

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Lingo Communications of Kentucky, LLC) WC Docket No. 20-245
Tariff F.C.C. No. 1) Transmittal No. 3

ORDER

Adopted: July 30, 2020

Released: July 30, 2020

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. On July 16, 2020, Lingo Communications of Kentucky, LLC (Lingo) filed Transmittal No. 3 proposing revisions to its interstate access service Tariff F.C.C. No. 1 to revise its originating and terminating end office switched access rates. The proposed revisions are scheduled to become effective on July 31, 2020. Because we conclude that substantial questions of lawfulness exist regarding Lingo’s proposed tariff revisions, we suspend the proposed revisions for one day and set for investigation the question of whether Lingo’s proposed revisions comply with the Commission’s USF/ICC Transformation Order, the Communications Act of 1934, as amended (Act), and the Commission’s rules.

II. BACKGROUND

2. Lingo is a competitive local exchange carrier (LEC). As such, it is required to comply with both the intercarrier compensation (ICC) rate transition requirements established in the USF/ICC Transformation Order and the “CLEC benchmark rule.”

3. In the USF/ICC Transformation Order, the Commission adopted bill-and-keep as the default methodology for all ICC charges, capped all terminating ICC rates, and established a transition path requiring scheduled reductions to certain terminating ICC charges. The transition rules also required incumbent LECs to adjust, over a period of years, many of their terminating switched access charges, effective on July 1 of each of those years, consistent with the ultimate goal of transitioning all terminating charges to bill and keep. To eliminate disparate regulatory treatment between different

1 Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Secretary, Federal Communications Commission, Transmittal No. 3 (filed July 16, 2020) (Transmittal); see Lingo Communications of Kentucky, LLC, Tariff F.C.C. No. 1 (filed July 16, 2020), 2nd Rev. Page No. 57, § 3.9.3 (Lingo Tariff F.C.C. No. 1).

2 See Transmittal Letter.

3 See Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (USF/ICC Transformation Order), aff’d, FCC 11-161, 753 F.3d 1015 (10th Cir. 2014); 47 CFR § 61.26.

4 USF/ICC Transformation Order, 26 FCC Rcd at 17904, para. 740; 17932, para. 798; 17934, para. 801; 17937m para. 807; 18026-28, paras. 970-71; 47 CFR § 61.26.

5 Id.

6 See 47 CFR §§ 51.907, 51.909.

classes of carriers, the Commission found that application of the ICC reforms would generally apply to competitive LECs via the CLEC benchmark rule.⁷ This obligation, adopted in its initial form in 2001, provides that a competitive LEC may not tariff interstate access charges above those of the competing incumbent LEC for similar services.⁸

4. There is a narrow exemption to the generally-applicable benchmark rule for competitive LECs that serve only rural end users that permits those carriers to benchmark their rates to the rates of the National Exchange Carrier Association (NECA).⁹ The applicable benchmark for rural competitive LECs is a standardized rural incumbent LEC rate—the rate listed in the NECA Tariff F.C.C. No. 5, assuming the highest rate band when the competitive LEC is competing against an incumbent LEC that is not a rural telephone company as defined by section 3(44) of the Act.¹⁰

5. In addition to requirements imposed by the *USF/ICC Transformation Order* and the CLEC benchmark rule, Section 61.2(a) of the Commission’s rules requires all tariffs to contain “clear and explicit explanatory statements regarding the rates and regulations” to “remove all doubt as to their proper application.”¹¹

6. Lingo submitted proposed tariff revisions that seek to modify its originating and terminating end office switched access rates.¹² According to the proposed revisions, Lingo’s “per minute rate is comprised of switched access elements found in NECA FCC Tariff No. 5.”¹³ The proposed revisions also provide that Lingo’s rate “excludes CCL. The Local Switching component matches Rate Band 8.”¹⁴ Lingo’s tariff revisions filings provide no additional information or context explaining the basis of its proposed revised rates.

III. DISCUSSION

7. As a competitive local exchange carrier, Lingo’s originating and terminating end office switched access rates should be benchmarked to either the competing incumbent local exchange carrier or, if it qualifies for the rural exemption, to the relevant rates listed in the NECA Tariff F.C.C. No. 5. The basis for Lingo’s tariff revisions are unclear. We, therefore, find that substantial questions of lawfulness exist regarding Lingo’s proposed tariff revisions that require further investigation, including whether the proposed revisions comply with the *USF/ICC Transformation Order* and the Commission’s rules, including but not limited to the CLEC benchmark rule. Accordingly, we suspend the proposed revisions for one day, impose an accounting order, and initiate an investigation into the lawfulness of the proposed revisions.¹⁵ We will identify the specific issues that are the subject of the investigation in an upcoming designation order. Those issues may include, but not be limited to, the issues identified in this Order. We may also, by order, identify discrete issues that warrant further investigation.

⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17937, para. 807.

⁸ See 47 CFR § 61.26; *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001).

⁹ Lingo Tariff F.C.C. No. 1, 2nd Rev. Page No. 57, § 3.9.3; see 47 CFR § 61.26(e).

¹⁰ 47 CFR §§ 61.26(e), 61.26(a)(4). See 47 U.S.C. § 153(44).

¹¹ 47 CFR § 61.2(a).

¹² Lingo Tariff F.C.C. No. 1, 2nd Rev. Page No. 57, § 3.9.3.

¹³ Lingo Tariff F.C.C. No. 1, 2nd Rev. Page No. 57, § 3.9.3, Note 1.

¹⁴ Lingo Tariff F.C.C. No. 1, 2nd Rev. Page No. 57, § 3.9.3, Note 1.

¹⁵ 47 U.S.C. § 204.

IV. EX PARTE REQUIREMENTS

8. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁶ Persons making *ex parte* presentations must file in WC Docket No. 20-245 a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, the effective date of the switched access rate and charge revisions of Lingo Communications of Kentucky, LLC’s Tariff F.C.C. No. 1 contained in Transmittal No. 3 IS advanced for one day to July 30, 2020, and then SUSPENDED for one day until July 31, 2020, and an investigation IS INSTITUTED.

10. IT IS FURTHER ORDERED that Lingo Communications of Kentucky, LLC SHALL FILE a supplement within five business days from the release date of this Order reflecting this suspension. Lingo Communications of Kentucky, LLC should cite the “DA” number on the instant Order as the authority for its filing.

11. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 204(a), and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, Lingo Communications of Kentucky, LLC SHALL KEEP ACCURATE ACCOUNT of all amounts received and paid that are associated with the switched access service rates and charges that are subject to this investigation.

FEDERAL COMMUNICATIONS COMMISSION

Gil M. Strobel
Chief, Pricing Policy Division
Wireline Competition Bureau

¹⁶ 47 CFR §§ 1.1200 *et seq.*