

CAHILL GORDON & REINDEL LLP

SUITE 950

1990 K STREET, N.W.

WASHINGTON, D.C. 20006-1181

EIGHTY PINE STREET
NEW YORK, N.Y. 10005-1702
(212) 701-3000
FAX: (212) 269-5420

TELEPHONE (202) 862-8900
FACSIMILE (202) 862-8958

AUGUSTINE HOUSE
6A AUSTIN FRIARS
LONDON, ENGLAND EC2N 2HA
(011) 44.20.7920.9800
FAX: (011) 44.20.7920.9825

ANGELA F. COLLINS | 202-862-8930 | acollins@cahill.com

May 5, 2015

VIA ELECTRONIC FILING

Filing Center
Public Utility Commission of Oregon
550 Capitol Street NE, Suite 215
Salem, OR 97308-2148

**Re: Petition of Ionex Communications North, Inc. dba Birch Communications
and OrbitCom, Inc. to Waive the Notification Time Periods of OAR 860-032-
0020(11)(a) and (b)**

Dear Sir or Madam:

Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and OrbitCom, Inc. (“OrbitCom”) (collectively, the “Petitioners”), by their attorneys, hereby respectfully submit a Petition to Waive the Notification Time Periods of OAR 860-032-0020(11)(a) and (b) (the “Petition”). This Petition is being submitted regarding the Notification of Customers and Assets of Ionex Communications North, Inc. dba Birch Communications and OrbitCom, Inc., filed with the Commission on April 29, 2015 in Docket Nos. 1487 and 1254.

If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



Angela F. Collins
Counsel for Ionex Communications North,
Inc. d/b/a Birch Communications

Attachments

cc: Meredith Moore, Counsel to OrbitCom (via electronic mail)
Kathy Shepherd, Competitive Provider Analyst (via electronic mail)

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

In the Matter of)	
)	
Petition of Ionex Communications)	Docket No. _____
North, Inc. dba Birch)	
Communications and OrbitCom, Inc.)	
to Waive the Notification Time)	
Periods of OAR 860-032-0020(11)(a))	
and (b))	

PETITION TO WAIVE NOTIFICATION TIME PERIODS

Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and OrbitCom, Inc. (“OrbitCom”) (collectively, the “Petitioners”), by their attorneys and pursuant to OAR 032-0020(16), respectfully request that the Public Utility Commission of Oregon (“Commission”) waive the 90-day customer and Commission notification requirements in OAR 860-032-0020(11)(a) and (b) so that the Petitioners may effectuate the transfer of the customers and assets of OrbitCom to Ionex in fewer than 90 days. In support thereof, the Petitioners provide the following:

I. DESCRIPTION OF PETITIONERS

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 is authorized by the Commission to provide local exchange and interexchange telecommunications services in Oregon.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

¹ Docket No. CP 1487 (Sept. 22, 2010).

its subsidiaries are authorized to provide provide telecommunications services in 50 states and the District of Columbia.

b. OrbitCom, Inc.

OrbitCom is a South Dakota corporation with corporate headquarters at 1701 N. Louise Ave., Sioux Falls, South Dakota, 57107. OrbitCom was authorized to provide telecommunications services in the state of Oregon in CP 1254-Order No. 04-618.

II. DESIGNATED CONTACTS

Correspondence concerning this matter should be directed to:

For OrbitCom, Inc.	For Ionex Communications North, Inc. d/b/a Birch Communications
Meredith A. Moore Cutler Law Firm, LLP 100 N. Phillips Ave., 9 th Floor Sioux Falls, SD 57104 605-335-4950 (telephone) 605-335-4961 (facsimile) meredithm@cutlerlawfirm.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

III. DESCRIPTION OF THE TRANSACTION

On April 24, 2015, BCI and OrbitCom entered into an Asset Purchase Agreement (“Agreement”) pursuant to which BCI will purchase certain assets and customers of OrbitCom (the “Transaction”). Pursuant to the Agreement, BCI will purchase the following assets from OrbitCom: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. BCI, however, will not assume any of OrbitCom’s pre-closing liabilities or obligations. The Transaction involves customers that currently receive services from OrbitCom

in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

Ionex will make any necessary revisions to its rates, terms, and conditions to incorporate OrbitCom'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. Ionex will provide services to OrbitCom customers utilizing its existing interconnection agreements, 911 arrangements, and numbering arrangements.

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 OrbitCom's customers with the same service quality they have come to expect and all billing will be handled under the Ionex name.

The proposed transfer will affect all of OrbitCom's current Oregon customers, none of whom will experience any material change to the terms and conditions of their services as a result of this transfer. The Parties will provide notice to affected customers in accordance with state requirements for each affected state and the rules and regulations of the Federal Communications Commission. A draft customer notice letter is attached as **Exhibit A**. Closing of the Transaction is contingent on receipt of all necessary regulatory approvals.

Upon completion of the Transaction and the migration of customers to Ionex, OrbitCom will no longer offer telecommunications services in Oregon. After OrbitCom determines that it no longer needs its Oregon authorizations for operational or billing purposes, OrbitCom will surrender its authorizations.

V. REQUEST FOR WAIVER

For critical business reasons, the Petitioners have determined that the transfer of customers should occur as soon as possible. The Petitioners intend to complete the Transaction in fewer than 90 days. Therefore, the Petitioners request a waiver of the 90-day notification periods to customers of OrbitCom and to the Commission pursuant to OAR 860-032-0020(11)(a) and (b) so that the Petitioners can complete this Transaction as soon as practicable. The Petitioners intend to provide OrbitCom's customers in Oregon with 45 days notice of the Transaction, which also is the notice period applicable in Colorado. All other states involved in the Transaction require a 30-day notice to customers.

a. Waiver of the Notification Periods is in the Public Interest

Waiver of the 90-day notification periods is in the public interest. Following this Transaction, the affected customers will continue to receive high-quality service, supported by Ionex's experienced and well-qualified management team, without any disruption, loss or impairment of service. The Transaction will benefit customers, who will be able to take advantage of expanded service offerings as well as the increased resources of Ionex as a result of this Transaction.

The Transaction also will be transparent to OrbitCom's existing customers who, as explained above, will not experience any immediate changes to the terms and conditions of their services. As such, customers will not be required to take any action in response to the customer notification they receive. However, should any customers wish to obtain substitute service, 45 days notice would provide ample opportunity to do so. Further, a 45-day notification period will allow the Petitioners to mail the customer notification letters to customers in all affected states in

a coordinated manner. A 90-day notice period is not necessary and would be overly burdensome.

b. Waiver of the Notification Periods is Consistent with Precedent

Waiver of the 90-day notification periods is consistent with Commission precedent. In adopting OAR 860-032-0020(16), the Commission anticipated that the specified timelines and requirements “may not be applicable or appropriate in every situation” and specifically included a provision “allowing the Commission to entertain a petition from a provider or the Staff to waive any timeline or regulation in this rule.”² The Commission also has previously granted a similar waiver allowing for use of a 45-day notice.³

A 90-day notification is not appropriate in this situation. This is a multi-state Transaction, requiring compliance with numerous different state and Federal Communications Commission notification rules, none of which require more than 45 days notice. Given that, and given that customers of OrbitCom will have sufficient notice of the Transaction and will experience no immediate changes in their service, the Commission should waive the 90-day notification requirement and instead permit the proposed 45-days notice.

VI. REQUEST FOR EXPEDITED REVIEW OF WAIVER REQUEST

The Petitioners seek to complete the Transaction in an expedited manner to realize the benefits of the transaction and minimize customer confusion. Therefore, the Petitioners

² *Proposed Rulemaking to Amend 860-032-0001 and 860-032-0020 to Change the Meaning of "Exempt Service" and Change the Requirements for Telecommunications Providers That Abandon or Discontinue Service in Oregon*, Docket No. AR 434, Order No. 03-084, 11 (Or. P.D.C. Feb. 5, 2003).

³ *Verizon Long Distance LLC Application for a Certificate of Authority to Provide Telecommunications Services in Oregon and Classification as a Competitive Telecommunications Provider, et al.*, Docket Nos. CP 144 and CP 202, Order No. 14-336 (entered Sept. 30, 2014).

respectfully request expedited processing of this Petition for Waiver, to allow the Petitioners to consummate the Transaction as soon as possible.

VI. CONCLUSION

WHEREFORE, for the reasons stated above, Petitioners respectfully request that the Commission grant this Petition and waive the 90-day notification requirements of OAR 860-032-0020(11)(a) and (b), and permit the Petitioners to provide customers and the Commission with 45 days notice of the Transaction.

ORBITCOM, INC.

Meredith A. Moore
Cutler Law Firm, LLP
100 N. Phillips Ave., 9th Floor
Sioux Falls, SD 57104
605-335-4950 (telephone)
605-335-4961 (facsimile)
meredithm@cutlerlawfirm.com

Respectfully submitted,

**IONEX COMMUNICATIONS NORTH, INC.
DBA BIRCH COMMUNICATIONS**



Angela F. Collins
Cahill Gordon & Reindel LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
202-862-8930 (telephone)
866-814-6582 (facsimile)
acollins@cahill.com

Counsel for Ionex Communications North,
Inc. dba Birch Communications

Dated: May 5, 2015

EXHIBIT A

Draft Customer Notice



IMPORTANT NOTICE
REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES

Dear _____

Birch Communications ("Birch") and OrbitCom, Inc. ("OrbitCom") are pleased to announce that Birch is acquiring OrbitCom's local telephone and long distance telephone customers, as well as certain other customers receiving additional types of services from OrbitCom. Subject to approval by the Federal Communications Commission and state regulators as necessary, Birch will replace OrbitCom as your current telecommunications service provider on or after **[45 DAYS AFTER LETTER DATE]**, 2015 (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all services previously provided to you by OrbitCom. 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 OrbitCom 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 **June 2015** or **July 2015** bill. As in the past, you are responsible for paying all bills rendered to you by OrbitCom 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 distance provider to ensure that your current long distance plan is not changed. Please note

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.

that if you are a customer of OrbitCom 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 OrbitCom 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 OrbitCom at: **605-834-7837**.

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 **888-772-4724**.³

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

Sincerely,

OrbitCom, 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.

STATE OF **GEORGIA**)
)
COUNTY OF **BIBB**)

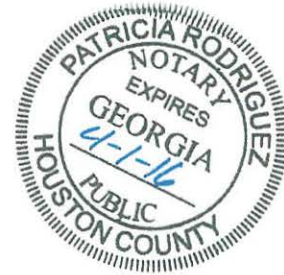
VERIFICATION

I, Vincent M. Oddo, President/CEO of Birch Communications, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.

April 27, 2015
Date


Name: Vincent M. Oddo

Title: President/CEO
Birch Communications, Inc.



Subscribed and sworn to before me this 27th day of April, 2015



Notary Public

STATE OF SOUTH DAKOTA)
COUNTY OF MINNEHAHA)

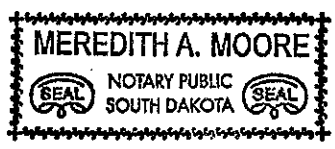
VERIFICATION

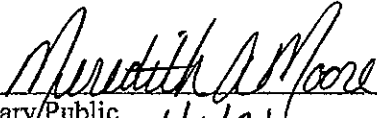
I, Brad VanLear, President of OrbitCom, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.

4-27-15
Date


Name: Brad VanLear
Title: President
OrbitCom, Inc.

Subscribed and sworn to before me this 27 day of April, 2015




Notary Public 11121