

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 IONEX COMMUNICATIONS NORTH, INC.,)
 DEBTOR-IN-POSSESSION)
)
 For Approval of Indirect Transfer)
 Control)
 _____)

DOCKET NO. 2006-0034

ORDER NO. 22591

Filed June 30, 2006
At 11:45 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

for
Charles P. Luissacop

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 IONEX COMMUNICATIONS NORTH, INC.,)
 DEBTOR-IN-POSSESSION) Docket No. 2006-0034
)
 For Approval of Indirect Transfer) Order No. 22591
 Control)
 _____)

ORDER

By this Order, the commission dismisses, without prejudice, the application filed by Ionex Communications North, Inc., Debtor-in-Possession ("Applicant") on February 22, 2006, which seeks approval of an indirect transfer of control of Applicant ("Application").¹ The commission dismisses the Application because Applicant is not authorized by the commission to provide telecommunications services in the State of Hawaii. Accordingly, the Applicant lacks standing to bring the Application before the commission.

¹See Application for Approval of Indirect Transfer of Control, Verification, and Exhibits A - C, filed on February 22, 2006. Applicant served a copy of the Application on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), an *ex officio* party to this docket pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62.

I.

Discussion

On February 22, 2006, Applicant filed its Application, requesting approval of an indirect transfer of control of Applicant from its parent, Birch Telecom, Inc., Debtor-in-Possession ("Birch DIP") to a new group of shareholders pending Birch DIP's emergence from Chapter 11 reorganization. Applicant claims to be authorized in Hawaii to provide facilities-based and resold local and interexchange telecommunications services through commission authorization issued to a subsidiary of Birch DIP, Telecom Resources, Inc. ("TRI").

On March 10, 2006, the Consumer Advocate filed its Statement of Position ("Statement of Position"), which concludes: "[N]either [Applicant] nor its subsidiary TRI holds any standing as an authorized telecommunications provider in Hawaii, and, thus, is not required to seek Commission approval of the subject indirect transfer of control pursuant to HRS § 269-19."²

By letter dated March 17, 2006, to Applicant, the commission requested Applicant to respond to the Consumer Advocate's Statement of Position within thirty days of the date of the commission's letter, or by April 17, 2006. Applicant has not filed any response to the Consumer Advocate's Statement of Position.

²Statement of Position, at 4.

Upon review of the entire record herein,³ the commission concurs with the position of the Consumer Advocate and finds that Applicant is not authorized to provide telecommunications services in Hawaii. Applicant accordingly lacks standing to bring the present Application before the commission.

II.

Order

THE COMMISSION ORDERS:

1. The Application is dismissed without prejudice⁴ because Applicant is not authorized to provide telecommunications services in the State of Hawaii.


2. For the reasons discussed herein, if Applicant is currently providing telecommunications services in the State of Hawaii, as represented in its Application, Applicant is illegally operating without authority. The commission therefore directs Applicant to file with the commission and the Consumer Advocate, within thirty (30) days of the date of this Order, information as to whether Applicant is currently providing telecommunications services in the State of Hawaii, and if so, the extent of those services.

³The commission takes official notice, pursuant to HAR § 6-61-48, of all records relating to Applicant, Birch DIP, TRI, and all other affiliates of Applicant described in the Application and in the Statement of Position, namely, Advanced Communications Group, Inc. and Ionex Telecommunications, Inc.

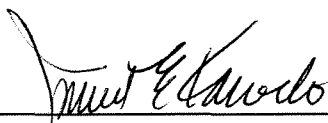
⁴In the event Applicant applies for, and is granted, authority to provide telecommunications services in the State of Hawaii, Applicant may then request commission approval of the subject indirect transfer of control.

DONE at Honolulu, Hawaii JUN 30 2006.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kaiulani E.S. Kidani
Commission Counsel

2006-0034.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22591 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

JOHN E. COLE
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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Debtor-in-Possession

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Karen Higashi

DATED: JUN 30 2006