

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4220
of Ionex Communications North,)
Inc., Atlanta, Georgia, seeking)
approval of a financing) APPROVED
agreement with its parent)
company, Birch Communications,)
Inc., Atlanta, Georgia.) Entered: December 15, 2009

BY THE COMMISSION:

On November 9, 2009, an application was filed by Ionex Communications North, Inc., ("Ionex" or "Applicant"), Atlanta, Georgia, seeking approval and authority to guarantee and pledge its assets in connection with a purchase agreement entered into by Ionex's parent company, Birch Communications, Inc. ("Birch"). Notice of the application was published in The Daily Record, Omaha, Nebraska, on November 11, 2009. 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

Upon consideration of the application, the evidence submitted, and being fully advised, the Commission is of the opinion and finds:

Ionex is a South Dakota Corporation with its headquarters located in Atlanta, Georgia. Ionex is authorized to provide local exchange and interexchange telecommunications services in Nebraska.¹ Birch is a Georgia corporation with headquarters in Atlanta, Georgia. Birch and its subsidiaries provide local exchange and interexchange telecommunications services to both business and residential customers in 32 states.

Applicant seeks approval and authority to guarantee and pledge its assets in connection with a Purchase Agreement

¹ See Docket C-970, *In the Matter of the Application of Feist Long Distance Services, Inc., Wichita, Kansas, which seeks a Certificate of Public Convenience and Necessity to operate as a reseller of interexchange services within the State of Nebraska*,., Granted, (May 4, 1993) and Application No. C-1380, *In the Matter of the Application of Firstel Communications, Inc., of Sioux Falls, South Dakota, seeking authority to obtain a certificate of public convenience and necessity to provide local exchange services in exchanges served by US West Communications, Inc. and GTE of the Midwest, Inc.*, Granted, (April 19, 1997).

entered into by Birch in late November of 2009. Pursuant to the Purchase Agreement Birch will issue and sell to Knight Libertas LLC secured notes due in 2015. Monies received by Birch under the Purchase Agreement will be used toward current debt and payment obligations and general corporate purposes including future acquisitions. The note will be secured by a first-priority senior security interest in the assets of Birch and certain Birch subsidiaries, including Ionex. Applicant seeks approval from the Commission pursuant to Neb. Rev. Stat. §75-148, which states in pertinent part,

A common carrier may issue stock, bonds, notes, or other evidence of indebtedness, payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities, the improvement or maintenance of its service, or the discharge or lawful refunding of its obligations if the common carrier first secures from the Commission an order authorizing such issue and the amount thereof and stating that in the opinion of the Commission the use of the capital to be secured by the issue of such stock, bonds, notes, or other evidence of indebtedness is reasonably required for the purposes of the carrier.

Ionex, Birch and certain other subsidiaries of Birch will jointly and severally secure the debt. The Applicant states that the proposed transaction will not result in any operational changes in the State of Nebraska.

Based upon the above information, the Commission finds the application to be in the public interest and to be reasonably required for the purposes of Ionex Communications North, Inc. and Birch Communications, Inc. Therefore, the application should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-4220 be, and is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska, this 15th day of December, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Vice Chairman



ATTEST:



Executive Director

//s// Gerald L. Vap

