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BEFORE THE ARIZONA CORPORATION COM

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ARIZONA CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

APR 22 2014

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IN THE MATTER OF THE APPLICATION OF)
IONEX COMMUNICATIONS NORTH, INC.)
D/B/A BIRCH COMMUNICATIONS FOR A)
DECLARATORY ORDER THAT A.A.C. RULES)
14-2- 1901-1913 AND RULEA 14-2-2001-2011)
ARE INAPPLICABLE TO THE IONEX)
ACQUISITION OF LIGHTYEAR, COVISTA)
AND ERNEST CUSTOMERS IN CUSTOMER)
BASE TRANSFERS OR IN THE ALTERNATIVE)
AN ORDER WAIVING APPLICABLE RULES.)

DOCKET NO. T-03864A-14-0073
T-04229A-14-0073
T-03631A-14-0073
T-03490A-14-0073

**IONEX COMMUNICATIONS
NORTH, INC. APPLICATION
FOR ORDER OR WAIVER**

As a result of the transactions described in this application, Ionex Communications North, Inc. d/b/a Birch Communications ("Ionex") has begun serving customers previously served by Lightyear Network Solutions, LLC ("Lightyear"), Ernest Communications ("Ernest"), and Covista. The number of Arizona customers acquired by Ionex is small, fewer than 1,000 customers in total. (Lightyear 443; Ernest 114; Covista 409). Customers of Lightyear, Ernest and Covista were all given advance notice of the Ionex asset acquisitions pursuant to FCC regulations governing the bulk transfer of customers. See 47 C.F.R. §64.1120(e).

Ionex requests a declaratory order that the Commission “slamming” rules (A.A.C. R14-2-1901-1913) and the “cramming” rules (A.A.C. R14-2001-2011) are inapplicable to the customer base acquisitions described below or, in the alternative, an order waiving the applicable rules.

I. BACKGROUND INFORMATION

A. Ionex

Ionex Communications North, Inc. (d/b/a Birch) was issued a certificate of convenience and necessity by the Commission on January 29, 2014, to provide local exchange and interexchange telecommunications services in Arizona. *See* Decision No. 74295. Ionex is a wholly owned subsidiary of Birch Communications, Inc. (“Birch”). Birch is a Georgia corporation headquartered at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. Birch and its subsidiaries are authorized to provide telecommunications services in all 50 states and the District of Columbia.

B. Lightyear Network Solutions, LLC

Lightyear is a Kentucky limited liability company which is headquartered at 1901 Eastpoint Parkway, Louisville, KY, 40223. Lightyear is certified to provide telecommunications services in the state of Arizona pursuant to Commission Decision No. 63381, which was issued February 16, 2001. On March 18, 2014, Lightyear filed a request to cancel its authority to provide service in Arizona. (ACC Docket T-04229A-14-0092).

C. Ernest Communications, Inc.

Ernest Communications, Inc. is a Georgia corporation authorized to do business in Arizona since 1998. Ernest was authorized to provide competitive local exchange telecommunications services as a reseller in Arizona pursuant to Decision No. 63142, which was issued November 16, 2000.

D. Covista

Covista is a New Jersey corporation with headquarters located at 225 East 8th Street, Suite 400, Chattanooga, TN, 37402. Covista provides resold long distance service pursuant to a certificate for convenience and necessity issued by the Arizona Commission in Decision No. 62639, which was issued June 9, 2000.

II. DESIGNATED CONTACTS

Correspondence concerning this matter should be directed to:

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III. DESCRIPTION OF THE TRANSACTIONS

A. Lightyear

On May 10, 2013, Birch and Lightyear entered into an Asset Purchase Agreement (“Agreement”) pursuant to which Birch would purchase certain assets and customers from Lightyear. Pursuant to the Agreement, Birch purchased the following assets from Lightyear: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. Birch has not assumed any of Lightyear’s pre-closing liabilities or obligations. The Arizona portion the asset and customer transfer anticipated by the Agreement was delayed pending receipt by Ionex of its certification to provide service in Arizona. On January 29, 2014, Ionex received certification to provide service in Arizona, and the customer transfer anticipated by the Agreement is now complete. Lightyear served approximately 443 customers in Arizona.

Ionex has made all necessary revisions to its rates, terms, and conditions to incorporate Lightyear's current services and rates so that affected customers will continue to receive the same services that they currently receive without any immediate changes to their service offerings or rates. No changes to any customer contracts, if any, will occur as a result of the transaction. Upon completion of the customer transfer, Ionex will provide Lightyear's customers with the same service quality they have come to expect and all billing will be handled under the Birch name. In compliance with federal rules governing the transfer of an entire customer base, Lightyear customers received notice of the carrier change along with a commitment from Ionex that there would be no immediate change to the rates, terms and conditions of their services as a result of this transfer.

B. Ernest Communications, Inc.

On May 30, 2013, Birch and Ernest entered into an Asset Purchase Agreement ("Agreement") pursuant to which Birch purchased the assets and customers of Ernest. Pursuant to the Agreement, Birch purchased the following assets from Ernest: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. Birch, however, did not assume any of Ernest's pre-closing liabilities or obligations.

Ionex has made all necessary revisions to its rates, terms, and conditions to incorporate Ernest's current services and rates so that affected customers will continue to receive the same services that they currently receive without any immediate changes to their service offerings or rates. The ownership structure of Birch and Ionex will not be affected by the Transaction. Ionex will provide Ernest's customers with the same service quality they have come to expect and all billing will be handled under the Birch name. In compliance with federal rules governing the transfer of an entire customer base, Arizona Ernest customers (roughly 114) received notice of

this carrier change along with a commitment from Ionex that there would be no immediate change to the rates, terms and conditions of their services as a result of this transfer.

C. Covista

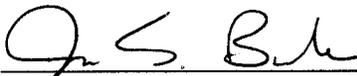
On November 30, 2012, Birch and Covista entered into an Asset Purchase Agreement (“Agreement”) pursuant to which Birch purchased certain assets and customers of Covista. Pursuant to the Agreement, Birch purchased the following assets from Covista: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. Birch, however, did not assume any of Covista’s pre-closing liabilities or obligations.

Ionex has made all necessary revisions to its rates, terms, and conditions to incorporate Covista’s current services and rates so that affected will continue to receive the same services that they currently receive without any immediate changes to their service offerings or rates. The ownership structure of Birch and Ionex will not be affected by the Transaction. Ionex will provide Covista’s customers with the same service quality they have come to expect and all billing will be handled under the Birch name. In compliance with federal rules governing the transfer of an entire customer base, Arizona Covista customers (roughly 409) received notice of this carrier change along with a commitment from Ionex that there would be no immediate change to the rates, terms and conditions of their services as a result of this transfer.

IV. Conclusion

Ionex requests a declaratory order that the Commission “slamming” rules and the “cramming” rules are inapplicable to the transfer of an entire customer base, provided that transfer occurred in compliance with federal transfer requirements. Alternatively, Ionex requests a waiver of A.A.C. R14-2-1901-1913 and R14-2001-2011 in connection with these acquisitions of Lightyear, Ernest and Covista customers.

Respectfully submitted, this 22nd day of April 2014.

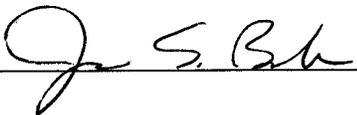
By:  _____

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D/B/A Birch Communications

ORIGINAL and 13 copies of the foregoing
filed this 22nd day of April 2014, with:

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1200 West Washington Street
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4814-6162-2810, v. 1