

Decision No. C14-0561

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0367T

IN THE MATTER OF THE JOINT APPLICATION OF IONEX COMMUNICATIONS NORTH, INC. DBA BIRCH COMMUNICATIONS AND CBeyond COMMUNICATIONS, LLC TO EXECUTE A TRANSFER.

DECISION GRANTING APPLICATION

Mailed Date: May 28, 2014

Adopted Date: May 28, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a joint application filed by Cbeyond Communications, LLC (Cbeyond) and Ionex Communications North, Inc. (Ionex) on April 22, 2014. The applicants request Commission authorization for a transaction where Ionex's corporate parent, Birch Communications, Inc. (BCI) will acquire Cbeyond, Inc. (CBI), Cbeyond's corporate parent. We will construe this filing as an application for approval of the transfer pursuant to Rule 4 *Code of Colorado Regulations* 723-2-2109 of the Commission's Rules Regulating Telecommunications Providers, Services, and Products.

2. Ionex owns a Certificate of Public Convenience and Necessity (CPCN) that authorizes it to provide local exchange services, granted by Decision No. C98-1245, Proceeding No. 98A-481T, issued December 15, 1998, and a CPCN granted in Decision No. C99-0062, Proceeding No. 98A-540T, issued January 19, 1999, allowing the offering of emerging competitive services. Ionex is also a registered toll reseller.

3. Cbeyond holds a CPCN and a Letter of Registration to provide regulated local exchange and emerging competitive telecommunications services. These authorities were granted in Commission Decision No. C00-1021, Proceeding No. 00A-433T, issued September 19, 2000. Cbeyond is represented in the application as a wholly owned subsidiary of CBI.

4. The applicants state that as a part of an Agreement and Plan of Merger, Ionex's corporate parent, BCI will purchase CBI.

5. Following the contemplated transaction, there will be no customers that will transfer. Both Ionex and Cbeyond will continue to offer services in Colorado under their current names.

6. With the represented transfer of control from CBI to BCI, we find that the Commission has jurisdiction in this matter.

7. On April 24, 2014, notice of the application was provided to all persons, firms, or corporations, interested in or affected by the grant or denial of the requested relief. Interventions were due on or before May 27, 2014. No interventions were filed.

B. Discussion

8. The application contains all information required by the applicable Commission Rules and is therefore deemed complete.

9. The application represents that customers of Cbeyond will continue to receive services following the transfer at the same name, rates, terms, and conditions that currently exist prior to the transaction.

10. The application is unopposed and therefore may be considered without a formal hearing, pursuant to § 40-6-109(5), C.R.S.

11. We find that the proposed transfer is not contrary to the public interest and therefore grant the joint application for transfer of control. This is based on the representation that affected customers will not experience any changes in rates, terms, and conditions as a result of the transaction.

II. ORDER

A. The Commission Orders That:

1. The joint application to transfer control filed by Ionex Communications North, Inc. (Ionex) and Cbeyond Communications, LLC (Cbeyond) is deemed complete and is granted.

2. Applicants Ionex and Cbeyond shall jointly notify the Commission if the transaction has been terminated, is not completed, or if the proposed transfer terms are changed. The notice shall include the proceeding and decision numbers which granted the authority to execute the transfer.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 28, 2014.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners