

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: May 19, 2015**

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

DATE: May 7, 2015

TO: Public Utility Commission

FROM: Kathy Shepherd <sup>(12)</sup>

THROUGH: Jason Eisdorfer, Bryan Conway, and Kay Marinos <sup>AC</sup> <sup>KM</sup>

SUBJECT: IONEX COMMUNICATIONS NORTH INC dba BIRCH COMMUNICATIONS and ORBITCOM INC: (Docket Nos. CP 1487 and CP 1254) Petition for Waiver of Notice Requirement of OAR 860-032-0020(11)(a) and (b).

**STAFF RECOMMENDATION:**

The Commission should grant the petition by Ionex Communications North, Inc. dba Birch Communications (Ionex) and OrbitCom, Inc. (OrbitCom) (collectively, Petitioners) seeking waiver of the 90-day time period for customer and Commission notification of abandonment of service under OAR 860-032-0020(11)(a) and (b), and permit a notice period of 45 days.

**DISCUSSION:**

On April 29, 2015, Petitioners filed notice with the Commission that OrbitCom will be transferring certain assets and customers to Ionex. The transfer is scheduled to take place by July 2015. Petitioners are both competitive telecommunications providers certificated to provide intraexchange and interexchange services in Oregon. Ionex was granted a certificate of authority on September 22, 2010. See Docket No. CP 1487, Order No. 10-369. OrbitCom was granted a certificate of authority on October 20, 2004. See Docket No. CP 1254, Order No. 04-618.

OAR 860-032-0020(11) governs the abandonment or transfer of customers by competitive telecommunications service providers. This rule requires the provider to give 90 days' notice to both the affected customers and the Commission prior to the abandonment of service or transfer of customers. Petitioners request a waiver of the rule requiring 90 days' notice.

In its Petition to Waive Notification Time Periods, Petitioners state that the sale of OrbitCom's assets and customers to Ionex is part of a multi-state transaction that involves compliance with FCC and other state notification requirements, most of which require only 30 days' notice. Customers are being notified of the transaction in a mass mailing in May 2015, 45 days prior to the planned transfer. Therefore, Petitioners filed their request for waiver of OAR 860-032-0020(11)(a) and (b), specifically the 90-day notification period for customers and the Commission. OAR 860-032-0020(16) allows the Commission to grant a petition to waive any time period or requirement of the rules for good and sufficient reason.

Petitioners state that the transfer will be transparent to customers and will not affect the services available to customers or result in a change to the rates, terms, and conditions of their service. Customers also have the option of discontinuing service and selecting a different provider if they choose.

Because the transfer involves a multi-state transaction that is planned to occur by July 2015, compliance with the 90-day notice requirement would delay the transfer and impose a significant burden on Petitioners. Petitioners assert that the public interest will not be harmed by granting the waiver and allowing 45 days for customer notice. Staff agrees based on the small number of Oregon customers affected, the minimal impact on customers, and the ample time remaining for customers to make a decision regarding their telecommunications service.

**PROPOSED COMMISSION MOTION:**

Ionex Communications North, Inc. dba Birch Communications and OrbitCom, Inc.'s petition for waiver of the 90-day notice period for customer and Commission notification of abandonment of service under OAR 860-032-0020(11)(a) and (b) be granted and a notice period of 45 days be granted.