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April 29, 2015

**Via Electronic Filing**

Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
Capitol Building, First Floor  
500 East Capitol Ave.  
Pierre, SD 57501

**Re: Ionex Communications North, Inc. d/b/a Birch Communications and  
OrbitCom, Inc. - Notification of Transfer of Customers and Assets**

Dear Ms. Van Gerpen:

Ionex Communications North, Inc. d/b/a Birch Communications (“Ionex”) and OrbitCom, Inc. (“OrbitCom”) (Ionex and OrbitCom collectively, the “Parties”), hereby respectfully notify the South Dakota Public Utilities Commission (“Commission”) of a pending transaction between OrbitCom and Ionex, pursuant to which OrbitCom will transfer substantially all of its telecommunications assets and South Dakota customer base to Ionex (the “Transaction”).

**I. PARTIES**

**A. Ionex Communications North, Inc. d/b/a Birch Communications**

Ionex is a South Dakota corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. Ionex is authorized by the Commission to provide local exchange and interexchange telecommunications services in South Dakota.<sup>1</sup> Ionex is a wholly owned subsidiary of Birch Communications, Inc. (“BCI”), a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305. BCI and its subsidiaries are authorized to provide telecommunications services in 50 states and the District of Columbia.

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<sup>1</sup> Docket No. TC97-032.

**B. OrbitCom, Inc.**

OrbitCom is a South Dakota corporation with corporate headquarters at 1701 N. Louise Ave., Sioux Falls, South Dakota, 57107. OrbitCom is authorized to provide telecommunications service in the state of South Dakota.<sup>2</sup>

**II. DESIGNATED CONTACTS**

Correspondence concerning this matter should be directed to:

<b>For OrbitCom, Inc.</b>	<b>For Ionex Communications North, Inc. d/b/a Birch Communications</b>
Meredith A. Moore Cutler Law Firm, LLP 100 N. Phillips Ave., 9 <sup>th</sup> Floor Sioux Falls, SD 57104 605-335-4950 (telephone) 605-335-4961 (facsimile) meredithm@cutlerlawfirm.com	Angela F. Collins Cahill Gordon & Reindel LLP 1990 K Street, NW, Suite 950 Washington, DC 20006 202-862-8930 (telephone) 866-814-6582 (facsimile) acollins@cahill.com

**III. DESCRIPTION OF THE TRANSACTION AND PUBLIC INTEREST STATEMENT**

On April 24, 2015, BCI and OrbitCom entered into an Asset Purchase Agreement (“Agreement”) pursuant to which BCI will purchase certain assets and customers of OrbitCom. Pursuant to the Agreement, BCI will purchase the following assets from OrbitCom: certain customer accounts and receivables, certain customer agreements and contracts, certain vendor agreements and contracts, certain equipment, and certain intellectual property. BCI, however, will not assume any of OrbitCom’s pre-closing liabilities or obligations.

Ionex will make any necessary revisions to its rates, terms, and conditions to incorporate OrbitCom’s current services and rates so that affected customers will continue to receive the same services that they currently receive without any immediate changes to their service offerings or rates. Ionex will provide services to OrbitCom customers utilizing its existing interconnection agreements, 911 arrangements, and numbering arrangements.

The ownership structure of BCI and Ionex will not be affected by the Transaction. Upon consummation of the Transaction and after completion of the customer transfer, Ionex will provide OrbitCom’s customers with the same service quality they have come to expect and all billing will be handled under the Ionex name.

The proposed transfer will affect all of OrbitCom’s current South Dakota customers,

<sup>2</sup> Docket No. TC02-031. The Commission granted a certificate to VP Telecom, Inc. in this docket. VP Telecom, Inc. later changed its name to OrbitCom, Inc.

none of whom will experience any material change to the terms and conditions of their services as a result of this transfer. The Parties will provide notice to affected customers in accordance with state requirements and the rules and regulations of the Federal Communications Commission. A draft customer notice letter is attached as **Exhibit A**. Closing of the Transaction is contingent on receipt of all necessary regulatory approvals.

Upon completion of the Transaction and the migration of customers to Ionex, OrbitCom will no longer offer telecommunications services in South Dakota. After OrbitCom determines that it no longer needs its South Dakota authorizations for operational or billing purposes, OrbitCom will surrender its authorizations in a separate filing. The Parties respectfully request that OrbitCom's authorization and any existing tariffs remain in place until OrbitCom separately requests such a cancellation. The contact listed for OrbitCom herein will address any required post-Transaction filing requirements for OrbitCom.

The proposed Transaction serves the public interest, and will ensure that affected customers enjoy continuity of high-quality telecommunications service. OrbitCom's current customers will be given prior written notice of the transfer of their account to Ionex, in compliance with state and federal customer notice rules. Following the Transaction, the affected customers will receive high-quality service supported by Ionex's experienced and well-qualified management team. Consequently, the proposed Transaction will be transparent to customers and will not have a negative impact on the public interest, service to South Dakota customers, or competition.

If you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,



Angela F. Collins  
Counsel for Ionex Communications North,  
Inc. d/b/a Birch Communications

Attachment

cc: Meredith Moore, Counsel to OrbitCom (via electronic mail)

**Exhibit A**

**Draft Customer Notice**



**ORBITCOM INC.**



**BIRCH**

**IMPORTANT NOTICE**  
**REGARDING A CHANGE IN YOUR TELECOMMUNICATIONS SERVICES**

Dear \_\_\_\_\_

Birch Communications ("Birch") and OrbitCom, Inc. ("OrbitCom") are pleased to announce that Birch is acquiring OrbitCom's local telephone and long distance telephone customers, as well as certain other customers receiving additional types of services from OrbitCom. Subject to approval by the Federal Communications Commission and state regulators as necessary, Birch will replace OrbitCom as your current telecommunications service provider on or after **[30 DAYS AFTER LETTER DATE]**, 2015 (the "Transfer Date"). As a result of this transaction, Birch will assume responsibility for all services previously provided to you by OrbitCom. Birch is excited about the opportunity to provide your telecommunications service(s) and looks forward to a long and mutually rewarding business relationship.

Please rest assured, the transition will have little or no impact on your current services, nor will there be any interruption of your service. The agreement between Birch and OrbitCom has been structured so that the transfer of service will be virtually seamless, other than the possibility of a minor change to your voice mail service for which you will receive additional information.<sup>1</sup> There, however, may be other changes to your service plan based on Birch's unique billing systems (e.g., customers currently utilizing a message or measured local service plan may be switched to a flat rate plan). In those cases, Birch will transition you in a neutral manner **with no increase to your regular monthly recurring charges**. You will retain all other service rates, features, terms, and conditions of service and your telephone number. Birch will not impose any charges for the transfer of your services to Birch and **no action is required from you to continue your telecommunications service(s) with Birch**. You will receive your first billing statement from Birch starting with your **June 2015 or July 2015** bill. As in the past, you are responsible for paying all bills rendered to you by OrbitCom during the transition of service.<sup>2</sup>

You do have the right to select a different carrier for your telecommunications service(s). If you choose to switch to an alternate carrier for services, you may incur a fee from that alternate carrier for the transfer of services to that alternate carrier. If you select a local telephone service provider other than Birch, you should also contact your current long distance provider to ensure that your current long distance plan is not changed. Please note

<sup>1</sup> It will be necessary for you to reset your password and re-record your message greeting(s). Additionally, saved messages at the time of the transfer will no longer be retained. Birch will provide further details in a follow-up letter.

<sup>2</sup> Those customers interested in setting up online payments will be pleased to know Birch offers online payments and account updates.

that if you are a customer of OrbitCom on the Transfer Date as set forth above, your account will automatically be transferred to Birch. In addition, should you have a term commitment with OrbitCom and you disconnect or transfer services to another carrier prior to the end of that term, you will be liable to Birch for any applicable early termination charges, subject to applicable law. Please note that when your service is transferred to Birch, any preferred carrier "freeze" you have placed on your existing telephone lines to prevent unauthorized transfer of your services to another carrier will be over-ridden for purposes of this transaction and will need to be reinstated by you by contacting Birch after the transfer is complete.

If you have any questions regarding this transaction or questions about your service or billing prior to the Transfer Date set forth above, you should contact OrbitCom at: **605-834-7837**.

If you have any questions regarding this transaction, or questions about your service or billing after the Transfer Date set forth above, you should contact Birch at **888-772-4724**.<sup>3</sup>

OrbitCom thanks you for your business and Birch looks forward to providing you with quality service for many years to come.

Sincerely,

OrbitCom, Inc. and  
Birch Communications

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<sup>3</sup> **About Birch Communications** - Headquartered in Atlanta, Georgia, Birch Communications is one of the largest competitive local exchange carriers in its 50-state footprint, serving residential and business customers. Birch was the first in its class to deploy its own private IP network utilizing soft switch technology to deliver innovative, high quality, affordable voice and broadband communications services to small- to large-sized business customers.

STATE OF           **GEORGIA**    )  
                                                          )  
COUNTY OF       **BIBB**            )

**VERIFICATION**

I, Vincent M. Oddo, President/CEO of Birch Communications, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.

April 27, 2015  
Date

  
Name: Vincent M. Oddo

Title: President/CEO  
Birch Communications, Inc.



Subscribed and sworn to before me this 27th day of April, 2015

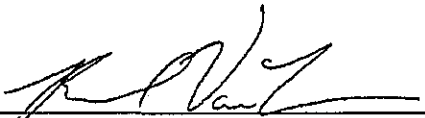
  
Notary Public

STATE OF SOUTH DAKOTA)  
COUNTY OF MINNEHAHA)

VERIFICATION

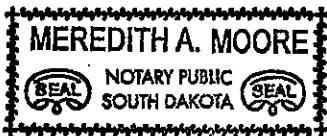
I, Brad VanLear, President of OrbitCom, Inc., have reviewed and am familiar with the foregoing document. The statements in the foregoing document are true of my own knowledge, except as to matters which are herein stated on information and belief, and as to those matters, I believe them to be true.

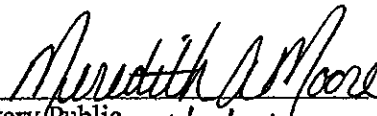
4-27-15  
Date

  
Name: Brad VanLear

Title: President  
OrbitCom, Inc.

Subscribed and sworn to before me this 27 day of April, 2015



  
Notary Public 1/1/21