

ORDER NO. 15 154

ENTERED MAY 19 2015

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

CP 1487, CP 1254

In the Matters of

IONEX COMMUNICATIONS NORTH,
INC, dba BIRCH COMMUNICATIONS

and ORBITCOM, INC.,

Request to Waive the Notification Time
Periods of OAR 860-032-0020(11)(a) and (b).

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on May 19, 2015, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



Becky L. Beier

Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

**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 ^{ES}

THROUGH: Jason Eisdorfer, Bryan Conway, and Kay Marinos ^{AAE KM}

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.

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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.

CA10-Ionex OrbitCom 90-Day Notice Waiver