

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

www.kelleydrye.com

DIRECT LINE (202) 955-9766

EMAIL eemcott@kelleydrye.com

NEW YORK, NY

TYSONS CORNER, VA

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES

BANGKOK, THAILAND

JAKARTA, INDONESIA

MANILA, THE PHILIPPINES

MUMBAI, INDIA

TOKYO, JAPAN

January 29, 2003

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director, Division of Public Records and Reporting
Florida Public Service Commission
2540 Shummard Oak Boulevard
Tallahassee, FL 32399

030104-TP

Re: **Informational Filing Concerning Birch Telecom of the South, Inc.**

Dear Ms. Bayo:

Birch Telecom of the South, Inc. ("Birch South"), through counsel, hereby notifies the Florida Public Service Commission ("Commission") of a change in ownership of Birch South's parent company, Birch Telecom, Inc. ("Birch") and requests that the Commission update its records to reflect the information in this notification letter. Pursuant to conversations with Commission staff and after review of the relevant Florida statutes and Commission rules, we understand that this parent-level transaction does not require the approval of the Commission.¹ Therefore, this notification is being submitted solely for the information of the Commission.

This change in Birch's ownership will result from a merger procedure whereby Birch South's parent company Birch, will become a wholly owned subsidiary of Ionex Telecommunications, Inc. ("Ionex") and the current shareholders of Birch will acquire between

¹ Specifically, it is our understanding that the relevant statute requires Commission approval of a transfer of control only if there is a direct transfer of control of the utility entity. See FL STAT. ANN. § 364.33. As explained more fully in this filing, the transfer of control is at the parent-level, not at the utility level. The transaction does not involve the acquisition of any telecommunications facilities or the acquisition, transfer or assignment of majority organizational control or controlling stock ownership of the certificated entity, Birch South. Birch South will not be directly affected by the transfer of control at its parent-level and Birch will continue to hold all of the stock of Birch South.

Ms. Blanca S. Bayo,
Director, Division of Public Records and Reporting
Florida Public Service Commission
January 29, 2003
Page Two

approximately 18.0% and 26.4% of the voting shares of Ionex.² The current Ionex shareholders will hold the remaining interests in Ionex. Upon completion of this parent-level transfer of control, Birch South will continue to be a subsidiary of Birch and will continue to operate in Florida under the same name and pursuant to its existing authorizations and tariffs. As Birch South does not currently provide telecommunications services in Florida, the transfer of control will have no adverse impact on customers in the state.

The Parties

Birch Telecom, Inc. ("Birch") is incorporated under the laws of Delaware with its principal business offices located at 2020 Baltimore Avenue, Kansas City, Missouri 64108. Although Birch is not itself a telecommunications carrier, Birch subsidiaries offer state-of-the-art telecommunications services primarily to small and mid-sized businesses in the Midwest and Southeastern United States. Birch provides these services in more than 30 cities in the United States. Birch is one of the largest competitive local exchange carriers in the nation with over 371,000 telephone lines in service. Birch subsidiaries also offer domestic and international telecommunications services pursuant to FCC Section 214 authorizations.

Birch Telecom of the South, Inc. ("Birch South") is a wholly owned subsidiary of Birch and is incorporated under the laws of Delaware with its offices also located at 2020 Baltimore Avenue, Kansas City, Missouri 64108. Birch South is authorized to provide telecommunications services in Florida pursuant to certificates of authority granted to it by the Commission on September 1, 2000 in Docket No. 000696-TX and October 20, 2000 in Docket No. 000741-TI.

Ionex Telecommunications, Inc. ("Ionex") is a privately held Delaware corporation, incorporated on July 9, 1999, that functions as a holding company for several operating entities.³ Ionex and its subsidiaries are headquartered at 15305 Dallas Parkway, Suite 1500, Addison, Texas 75001. It is one of the fastest growing providers of digital broadband services in its primary markets. Through its subsidiaries, Ionex is authorized to provide service in numerous states throughout the country. In connection with this transaction, Ionex is raising a substantial multimillion dollar additional investment primarily from its existing shareholders, which will be available for use by the utility companies.

² None of the existing Birch shareholders, however, will acquire a 10% or greater interest in Ionex, or otherwise acquire control of Ionex.

³ As a holding company, Ionex is not doing business in Florida and therefore, is not required to qualify to do business within Florida.

Ms. Blanca S. Bayo,
Director, Division of Public Records and Reporting
Florida Public Service Commission
January 29, 2003
Page Three

The Transaction

The parent-level transfer of control will be effected through a merger procedure. Ionex will establish a special purpose subsidiary and Birch will merge into the special purpose subsidiary but Birch will be the surviving entity. In that way, Birch will become a direct, wholly owned subsidiary of Ionex, and Birch South will continue as a wholly owned subsidiary of Birch. Ionex will issue new shares of its own stock to the diffuse group of current shareholders of Birch, *pro rata*, so that they will hold approximately 18.0% to 26.4% of the total outstanding shares of Ionex (depending on the amount of additional funding provided by the Ionex investors as described below) but will not control it. An integral part of the transaction is a substantial multimillion dollar additional investment by Ionex shareholders. The precise amount of that investment will not be determined until closer to the closing of the transaction. Even if Birch shareholders collectively obtain the maximum percentage ownership in Ionex contemplated by the merger agreement (26.4%), no individual current shareholder of Birch will hold a 10% or greater interest in the post-merger Ionex. As existing Ionex shareholders will continue to control approximately 75% or more of Ionex, Ionex will not experience a change of control as a result of this transaction. An organizational chart showing the ownership structure of the companies after the transaction is attached as *Exhibit A*.

Impact on the Public

The proposed transfer of control of Birch (and the consequent indirect transfer of control of Birch South) to Ionex is in the public interest. Birch and Ionex will be able to take advantage of greater economies of scale and Birch will have access to additional capital from a well-financed parent, Ionex. Birch's subsidiaries will continue to provide service to their customers under the same names and with the same operating authorities. Moreover, there will not be any change in the rates, terms or conditions of service to Birch's customers as a result of the transaction. The contacts for customer and Commission inquiries also will remain the same. Thus, the transfer of control of Birch and its subsidiaries will be transparent to customers and will not have any adverse impact on them. The only changes in Birch caused by this transaction are in the ultimate ownership and financial condition of the parent of the operating subsidiaries

KELLEY DRYE & WARREN LLP

Ms. Blanca S. Bayo,
Director, Division of Public Records and Reporting
Florida Public Service Commission
January 29, 2003
Page Four

As noted above, upon review of the relevant Florida statutes and Commission rules, and based on conversations with Commission staff, Ionex and Birch understand that prior Commission approval is not required to complete the indirect transfer of control described herein. Ionex and Birch therefore submit this letter for the Commission's information and request that it be retained in the appropriate file. Enclosed are an original, fifteen (15) copies, a duplicate copy and a self-addressed, postage-paid envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided.

Respectfully submitted,

BIRCH TELECOM, INC.
BIRCH TELECOM OF THE SOUTH, INC.

IONEX TELECOMMUNICATIONS, INC.

By: Jeffrey A. Marks/EWE
Jeffrey A. Marks
LATHAM & WATKINS
555 Eleventh Street, N.W.
Suite 1000
Washington, DC 20004
Telephone: (202) 637-2120
Fax: (202) 637-2201
Jeffrey.Marks@LW.com

By: Erin W Emmott
James J. Freeman
Erin W. Emmott
KELLEY DRYE & WARREN, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Telephone: (202) 955-9766
Fax: (202) 955-9792
eemmott@kelleydrye.com

Attachments

cc: Thomas Williams, Engineer for Certification and Tariffs

VERIFICATION

I, the undersigned, am authorized to represent Birch Telecom, Inc., and to make this verification on its behalf. The statements in the foregoing document relating to this company and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Gregory C. Lawhon
Name: Gregory C. Lawhon

Senior Vice President and General Counsel
Title

Subscribed and sworn to before me this 21st day of
January, 2003.

Barbara P. Fillingger
Notary Public

My Commission expires: _____

BARBARA P. FILLINGER
Notary Public-Notary Seal
State Of Missouri
Commissioned In Jackson County
My Commission Expires: June 6, 2004

VERIFICATION

I, the undersigned, am authorized to represent Birch Telecom of the South, Inc., and to make this verification on its behalf. The statements in the foregoing document relating to this company and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Gregory C. Lawhon
Name: Gregory C. Lawhon

Senior Vice President and General Counsel
Title

Subscribed and sworn to before me this 21st day of
January, 2003.

Barbara P. Hillinger
Notary Public

My Commission expires _____
BARBARA P. HILLINGER
Notary Public-Notary Seal
State Of Missouri
Commissioned In Jackson County
My Commission Expires: June 6, 2004

VERIFICATION

I, the undersigned, am authorized to represent Ionex Telecommunications, Inc., and its subsidiaries, and to make this verification on their behalf. The statements in the foregoing document relating to this company and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Robert C. Mote

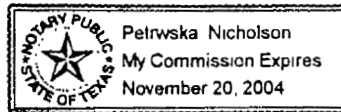
Name

VP & GENERAL COUNSEL

Title

Subscribed and sworn to before me this 14th day of January, 2003.

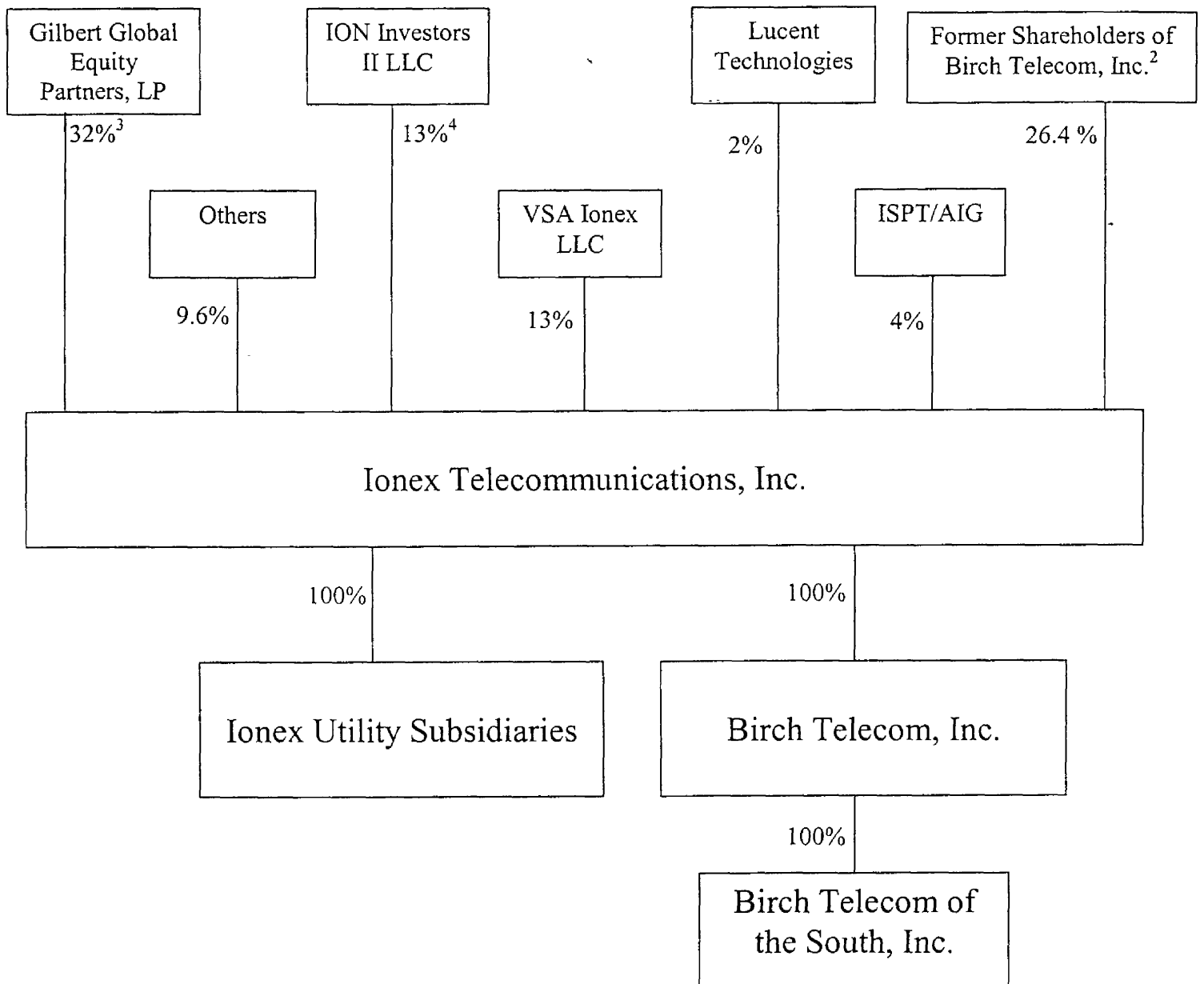
Petruska Nicholson
Notary Public



My Commission expires: November 20, 2004

EXHIBIT A

Corporate Organization Post-Merger¹



1. These diagrams show ownership as approximate percentages of the voting interests in Ionex Telecommunications, Inc. ("Ionex"). These figures represent interests resulting from the minimum additional investment contemplated by the merger agreement. The existing Ionex shareholders' interest will increase if they elect to make more than the minimum additional investment and the interest in Ionex of the Birch shareholders will correspondingly decrease. In no event, will Birch's current shareholders hold less than 18.0% in the post-merger Ionex.
2. None of the current shareholders of Birch will hold a 10% or greater interest in the post-merger Ionex.
3. In addition to the 22% ownership held by Gilbert Global Equity Partners, L.P., an additional approximately 7% interest in Ionex is held in the name of Gilbert Global Equity Partners, (Bermuda) L.P., and an additional approximately 3% interest is held in the name of GGEP/GGECC Equity Partners, LP bringing the total ownership for Gilbert Global Equity Partners affiliated companies to approximately 32%.
4. In addition to the 11% ownership held by ION Investors II LLC, an additional approximately 2% interest in Ionex is held in the name of ION Investors I LLC, bringing the total ownership for ION Investors affiliated companies to approximately 13%.