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February 19, 2016

**VIA ELECTRONIC FILING**

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

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

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

Enclosure

cc: Doug Brandon, Counsel to Primus

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON**

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

**NOTIFICATION OF TRANSACTION AND  
PETITION TO WAIVE NOTIFICATION TIME PERIODS**

Ionex Communications North, Inc. dba Birch Communications (“Ionex”) and Primus Telecommunications, Inc. (“Primus”) (collectively, the “Petitioners”), by their attorneys and pursuant to OAR 032-0020(16), respectfully notify the Public Utility Commission of Oregon (“Commission”) of a pending transaction between Ionex and Primus pursuant to which Primus will transfer its Oregon customer base to Ionex (the “Transaction”). In connection with that Transaction, Petitioners also respectfully request that the 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 Primus customers 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.<sup>1</sup> 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 subsidiaries are authorized to provide telecommunications services 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, Iowa 52404. Primus was authorized to provide telecommunications services in Oregon in Docket No. CP 82.

On January 21, 2016, Primus filed a petition under Chapter 15 of the United States Bankruptcy Code,<sup>2</sup> which resulted in the *pro forma* assignment of Primus’ telecommunications authorizations from Primus Telecommunications, Inc. to Primus Telecommunications, Inc., debtor-in-possession. During the restructuring process, which will allow the company to remain in possession and control of its current and future assets, undertakings 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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<sup>1</sup> Docket No. CP 1487 (Sept. 22, 2010).

<sup>2</sup> 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:

<b>For Primus Telecommunications, Inc.</b>	<b>For Ionex Communications North, Inc. d/b/a Birch Communications</b>
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

## III. DESCRIPTION OF THE TRANSACTION

On January 19, 2016, BCI and Primus entered into an Asset Purchase 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. BCI, however, will not assume any of Primus' pre-closing liabilities or obligations

Ionex will make any necessary revisions to its rates, terms, and conditions 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. Ionex will provide services to Primus 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 Primus customers with the same service quality they have come to expect and all billing will be handled under the Birch Communications name.

The proposed transfer will affect all current Oregon customers of Primus, 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, Primus will no longer offer telecommunications services in Oregon. Once the Parties notify the Commission that the Transaction has been consummated, the Parties respectfully request that the Commission proceed to cancel Primus' telecommunications authorizations and any tariffs it may have on file.

#### **IV. REQUEST FOR WAIVER**

For critical business reasons, the Petitioners have determined that the transfer of customers should occur as soon as possible. Therefore, the Petitioners request a waiver of the 90-day notification periods to customers of Primus 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 Primus customers in Oregon with 45 days notice of the Transaction, which also is the notice period applicable in Colorado and Oklahoma. Nearly every other state involved in the Transaction requires 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 Primus' 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."<sup>3</sup> The Commission also has previously granted a similar waiver allowing for use of a 45-day notice.<sup>4</sup>

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. Given that, and given that customers of Primus will have

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<sup>3</sup> *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).

<sup>4</sup> *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).

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.

**V. 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 respectfully request expedited processing of this Petition for Waiver.

**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 Primus customers and the Commission with 45 days notice of the Transaction.

**PRIMUS TELECOMMUNICATIONS  
INC.**

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

Counsel for Primus Telecommunications,  
Inc.

Dated: February 19, 2016

Respectfully submitted,

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



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Angela F. Collins  
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acollins@cahill.com

Counsel for Ionex Communications North,  
Inc. dba Birch Communications

**EXHIBIT A**

Draft Customer Notice





**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 **[45 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.<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> 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.

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

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 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**.<sup>3</sup>

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

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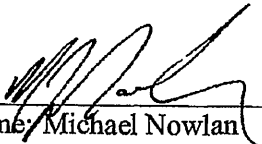
<sup>3</sup> **About Birch Communications** - Headquartered in Atlanta, Georgia, Birch Communications is one of the largest competitive local exchange carriers in its 50-state footprint, serving residential and business customers. Birch was the first in its class to deploy its own private IP network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

Province  
~~STATE OF~~ ONTARIO )  
City  
~~COUNTY OF~~ Toronto )

**VERIFICATION**


I, Michael Nowlan, Chief Executive Officer of Primus Telecommunications, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document with respect to Primus Telecommunications, Inc. 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.

2/2/2016  
Date

  
Name: Michael Nowlan

Title: Chief Executive Officer  
Primus Telecommunications, Inc.

Subscribed and sworn to before me this 2<sup>nd</sup> day of February

  
Notary Public

