

Decision No. C14-0605

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0368T

IN THE MATTER OF THE APPLICATION OF IONEX COMMUNICATIONS NORTH, INC.
DBA BIRCH COMMUNICATIONS AND CBeyond COMMUNICATIONS, LLC TO
EXECUTE AN ENCUMBRANCE.

DECISION GRANTING APPLICATION

Mailed Date: June 9, 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 Ionex Communications North, Inc. (Ionex) and PNC Bank, National Association (PNC), as the Lending Administrative Agent for Birch Communications, Inc. (BCI), the parent company of Ionex on April 22, 2014. The joint applicants request Commission authorization to enter into a financing transaction in which substantially all of the assets of BCI including its parent, Birch Communications Holdings, Inc. and BCI's subsidiaries, including Ionex's Commission issued telecommunications authorities, will be encumbered. Ionex acquired control of Cbeyond Communications, LLC (Cbeyond) in Commission Decision No. C14-0561 in Proceeding No. 14A-0367T on May 28, 2014. Cbeyond's assets, including its telecommunications authorities, will also be encumbered in this transaction. We will construe this filing as an application for approval of the encumbrance of the Certificates of Public Convenience and Necessity (CPCNs) of Ionex and Cbeyond pursuant to § 40-15-204, C.R.S.

2. If the Commission grants the authority to execute the encumbrance of Ionex's and Cbeyond's assets, including their Commission issued telecommunications authorities, the joint application represents that there will be no changes in ownership. Services provided by Ionex and Cbeyond will continue to their customers with no changes in terms and conditions.

3. The application contains a Request for Confidential Treatment (Request) of information that is represented to include the private terms and conditions of the financing transaction with PNC. Confidential treatment of information filed with the Commission is governed by Rule 1100 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1. The Request is not opposed by any party. We will recognize the Request as a Motion for Confidential Treatment of the documentation included as Exhibit A to the application and confidential information identified in the filing.

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. 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.

6. PNC is serving as the lender in the financial transaction.

7. The Commission granted an encumbrance of Ionex's CPCN to Bank of America (BOA) in Decision No. C10-1291, Proceeding No. 10A-767T on December 1, 2010, and modified in Decision Nos. C11-0469, Proceeding No. 10A-767T on May 4, 2011 and C12-0821,

Proceeding No. 12A-632T on July 18, 2012. The pending application represents that a portion of the proceeds of the described transaction with PNC will be used to pay off the amount due to BOA.

8. On April 29, 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 May 29, 2014. No interventions were filed.

9. We find that the Commission has jurisdiction in this matter.

B. Discussion

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

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

12. We find that the proposed encumbrances are not contrary to the public interest and therefore grant the joint application.

13. The applicants are reminded that approval of the Commission is necessary before a Commission issued telecommunications authority can be transferred to another party in the event of default or foreclosure of the financial instrument.

II. ORDER

A. The Commission Orders That:

1. The joint application to encumber telecommunications authorities filed by Ionex Communications North, Inc. (Ionex), and PNC Bank, National Association (PNC) is deemed complete and is granted with certain conditions as noted below.

2. The Commission will treat the confidential information included in the application, including Exhibit A to the filing, in accordance with Rule 1100, 4 *Code of Colorado Regulations* 723-1. All persons accorded access to this identified information contained in these documents shall treat such information as confidential and shall neither use or disclose such information except for the purpose of this proceeding.

3. Ionex, Cbeyond Communications, LLC (Cbeyond), and PNC shall jointly notify the Commission when the encumbrances have been terminated or are not completed within 60 days of the proposed effective date stated in the application or if the proposed encumbrance terms are changed prior to the consummation date. This notice shall include the proceeding and decision numbers which granted the authority to execute the encumbrance.

4. In the event the encumbrances held by PNC are exercised or transferred to another entity or entities, PNC or the new entity, Ionex, and Cbeyond shall jointly file a transfer application to transfer the encumbered telecommunications authorities and obtain specific approval for this subsequent transfer from the Commission.

5. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

6. 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



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners