

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public	)	
Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. TC-2019-0137
	)	
Ionex Communications, Inc. d/b/a	)	
Birch Communications,	)	
	)	
Respondent.	)	

**ANSWER AND AFFIRMATIVE DEFENSES**

**COMES NOW** Ionex Communications, Inc. (“Ionex” or the “Company”),<sup>1</sup> through the undersigned counsel and pursuant to the Notice of Contested Case and Order Directing Filing issued by the Missouri Public Service Commission (“Commission”) on November 14, 2018 in the above-referenced case, respectfully submits this Answer to the Complaint filed by Staff of the Commission alleging that Ionex has violated the Commission’s statutes relating to the payment of annual assessments.

**ANSWER**

The Company answers the enumerated paragraphs of the Complaint as follows:

1. On information and belief, the Company denies the allegations in Paragraph 1 of the Complaint.
2. On information and belief, the Company admits the allegations in Paragraph 2 of the Complaint.

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<sup>1</sup> Effective December 30, 2017, the Company converted from a Kansas corporation to a Delaware limited liability company. Effective October 24, 2018, the Company changed its name in its home state of Delaware to Lingo Communications Midwest, LLC. These changes are pending approval by the Missouri Secretary of State. Thereafter, the Company will promptly present the name change to the Commission. For ease of reference, the Company continues to use the name “Ionex” herein.

3. The Company denies the first sentence of Paragraph 3 of the Complaint. The Company is located at 5607 Glenridge Drive NE, Suite 300, Atlanta, GA 30342. On information and belief, the Company admits the remainder of the allegations in Paragraph 3 of the Complaint.

4. The Company admits the allegations in Paragraph 4 of the Complaint.

5. On information and belief, the Company admits the allegations in Paragraph 5 of the Complaint.

6. The Company neither admits nor denies the allegations in Paragraph 6 of the Complaint. The law speaks for itself.

7. The Company neither admits nor denies the allegations in Paragraph 7 of the Complaint. The law speaks for itself.

8. Paragraph 8 of the Complaint requires no response, but to the extent a response is required, the above responses to Paragraphs 1-7 of the Complaint are incorporated herein by reference.

9. The Company neither admits nor denies the allegations in Paragraph 9 of the Complaint. The law speaks for itself.

10. On information and belief, the Company admits the allegations in Paragraph 10 of the Complaint.

11. The Company neither admits nor denies the allegations in Paragraph 11 of the Complaint. The law speaks for itself.

12. The Company is without knowledge or information to form a belief as to the truth of the factual allegations of Paragraph 12 and therefore denies the same.

13. The Company is without knowledge or information to form a belief as to the truth of the factual allegations of Paragraph 13 and therefore denies the same.

14. The Company denies the allegations in Paragraph 14. As of the date of this filing, the Company has paid the Company's total fiscal year 2019 assessment of \$1,964.91.

15. The Company neither admits nor denies the allegations in Paragraph 15 of the Complaint. The law speaks for itself.

16. The Company neither admits nor denies the allegations in Paragraph 16 of the Complaint. The law speaks for itself.

### **AFFIRMATIVE DEFENSES**

1. The Complaint should be dismissed for failure to state a claim. The Company has paid the Company's total fiscal year 2019 assessment at issue in the Complaint.

1. The Commission should refrain from imposing a penalty on the Company as penalties are designed to deter future violations. *See, e.g., State ex rel. Nixon v. Consumer Automotive Resources*, 882 S.W.2d 717, 722 (Mo. Ct. App. E.D. 1994); *State ex rel. Webster v. Missouri Res. Recovery, Inc.*, 825 S.W.2d 916, 942 (Mo. Ct. App. S.D. 1992). The Company has taken steps to address its regulatory reporting obligations. As explained in the notices filed with the Commission,<sup>2</sup> the Company underwent organizational changes as a result of a transaction between Ionex's former parent, Birch Communications, LLC (formerly Birch Communications, Inc.), and Fusion

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<sup>2</sup> *Joint Notice of BCHI Holdings, LLC, Birch Telecom of Missouri, Inc., Fusion Telecommunications International, Inc. and Network Billing Systems, LLC Regarding a Transaction That Will Result in a Material Change to the Ownership and Control of Network Billing Systems, LLC* (Nov. 30, 2017); *Network Billing Systems, LLC, Birch Telecom of Missouri, LLC, Ionex Communications, Inc., and Tempo Telecom, LLC: Notice of Intracorporate Reorganization (Without Change to Controlling Ownership)* (Aug. 24, 2018).

Connect, Inc. (formerly Fusion Telecommunications International, Inc.), which was consummated on May 4, 2018 (the "Transaction"). As a result of the Transaction, Ionex was spun-off to a newly formed holding company, Lingo Management, LLC, which is a wholly owned subsidiary of Lingo Communications, LLC and owned by the existing owners of Birch Communications, LLC. After the Transaction, Ionex implemented changes in its regulatory reporting, and has contracted with a third-party to assist with the management of the regulatory reporting process in Missouri (and other states). Ionex has not found any record of receiving notice of assessment, and certainly did not intentionally ignore it. Accordingly, the imposition of an administrative penalty is unnecessary and unjustified.

**WHEREFORE**, the Company respectfully prays for relief as set forth below:

- A. The Commission should dismiss the Complaint as the Company has paid the Company's total fiscal year 2019 assessment at issue in the Complaint; and
- B. The Commission should refrain from levying an administrative penalty against the Company.

Dated: December 14, 2018

Respectfully submitted,

**IONEX COMMUNICATIONS, INC.**

**/s/ Carl J. Lumley**

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Its Attorneys

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 14th day of December 2018, to the following parties:

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\_\_\_\_\_/s/ Carl J. Lumley\_\_\_\_\_