



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION)
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.)

ORDER

DOCKET NO. TM18070796

Parties of Record:

Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC., on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On July 25, 2018, Lingo Communications, LLC ("Transferee" or "Lingo"), Birch Communications of the Northeast, LLC ("Birch-NE"), TNCI Impact LLC ("Transferor"), and Matrix Telecom, LLC ("Matrix") (collectively, the "Petitioners"), submitted a Verified Petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1, and N.J.S.A. 48:3-10 requesting Board approval, to the extent required, to transfer indirect control of Matrix to Transferee (the "Transaction") and related transactions.¹ Following closing of the transaction, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions to Matrix customers.

BACKGROUND

Lingo, is a Georgia limited liability company, with a principal office located in Atlanta, Georgia. Lingo is a wholly owned, direct subsidiary of GG Telecom Investors, LLC ("GG Telecom"), a Georgia limited liability company. GG Telecom is owned by Holcombe T. Green, Jr. (66.5%) and R. Kirby Godsey (33.5%). Lingo is a holding company and does not provide

¹ In a separate filing (BPU Docket Number TF18070795 or "Financing Petition") petitioners seek approval for Matrix and Birch-NE to participate in certain financing arrangements concurrently with or following completion of this transaction.

telecommunications services or hold any Board authorizations. Birch-NE, a Delaware limited liability company, is an indirect wholly owned subsidiary of Lingo and is authorized in New Jersey to provide facilities-based local exchange and intrastate interexchange telecommunications services. See In the Matter of Birch Communications of the Northeast, LLC Petition for Authority Provide Local Exchange and Interexchange Telecommunications Services within the State of New Jersey, Docket No. TE17121242, (May 22, 2018). Transferee and Birch-NE have no employees located in New Jersey.

Matrix is a Texas limited liability company and wholly owned, indirect subsidiary of Transferor. Transferor is a Delaware limited liability company that is 90% owned by Garrison TNCI LLC and 10% owned by Impact Telecom Holdings, Inc. The corporate headquarters of Matrix and Transferor is located in Englewood, Colorado. Matrix and its affiliates (collectively, "Impact Telecom") provide intrastate, interstate and international telecommunications services to residential, business and carrier customers throughout the United States. In New Jersey, Matrix is authorized to provide facilities-based competitive local exchange telecommunications service. See I/M/O the Petition of Matrix Telecom, Inc. d/b/a Matrix Business Technologies for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services Within the State of New Jersey, Docket No. TE06120898 (April 13, 2007). Matrix also holds authority from the Federal Communications Commission ("FCC") to provide domestic interstate and international telecommunications services. According to the Petition, Impact has two employees in New Jersey.

The granting of competitive local exchange ("CLEC") authority conveys certain rights and privileges upon Birch-NE and Matrix, which are reserved for the provision of facilities-based landline services. While CLECs may also provide other telecommunications services, such as wireless, small cell or distributed antenna systems, these service offerings are beyond the scope of Board jurisdiction and the granting of CLEC authority. Specifically, the Board granting of CLEC authority is limited to the provision of competitive facilities-based local and interexchange services. To the extent that a CLEC provides non-regulated telecommunications services, the CLEC benefits, rights or privileges are not applicable to those non-regulated services.

DISCUSSION

Pursuant to the terms of a Securities Purchase Agreement (the "Agreement") dated as of July 3, 2018, by and between Transferor and Lingo, Lingo will acquire all issued and outstanding membership interests of Impact Acquisition, LLC, a Delaware limited liability company and an indirect parent of Matrix. Following the transaction, Impact Acquisition, LLC and its subsidiaries, including Matrix, will be held by Lingo Management, LLC, which is a wholly owned subsidiary of Lingo. As a result, indirect ownership of Matrix will be transferred to Lingo. Additionally, Petitioners request authority for Lingo, after the closing of the Transaction, to eliminate Impact Telecom, LLC from the chain of ownership of Matrix (the "Post-Transaction Pro Forma Change") resulting in Matrix becoming a wholly owned, direct subsidiary of Impact Acquisition, LLC. Since Matrix is currently a wholly owned, indirect subsidiary of Impact Acquisition, LLC, the Post-Transaction Pro Forma Change will not change the ultimate post-Transaction ownership of Matrix and is pro forma in nature. Petitioners state that this Post Transaction Pro Forma Change will have no effect on Matrix, its customers or its operations, but eliminating the additional intermediate holding company will streamline recordkeeping and reporting among other benefits.

Petitioners submit that the Transaction is in the public interest. The petition states that customers of the combined company will benefit from the extensive telecommunications experience and expertise of the combined company. The financial, technical, and managerial resources that Transferee and Birch-NE will bring to Matrix (and Matrix to Transferee and Birch-NE) are expected to enhance their ability to compete in the telecommunications market-place. Further, the petitioners contend that the proposed Transaction will have no adverse impact on customers and will not alter the manner of service delivery or billing. 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. Following consummation of the Transaction, Matrix and Birch-NE will continue to provide services to their customers in New Jersey without interruption and without immediate change in rates, terms or conditions. The only change immediately following closing of the transaction from a consumer's perspective is that Lingo will be the new ultimate owner of Matrix.

The petition states that as of this filing, Petitioners have not engaged in any material integration planning, and there are no current plans with regard to New Jersey employees. Impact Telecom does not have an employee pension plan. Employees' existing rights in any other retirement benefit plan offered by Impact Telecom will be retained upon completion of the Transaction. Further, in the future, Impact Telecom's employees may be able to rollover any pre-closing contributions to their existing retirement benefits plan into another qualified benefit plan such as an Individual Retirement Rollover Account or a retirement benefits plan offer by Lingo or its subsidiaries.

The New Jersey Division of Rate Counsel submitted comments by letter dated August 24, 2018, stating it does not oppose approval of the proposed transfer provided conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. Specifically, as a condition of approval, Rate Counsel urges that the Board require Petitioners to notify the Board and Rate Counsel, providing an appropriate explanation in writing within a minimum of thirty days prior to effectuating a reduction in New Jersey jobs that is greater than fifteen percent (15%), throughout a three (3) year period following approval.

By letter dated August 28, 2018, Petitioners object to the proposal by Rate Counsel stating that such a condition requiring prior notice is not consistent with the Board's prior decisions in other transfer of control transactions in substantially identical circumstances involving other competitive providers serving the New Jersey market. Petitioners state that Rate Counsel's proposal for advance notice, if adopted would be significantly more burdensome on Petitioners than a requirement to notify the Board after the fact. Imposing an advance notice requirement would place Petitioners at a competitive disadvantage compared to other authorized providers operating in the same market but not subject to such a requirement. Further, Petitioners note that Rate Counsel's proposal is not consistent with what the Board has ordered in similar dockets where the Board has required companies to report after the fact, for three years following closing, headcount reductions in New Jersey greater than 15%.

FINDINGS AND CONCLUSIONS

Pursuant to N.J.S.A. 48:2-51.1(a), the Board shall evaluate the impact of an acquisition of control of a public utility on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1 as set forth above. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

After a careful review of this matter, the Board is satisfied that positive benefits will flow to customers based upon the record, and that the combined enterprise would not be able to exercise market power to raise prices above competitive levels or exclude competitors from the marketplace. The Board therefore **FINDS** that the proposed transaction will have little impact on competition. The Board additionally **FINDS** that there will be no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions and the provision of service quality on competitive offerings is in the public interest.

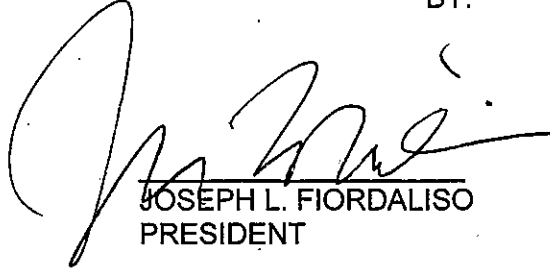
The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. Of the four petitioners, only one, Matrix, has any employees in New Jersey and currently that total is two. Petitioners stated there are no immediate plans with respect to these employees. However, while Rate Counsel seeks notice prior to any reduction, Board precedent requires companies to provide notice and explanation to the Board following any headcount reductions in New Jersey greater than fifteen percent (15%) for a three (3) year period after the date of closing. See In the Matter of the Verified Joint Petition of Broadview Network Holdings, Inc. et al., Docket No. TM17040433 (June 30, 2017). There is no reason to disturb Board precedent requiring subsequent notice of employee reductions based on these facts. The Board, therefore, **FINDS** that Petitioners must notify the Board, providing a written explanation following a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of its total employee headcount for a three (3) year period after the date of closing.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with the applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed transaction will have no impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.

This Order shall be effective September 27, 2018.

DATED: 9/17/18

BOARD OF PUBLIC UTILITIES
BY:



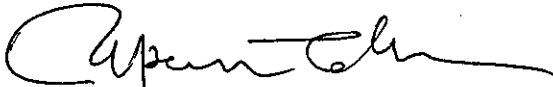
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

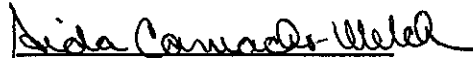


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

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TELECOM, LLC FOR APPROVAL OF THE PROPOSED TRANSFER OF INDIRECT
CONTROL
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