



State of Utah
Department of Commerce
Division of Public Utilities

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MEMORANDUM

To: Public Service Commission

From: Division of Public Utilities
Chris Parker, Director
Bill Duncan, Telecommunications / Water Manager
Ron Slusher, Utility Technical Consultant

Date: March 18, 2016

Re: In the Matter of Ionex Communications North, Inc. dba Birch Communications'
Acquisition of Primus Telecommunications, Inc. Docket No. 16-2563-01.

RECOMMENDATION (Approve):

The Division of Public Utilities ("Division") has reviewed the joint application between Ionex Communications North, Inc. dba Birch Communications' and Primus Telecommunications, Inc. and believes that the public interest will be promoted by recommending that the Public Service Commission ("Commission") allow the this Transfer of Assets.

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 R746-110-1.

EXPLANATION:

On or about February 18, 2016, Ionex Communications North, Inc. dba Birch Communications' ("Ionex") and Primus Telecommunications, Inc. ("Primus") notified the Commission of a transaction, which will result in a transfer of control of Primus to Ionex.

Ionex is a South Dakota corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia. Ionex is authorized to provide public telecommunications services in the State of Utah by the Commission on April 05, 2013, in docket number 13-2563-01. Ionex is a wholly owned subsidiary of Birch Communications, Inc. ("BCI").

Primus is a Delaware corporation with corporate headquarters at 805 Wright Brothers Boulevard, Cedar Rapids, Iowa 52404. Primus is a registered provider interexchange telecommunications services in Utah.

The Companies state that on January 18, 2016, BCI and Primus entered into an Asset Purchase Agreement pursuant to which BCI will purchase certain assets and customers of Primus, including certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. BCI will not assume any of Primus' pre-closing liabilities or obligations. After the transaction Primus will no longer offer telecommunications services in Utah.

On January 21, 2016, Primus filed a petition under Chapter 15 of the United States Bankruptcy Code, which resulted in the *pro forma* assignment of Primus' Utah telecommunications authorization from Primus Telecommunications, Inc. to Primus Telecommunications, Inc., debtor-in-possession. During the restructuring process, which will allow the company to remain in possession and control of its current and future assets, undertakings and properties, and the proceeds thereof while it completes a sale of its business, Primus will continue to operate as debtor-in-possession in the ordinary course of business.

The Applicants submit that the transaction described herein will serve the public interest and will ensure that affected customers enjoy continuity of high-quality telecommunications service. Primus' current customers will be given prior written notice of the transfer of their account to Ionex, in compliance with state and federal customer notice rules.

The Applicants further submit that the transaction will be conducted in a manner that will be largely transparent their customers.

Cc. Vincent M. Oddo, President/CEO, Ionex Communications North, Inc. dba Birch Communications'
Michael Nowlan, Chief Executive Officer, Primus Telecommunications, Inc.
Douglas Brandon, Counsel for Primus
Justin Jetter, Assistant Attorney General, State of Utah
Cheryl Murray, Utility Analyst, Office of Consumer Services, State of Utah