



BEFORE THE ARIZONA CORPORATION COMMISSION

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BOB STUMP
Chairman
GARY PIERCE
Commissioner
BRENDA BURNS
Commissioner
BOB BURNS
Commissioner
SUSAN BITTER SMITH
Commissioner

Arizona Corporation Commission

DOCKETED

OCT 24 2014

DOCKETED BY
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IN THE MATTER OF THE APPLICATION
OF IONEX COMMUNICATIONS NORTH,
INC. D/B/A BIRCH COMMUNICATIONS
FOR APPROVAL OF THE TRANSFER OF
CUSTOMERS FROM LIGHTYEAR
NETWORK SOLUTIONS, LLC, ERNEST
COMMUNICATIONS, INC. AND COVISTA,
INC.

DOCKET NOS. T-03864A-14-0073
T-04229A-14-0073
T-03631A-14-0073
T-03490A-14-0073

DECISION NO. 74778

ORDER

Open Meeting
October 16, 2014
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On February 26, 2014, Ionex Communications North, Inc. d/b/a Birch Communications ("Ionex") filed a letter to advise the Arizona Corporation Commission ("Commission"), that Ionex has begun serving customers previously served by Lightyear Network Solutions, LLC. ("Lightyear"), Ernest Communications, Inc. ("Ernest") and Covista, Inc. ("Covista") as a result of the transactions described below. Ionex concluded that Commission approval was not required for Ionex to begin serving these customers due to the small size of the carriers involved in the transaction[s] (not Class A Utilities) and the recently amended Arizona Revised Statute ("A.R.S.") §40-285(F) and filed the letter for informational purposes and to provide contact information should any questions arise.

2. Upon receipt of the aforementioned filing, Staff discussed with representative counsel the need to address Arizona Administrative Code ("A.A.C.") R14-2-1904 et seq. (the "Slamming

1 Rules”) and A.A.C. R14-2-2001 et seq. (the “Cramming Rules”) in a customer transfer situation. As a
2 result, on April 22, 2014, Ionex filed in this docket an application for a declaratory order from the
3 Commission that the Commission’s Slamming Rules and Cramming Rules are inapplicable to the
4 transfer of an entire customer base, provided that the transfer occurred in compliance with federal
5 transfer requirements. Alternatively, Ionex requests a waiver of A.A.C. R14-2-1901-1913 and R14-
6 2001-2011 in connection with the acquisitions of Lightyear, Ernest and Covista.

7 3. In support of this filing, Ionex provides the following information.

8 **Description of the Applicants**

9 Ionex Communications North, Inc. d/b/a Birch Communications

10 4. Ionex was issued a Certificate of Convenience and Necessity (“CC&N”) on January 29,
11 2014, to provide resold local exchange and long distance, and facilities-based long distance and local
12 exchange telecommunications services in Arizona pursuant to Decision No. 74295. Ionex is a wholly
13 owned subsidiary of Birch Communications, Inc. (“Birch”). Birch is a Georgia corporation
14 headquartered at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia, 30305. Birch and its
15 subsidiaries are authorized to provide telecommunications services in all 50 states and the District of
16 Columbia.

17 Lightyear Network Solutions, LLC

18 5. Lightyear is a Kentucky limited liability company which was headquartered at 1901
19 Eastpoint Parkway Louisville, KY, 40223. Lightyear Network Solutions, LLC was issued a CC&N to
20 provide competitive resold and facilities-based local exchange and interexchange services via Decision
21 No. 67435 on December 3, 2004.

22 6. On December 5, 2006, the Commission, in Decision No. 69171, cancelled the facilities-
23 based long distance portion of Lightyear’s CC&N. On May 16, 2008, the Commission, in Decision
24 No. 70342, cancelled the facilities-based and resold local exchange portion of Lightyear’s CC&N. On
25 March 18, 2014, Lightyear submitted a Request for Cancellation of Long Distance Resale Authority in
26 Docket No. T-04229A-14-0092 that is currently pending.

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1 Ernest Communications, Inc.

2 7. Ernest was a Georgia corporation authorized to do business in Arizona in 1998. Ernest
3 was granted a CC&N for authority to provide competitive resold local exchange telecommunications
4 services in Decision No. 63142, dated November 16, 2000.

5 8. Ernest has not submitted an application to request a cancellation of its CC&N. Staff
6 attempts to reach any representative of Ernest by phone revealed that the most recent contact number
7 has now been routed to Birch Communications. An email sent to a company contact listed on
8 Ernest's most recent Annual Report was returned undeliverable. A certified letter addressing the
9 CC&N cancellation issue was mailed on June 18, 2014, to the last known contact and company
10 address. The letter was returned by the U.S. Postal Service, unopened, to the Commission with the
11 indication that the recipient was unknown.

12 9. Though required to file a bond, Staff could find no compliance filing indicating that
13 Ernest had fulfilled with this requirement. The Commission Business Office confirmed no such bond
14 exists.

15 Covista, Inc.

16 10. Covista was a New Jersey corporation with headquarters located at 225 East 8th Street,
17 Suite 400, Chattanooga, TN, 37402. Covista, while under the name of Total Tel, Inc., was granted a
18 CC&N in Decision No. 62638 by the Commission on June 9, 2000, to provide resold long distance
19 service. Total Tel, Inc. subsequently changed its name to Covista and notified the Commission of such
20 in Docket No. T-03490A-00-0930. On December 18, 2003, Covista's CC&N authority was expanded
21 to include competitive facilities-based and resold local exchange services in Decision No. 66641. On
22 August 6, 2008, upon Covista's request, the Commission cancelled Covista's authority to provide
23 competitive facilities-based and resold local exchange services in Decision No. 70449.

24 11. Covista has not submitted an application to request a cancellation of its CC&N for
25 interexchange service. Staff attempts to reach any representative of Covista by phone revealed that
26 the most recent contact number is now out of service. An email sent to a company contact listed on
27 Covista's most recent Annual Report was returned undeliverable. A certified letter addressing the
28 CC&N cancellation issue was mailed on June 18, 2014, to the last known contact and company
address. This letter was returned to the Commission with the indication that the forwarding address
had expired. A second certified letter mailed on July 1, 2014, to the forwarding address was not
returned nor did it elicit a response.

1 12. Covista was required to obtain a bond as a requirement in Decision No. 66641.
2 However, in Decision No. 70449, the Commission noted that Covista never fulfilled this requirement
3 and no additional ordering language was included directing Covista to obtain the bond.

4 **Description of the Transaction**

5 Lightyear Network Solutions, LLC

6 13. On May 10, 2013, Birch and Lightyear entered into an Asset Purchase Agreement
7 pursuant to which Birch would purchase certain assets and customers from Lightyear. Birch
8 purchased the following assets from Lightyear: certain customer accounts and receivables, certain
9 customer agreements and contracts, certain vendor agreements and contracts, certain equipment and
10 certain intellectual property. Birch has not assumed any of Lightyear's pre-closing liabilities or
11 obligations. The Arizona portion of the asset and customer transfer anticipated by the Agreement was
12 delayed pending receipt by Ionex of its certification to provide service in Arizona. On January 29,
13 2014, Ionex received certification to provide service in Arizona and the customer transfer anticipated
14 by the Agreement is now complete. Lightyear served approximately 443 customers in Arizona.

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

24 Ernest Communications, Inc.

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

3 16. Ionex has made all the necessary revisions to its rates, terms and conditions to
4 incorporate Ernest's current services and rates so that the affected customers will continue to receive
5 the same services that they received without any immediate changes to their service offerings or rates.
6 Ionex also states that Ionex will provide Ernest's customers with the same quality of service they have
7 come to expect and all billing will be handled under the Birch name. Ionex further states that in
8 compliance with federal rules governing the transfer of an entire customer base, Arizona Ernest
9 customers, approximately 114, received notice of the carrier change along with a commitment from
10 Ionex that there would be no immediate change to the rates, terms and conditions of their service as a
11 result of the transfer.

12 Covista, Inc.

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

18 18. Ionex has made all the necessary revisions to its rates, terms and conditions to
19 incorporate Covista's current services and rates so that the affected customers will continue to receive
20 the same services that they received without any immediate changes to their service offerings or rates.
21 Ionex states that Ionex will provide Covista's customers with the same quality of service they have
22 come to expect and all billing will be handled under the Birch name. Ionex further states that in
23 compliance with federal rules governing the transfer of an entire customer base, Arizona Covista
24 customers, approximately 409, received notice of the carrier change along with a commitment from
25 Ionex that there would be no immediate change to the rates, terms and conditions of their service as a
26 result of the transfer.

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Request for Waiver of Slamming and Cramming Rules

19. Ionex requests a declaratory order that the Slamming and Cramming Rules are inapplicable to the transfer of an entire customer base, provided the 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.

Complaints and Compliance

20. The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions about any of the companies named in this Docket. According to the Corporations Division, Ionex and Ernest are in good standing, Lightyear is not in good standing as a Certificate of Cancellation was filed on March 3, 2014, and Covista is not in good standing as their 2013 Annual Report, due October 28, 2013, is delinquent. Ionex and Lightyear have filed their required Utilities Annual Reports while Ernest is delinquent in filing its 2013 Utilities Annual Report and Covista has not filed its 2001, 2012 or 2013 Utilities Annual Reports. The Compliance Section of the Utilities Division reports that Ionex, Lightyear, Ernest and Covista are in compliance.

Staff's Analysis

21. The Applicants seek a waiver of A.A.C R14-2-1901 to -1913, the Slamming Rules. In its application, Ionex noted that the customers of Lightyear, Ernest and Covista were provided notice of the carrier change in compliance with federal rules. The Lightyear notice was sent out on October 24, 2013, the Ernest notice on July 15, 2013, and the Covista notice on February 1, 2013. Staff reviewed the notices. Because the notices inform customers that the rates, terms and conditions of service will not change as a result of the proposed transactions and informs customers that they may subscribe to the telecommunications service provider of their choice, Staff believes the Commission's Slamming Rules should be waived in this matter.

Staff Recommendations

22. Staff believes the Commission's Slamming and Discontinuance Rules all apply to this transaction. However, based on the above, Staff recommends the following:

- A waiver of A.A.C. R14-2-1904, et seq. and any other applicable anti-slamming regulations that may be inconsistent with the Federal Communication Commission's ("FCC's") rules regarding the transfer of customer bases because the notice informs

1 customers that the rates, terms and conditions of service will not change as a result of
2 this proposed transfer and informs customers that they may subscribe to the
telecommunications service provider of their choice; and

- 3 • A waiver not be granted of A.A.C. R14-2-2001 et seq. cramming rules because the
4 rates, terms and conditions of service will not change as a result of this proposed
5 transfer.

6 23. Based on Staff's inability to make contact with a representative of Ernest or Covista,
7 the Consumer Services Sections' report of Annual Report delinquencies for Ernest and Covista and
8 the information contained in notices to customers of the transfers filed in this Docket by Ionex, Staff
9 has concluded that Ernest and Covista no longer exist as business entities in Arizona. Neither Ernest
10 nor Covista have requested cancellation of its CC&N but, given the preceding, Staff recommends the
11 following process to commence cancellation of Ernest's and Covista's CC&Ns:

- 12 1) A copy of the Memo and proposed Order for this case be delivered to Ernest and
13 Covista at their last known address and placed in their CC&N dockets (Docket Nos.
14 T-03631A-98-0540 and T-03490A-98-0013, respectively).
- 15 2) Ernest and Covista be given sixty (60) days from the date of the Order in this Docket
16 to object to cancellation of their CC&N and request a Hearing if they so desire.
- 17 3) A separate notice be sent to Ernest and Covista, with a copy of the Order attached,
18 stating that they have sixty (60) days from the date of the Order to object to
19 cancellation of their CC&N and request a Hearing or cancellation of their CC&N will
20 occur.
- 21 4) If, after sixty (60) days have expired with no response from Ernest and/or Covista,
22 Staff should docket a Report and Order recommending cancellation of Ernest's
23 and/or Covista's CC&N.

24 CONCLUSIONS OF LAW

25 1. Ionex Communications North, Inc. d/b/a Birch Communications, Lightyear Network
26 Solutions, LLC, Ernest Communications, Inc. and Covista, Inc. are public service corporations within
27 the meaning of Article XV of the Arizona Constitution.

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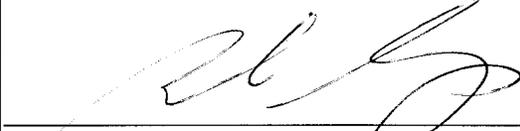
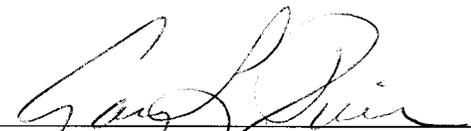
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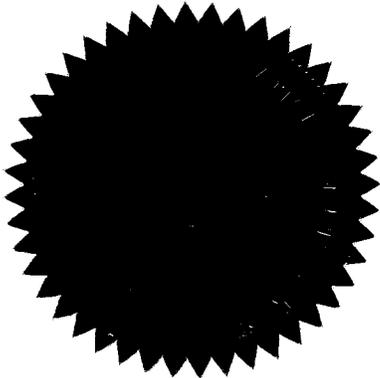
IT IS FURTHER ORDERED that Ionex Communications North, Inc. d/b/a Birch Communications' request for a waiver of A.A.C. R14-2-2001 et seq. be and hereby is denied.

IT IS FURTHER ORDERED that a process shall commence to cancel Ernest Communications, Inc.'s and Covista, Inc.'s CC&Ns consistent with Finding of Fact 23.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

 CHAIRMAN	 COMMISSIONER	
 COMMISSIONER	 COMMISSIONER	 COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 24th day of October, 2014.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:MAC:sms\MAS

1 SERVICE LIST FOR: IONEX COMMUNICATIONS NORTH, INC. D/B/A BIRCH
2 COMMUNICATIONS, LIGHTYEAR NETWORK SOLUTIONS, LLC,
3 DOCKET NOS. T-03864A-14-0073, T-04229A-14-0073, T-03631A-14-0073 AND T-
4 03490A-14- 0073.

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