

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application     ) Application No. C-4305  
of Ionex Communications North,        )  
Inc. d/b/a Birch Communications,       )  
Atlanta, Georgia, seeking             )  
approval for transfer of                ) GRANTED  
customers and assets of American       )  
Fiber Network, Inc., Overland         )  
Park, Kansas.                            ) Entered: October 26, 2010

BY THE COMMISSION:

On September 17, 2010, an application was jointly filed by American Fiber Network, Inc., ("AFN"), of Overland Park, Kansas, and Ionex Communications North, Inc., d/b/a Birch Communications ("Ionex"), of Atlanta, Georgia, (collectively "Applicants"), seeking approval of a transfer of AFN's customer base and telecommunications assets to Ionex. Notice of the application was published in The Daily Record, Omaha, Nebraska, on September 21, 2010. No protests were filed; therefore, this application is processed pursuant to the Commission's Rule of Modified Procedure.

O P I N I O N     A N D     F I N D I N G S

The Parties:

AFN is a Delaware corporation with principal offices located in Overland Park, Kansas. AFN provides local exchange and interexchange telecommunications services in Nebraska under and by virtue of authority heretofore granted by this Commission.<sup>1</sup>

Ionex is a corporation organized and existing under and by virtue of the laws of the state of South Dakota, with its headquarters located in Atlanta, Georgia. Ionex is authorized by the Commission to provide local and interexchange telecommunications services in the State of Nebraska pursuant to authority heretofore granted by the Commission.<sup>2</sup> Ionex is a wholly-owned subsidiary of Birch Communications Inc. ("BCI"), a Georgia corporation headquartered in Atlanta, Georgia.

Description of the Transaction:

According to the application, BCI agreed to purchase AFN's assets and customer base pursuant to a Sale Agreement pursuant to Article 9 of the Uniform Commercial Code. The assets to be

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<sup>1</sup> See Authority No. C-4014 (see also C-3726).

<sup>2</sup> See Authority No. C-4081 (see also C-970, C-1380, C-2224 and C-2270).

purchased include customer accounts, accounts receivable, customer agreements and contracts, vendor agreements and contracts, and intellectual property. The ownership structure of Ionex and BCI will remain unchanged after the purchase.

The Applicants state Ionex will provide AFN customers with the same service quality received by AFN and all billing will be handled by Ionex using the Birch name. Upon consummation of the agreement, Ionex will file revised tariff sheets incorporating AFN's current services and rates so AFN's customers will continue to receive the same service they currently receive with no changes to the rates, offerings, terms and conditions of service. Ionex will provide services to AFN customers utilizing its existing interconnection agreements, 911 arrangements and numbering arrangements.

Applicants will provide joint notice to AFN customers a minimum of thirty (30) days before the transfer pursuant to Federal Communications Commission rules. A sample of the notice to customers was provided to the Commission by the Applicants. Upon completion of the transfer of customers, the Applicants state that AFN will no longer require authorization to provide telecommunications services in Nebraska. AFN states it will seek Commission approval to cancel its authority and tariff in a separate filing.

The Applicants state that the transaction is in the public interest and will benefit the customers of AFN as Ionex will continue to provide high service quality and bring its industry knowledge, technical expertise, and financial strength to the customers of AFN.

Based on the evidence, we find the application to be fair and reasonable and in the public interest. The application should be granted.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application C-4305 be, and it is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska, this 26<sup>th</sup> day of  
October, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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MADE AND ENTERED at Lincoln, Nebraska, this 26<sup>th</sup> day of October, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*[Signature]*

Chairman

*Gerald L. Vap*

*Anne Bayle*

ATTEST:

*Michelle S. J. J.*

*Tim Schram*

Executive Director

//s// Frank E. Landis

//s// Gerald L. Vap