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

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

ORDER

Adopted: December 16, 2020 **Released: December 16, 2020**

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. Lingo Communications of Kentucky, LLC (Lingo), a competitive local exchange carrier (LEC) serving customers in and around Pikeville, Kentucky, filed proposed tariff revisions on July 16, 2020 (the July Tariff Revisions).[1] The Wireline Competition Bureau (Bureau) suspended the July Tariff Revisions and initiated an investigation into their lawfulness.[2] Of particular concern were Lingo's proposed originating and terminating end office switched access rates, specifically its apparent application of a non-zero rate to terminating end office switching. Also of concern was Lingo's qualification for the "rural exemption" to the competitive LEC benchmark rule, which would allow Lingo to benchmark its rates to the rates tariffed by the National Exchange Carrier Association (NECA) rather than to the rates tariffed by the incumbent LEC providing service in Lingo's service area which is BellSouth Telecommunications, LLC doing business as AT&T Kentucky (BellSouth).[3]

2. Based on additional information provided by Lingo demonstrating that the adjustments Lingo made to its proposed tariff revisions clarifying that its terminating end office switching rate is zero and that it is entitled to the rural exemption, we conclude that the issues raised in the *Lingo Suspension Order* have been resolved.

II. BACKGROUND

3. In the *USF/ICC Transformation Order*, the Commission adopted bill-and-keep as the default methodology for all intercarrier compensation charges and, among other things, capped most

[1] Letter from Carey Roesel, Consultant to Lingo Communications of Kentucky, LLC, to Secretary, Federal Communications Commission, Transmittal No. 3 (filed July 16, 2020); Lingo Communications of Kentucky, LLC, Tariff F.C.C. No. 1 (filed July 16, 2020) (available via the Commission's Electronic Tariff Filing System (ETFS)) (July Tariff Revisions).

[2] *Lingo Communications of Kentucky, LLC, Tariff F.C.C. No. 1*, WC Docket No. 20-245, Transmittal No. 3, Order, DA 20-809, para. 1 (WCB July 30, 2020) (*Lingo Suspension Order*) (suspending the July Tariff Revisions for one day and initiating an investigation).

[3] 47 CFR § 61.26(e); *see Lingo Suspension Order* at 2, para. 7. *See also* Letter from Angela F. Collins, Counsel to Lingo Communications of Kentucky, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-245, at 2 (filed Dec. 4, 2020) (Lingo Dec. 4, 2020 *Ex Parte*) "); AT&T, *Service Publications*, https://about.att.com/pages/service_publications/kentucky (last visited Dec. 10, 2020).

intercarrier compensation rates, including interstate terminating and originating charges.[4] Consistent with its ultimate goal of transitioning all charges to bill-and-keep, the Commission also adopted rules which required incumbent LECs to transition terminating end office charges to zero over a period of years.[5] Pursuant to those rules, all rate-of-return carriers (such as those participating in the NECA tariffs) were required to revise and refile their federal access tariffs to remove "any intercarrier charges for terminating End Office Access Service" effective no later than July 1, 2020.[6]

4. To avoid disparate regulatory treatment between different classes of carriers, the Commission found that the intercarrier compensation reforms would generally apply to competitive LECs via the competitive LEC benchmark rule.[7] This obligation provides that a competitive LEC may not tariff interstate access charges above those filed by the competing incumbent LEC (ILEC) for similar services.[8]

5. There is a narrow exemption to the competitive LEC benchmark rule that permits a Rural Competitive Local Exchange Carrier (Rural CLEC) that is competing with a non-rural ILEC to benchmark its interstate access rates to the highest band of NECA's tariffed interstate access rates rather than to the rates tariffed by the competing ILEC.[9] A "Rural CLEC" is defined as "a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any end users located within either: (i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau; or (ii) An urbanized area, as defined by the Census Bureau."[10] A competing ILEC is "the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."[11] And, a "non-rural ILEC" is defined as "an incumbent local exchange carrier that is not a rural telephone company under 47 U.S.C. 153(44)."[12] A "rural telephone company" is defined as a local exchange carrier operating entity to the extent that such entity—(A) provides common carrier service to any local exchange carrier study area that does not include either— (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone

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[4] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17904, para. 740; 17932, para. 798; 17934, para. 801; 17937, para. 807; 18026-28, paras. 970-71 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); 47 CFR § 61.26.

[5] *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, para. 800, Fig. 9.

[6] 47 CFR § 51.909(j). Pursuant to the Commission's rules, price cap carriers were required to revise and refile their federal access tariffs "removing any intercarrier charges for terminating End Office Access Service" effective no later than July 1, 2017. *See id.* at § 51.907(g)(1).

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

[8] *See* 47 CFR § 61.26(b); *see generally Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001). Section 61.26(a)(2) defines "competing ILEC" as "the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC." 47 CFR § 61.26(a)(2).

[9] 47 CFR § 61.26(e). A rural CLEC engaged in access stimulation does not qualify for the rural exemption. *Id.*

[10] *Id.* at § 61.26(a)(6).

[11] *Id.* at § 61.26(a)(2).

[12] *Id.* at § 61.26(a)(4).

exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.[13]

6. Upon review of the July Tariff Revisions, we found that it was unclear whether Lingo's July Tariff Revisions complied with the Commission's rule that all terminating end office switched access rates be zero because Lingo listed its End Office Switching Terminating Rate as "$0.003453."[14] Lingo's tariff explained that this was a composite rate "comprised of switched access elements found in NECA FCC Tariff No. 5," including end office switching charges and tandem switching charges.[15] Lingo applied this rate even if the interexchange carrier purchasing service pursuant to the Lingo tariff was only using the end office switched access component, meaning that interexchange carriers would be charged a non-zero rate in this case, contrary to Commission rules.[16] It was also unclear whether Lingo qualified for the rural exemption allowing it to benchmark its rates to NECA rather than to BellSouth. We therefore concluded that substantial questions of lawfulness existed regarding Lingo's revised originating and terminating end office switched access rates, and whether Lingo qualified for the rural exemption to the generally-applicable competitive LEC benchmark rule.[17] Pursuant to section 204 of the Communications Act of 1934, which authorizes the Commission to investigate the lawfulness of filed tariffs, we advanced the effective date of the tariff revisions for one day, to July 30, 2020, and then suspended the revisions for one day, allowing the revisions to become effective on July 31, 2020; imposed an accounting order; and instituted an investigation into the lawfulness of Lingo's July Tariff Revisions.[18] Lingo submitted a supplemental tariff filing pursuant to the *Lingo Suspension Order* reflecting the suspension.[19]

7. On August 12, 2020, Lingo filed an *ex parte* letter providing additional information justifying its status as a rural competitive LEC that qualifies for the rural exemption.[20] In its letter, Lingo provides an explanation of its corporate history, as well as a description of how its customers in Kentucky were acquired. Lingo further describes steps it has taken recently to confirm that it does not provide service to any non-rural customers, averring "that each of the customers it serves are located in rural areas as defined in FCC Rule 61.26(a)(6), *i.e.*, the customers are not located within either (i) any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (ii) an urbanized area, as defined by the Census Bureau."[21] In a supplemental *ex parte* letter filed on December 4, 2020, Lingo further specified that "[t]he incumbent local exchange carrier (ILEC) providing service in Lingo Kentucky's service area is BellSouth Telecommunications, LLC doing business as AT&T Kentucky ('BellSouth'). BellSouth serves urban areas in Kentucky, and as such, is not a rural ILEC under the Commission's rules."[22]

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[13] 47 U.S.C. § 153(44).

[14] July Tariff Revisions at § 3.9.3.

[15] *Id.* at § 3.9.3 and note 1.

[16] *Id.* at § 3.9.3.

[17] *Lingo Suspension Order* at para. 7.

[18] *Id.* at paras. 7, 9. When proposed tariff revisions are advanced by a day, the effective date listed in the proposed revisions is moved to one day earlier so that suspension of the proposed revisions can occur on that day, thereby allowing the proposed revisions to become effective on the original effective date, but not to be deemed lawful. 47 U.S.C. § 204(a)(3).

[19] Letter from Carey Roesel, Consultant to Lingo Communications of Kentucky, LLC, to Secretary, Federal Communications Commission, Transmittal No. 4 (filed Aug. 6, 2020); Lingo Communications of Kentucky, LLC, Tariff F.C.C. No. 1 (filed Aug. 6, 2020), Supplement No. 1 (available via ETFS). *See* 47 CFR § 61.191.

[20] Letter from Angela F. Collins, Counsel to Lingo Communications of Kentucky, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-245, at 2 (filed Aug. 12, 2020) (Lingo Aug. 12, 2020 *Ex Parte*).

[21] *Id*. at 3; *see* 47 CFR § 61.26(a)(6) (defining "Rural CLEC").

[22] Lingo Dec. 4, 2020 *Ex Parte* at 1.

8. On September 2, 2020, Lingo filed additional revisions to its tariff specifying that its terminating end office switching rate is zero (the September Tariff Revisions),[23] as required by the Commission's rules.[24] Based on that filing and the Lingo Aug. 12, 2020 *Ex Parte* filed in this proceeding, the Bureau allowed the September Tariff Revisions to take effect on September 17, 2020.

III. DISCUSSION

9. Based on the record before us, we are satisfied that the September Tariff Revisions comply with the intercarrier compensation rate transition requirements established in the *USF/ICC Transformation Order* and the competitive LEC benchmark rule for the access rates in Lingo's tariff.[25]

10. Pursuant to the transition adopted by the Commission in the *USF/ICC Transformation Order*, Lingo's tariffed rates for terminating end office switched access service must be zero.[26] The July Tariff Revisions contained a non-zero terminating end office switching rate, and there was no accompanying explanation of how that rate complied with the requirement that Lingo's terminating end office switching rate be zero.[27] By contrast, the September Tariff Revisions make clear that Lingo's terminating end office switching rate is zero, as required by the *USF/ICC Transformation Order* and the Commission's rules.[28]

11. Pursuant to the competitive LEC benchmark rule, Lingo is permitted to benchmark its rates to the NECA tariffed rates, rather than to the BellSouth tariffed rates, only if it qualifies for the rural exemption to the competitive LEC benchmark rule as a rural CLEC competing with a non-rural ILEC.[29] We find compelling the evidence that Lingo offered in support of its claim that it meets the definition of a "rural CLEC" because all of the customers it serves are located in rural areas as provided for in the Commission's rules.[30] In support of that claim, Lingo provides an explanation of its corporate history serving customers in the Appalachian region of southeastern Kentucky and a description of how its customers in Kentucky were acquired.[31] Notably, Lingo's original customer base came from its predecessor SouthEast Telephone, Inc. (SouthEast), a company that petitioned the Commission in 2004 to allow it to serve metropolitan customers and maintain its rural exemption. As Lingo explains, the Commission denied the waiver request, but recognized that SouthEast was entitled to the rural

[23] *See* Letter from Carey Roesel, Consultant to Lingo Communications of Kentucky, LLC, to Secretary, Federal Communications Commission, Transmittal No.5 (filed Sept. 2, 2020); Lingo Communications of Kentucky, LLC, Tariff F.C.C. No. 1 (filed Sept. 2, 2020), 3rd Rev. Page No. 57, § 3.9.3 (available via ETFS) (September Tariff Revisions).

[24] 47 CFR § 51.909(j).

[25] *USF/ICC Transformation Order*, 26 FCC Rcd at 17905, para. 740; 17932, para. 798; 17934, para. 801; 17937, para. 807; 18026-28, paras. 970-71; 47 CFR §§ 51.909(j), 61.26.

[26] The Commission required all rate-of-return carriers, including those that participate in the NECA tariff, to revise and refile their federal access tariffs "to remove any intercarrier charges for terminating End Office Access Service" effective no later than July 1, 2020. 47 CFR § 51.909(j).

[27] July Tariff Revisions at § 3.9.3 and note 1.

[28] September Tariff Revisions at § 3.9.3.

[29] *Compare* 47 CFR § 61.26(c) ("the benchmark rate for a CLEC's switched exchange access services will be the rate charged for similar services by the competing ILEC") *with id.* at § 61.26(e) ("[A] rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching.").

[30] *See id.* at § 61.26(a)(6).

[31] *See generally* Lingo Aug. 12, 2020 *Ex Parte*.

exemption.[32] Although there are a series of other successor corporations between SouthEast and Lingo, those successors appear to have taken care to maintain the rural nature of Lingo's predecessors. Moreover, Lingo describes steps it has taken recently to confirm that it does not provide service to any non-rural customers, averring "that each of the customers it serves are located in rural areas as defined in FCC Rule 61.26(a)(6), i.e., the customers are not located within either (i) any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (ii) an urbanized area, as defined by the Census Bureau."[33]

12. BellSouth, the competing ILEC, is indisputably a non-rural ILEC because it is an incumbent local exchange carrier that is not a rural telephone company under 47 U.S.C. § 153(44).[34] Although BellSouth serves rural areas such as those served by Lingo, it also serves non-rural areas including major metropolitan areas, which excludes it from the definition of rural telephone company.[35]

13. In light of Lingo's September Tariff Revisions showing a zero rate for terminating end office switched access service, and the Lingo Aug. 12, 2020 and Dec. 4, 2020 *Ex Parte*s demonstrating that it is entitled to the rural exemption, we find that the issues raised in the *Lingo Suspension Order* are resolved and the investigation of Lingo's tariff, which began on July 30, 2020, is terminated.

III. ORDERING CLAUSES

14. 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 C.F.R. §§ 0.91 and 0.291, the tariff investigation initiated on July 30, 2019, in WC Docket No. 20-245 as to the tariff revisions filed on July 16, 2020 by Lingo Communications of Kentucky, LLC, Tariff F.C.C. No. 1, IS TERMINATED.

15. IT IS FURTHER ORDERED that the accounting order applicable to Lingo Communications of Kentucky, LLC, IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

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

[32] *Id.* at 2 (Description of Lingo Kentucky and Accompanying Verification). *See also Access Charge Reform et. al.*, CC Docket No. 96-262, Order, 23 FCC Rcd. 2556, 2562-63, paras. 17-21 (2008).

[33] Lingo Aug. 12, 2020 *Ex Parte*, at 3-4 (Description of Lingo Kentucky and Accompanying Verification).

[34] *See* Lingo Dec. 4, 2020 *Ex Parte* at 1 (explaining that BellSouth is the competing ILEC and affirming that "BellSouth serves urban areas in Kentucky, and as such, is not a rural ILEC under the Commission's rules."). *See also* 47 CFR § 61.26(a)(4).

[35] *See* BellSouth Telecommunications, LLC, Tariff F.C.C. No. 1 (filed Nov. 5, 2020), 1st Rev. Page No. 46, §§ 15.4.1, 15.4.2, 15.4.3 (describing the operating territory of BellSouth in Kentucky as comprised of the Louisville, Owensboro, and Winchester Local Access and Transport Areas (LATAs), and listing the various rate centers within those LATAs) (available via ETFS).