com)

Janice Ono (Janice.ono@att.com)

Sheila Page (spage@utah.gov)

Mike Peterson (mpeterson@utahcooperatives.org)

Pam Pittenger (pam.pittenger@ftr.com)

Jenny Prescott (jenny.prescott@allwest.com)

Bruce Rigby (bruce@ucmc-usa.com)

Gary Sackett (gsackett@joneswaldo.com)

Kira Slawson (kiram@blackburn-stoll.com)

Alan L. Smith (alanakaed@aol.com)

Ted D. Smith (tsmithlaw@earthlink.net)

Kendra Thomas (kthomas@kfrservices.com)

Bruce H. Todd (btodd@stratanetworks.com)

Jake Warner (jakew@beehive.net)

James H. Woody (jwoody@union-tel.com)

John Woody (jwoody@union-tel.com)

Union Telephone Company

Patricia Schmid (pschmid@utah.gov)

Justin Jetter (jjetter@utah.gov)

Rex Olsen (rolsen@utah.gov)

Robert Moore (rmoore@utah.gov)

Assistant Utah Attorneys General

By Hand Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

Administrative Assistant