

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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	<u>DOCKET NO. 17-2600-01</u>
Joint Notice of BCHI Holdings, LLC, Ionex Communications North, Inc., Birch Communications, Inc. and Fusion Telecommunications International, Inc. Regarding an Intracorporate Reorganization	<u>DOCKET NOS. 17-2563-01</u> <u>and 17-2600-02</u> <u>REPORT AND ORDER</u>

ISSUED: January 23, 2018

SYNOPSIS

The Public Service Commission (“PSC”) approves the application of Birch Communications, Inc. (“Birch”) for a Certificate of Public Convenience and Necessity (“Certificate”).

PROCEDURAL HISTORY

On December 1, 2017, in Docket No. 17-2600-01, Birch filed its Application for a Certificate to Provide Facilities-Based and Resold Local Exchange, Access, and Interexchange Telecommunications Services in the State of Utah (“Application”). The Application “specifically seek[s] authorization [to operate] as a facilities- and reseller-based provider of interexchange and local exchange services in the service area of [Qwest Corporation d/b/a CenturyLink (“CenturyLink”).” The Application also seeks “statewide authority so that it may expand to the service areas of other future or existing [local exchange carriers] when they become open to competition.” The Application sets forth detailed information regarding the technical, financial,

and managerial resources of Birch to provide the services it seeks to offer. In addition, the Application asks the PSC to waive the \$100,000 bond requirement set forth in Utah Administrative Code R746-349-3(A)(2) because Birch will not require customer deposits or prepayments.

On December 18, 2017, the Division of Public Utilities (“DPU”) filed a memorandum recommending approval of the Application. In its memorandum, the DPU noted the following:

1. Approval of the Application will serve the public interest by creating greater competition in Utah’s local exchange marketplace.
2. Birch intends to offer interexchange telecommunications statewide. To the extent it provides local exchange service, it will initially do so in areas served by CenturyLink; however, Birch does not plan to provide local exchange service in areas of any small or rural local exchange carriers having fewer than 5,000 access lines that are controlled by an incumbent local exchange carrier with fewer than 30,000 total access lines, consistent with Utah Code Ann. § 54-8b-2.1(3) and (4).
3. Birch does not currently own facilities or property in the State of Utah, but it plans to acquire or construct facilities in the state as necessary to provide its services. Birch plans to utilize a mix of its own facilities’ unbundled network elements (“UNE”) or UNE-replacement services from incumbent local exchange carriers and other services they offer such that Birch can provide local exchange and interexchange services in Utah.

In the Notices of Filing and Comment Period issued December 5, 2017 in Docket No. 17-2600-01, the PSC stated: “If no comment is filed in opposition to the application, the PSC will

adjudicate this docket informally and without hearing.” No comments from parties expressing opposition to the Application were filed.

On December 5, 2017, Birch filed, with the joining parties, the Joint Notice of BCHI Holdings, LLC, Ionex Communications North, Inc., Birch Communications, Inc. and Fusion Telecommunications International, Inc. Regarding an Intracorporate Reorganization (“Joint Notice”). The Joint Notice states the filing parties are participating in “a *pro forma* intracorporate reorganization.” (Joint Notice at 1.) The Joint Notice does not request any action from the PSC. On December 18, 2017, the PSC issued a Notice of Filing and Comment Period, inviting comments through January 4, 2018, and again stating the docket would be adjudicated informally and without hearing unless comments in opposition were filed. On January 2, 2018, the DPU filed a memorandum recommending the PSC “allow” the “Merger and Intra-corporate reorganization.” The DPU represents the “public interest will be promoted” by the contemplated transaction and that it anticipates no objection or opposition to the transaction.

In light of the foregoing, the PSC enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. There are no intervenors in this docket. There has been no opposition to the Application.
2. Birch has filed documentation containing sufficient information to support the Application.
3. Birch has demonstrated that it is qualified to do business in Utah.

4. Birch proposes to provide public telecommunications services in the non-rural service area of CenturyLink.
5. Birch will utilize its managerial expertise to support its Utah operations.
6. Birch has sufficient technical resources and abilities to provide the public telecommunications services it proposes to offer.
7. Birch has a positive net worth and sufficient working capital for its Utah operations.
8. In providing intrastate services, Birch will be subject to competition from other certified telecommunications service providers.
9. Birch's service offerings will provide customers with a wider range of choice in meeting their telecommunications needs and will support the development of competition.
10. Birch will not require customer deposits or offer any prepaid services in Utah.
11. No opposition to the transaction described in the Joint Notice has been voiced and all available information supports a finding that the transaction is in the public interest.

CONCLUSIONS OF LAW

1. Birch meets each of the statutory requirements of Utah Code Ann. §§ 54-8b-1.1 *et seq.* for the requested Certificate.
2. Birch's request to be exempted from the \$100,000 bond requirement is in accord with PSC practice and is in the public interest.
3. Issuance of the requested Certificate to provide public telecommunications services, as described in the Application, is in accord with the legislative policy set forth in Utah Code Ann. §§ 54-8b-1.1 *et seq.*, and is in the public interest.

ORDER

In light of the Findings and Conclusions set forth above, the PSC ORDERS:

1. Birch is granted the Certificate attached as Exhibit A, which exhibit is incorporated by reference into this Order as if fully set forth.
2. Birch's Certificate is subject to the limitations stated therein.
3. Birch shall provide annual reports to the PSC and to the DPU. Birch shall meet with the DPU to determine what information is required in order for the DPU to exercise its statutory obligations.
4. Birch is exempted from the \$100,000 bond requirement set forth in Utah Administrative Code R746-349-3(A)(2).

Any person may file a protest in regard to this Order within 20 days from the date of issuance. If the PSC finds the protest to be meritorious, the effective date shall be suspended pending further proceedings. Otherwise, this order shall take effect 20 days from the signature date below.

DATED at Salt Lake City, Utah, January 23, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#299321

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 PSC 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 PSC 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 PSC'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.

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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ISSUED: January 23, 2018

The Public Service Commission, pursuant to Utah Code Ann. § 54-8b-2.1, issues a Certificate of Public Convenience and Necessity authorizing Birch Communications, Inc. to provide public telecommunications services within the State of Utah. Birch Communications, Inc. may not operate in any area with fewer than 5,000 access lines that is served by an incumbent local exchange carrier that has fewer than 30,000 total access lines.

DATED at Salt Lake City, Utah, January 23, 2018.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#299321

CERTIFICATE OF SERVICE

I CERTIFY that on January 23, 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

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