

CAPITAL NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
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Commissioner
BOB BURNS
Commissioner
TOM FORESE
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Commissioner

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Arizona Corporation Commission

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In the Matter of the Application of Ionex
Communications North, Inc. d/b/a Birch
Communications for Approval of Transfer
of Customers from Primus Telecommunications, Inc.

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) T- 03243A-16-___ T-03243A-16-0052
) T- 03864A-16-___ T-03864A-16-0052
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APPLICATION FOR
WAIVER OF SLAMMING RULES AND
NOTIFICATION OF CUSTOMER TRANSFER

Ionex Communications North, Inc. d/b/a Birch Communications (“Ionex”) and Primus Telecommunications, Inc. (“Primus”) (Ionex and Primus collectively, the “Applicants”) hereby request waiver of the slamming rules, A.A.C. R14-2-1901-1913, in connection with the transfer of the Primus customers in Arizona to Ionex.

I. DESCRIPTION OF APPLICANTS

A. **Ionex Communications North, Inc. d/b/a Birch Communications**

Ionex is a South Dakota corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. Ionex was issued a certificate of convenience and necessity by the Arizona Corporation Commission (“Commission”) to provide local exchange and interexchange telecommunications services on January 29, 2014.¹ Ionex is a wholly owned subsidiary of Birch Communications, Inc. (“BCI”), a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. BCI and its

¹ See Decision No. 74295, Docket No. T-03864A-13-0051.

subsidiaries are authorized to provide telecommunications services to both residential and business customers in 50 states and the District of Columbia.

B. Primus Telecommunications, Inc.

Primus is a Delaware corporation with corporate headquarters at 805 Wright Brothers Boulevard, Cedar Rapids, IA 52404. Primus was issued a certificate of convenience and necessity by the Commission to provide interexchange telecommunications services on March 30, 2001.² Primus serves roughly 200-250 long distance customers in Arizona.

On January 21, 2016, Primus filed a petition under Chapter 15 of the United States Bankruptcy Code, which resulted in the *pro forma* transfer of Primus' Arizona authorization to Primus Telecommunications, Inc., Debtor-in-Possession.³ During the restructuring process, which will allow the company to remain in possession and control of its current and future assets, undertaking and properties, and the proceeds thereof while it completes a sale of its business, Primus will continue to operate as debtor-in-possession in the ordinary course of business. No substantive change in ownership or control of Primus has taken place as a result of the bankruptcy filing.

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² See Decision 63529, Docket No. T-03243A-96-0443.

³ In re PT Holdco, Inc., *et al.*, Case No. 16-10131 (LSS) (D. Del. Jan. 21, 2016).

II. DESIGNATED CONTACTS

Correspondence concerning this matter should be directed to:

For Primus	For Ionex Communications North, Inc. d/b/a Birch Communications
Douglas Brandon Akin Gump Strauss Hauer & Feld LLP 1333 New Hampshire Avenue, N.W. Washington, DC 20036 202-887-4021 (telephone) 202-887-4288 (facsimile) dbrandon@akingump.com	Angela F. Collins Cahill Gordon & Reindel LLP 1990 K Street, NW, Suite 950 Washington, DC 20006 202-862-8930 (telephone) 866-814-6582 (facsimile) acollins@cahill.com and Joan S. Burke Law Office of Joan S. Burke 1650 N. First Avenue Phoenix, AZ 85003 602-535-0356 (telephone) joan@jsburkelaw.com

II. TRANSFER OF CUSTOMERS

On January 18, 2016, BCI and Primus entered into an Asset Purchase Agreement (“Agreement”) pursuant to which BCI will purchase certain assets and customers of Primus, including certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property (the “Transaction”). BCI, however, will not assume any of Primus’ pre-closing liabilities or obligations.

Following approval of the proposed Transaction, Ionex will file any necessary tariff revisions to incorporate Primus’ 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 BCI and Ionex will not be affected

by the Transaction. Upon consummation of the Transaction and after completion of the customer transfer, Ionex will provide Primus' customers with the same service quality they have come to expect and all billing will be handled by Ionex. Consummation of the Transaction is contingent on, among other things, receipt of all necessary regulatory approvals.

Upon completion of the Transaction and the migration of customers, Primus will no longer offer telecommunications services in Arizona. Primus will request cancellation of its certificate and tariffs in a separate application once the Parties inform the Commission that the Transaction has been consummated.

Applicants request a waiver of A.A.C. R14-2-1901 et seq. generally and R14-2-1904 and R14-2-1905 specially, as those rules may apply to this transaction. This transaction is designed to be seamless to the former Primus customers insofar as there will be no immediate change to customers' rates, terms, and conditions of service and the transfer will occur with no charge to customers as they transition to Ionex. Ionex will incorporate into its tariff the rates, terms and conditions of services currently provided to Primus customers. Ionex will assume all managerial, technical and financial responsibilities in connection with providing service to the former Primus customers.

Written notice of the transfer will be provided to Primus customers via First Class United States mail and in accordance Section 64.1120(e), Verification of Orders for Telecommunications Services, as amended, of Federal Communications Commission ("FCC") rules. 47 C.F.R. 64.1120(e). A copy of the draft customer notice letter is provided as Exhibit A to this Waiver Application.

Application respectfully requests waiver of Commission slamming rules, A.A.C. R14-2-1901 et seq., in connection with the transfer of customers from Primus to Ionex.

RESPECTFULLY SUBMITTED this 12th day of February 2016.

LAW OFFICE OF JOAN S. BURKE



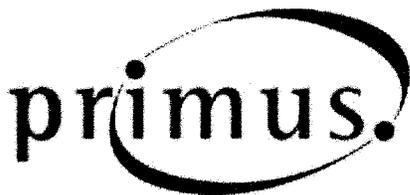
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Attorney for Ionex Communications North, Inc.
d/b/a Birch Communications

ORIGINAL and thirteen (13) copies
of the foregoing filed
this 12th day of February 2016 with:

The Arizona Corporation Commission
Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007





IMPORTANT NOTICE
REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES

Dear _____

Birch Communications ("Birch") and Primus Telecommunications, Inc. ("Primus") are pleased to announce that Birch is acquiring Primus' local telephone and long distance telephone customers, as well as certain other customers receiving additional types of services from Primus. Subject to approval by the Federal Communications Commission and state regulators as necessary, Birch will replace Primus as your current telecommunications service provider on or after **[30 DAYS AFTER LETTER DATE]**, 2016 (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all wireline services previously provided to you by Primus. Birch is excited about the opportunity to provide your telecommunications service(s) and looks forward to a long and mutually rewarding business relationship.

Please rest assured, the transition will have little or no impact on your current services, nor will there be any interruption of your service. The agreement between Birch and Primus has been structured so that the transfer of service will be virtually seamless, other than the possibility of a minor change to your voice mail service for which you will receive additional information.¹ There, however, may be other changes to your service plan based on Birch's unique billing systems (e.g., customers currently utilizing a message or measured local service plan may be switched to a flat rate plan). In those cases, Birch will transition you in a neutral manner **with no increase to your regular monthly recurring charges**. You will retain all other service rates, features, terms, and conditions of service and your telephone number. Birch will not impose any charges for the transfer of your services to Birch and **no action is required from you to continue your telecommunications service(s) with Birch**. You will receive your first billing statement from Birch starting with your **[MONTH]** 2016 or **[MONTH]** 2016 bill. As in the past, you are responsible for paying all bills rendered to you by Primus during the transition of service.²

You do have the right to select a different carrier for your telecommunications service(s). If you choose to switch to an alternate carrier for services, you may incur a fee from that alternate carrier for the transfer of services to that alternate carrier. If you select a local telephone service provider other than Birch, you should also contact your current long

¹ It will be necessary for you to reset your password and re-record your message greeting(s). Additionally, saved messages at the time of the transfer will no longer be retained. Birch will provide further details in a follow-up letter.

² Those customers interested in setting up online payments will be pleased to know Birch offers online payments and account updates.

distance provider to ensure that your current long distance plan is not changed. Please note that if you are a customer of Primus on the Transfer Date as set forth above, your account will automatically be transferred to Birch. In addition, should you have a term commitment with Primus and you disconnect or transfer services to another carrier prior to the end of that term, you will be liable to Birch for any applicable early termination charges, subject to applicable law. Please note that when your service is transferred to Birch, any preferred carrier "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer of your services to another carrier will be over-ridden for purposes of this transaction and will need to be reinstated by you by contacting Birch after the transfer is complete.

If you have any questions regarding this transaction or questions about your service or billing prior to the Transfer Date set forth above, you should contact Primus at **1-888-877-4687** (residential customers) or **1-866-383-3360** (business customers).

If you have any questions regarding this transaction, or questions about your service or billing after the Transfer Date set forth above, you should contact Birch at **1-888-772-4724**.³

Primus thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

Primus Telecommunications, Inc. and
Birch Communications

³ **About Birch Communications** - Headquartered in Atlanta, Georgia, Birch Communications is one of the largest competitive local exchange carriers in its 50-state footprint, serving residential and business customers. Birch was the first in its class to deploy its own private IP network utilizing soft switch technology to deliver innovative, high quality, affordable voice and broadband communications services to small- to large-sized business customers.