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**BEFORE THE UTAH PUBLIC SERVICE COMMISSION**

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<p>In the Matter of the Application of BIRCH COMMUNICATIONS, INC. for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange, Access, and Interexchange Telecommunications Services in the State of Utah</p>	<p>Docket No. _____</p> <p style="text-align: center;">APPLICATION</p>
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Application is hereby made to the Utah Public Service Commission (“Commission”) for a certificate authorizing Birch Communications, Inc. (“Birch” or “Applicant”) to operate as a local exchange and interexchange carrier of telecommunications services pursuant to Chapter 8b of Title 54 of the Utah Code; Utah Admin. Code R 746-349-1 *et seq.*; and the Commission’s Rules of Practice and Procedure, the following information and exhibits are furnished in support thereof:

**I. GENERAL INFORMATION**

1. Applicant’s legal name is Birch Communications, Inc. Applicant may be reached at its principal place of business:

Birch Communications, Inc.  
320 Interstate North Parkway SE  
Atlanta, GA 30339  
678-424-2400 (telephone)  
678-424-2501 (facsimile)

2. Birch is a Georgia corporation organized on May 28, 1996. Birch's Articles of Incorporation are attached hereto as **Exhibit A**. Applicant is in the process of registering with the Utah Secretary of State as a foreign profit corporation, and will supplement this Application once its Certificate of Authority is received.

## **II. CONTACT INFORMATION**

1. Correspondence or communications pertaining to this Application should be directed to:

Angela F. Collins  
Cahill Gordon & Reindel LLP  
1990 K Street, NW, Suite 950  
Washington, DC 20006  
202-862-8900 (telephone)  
[acollins@cahill.com](mailto:acollins@cahill.com)

and

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201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
801-536-6817  
[bevans@parsonsbehle.com](mailto:bevans@parsonsbehle.com)

2. Questions concerning Applicant's ongoing operations and regulatory compliance should be directed to:

Sharyl Fowler  
Manager, Regulatory Administration  
115 Gateway Drive  
Macon, GA 31210  
478-475-9800 (telephone)  
478-405-3112 (facsimile)  
[sharyl.fowler@birch.com](mailto:sharyl.fowler@birch.com)

3. Customer inquiries and complaints should be directed to the following:

Customer service: 866-424-5100

Angela Howard  
Paralegal, Response Specialist  
2323 Grand Boulevard, Suite 925  
Kansas City, MO 64108  
816-300-1428  
[complaints@birch.com](mailto:complaints@birch.com)

4. Applicant's registered agent in the state of Utah is:

Corporation Service Company  
2180 South 1300 East, Suite 650  
Salt Lake City, UT 84106

### III. R746-349-3 FILING REQUIREMENTS

1. R746-349-3(A)(1), Technical, Financial, and Managerial Abilities: Applicant's wholly owned subsidiary, Ionex Communications North, Inc. ("Ionex"), was authorized to provide telecommunications services in Utah in Docket No. 13-2563-01 (April 5, 2013). The financial, technical, and managerial qualifications of Applicant are stated in the body of this Application and included in the Exhibits hereto, and are also a matter of record in Docket No. 13-2563-01, of which qualifications Applicant requests that the Commission take administrative notice.

2. R746-349-3(A)(2), Proof of Bond in the Amount of \$100,000: Applicant does not plan to collect customer deposits or offer any prepaid services in the State of Utah. Accordingly, Applicant hereby respectfully requests a waiver of this bond requirement.

3. R746-349-3(A)(3), Construction or Acquisition of Facilities: Applicant does not currently own facilities or property in the State of Utah, but will acquire or construct any facilities in the state as necessary in order to provide its services. Ultimately, Applicant will utilize a mix of its own facilities unbundled network elements ("UNEs") or UNE-replacement services from incumbent local exchange carriers ("ILECs"), and other ILEC-provided services to provide local exchange and interexchange services in Utah.

4. R746-349-3(A)(4), Services to be Offered

a. R746-349-3(A)(4)(a), Classes of Customers: Applicant intends to offer local exchange and interexchange services to large business customers in Utah. This Application is being filed in connection with an internal corporate reorganization pursuant to which Applicant will serve large business customers, and Applicant's currently authorized affiliate Ionex will serve residential and single-line business customers in Utah.

b. R746-349-3(A)(4)(b), Location of Service: Applicant seeks authority to offer local exchange services throughout the State of Utah, with the exception of exchange areas with less than 5,000 access lines that are owned or controlled by an ILEC with fewer than 30,000 total access lines in accordance with Utah Code Ann. § 54-8b-2.1.

c. R746-349-3(A)(4)(c), Services Offered: Applicant proposes to offer local exchange and interexchange services throughout the State of Utah to large business customers. At present, Applicant is specifically seeking authorization as a facilities- and reseller-based provider of interexchange and local exchange services in the service area of Century Link. The Applicant does seek, however, statewide authority so that it may expand to the service areas of other future or existing LECs when they become open to competition.

5. R746-349-3(A)(5), Access to Standard Services: Applicant will provide access to local exchange, operator services, directory assistance, directory listings, and emergency services such as 911 and E911 either through facilities-based interconnection or resale services purchased from an underlying provider.

6. R746-349-3(A)(6), Implementation Schedule: Pursuant to Section 252(c)(3) of the Telecommunications Act of 1996, 47 U.S.C. § 252(c)(3), Applicant intends to initiate its operations in the State of Utah upon receipt of authority from the Commission.

7. R746-349-3(A)(7), Managerial Personnel: Applicant does not plan to operate an office within the State of Utah. Responsibility for Utah operations will be handled by Applicant's management team from its headquarters in Atlanta, Georgia. See **Exhibit B** for the biographical information and technical qualifications of management.

8. R746-349-3(A)(8), Employee Organization Chart: There are no employees specifically responsible for Utah operations. Please see **Exhibit B** for information on Applicant's management team.

9. R746-349-3(A)(9), Chart of Accounts: Applicant's chart of accounts, including account numbers, names, and brief descriptions, can be provided to the Commission upon request. Applicant respectfully requests the Commission take administrative notice of the chart of accounts provided by Ionex in Docket No. 13-2563-01.

10. R746-349-3(A)(10), Financial Statements: Attached as **Confidential Exhibit D** are the financial statements of Applicant Communications, Inc., demonstrating that Applicant has sufficient resources to initiate operations, and provide the services for which it seeks authority. The information provided in **Confidential Exhibit D** is proprietary and has been attached in a sealed envelope marked "Confidential." As **Confidential Exhibit D** contains sensitive information regarding Applicant's business operations, Applicant respectfully requests that this information be treated confidentially, and not be released to any member of the public absent Applicant's prior written consent.

11. R746-349-3(A)(11), Financial Statements: Attached as **Confidential Exhibit D** are the financial statements of Birch Communications, Inc., demonstrating that Applicant has sufficient resources to initiate operations, and provide the services for which it seeks authority. The information provided in **Confidential Exhibit D** is proprietary and has been filed in hard

copy in a sealed envelope marked “**Confidential--Subject to Utah Rule R746-1-602 and 603.**”<sup>1</sup>

As **Confidential Exhibit D** contains sensitive information regarding Applicant’s business operations, Applicant respectfully requests that this information be treated confidentially, and not be released to any member of the public absent Applicant’s prior written consent.

12. R746-349-3(A)(12), Five-year projection of expected operations.

(a) R746-349-3(A)(12)(a), Income and cash flow statements. Please see

**Confidential Exhibit D.**

(b) R746-349-3(A)(12)(b), Types of technology to be deployed in Utah:

Applicant will not own any switching or other facilities in Utah, but will utilize its facilities and switches located in other portions of its operating service territory. Applicant will utilize a mix of its own facilities, unbundled network elements (“UNEs”) or UNE-replacement services from incumbent local exchange carriers (“ILECs”), and other ILEC-provided services to provide local exchange and interexchange services in Utah. Applicant has existing interconnection and commercial agreements in place with CenturyLink, and expects to use those agreements to provide services in Utah.

(c) R746-349-3(A)(12)(c), Maps of proposed locations of facilities: As stated

above, Applicant does not own switching or other facilities in Utah, and thus this requirement is not applicable.

13. R746-349-3(A)(13), Implementation Schedule: Pursuant to Section 252(c)(3) of the Telecommunications Act of 1996, 47 U.S.C. § 252(c)(3), Applicant intends to initiate its operations in the State of Utah upon receipt of authority from the Commission.

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<sup>1</sup> This Application is accompanied by a Motion to Deviate from Rule R746-1-203 to permit the filing and service of Confidential Exhibit D.

14. R746-349-3(A)(14), Technical and Managerial Abilities: Applicant's officers have the necessary managerial and technical capabilities to provide local exchange and interexchange telecommunications services in the State of Utah. Applicant's management team has extensive experience in the telecommunications industry. Please see Exhibit B for resumes of Applicant's management team.

(a) R746-349-3(A)(14)(a), Proof of Certification: Applicant currently is transacting business as a local exchange and interexchange carrier in the 9-state BellSouth region (Alabama, Georgia, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee), Arkansas, New Jersey, and Pennsylvania. Applicant also holds authority to provide telecommunications services in Montana. Affiliates of Applicant are authorized to provide local exchange and/or interexchange services in all other states and the District of Columbia. Applicant is in the process of filing for certification to provide local exchange and/or interexchange telecommunications services in: Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Maine, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Vermont, West Virginia, Wisconsin, and Wyoming. Applicant's affiliate Ionex currently offers service in Utah.

(b) R746-349-3(A)(14)(b), Company Experience in Providing Telecommunications Services: Applicant's management team has more than 100 years combined experience operating a telecommunications business and the company and its affiliates have been operating since 1996. Applicant and its affiliates are authorized to provide local exchange and/or interexchange services in all 50 states and the District of Columbia.

15. R746-349-3(A)(15), Public Interest Statement: Applicant maintains that the issuance of a Certificate of Public Convenience and Necessity is in the public interest. Applicant's provision of local exchange and interexchange service will ensure the universal availability and accessibility of high-quality, affordable telecommunications services to business subscribers. Approval of Applicant's request for certification increases competitive options, and price competition drives prices downward. Applicant's entry into the Utah market will serve the public interest and universal service goals by making available an alternative provider, thereby stimulating intrastate competition, reducing cost to consumers, and creating competitor incentives to innovate. Grant of this Application will enhance competition, generate the benefits that result from competition, and result in a more efficient, innovative, technologically advanced, and diversified telecommunications industry in Utah.

16. R746-349-3(A)(16), Authority to Do Business: Applicant is in the process of obtaining its certificate of authority from the Utah Secretary of State.

17. R746-349-3(A)(17), Unauthorized Switching, Solicitation of New Customers, and Prevention of Unauthorized Switching: Applicant has detailed anti-slamming measures in place and routinely uses third-party verification ("TPV") to verify carrier change requests in accordance with federal and state requirements. After TPV is used to verify a carrier change request, Applicant customer service personnel often conduct recorded, follow-up conversations with the customer to confirm the switch and for quality assurance purposes.

(a) R746-349-3(A)(17)(a), Sanctions: Please see **Exhibit C**.

(b) R746-349-3(A)(17)(b), Documentation of Complaints Regarding Unauthorized Switching: Please see **Exhibit C**.



**EXHIBITS**

- Exhibit A**            Articles of Incorporation
- Exhibit B**            Key Leadership/Management Resumes
- Exhibit C**            Complaints
- Exhibit D**            Financial Statements (Confidential – Submitted Under Seal)

(c) R746-349-3(A)(17)(c), Applicant's Responses to Complaints Regarding Unauthorized Switching: Please see **Exhibit C**.

18. R746-349-3(A)(18), Applicant's Written Policies Governing Solicitation of Customers/Statement Regarding Prevention of Unauthorized Switching: Applicant has detailed anti-slamming measures in place and routinely uses third-party verification ("TPV") to verify carrier change requests in accordance with federal and state requirements. After TPV is used to verify a carrier change request, Applicant customer service personnel often conduct recorded, follow-up conversations with the customer to confirm the switch and for quality assurance purposes.

WHEREFORE, Birch Communications, Inc. respectfully requests that the Commission grant a Certificate of Public Convenience and Necessity to provide telecommunications services in the State of Utah.

Respectfully submitted this 30<sup>th</sup> day of November, 2017.

PARSONS BEHLE & LATIMER



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William J. Evans  
*Attorneys for Birch Communications, Inc.*