

**ORIGINAL**

**OPEN MEETING**

**MEMORANDUM**  
Arizona Corporation Commission

**DOCKETED**



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TO: THE COMMISSION

FROM: Utilities Division

DOCKETED BY

DATE: April 17, 2015

ARIZONA CORP COMMISS  
DOCKET CONTROL

RE: IN THE MATTER OF THE CANCELLATION OF THE CERTIFICATE OF CONVENIENCE AND NECESSITY OF ERNEST COMMUNICATIONS, INC. (DOCKET NO. T-03631A-15-0005)

**INTRODUCTION**

On January 13, 2015, Staff requested Docket No. T-03631A-15-0005 be opened to effect the cancellation of the Certificate of Convenience and Necessity ("CC&N") of Ernest Communications, Inc. ("Ernest").

**BACKGROUND**

Ernest was a Georgia corporation authorized to do business in Arizona in 1998, with headquarters located at 5275 Triangle Parkway, Suite 150, Norcross, Georgia, 30092. Ernest was granted a CC&N by the Arizona Corporation Commission ("Commission") to provide competitive resold local exchange telecommunications services in Decision No. 63142, dated November 16, 2000.

On February 26, 2014, Ionex Communications North, Inc. d/b/a Birch Communications ("Ionex") filed a letter in Docket No. T-03490A-14-0073 ("the Transfer Docket") to advise the Commission that Ionex had begun serving customers previously served by Ernest as a result of an Asset Purchase Agreement.<sup>1</sup> As a result of this transaction, Ernest no longer has any customers in Arizona. Ernest has not submitted an application to request a cancellation of its CC&N for local exchange service.

During the course of the proceeding in the Transfer Docket, Staff made several attempts to reach a representative of Ernest. An attempt by phone revealed the most recent contact number has now been routed to Birch Communications. An email sent to Ernest's contact listed on its most recent Annual Report was returned undeliverable. A certified letter addressing the CC&N cancellation issue was mailed on June 18, 2014 to the last known contact and address for Ernest. The letter was returned by the U.S. Postal Service, unopened, to the Commission with the indication that the recipient was unknown.

<sup>1</sup> *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 No. T-03490A-14-0073.*

Given Staff's inability to contact an Ernest representative along with the information presented in the Transfer Docket, Staff concluded Ernest no longer exists as a business entity in Arizona. In its Proposed Order in the Transfer Docket, at Finding of Fact No. 23, Staff recommended a process to commence cancellation of Ernest's CC&N. The Commission, in Decision No. 74778, dated October 24, 2014, ordered that this process should commence.

### **STAFF'S ANALYSIS**

According to the abovementioned cancellation process, a copy of the Staff Memo and proposed Order for the Transfer Docket was to be delivered to Ernest at its last known address and placed in its CC&N docket (Docket No. T-03631A-98-0540). This was completed on October 6, 2014.

A separate notice was also to be sent to Ernest, with a copy of Decision No. 74778 attached, informing Ernest it had sixty (60) days from the date of the Decision to object to cancellation of its CC&N and request a Hearing or cancellation of its CC&N would occur. This notice was mailed on October 30, 2014 and docketed in the Transfer Docket the same day. Ernest was then given sixty (60) days to respond as described.

If, after the expiration of the sixty (60) days, there is no response from Ernest, Staff is to docket a Report and Order recommending cancellation of Ernest's CC&N. As no objection or Hearing request has been received from Ernest, Staff hereby submits this Staff Report and Recommended Order.

### **COMPLIANCE**

The Consumer Services Section of the Utilities Division reports that there were no complaints, inquiries, or opinions filed against Ernest from January 1, 2011 through January 22, 2015. Ernest did not file its 2014 Annual Report or its 2013 Utilities Annual Report.

### **STAFF RECOMMENDATIONS**

For the above stated reasons, Staff recommends approval of the cancellation of the CC&N of Ernest to provide competitive resold local exchange telecommunications services in Arizona. Additionally, Staff recommends the cancellation of Ernest's tariffs that are on file with this Commission.

THE COMMISSION

April 28, 2015

Page 3

Upon cancellation of its CC&N, Ernest will no longer be authorized to provide competitive resold local exchange telecommunications services in Arizona and therefore, will no longer be subject to the requirements of Decision No. 63142.



Steven M. Olea

Director

Utilities Division

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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  
CANCELLATION OF CERTIFICATE OF  
CONVENIENCE AND NECESSITY OF  
ERNEST COMMUNICATIONS, INC.

DOCKET NO. T-03631A-15-0005  
DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
May 12 and 13, 2015  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On January 13, 2015, Staff requested Docket No. T-03631A-15-0005 be opened to effect the cancellation of the Certificate of Convenience and Necessity ("CC&N") of Ernest Communications, Inc. ("Ernest").

**Background**

2. Ernest was a Georgia corporation authorized to do business in Arizona in 1998, with headquarters located at 5275 Triangle Parkway, Ste. 150, Norcross, Georgia, 30092. Ernest was granted a CC&N by the Arizona Corporation Commission ("Commission") to provide competitive resold local exchange telecommunications services in Decision No. 63142, dated November 16, 2000.

3. On February 26, 2014, Ionex Communications North, Inc. d/b/a Birch Communications ("Ionex") filed a letter in Docket No. T-03490A-14-0073 ("the Transfer Docket") to advise the Commission that Ionex had begun serving customers previously served by Ernest as a

1 result of an Asset Purchase Agreement.<sup>1</sup> As a result of this transaction, Ernest no longer has any  
2 customers in Arizona. Ernest has not submitted an application to request a cancellation of its CC&N  
3 for local exchange service.

4 4. During the course of the proceeding of the Transfer Docket, Staff made several  
5 attempts to reach a representative of Ernest. An attempt by phone revealed the most recent contact  
6 number has now been routed to Birch Communications. An email sent to Ernest's contact listed on  
7 its most recent Annual Report was returned undeliverable. A certified letter addressing the CC&N  
8 cancellation issue was mailed on June 18, 2014 to the last known contact and address for Ernest. The  
9 letter was returned by the U.S. Postal Service, unopened, to the Commission with the indication that  
10 the recipient was unknown.

11 5. Given Staff's inability to contact an Ernest representative along with the information  
12 presented in the Transfer Docket, Staff concluded Ernest no longer exists as a business entity in  
13 Arizona. In its Proposed Order in the Transfer Docket, at Finding of Fact No. 23, Staff  
14 recommended a process to commence cancellation of Ernest's CC&N. The Commission, in Decision  
15 No. 74778, dated October 24, 2014, ordered that this process should commence.

#### 16 **Staff's Analysis**

17 6. According to the abovementioned cancellation process, a copy of the Staff Memo and  
18 proposed Order for the Transfer was to be delivered to Ernest at its last known address and placed in  
19 its CC&N docket (Docket No. T-03631A-98-0540). This was completed on October 6, 2014.

20 7. A separate notice was also to be sent to Ernest, with a copy of Decision No. 74778  
21 attached, informing Ernest it had sixty (60) days from the date of the Decision to object to  
22 cancellation of its CC&N and request a Hearing or cancellation of its CC&N would occur. This  
23 notice was mailed on October 30, 2014 and docketed in the Transfer Docket the same day. Ernest  
24 was then given sixty (60) days to respond as described.

25 8. If, after the expiration of the sixty (60) days, there is no response from Ernest, Staff is  
26 to docket a Report and Order recommending cancellation of Ernest's CC&N. As no objection or  
27

28 <sup>1</sup> *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 No. T-03490A-14-0073.

1 Hearing request has been received from Ernest, Staff hereby submits this Staff Report and  
2 Recommended Order.

3 **Compliance**

4 9. The Consumer Services Section of the Utilities Division reports there were no  
5 complaints, inquiries, or opinions filed against Ernest from January 1, 2011 through January 22, 2015.  
6 Ernest did not file its 2014 Annual Report or its 2013 Utilities Annual Report.

7 **Staff Recommendations**

8 10. For the above stated reasons, Staff recommends approval of the cancellation of the  
9 CC&N of Ernest to provide competitive resold local exchange telecommunications services in  
10 Arizona. Additionally, Staff recommends the cancellation of Ernest's tariffs that are on file with this  
11 Commission.

12 11. Upon cancellation of its CC&N, Ernest will no longer be authorized to provide  
13 competitive resold local exchange telecommunications services in Arizona and therefore, will no  
14 longer be subject to the requirements of Decision No. 63142.

15 CONCLUSIONS OF LAW

16 1. Ernest Communications, Inc. is a public service corporation within the meaning of  
17 Article XV of the Arizona Constitution.

18 2. The Commission has jurisdiction over Ernest Communications, Inc. and the subject  
19 matter in this filing.

20 3. The Commission, having reviewed the filing and Staff's Memorandum dated April 17,  
21 2015, concludes that it is in the public interest to approve the cancellation of Ernest Communications,  
22 Inc.'s CC&N to provide competitive resold local exchange telecommunications service and to cancel  
23 its tariffs on file with the Commission as proposed and discussed herein.

24 4. Staff's recommendations are reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that Ernest Communications, Inc.'s Certificate of Convenience and Necessity, granted in Commission Decision No. 63142 (November 16, 2000) to provide competitive resold local exchange telecommunications service in Arizona is hereby cancelled.

IT IS FURTHER ORDERED that Ernest Communications, Inc.'s tariffs on file with the Commission are hereby cancelled.

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 \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:MAC:red\MT

1 SERVICE LIST FOR: ERNEST COMMUNICATIONS, INC.  
2 DOCKET NO. T-03631A-15-0005

3 Mr. Paul Masters  
4 Ernest Communications, Inc.  
5 5275 Triangle Parkway, Suite 15  
6 Norcross, Georgia 30092

7 Mr. Steven M. Olea  
8 Director, Utilities Division  
9 Arizona Corporation Commission  
10 1200 West Washington Street  
11 Phoenix, Arizona 85007

12 Ms. Janice M. Alward  
13 Chief Counsel, Legal Division  
14 Arizona Corporation Commission  
15 1200 West Washington Street  
16 Phoenix, Arizona 85007

17 Ms. Lyn Farmer  
18 Chief Administrative Law Judge,  
19 Hearings Division  
20 Arizona Corporation Commission  
21 1200 West Washington Street  
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