

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0366T

IN THE MATTER OF THE JOINT APPLICATION OF IONEX COMMUNICATIONS NORTH, INC. DBA BIRCH COMMUNICATIONS AND DISHNET WIRELINE, LLC DBA LIBERTY-BELL TELECOM FOR WAIVER OF COLORADO RULE 2311 REGARDING AUTHORIZATION AND VERIFICATION OF CHANGES IN TELECOMMUNICATIONS PROVIDERS IN CONNECTION WITH A PENDING TRANSACTION.

DECISION GRANTING APPLICATION

Mailed Date: June 5, 2014

Adopted Date: June 5, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a joint application filed by dishNet Wireline, LLC (dishNet), doing business as Liberty Bell Telecom and Ionex Communications North, Inc. (Ionex) on April 22, 2014. The applicants request Commission authorization for a transaction where Birch Communications, Inc., the parent company of Ionex, will purchase dishNet's customers and certain assets. The filing represents that following the purchase transaction that Ionex will provide services to the acquired dishNet customers. We will construe this filing as an application for approval of the transfer of dishNet's customers and assets pursuant to 4 *Code of Colorado Regulations* (CCR) 723-2109 of the Commission's Rules Regulating Telecommunications Providers, Services, and Products.

2. The application also contains a request for a waiver of Commission Rule 4 CCR 723-2311(g) as it relates to the slamming rules for transferred customers.

3. The certificate of public convenience and necessity (CPCN) owned by dishNet, to provide competitive local exchange telecommunications services and authority to provide emerging competitive services, granted by the transfer in Decision No. C10-1370, Proceeding No. 10A-935T, issued December 28, 2010.

4. Ionex owns a 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.

5. The applicants state that following the completion of the transfer that dishNet will no longer offer telecommunications services in Colorado under the trade name Liberty Bell Telecom and intends on cancelling its trade name.

6. Subsequent to the transfer, the application represents that Ionex will adopt the relevant portions of dishNet's effective tariff in order to provide services to the transferred customers. There will be no changes to the services, rates, or terms and conditions provided to affected customers.

7. The application contains a draft of the customer notice that informs customers of the transfer.

8. With the represented transfer of assets and customers from dishNet to Ionex we find that the Commission has jurisdiction in this matter.

9. On April 28, 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 28, 2014. No interventions were filed.

B. Discussion

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

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

12. The request of a waiver of Commission Rule 4 CCR 723-2311(g) is made so as not to obtain individual customer authorization for the change in provider. Applicants have provided a proposed customer notice that is required to obtain such a waiver.

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

14. We find that the proposed transfer of assets and customers is not contrary to the public interest and therefore grant the joint application for transfer and waiver of the Commission's slamming rules. This is based on the representation that affected customers will be properly notified on a timely basis and that rates, terms, and conditions for the transferred customers will not change.

II. ORDER

A. The Commission Orders That:

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

2. For the sole purpose of this application to transfer jurisdictional customers, dishNet and Ionex are granted a waiver of Rule 2311(g) of the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR)

723-2. The draft of the customer notice contained in the application is acceptable and may be used to notify customers of the transfer and of their respective right to select an alternative provider if they desire to do so.

3. Ionex shall file a notice to adopt the relevant portions of dishNet's effective tariffs serving transferred customers that are on file with the Commission within 45 days following the actual date of transfer. If there is a tariff on file with the Commission that serves no customers, dishNet may file to discontinue the offering of these services with a Notification of Discontinuance of Regulated Telecommunications Services Where No Customers are Affected pursuant to Rule 4 CCR 723-2-2108(f).

4. 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.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 5, 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