

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4269
of Ionex Communications North,)
Inc., Atlanta, Georgia, seeking)
approval of a financing)
agreement with its parent)
company, Birch Communications,) GRANTED
Inc., Atlanta, Georgia, and)
rescinding the financing)
agreement previously approved in)
Docket C-4220.) Entered: June 15, 2010

BY THE COMMISSION:

On April 28, 2010, an application was filed by Ionex Communications North, Inc. ("Ionex" or "Applicant"), Atlanta, Georgia, seeking approval of a financing agreement with its parent company, Birch Communications, Inc. ("Birch"), Atlanta, Georgia, and rescinding the financing agreement previously approved in Docket C-4220. Notice of the application was published in The Daily Record, Omaha, Nebraska, on May 3, 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

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 principle office located in Atlanta, Georgia. Ionex is authorized to provide local exchange and interexchange telecommunications services in Nebraska pursuant to Docket C-970.¹ Birch is a Georgia Corporation with its principle office located in Atlanta, Georgia. Birch and its subsidiaries provide local

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 Docket 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).*

exchange and interexchange telecommunications services to both business and residential customers in 32 states.

On December 15, 2009, the Commission issued an order approving Applicant's request to guarantee and pledge its assets in connection with a Purchase Agreement entered into by Birch in late November of 2009. This financial agreement was not completed; therefore, Applicant requests that the financial agreement approved in Docket C-4220 be rescinded.

Applicant now seeks authority to guarantee and pledge its assets in connection with a financing agreement entered into by Birch. The financial agreement would allow Birch to obtain secured term loans from lenders and their affiliates. A portion of the monies received will be immediately available to be used toward current debt and payment obligations as well as general corporate purposes, including future acquisitions. The loans will be secured by a lien on substantially all of 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 be jointly and severally liable for repayment of 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-4269 be, and is hereby, granted.

IT IS FURTHER ORDERED that the financing agreement previously approved in Docket C-4220 be, and is hereby, rescinded.

MADE AND ENTERED at Lincoln, Nebraska, this 15th day of June, 2010.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s// Frank E. Landis
//s// Tim Schram



Vice Chairman

ATTEST:



Executive Director

