

ORDER NO. 16 096

ENTERED MAR 08 2016

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

CP 1487, CP 82

In the Matters of

IONEX COMMUNICATIONS NORTH,  
INC., dba BIRCH COMMUNICATIONS  
(CP 1487),

and

PRIMUS TELECOMMUNICATIONS, INC.  
(CP 82),

Petition for Waiver of Notice Requirement of  
OAR 860-032-0020(11)(a) and (b).

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on March 8, 2016, 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:

  
**Kristi Collins**  
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: March 8, 2016

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

DATE: February 25, 2016

TO: Public Utility Commission

FROM: Kathy Shepherd *ES*

THROUGH: Jason Eisdorfer *E*, Bryan Conway *MC*, and Kay Marinos *KM*

SUBJECT: IONEX COMMUNICATIONS NORTH, INC. dba BIRCH  
COMMUNICATIONS and PRIMUS TELECOMMUNICATIONS, INC.:  
(Docket Nos. CP 1487 and CP 82) 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 Primus Telecommunications, Inc. (Primus) (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 at least 45 days.

**DISCUSSION:**

On February 19, 2016, Petitioners filed notice with the Commission that Primus will be transferring certain assets and customers to Ionex. The transfer is scheduled to take place by May 2016. 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. Primus was granted a certificate of authority on October 6, 1995. See Docket No. CP 82, Order No. 95-1071.

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.

Ionex/Primus Petition for Waiver  
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In its Petition to Waive the Notification Time Periods, Petitioners state that the sale of Primus' 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 by early March 2016, at least 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 May 2016, 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 at least 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 Primus Telecommunications, 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 at least 45 days be granted.

CA1-Ionex Primus 90-Day Notice Waiver