

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, N.W., SUITE 800
WASHINGTON, DC 20005**

ORDER

January 21, 2020

**FORMAL CASE NOS. TA 05-5 AND TA 2013-01, IN THE MATTER OF THE
NOTIFICATION OF PROPOSED CHANGES IN INDIRECT CONTROL OF
LINGO COMMUNICATIONS OF THE NORTHEAST, LLC AND MATRIX
TELECOM, LLC, Order No. 20283**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) dismisses the Notification from Lingo Communications, LLC (“Transferor” or “Lingo”), Lingo Communications of the Northeast, LLC (“Lingo Northeast”), Matrix Telecom, LLC (“Matrix”) (“Lingo Northeast and Matrix,” collectively the “Licensees”), and Garrison LM LLC (“Garrison” or “Transferee”) (collectively, the “Parties”) of the proposed changes in control of the Licensees, including the transfer of indirect control of Licensees to Transferee upon the occurrence or non-occurrence of certain events relating to the repayment of corporate debt (the “Transaction”). The Commission shall undertake no further review of the Transaction for lack of Commission jurisdiction.

II. BACKGROUND

2. On December 23, 2019, the Parties filed Notification with the Commission of proposed changes in control of the Licensees: Lingo Northeast and Matrix, including the transfer of indirect control of the Licensees to the Transferee: Garrison, in a transaction involving the occurrence or non-occurrence of certain events relating to the repayment of debt.¹ No comments on the Notification were filed or received.

A. Description of the Parties

1) Lingo Communications, LLC (Transferor)

3. The Parties describe Lingo as a Georgia limited liability company, with its principal office in Atlanta, Georgia. The Parties state that the Transferee is a wholly owned, direct subsidiary of GG Telecom Investors, LLC (“GG Telecom”), a Georgia limited liability

¹ *Formal Case Nos. TA 05-5 and TA 2013-01, In the Matter of the Notification of Proposed Changes in Indirect Control of Lingo Communications of the Northeast, LLC and Matrix Telecom, LLC* (“*Formal Case No. TA 05-5 and TA 2013-01*”), filed December 23, 2019 (“Notification”).

company. According to the Parties, GG Telecom is owned 62.5% by Holcombe T. Green, Jr. and 37.5% owned by R. Kirby Godsey. Lingo is a holding company and does not provide telecommunications services or hold any Commission authorizations.²

4. The Parties state that Lingo controls the Licensees through Lingo Management, LLC (“Lingo Management”), in which Lingo holds all the voting interests.³ The Parties state that Lingo Management is a Georgia limited liability company, with its principal office in Atlanta, Georgia. The Parties assert that Lingo Management is a holding company and does not provide any telecommunications services or hold any Commission authorizations.⁴

**2) Lingo Communications of the Northeast, LLC (Licensee)
Matrix Telecom, LLC (Licensee)**

5. The Parties describe Lingo Northeast as a Delaware limited liability company and an indirect wholly owned subsidiary of Lingo and a direct subsidiary of Lingo Management. The Parties assert that Lingo Northeast is authorized to provide local exchange telecommunications services in the District of Columbia (“District”) pursuant to *Formal Case No. TA 2013-1*, Order No. 17067.⁵ The Parties add that Lingo Northeast also holds authority from the Federal Communications Commission (“FCC”) to provide domestic interstate and international telecommunications services, and is authorized to provide intrastate telecommunications services in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia.⁶

6. According to the Parties, Matrix is a Texas limited liability company and is a direct subsidiary of Impact Telecom LLC, and an indirect wholly owned subsidiary of Lingo and Lingo Management. In the District, The Parties state that Matrix is authorized to provide local telecommunications services pursuant to *Formal Case No. TA 05-5*, Order

² Notification at 1.

³ The Parties state that Lingo does not hold any of the non-voting interests in Lingo Management, which are held by Transferee. Notification at n.2.

⁴ Notification at 1-2.

⁵ *Formal Case No. TA 2013-1, In the Matter of the Application of Birch Communications of the Northeast, Inc. d/b/a Birch Communications to Provide Local Telecommunications Services in the District of Columbia*, Order No. 17067, rel. February 8, 2013.

⁶ The Parties state that Lingo Northeast provides international telecommunications services pursuant to the authorization granted by the FCC to Lingo Management under IB File No. ITC-214-20160630-00180, and provides interstate telecommunications services pursuant to blanket domestic Section 214 authority. 47 C.F.R. § 63.01. Notification at n.3.

No. 13772,⁷ amended in *Formal Case No. TA 07-2*, Order No. 14201.⁸ The Parties add that Matrix also holds authority from the FCC to provide domestic interstate and international telecommunications services,⁹ and is authorized to provide intrastate telecommunications services in the District and all other states except Virginia, where its subsidiary is authorized to provide intrastate telecommunications services.¹⁰

3) Garrison LM LLC (Transferee)

7. The Parties describe Transferee Garrison as a Delaware limited liability company with its principal office in New York, New York. The Parties assert that the Transferee is a holding company owned by funds managed by the Garrison Investment Group, a leading middle market credit and asset based investor. The Parties maintain that the Transferee provides no telecommunications services and does not own any other telecommunications companies. The Parties add that the Transferee is an affiliate of Garrison TNCI, LLC, an entity that was previously owned by Matrix before its sale to Lingo in 2018.¹¹ The Parties maintain that, as such, Transferee has demonstrated experience and qualifications to own telecommunications providers.

B. Description of the Transactions

8. The Parties explain that pursuant to the terms of the Amended and Restated Operating Agreement of Lingo Management, LLC dated as of December 9, 2019 (“A&R Operating Agreement”), the Transferee acquired a non-voting interest in Lingo Management, with the voting interest (and control) remaining with the current holder, Lingo, which also retains the ability to appoint the sole member of the operating board.¹²

⁷ *Formal Case No. TA 05-5, In the Matter of the Application of Matrix Telecom, Inc. to Provide Local Telecommunications Services in the District of Columbia*, Order No. 13772, rel. September 30, 2005.

⁸ *Formal Case No. TA 07-2, In the Matter of the Application of Matrix Telecom, Inc. to Provide Local Telecommunications Services in the District of Columbia*, Order No. 14201, rel. February 5, 2007.

⁹ The Parties state that Matrix provides international telecommunications services pursuant to IB File Nos. ITC-214-19900713-00004 (Old File No. ITC-90-152), ITC-214-19930330-00053 (Old File No. ITC-93-145), ITC-214-19940830-00266 (Old File No. 94-478), ITC-214-19970415-00212 (Old File No. ITC-97-227), ITC-214-19980507-00300 (Old File No. ITC-98-349), and ITC-214-19980915-00644. The Parties add that Matrix provides interstate telecommunications services pursuant to blanket domestic Section 214 authority. 47 C.F.R. § 63.01. Notification at n.4.

¹⁰ Notification at 2.

¹¹ *See Formal Case Nos. TA 05-5 and TA 07-2, In the Matter of the Joint Application of Lingo Communications, LLC, Birch Communications of the Northeast, LLC, TNCI Impact LLC, and Matrix Telecom, LLC for Approval of the Proposed Transfer of Indirect Control of Matrix Telecom, LLC to Lingo Communications, LLC*, Order No. 19709, rel. October 12, 2018.

¹² The Parties explain that prior to the execution of the A&R Operating Agreement, Lingo Management was a member managed limited liability company and Lingo was its sole member. The Parties maintain that Lingo Management converted to a manager managed limited liability company under the A&R Operating Agreement with voting and non-voting interests held by Lingo and Transferee, respectively. Notification at n.5.

The Parties explain that the A&R Operating Agreement sets forth certain changes in the operating board and ownership interests of Lingo Management that will result in (1) Lingo relinquishing control of the operating board, and (2) Transferee obtaining control of Lingo Management through the ability to appoint all members of the operating board and/or holding the sole voting interest in Lingo Management.¹³

9. The Parties assert that the proposed changes in control will be accomplished in multiple steps. Currently, Lingo retains the ability to appoint the sole member of the operating board of Lingo Management. As explained by the Parties, the change will be reflected in the A&R Operating Agreement giving the Transferee the right to increase the size of the operating board of Lingo Management from one member selected by Lingo to five members with (x) Transferee designating two members, one of whom shall serve as an independent manager, (y) Lingo designating two members, one of whom shall serve as an independent manager, and (z) the Chief Executive Officer of Lingo Management serving as the fifth member (the Parties refer to as the “Change in Board Composition”). Upon occurrence of the Change in Board Composition, Lingo will relinquish sole control over Lingo Management with the change from a single-member board to a five-member board.¹⁴

10. In addition, the Parties maintain that upon the occurrence of certain triggering events set forth in the A&R Operating Agreement, the operating board of Lingo Management shall automatically reset and, upon such automatic reset, the Transferee shall gain the right to designate all five members of the operating board of Lingo Management, a majority of which shall be independent managers (referred to by the Parties as the “Board Reset”). The Parties assert that upon the occurrence of the Board Reset, Lingo will have no right to designate any member of the operating board of Lingo Management.¹⁵

11. The Parties assert that, upon the occurrence or non-occurrence of certain events relating to the repayment of debt and as set forth in the A&R Operating Agreement, the existing voting interest of Lingo will be cancelled, and Transferee’s non-voting interest will be converted automatically into the sole voting interest of Lingo Management (referred to by the Parties as the “Change in Voting Interest”). The Parties state that upon the Change in Voting Interest, the Transferee will hold all voting interests in Lingo Management.¹⁶

12. The Parties offer that prior to the Change in Board Composition or the Board Reset, Lingo will continue to control Lingo Management through its ability to appoint the single member of the operating board of Lingo Management. After the completion of the Change in Board Composition or the Board Reset, the Parties assert that

¹³ Notification at 2-3.

¹⁴ Notification at 4.

¹⁵ Notification at 4.

¹⁶ Notification at 4.

the control of Lingo Management would be dictated by the composition of the operating board as described in accordance with the A&R Operating Agreement.¹⁷

13. Accordingly, the Parties notify the Commission of the potential Change in Board Composition, the Board Reset, and the Change in Voting Interest to the extent any or all of those changes are triggered pursuant to the A&R Operating Agreement. The Parties include a depiction of the current control structure of Lingo Management and the control structure of Lingo Management in the event the Change in Board Composition, Board Reset and/or Change in Voting Interest occur as Exhibit A.¹⁸

14. The Parties claim that no assignment of licenses, certificates of public convenience, assets, or customers will occur as a consequence of the proposed Transaction. The Parties state that immediately following the consummation of the Transaction, the Licensees will continue to provide service to their existing customers pursuant to the same rates, terms, and conditions. Lastly, the Parties assert that the Transaction will be transparent to Licensees' customers.¹⁹

C. Public Interest Considerations

15. According to the Parties, the Transaction is in the public interest because it will have no adverse impact on customers and will not alter the manner of service delivery or billing. The Parties add that the Transaction will not result in any immediate change of carrier for customers or any assignment of authorizations, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. The Parties contend that following consummation of the Transaction, the Licensees will continue to provide high-quality communications services to their customers without interruption and without immediate change in rates, terms, or conditions.²⁰

16. The Parties claim that customers will benefit from the extensive telecommunications experience and expertise of the Transferee, which they claim has previously invested in the telecommunications market. The Parties explain that the financial, technical, and managerial resources that the Transferee will bring to the Licensees are expected to enhance their ability to compete in the telecommunications marketplace. The Parties further claim that the proposed Transaction will not adversely affect competition because it will not result in a reduction of competitors and customers will continue to have access to the same competitive alternatives they have today. The Transaction, according to the Parties will not provide them with any competitive advantage

¹⁷ Notification at 4.

¹⁸ Notification at 4, 6-11, Exhibit A: Chart of Current and Post-Transaction Control Structure of Licensees.

¹⁹ Notification at 4.

²⁰ Notification at 5.

as the result of concentration of fiber assets and will not harm consumers or negatively impact the market for facilities-based service.²¹

III. COMMISSION DECISION

A. Transfer of Control

17. D.C. Code § 34-1001 sets forth the Commission’s authority to review the transactions filed for Commission consideration and approval. In addition, 15 DCMR § 2511.2 provides the application requirements for entities seeking Commission approval for a corporate restructuring.²² The first step in this process, however, is for the Commission to determine whether it has authority to review and approve an application for transfer of control or a corporate restructuring, in accordance with D.C. Code § 34-1001. If it determines that it has authority to review the transaction in accordance with D.C. Code § 34-1001, then the Commission will conduct an analysis of the application based on the requirements provided in 15 DCMR § 2511.2.²³ The relevant portion of D.C. Code § 34-1001 reads:

No franchise nor any right to or under any franchise to own or operate any public utility as defined in this subtitle . . . shall be assigned [or] transferred . . . nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer . . . or agreement shall have been approved by the Commission in writing.²⁴

18. A “public utility” is defined under D.C. Code § 34-214 as, *inter alia*, a “telephone corporation” or a “telephone line.”²⁵ D.C. Code § 34-220 provides that a “telephone corporation” includes:

every corporation, company, association, joint-stock company or association, partnership, and persons, their

²¹ Notification at 4.

²² See 15 DCMR § 2511.2 (2015). Specifically, 15 DCMR § 2511.2 states: For any change of ownership or control involving a certificated local exchange carrier that must be approved by the Commission pursuant to D.C. Official Code § 34-1001 (2001), all of the entities involved in the transaction must file an application with the Commission at least sixty (60) days before the proposed closing date of the transaction.

²³ See 15 DCMR § 2511.2(d) (2015) stating the five standards an application for transfer of control or other type of corporate reorganization must meet in order to receive Commission approval. The five standards are: (1) how the proposed transaction will affect competition in the District of Columbia; (2) how the proposed transaction will affect universal service; (3) how the proposed transaction will affect public safety and welfare; (4) whether the proposed transaction will affect the quality of local telecommunications services; and (5) how the proposed transaction will affect consumer rights.

²⁴ D.C. Code § 34-1001 (Supp. 2016).

²⁵ D.C. Code § 34-214 (Supp. 2016).

lessees, trustees, or receivers . . . owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communications for hire, or which licenses, lets, or permits telephonic communication for hire.²⁶

19. D.C. Code § 34-221 states that a “telephone line” includes:

conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication.²⁷

20. The Commission has interpreted D.C. Code §§ 34-1001, 34-214, 34-220 and 34-221 to mean that if a Competitive Local Exchange Carrier (“CLEC”) has facilities in the District, then it can be classified as a public utility under the D.C. Code and therefore certain transactions, such as assignments or transfers, require prior Commission review and approval.²⁸ In the instant case, the Parties represent that the telecommunications services provided in the District by the Licensees are not facilities-based and that, as explained in a previous Order, the Licensees do not own, operate, manage or control any telecommunications facilities in the District.²⁹ Inasmuch as the Licensees have no facilities in the District, the Licensees do not meet the definition of a public utility. Because the Licensees do not meet the statutory definition of a public utility, there is no need for the Commission to analyze the merits of this transaction, in accordance with 15 DCMR § 2511.2. Consequently, the Commission will dismiss the Parties’ Notification of the

²⁶ D.C. Code § 34-220 (Supp. 2015).

²⁷ D.C. Code § 34-221 (Supp. 2015).

²⁸ See *Formal Case No. 990, In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 13139, ¶ 22, rel. March 25, 2004; See also *Formal Case No. 892, In the Matter of the Joint Application of CTC Communications Corp., Conversant Communications Resale, L.L.C., and Choice One Communications Resale, L.L.C. for Approval of Pro Forma Intra-Company Changes*, Order No. 16933, rel. October 12, 2012, citing *Formal Case No. 968, Joint Application of AT&T Corporation and Teleport Communications Group, Inc., for Approval of Transfer of a Franchise*, Order No. 11532 at 5, rel. November 5, 1999, which provided the context for the Commission’s authority to review certain transactions.

²⁹ See Notification at 1, n.1, citing *Formal Case Nos. TA 05-5 and TA 07-2*, Order No 19709.

indirect transfer of control of Lingo, Lingo Northeast and Matrix, to Garrison for lack of Commission jurisdiction.

THEREFORE, IT IS ORDERED THAT:

21. The Notification of Lingo Communications, Lingo Communications of the Northeast, LLC, and Matrix Telecom, LLC, to Garrison LM LLC, is **DISMISSED** for lack of Commission jurisdiction.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**