

ORIGINAL

OPEN MEETING



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MEMORANDUM

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AZ CORP COMMISSION
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2015 JUN 23 AM 9 43

TO: THE COMMISSION

FROM: Utilities Division

DATE: June 23, 2015

RE: IN THE MATTER OF THE JOINT APPLICATION OF IONEX COMMUNICATIONS NORTH, INC. DBA BIRCH COMMUNICATIONS AND ORBITCOM, INC. FOR APPROVAL OF A WAIVER OF THE SLAMMING RULES IN CONNECTION WITH THE TRANSFER OF THE ORBITCOM CUSTOMERS IN ARIZONA TO IONEX (DOCKET NOS. T-03864A-15-0144 AND T-04274A-15-0144)

INTRODUCTION

On May 6, 2015, Ionex Communications North, Inc. dba Birch Communications ("Ionex") and OrbitCom, Inc. ("OrbitCom"), (together the "Applicants"), filed a joint application requesting approval from the Arizona Corporation Commission ("Commission") for a waiver of Arizona Administrative Code ("A.A.C") R14-2-1901 to -1913, the "Slamming Rules", in connection with the transfer of OrbitCom's customers in Arizona to Ionex. On May 18, 2015, Ionex filed a Supplement to the Application to provide a copy of the draft customer notice letter sent to OrbitCom customers affected by the transfer. On June 1, 2015, OrbitCom filed a letter stating that upon approval of the Application in this Docket, it will file a separate application requesting cancellation of its Certificate of Convenience and Necessity ("CC&N") within sixty (60) days of the issuance of the Commission's Order.

In support of this filing, Applicants provide the following information.

DESCRIPTION OF THE APPLICANTS

A. *Ionex Communications North, Inc. dba Birch Communications*

Ionex is a South Dakota corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia, 30305. Ionex was issued a CC&N to provide competitive resold and facilities-based local exchange and long distance telecommunications services by the Commission in Decision No. 74295 dated January 29, 2014. Ionex is a wholly owned subsidiary of Birch Communications, Inc. ("BCI"), a Georgia corporation with headquarters also located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia, 30305. BCI and its subsidiaries are authorized to provide telecommunications services in fifty (50) states and the District of Columbia.

Arizona Corporation Commission
DOCKETED

JUN 23 2015

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B. *OrbitCom, Inc.*

OrbitCom is a South Dakota corporation with headquarters located at 1701 North Louise Avenue, Sioux Falls, South Dakota, 57107. OrbitCom was issued a CC&N to provide competitive resold interexchange and facilities-based local exchange telecommunications services by the Commission in Decision No. 67945 dated June 21, 2005.

THE PROPOSED TRANSACTION

The Applicants state that on April 24, 2015, BCI and OrbitCom entered into an Asset Purchase Agreement (“Agreement”) pursuant to which BCI will purchase certain customer accounts and receivables, customer agreements and contracts, vendor agreements and contracts, equipment and intellectual property. BCI will not assume any of OrbitCom’s pre-closing liabilities or obligations. In connection with this purchase, all customers in Arizona currently served by OrbitCom will be transferred to Ionex. Ionex will assume all managerial, technical and financial responsibilities in connection with providing service to the former OrbitCom customers and will provide service to these customers utilizing its existing interconnection agreements, 911 arrangements and numbering arrangements.

Ionex states that it will make any necessary revisions to its existing rates, terms and conditions to incorporate OrbitCom’s current services and rates so that the affected customers will continue to receive the same services they currently receive without any immediate changes to their service offerings or rates. Ionex will also incorporate into its tariff the rates, terms and conditions of services currently provided to OrbitCom customers. The transfer is designed to be seamless as there will be no change to the affected customer’s rates, terms and conditions and there will be no charge to the transferred customers for the transfer of service.

STAFF’S ANALYSIS

Request for Waiver of Slamming Rules

The Applicants seek a waiver of Article 19 - Consumer Protections For Unauthorized Carrier Changes (A.A.C. R14-2-1901 to -1913), the Slamming Rules, for the transfer of nine (9) business and one (1) residential local exchange and long distance customers in Arizona. Pursuant to 47 C.F.R. § 64.1120(e)(3) of the Federal Communications Commission’s rules, on May 7, 2015, a written notice of the transfer was provided to OrbitCom’s customers via First Class United States mail. A copy of the draft notice was provided as a Supplement to the Application.

Staff has reviewed the notice that was sent to the affected customers. The notice informs 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. The Applicants also state in their application that affected customers will continue to receive the same services they currently receive and that the transfer is designed to be seamless to those customers. Given the nature of this transaction and the notice to the affected customers, Staff believes the Commission’s Slamming Rules should be waived in this matter.

CC&N Cancellation

Upon completion of the proposed transaction previously described, OrbitCom will no longer have any customers in Arizona, will no longer be providing telecommunication services in Arizona and has no intention of providing such services in the future. On June 1, 2015, OrbitCom filed a letter stating that upon approval of the Application in this Docket, it will file a separate Application requesting cancellation of its CC&N in Arizona within sixty (60) days of the issuance of the Commission's Order provided the Applicants experience no delays in effectuating the customer transfer. OrbitCom further stated that in the event the Applicants experience a delay, it will promptly notify the Commission and request additional time to file the CC&N cancellation application.

Complaints and Compliance

The Compliance Section of the Utilities Division reports the Applicants are in compliance. The Consumer Services Section of the Utilities Division reports that from January 1, 2012 to May 18, 2015 there have been no complaints or opinions concerning Ionex or OrbitCom. According to the Corporations Division, the Applicants are in good standing. The Applicants filed their 2014 Utilities Annual Report in April, 2015.

STAFF RECOMMENDATIONS

Staff recommends approval of the Application for Ionex to acquire the Arizona customers of OrbitCom.

Staff further recommends that approval be conditioned on the following:

- a. The Applicants provide notice to Docket Control within thirty (30) days following completion of the proposed transactions in this Application.
- b. That Ionex file an updated tariff, within thirty (30) days of the effective date of a Decision in this matter, to incorporate the rates, terms and conditions of service that were included in the tariffs of OrbitCom.

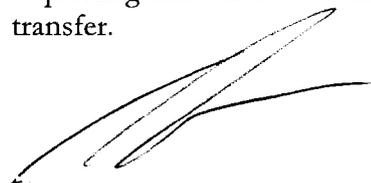
THE COMMISSION

June 23, 2015

Page 4

Based on the above, Staff recommends a waiver of A.A.C. R14-2-1901 et seq. in connection with the transfer of OrbitCom's customers in Arizona to Ionex.

Finally, Staff recommends the Commission require OrbitCom to file an application requesting cancellation of its CC&N within ninety (90) days following the closing of the proposed transfer.



Steven M. Olea
Director
Utilities Division

SMO:MAC:red\MAS

ORIGINATOR: Matt Connolly

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BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
Chairman
BOB STUMP
Commissioner
BOB BURNS
Commissioner
DOUG LITTLE
Commissioner
TOM FORESE
Commissioner

IN THE MATTER OF THE JOINT APPLICATION OF IONEX COMMUNICATIONS NORTH, INC. DBA BIRCH COMMUNICATIONS AND ORBITCOM, INC. FOR APPROVAL OF A WAIVER OF THE SLAMMING RULES IN CONNECTION WITH THE TRANSFER OF THE ORBITCOM CUSTOMERS IN ARIZONA TO IONEX.

DOCKET NO. T-03864A-15-0144
T-04274A-15-0144
DECISION NO. _____
ORDER

Open Meeting
July 7 and 8, 2015
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On May 6, 2015, Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and OrbitCom, Inc. (“OrbitCom”), (together the “Applicants”), filed a joint application requesting approval from the Arizona Corporation Commission (“Commission”) for a waiver of Arizona Administrative Code (“A.A.C”) R14-2-1901 to -1913, the “Slamming Rules”, in connection with the transfer of OrbitCom’s customers in Arizona to Ionex.
2. On May 18, 2015, Ionex filed a Supplement to the Application to provide a copy of the draft customer notice letter sent to OrbitCom customers affected by the transfer.
3. On June 1, 2015, OrbitCom filed a letter stating that upon approval of the Application in this Docket, it will file a separate application requesting cancellation of its Certificate of Convenience and Necessity (“CC&N”) within sixty (60) days of the issuance of the Commission’s Order.

1 4. In support of this filing, Applicants provide the following information.

2 **Description of the Applicants**

3 *Ionex Communications North, Inc. dba Birch Communications*

4 5. Ionex is a South Dakota corporation with headquarters located at 3060 Peachtree
5 Road NW, Suite 1065, Atlanta, Georgia, 30305. Ionex was issued a CC&N to provide competitive
6 resold and facilities-based local exchange and long distance telecommunications services by the
7 Commission in Decision No. 74295 dated January 29, 2014. Ionex is a wholly owned subsidiary of
8 Birch Communications, Inc. (“BCI”), a Georgia corporation with headquarters also located at 3060
9 Peachtree Road NW, Suite 1065, Atlanta, Georgia, 30305. BCI and its subsidiaries are authorized to
10 provide telecommunications services in fifty (50) states and the District of Columbia.

11 *OrbitCom, Inc.*

12 6. OrbitCom is a South Dakota oration with headquarters located at 1701 N. Louise
13 Avenue, Sioux Falls, South Dakota, 57107. OrbitCom was issued a CC&N to provide competitive
14 resold interexchange and facilities-based local exchange telecommunications services by the
15 Commission in Decision No. 67945 dated June 21, 2005.

16 **The Proposed Transaction**

17 7. The Applicants state that on April 24, 2015, BCI and OrbitCom entered into an Asset
18 Purchase Agreement (“Agreement”) pursuant to which BCI will purchase certain customer accounts
19 and receivables, customer agreements and contracts, vendor agreements and contracts, equipment and
20 intellectual property. BCI will not assume any of OrbitCom’s pre-closing liabilities or obligations. In
21 connection with this purchase, all customers in Arizona currently served by OrbitCom will be
22 transferred to Ionex. Ionex will assume all managerial, technical and financial responsibilities in
23 connection with providing service to the former OrbitCom customers and will provide service to
24 these customers utilizing its existing interconnection agreements, 911 arrangements and numbering
25 arrangements.

26 8. Ionex states that it will make any necessary revisions to its existing rates, terms and
27 conditions to incorporate OrbitCom’s current services and rates so that the affected customers will
28 continue to receive the same services they currently receive without any immediate changes to their

1 service offerings or rates. Ionex will also incorporate into its tariff the rates, terms and conditions of
2 services currently provided to OrbitCom customers. The transfer is designed to be seamless as there
3 will be no change to the affected customer's rates, terms and conditions and there will be no charge to
4 the transferred customers for the transfer of service.

5 **Request for Waiver of Slamming Rules**

6 9. The Applicants seek a waiver of Article 19 – Consumer Protection For Unauthorized
7 Carrier Changes (A.A.C. R14-2-1901 to -1913), the Slamming Rules, for the transfer of nine (9)
8 business and one (1) residential local exchange and long distance customers in Arizona. Pursuant to
9 47 C.F.R. § 64.1120(e)(3) of the Federal Communications Commission's rules, on May 7, 2015, a
10 written notice of the transfer was provided to the affected OrbitCom customers via First Class United
11 States mail. A copy of the draft notice was provided as a Supplement to the Application.

12 10. Staff has reviewed the notice sent to those affected customers. The notice informs
13 customers that the rates, terms and conditions of service will not change as a result of the proposed
14 transactions and informs customers that they may subscribe to the telecommunications service
15 provider of their choice. The Applicants also state in their application that affected customers will
16 continue to receive the same services they currently receive and that the transfer is designed to be
17 seamless to those customers. Given the nature of this transaction and the notice to the affected
18 customers, Staff believes the Commission's Slamming Rules should be waived in this matter.

19 **CC&N Cancellation**

20 11. Upon completion of the proposed transaction previously described, OrbitCom will no
21 longer have any customers in Arizona, will no longer be providing telecommunication services in
22 Arizona and has no intention of providing such services in the future. On June 1, 2015, OrbitCom
23 filed a letter stating that upon approval of the Application in this Docket, it will file a separate
24 Application requesting cancellation of its CC&N in Arizona within sixty (60) days of the issuance of
25 the Commission's Order provided the Applicants experience no delays in effectuating the customer
26 transfer. OrbitCom further stated that in the event the Applicants experience a delay, it will promptly
27 notify the Commission and request addition time to file the CC&N cancellation application.

28 ...

1 Complaints and Compliance

2 12. The Compliance Section of the Utilities Division reports the Applicants are in
3 compliance. The Consumer Services Section of the Utilities Division reports that from January 1,
4 2012 to May 18, 2015 there have been no complaints or opinions concerning Ionex or OrbitCom.
5 According to the Corporations Division, the Applicants are in good standing. The Applicants filed
6 their 2014 Utilities Annual Report in April, 2015.

7 Staff Recommendations

8 13. Staff recommends approval of the Application for Ionex to acquire the Arizona
9 customers of OrbitCom.

10 14. Staff further recommends that approval be conditioned on the following:

- 11 • The Applicants provide notice to Docket Control within thirty (30) days
12 following completion of the proposed transactions in this Application;
- 13 • That Ionex file an updated tariff, within thirty (30) days of the effective date of
14 a Decision in this matter, to incorporate the rates, terms and conditions of
service that were included in the tariffs of OrbitCom.

15 15. Based on the above, Staff recommends a waiver of A.A.C. R14-2-1901, et seq. in
16 connection with the transfer of OrbitCom's customers in Arizona to Ionex.

17 16. Finally, Staff recommends the Commission require OrbitCom to file an application
18 requesting cancellation of its CC&N within ninety (90) days following the closing the proposed
19 transfer.

20 CONCLUSIONS OF LAW

21 1. Ionex Communications North, Inc. dba Birch Communications and OrbitCom, Inc.
22 are public service corporations within the meaning of Article XV of the Arizona Constitution.

23 2. The Commission has jurisdiction over Ionex Communications North, Inc. dba Birch
24 Communications and OrbitCom, Inc. and the subject matter of this filing.

25 3. The Commission, having reviewed the filing and Staff's Memorandum dated June 23,
26 2015, concludes that it is in the public interest to grant approval as proposed and discussed herein.

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ORDER

IT IS THEREFORE ORDERED that the request by Ionex Communications North, Inc. dba Birch Communications and OrbitCom, Inc. for a waiver of A.A.C. R14-2-1901 et seq., the Commission's Slamming Rules, is hereby approved in conjunction with the proposed transaction.

IT IS FURTHER ORDERED that within thirty (30) days following the closing of the proposed transaction, Ionex Communications North, Inc. dba Birch Communications and OrbitCom, Inc. shall inform the Commission, by filing an affidavit with Docket Control, that the transaction has closed and the proposed transfer has been consummated.

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1 IT IS FURTHER ORDERED that Ionex Communications North, Inc. dba Birch
 2 Communications file an updated tariff, within thirty (30) days of the effective date of a Decision in
 3 this matter, to incorporate the rates, terms and conditions of service that were included in the
 4 OrbitCom, Inc. tariff.

5 IT IS FURTHER ORDERED that within ninety (90) days following the closing of the
 6 proposed transaction, OrbitCom, Inc. file an Application to cancel its CC&N.

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

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9 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

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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 _____ day of _____, 2015.

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JODI JERICH
 EXECUTIVE DIRECTOR

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DISSENT: _____

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DISSENT: _____

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1 SERVICE LIST FOR: IONEX COMMUNICATIONS NORTH, INC. DBA BIRCH
COMMUNICATIONS AND ORBITCOM, INC.
2 DOCKET NOS. T-03864A-15-0144 AND T-04274A-15-0144

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