

Joint Notice Regarding Reorganization of BullsEye Telecom, Inc. and Lingo Telecom, LLC d/b/a Trinsic Communications d/b/a Lingo d/b/a BullsEyeComm and Approval for Transfer of Customers	<p style="text-align: center;"><u>DOCKET NOS. 23-2413-01</u> <u>and 23-2452-02</u></p> <p style="text-align: center;"><u>ORDER</u></p>
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ISSUED: June 7, 2023

I. BACKGROUND

On April 3, 2023, Lingo Telecom, LLC d/b/a Trinsic Communications d/b/a Lingo d/b/a BullsEyeComm (“Lingo”), and BullsEye Telecom, Inc. (“BullsEye”), collectively the “Applicants,” filed a joint notification (“Notification”) with the Public Service Commission (PSC) seeking “approval, to the extent necessary,”¹ of an internal reorganization that (i) will transfer customers from BullsEye to Lingo effective July 1, 2023; (ii) will result in the cancellation of BullsEye’s Certificate of Public Convenience and Necessity (CPCN), effective upon completion of the transfer of customers from BullsEye to Lingo;² and (iii) may require a waiver of Utah’s Anti-Slamming statute.³

The Division of Public Utilities (DPU) filed its comments and recommendations on April 17, 2023, recommending the PSC acknowledge the Notification and requesting informal adjudication of the matter. DPU states that the Applicants have complied with Utah Admin. Code R746-349-7 and that the public interest will be promoted by acknowledging the Notification. DPU does not address whether the

¹ Notification at 1.

² BullsEye’s CPCN was issued on November 19, 2003, in Docket No. 03-2413-01.

³ See Utah Code Ann. § 54-8b-18 (the “Anti-Slamming Statute”) and Utah Admin. Code R746-349-5.

internal reorganization requires PSC approval or the application of Utah's Anti-Slamming Statute.

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Internal Reorganization

The PSC concludes that Applicants are exempt from the requirements of Utah Code Ann. § 54-4-30 because each is a competitive entrant and neither receives high-cost support from the Utah Universal Public Telecommunications Support Fund.⁴ In addition, no party has identified a statutory or other legal requirement for the PSC to approve the internal reorganization, and no party has requested a declaratory ruling on the issue pursuant to Utah Admin. Code R746-101-1, et seq.

Accordingly, the PSC acknowledges that Applicants have notified the PSC of their intended internal reorganization and gives notice it will take no further action in this docket regarding its approval unless a party files a request for agency action and explains the basis upon which the PSC may or should act.

B. Transfer of Customers, CPCN Cancellation, and Waiver

The Utah Code generally prohibits a change of customer telecommunications providers unless customers are notified about any "change in the provider of any public telecommunications service to a subscriber [and the notice] complies, at a minimum, with Subsections (2)(a) through (e)."⁵ Subsections (2)(a) through (e)

⁴ See Utah Code Ann. §§ 54-8b-3.4(1)(a)(i) & 54-8b-3.4(2).

⁵ Utah Code Ann. § 54-8b-18(2).

generally require notification to customers of the nature, extent, and rates of the service being offered and associated rate changes, confirmation from the customer that it is aware of the rate changes, and customer authorization of those changes and the change in telecommunications provider.

According to DPU, “[b]oth [BullsEye and Lingo] are direct subsidiaries of Impact Telecom, LLC and an indirect subsidiary of Lingo, Lingo Communications, LLC[,] and B. Riley Principal Investments, LLC.”⁶ The Notification similarly states, the transfer of customers will be “between two affiliates with the same entities holding the controlling interest in both BullsEye and [Lingo].”⁷ Thus, the Notification represents the “transition from [BullsEye] to [Lingo] . . . will be virtually transparent. BullsEye customers will not incur any charges or immediate changes to services, terms and conditions, or rates as a result[.]”⁸ The Notification also represents that the “[c]ustomer notice of the transfer began running in BullsEye invoices on February 17, 2023 and will continue to run thr[ough] June 2023.”⁹

Regarding the CPCN cancellation, the Notification states that “[f]ollowing the transfer, BullsEye customers will be served by [Lingo] and BullsEye will no longer operate within Utah. A notice of consummation and request to proceed with the

⁶ DPU Comments at 2.

⁷ Notification at 2.

⁸ *Id.*

⁹ *Id.* A copy of the customer notice is attached as Exhibit B to the Notification.

[cancellation] of the Authority of BullsEye will be submitted to the [PSC] upon completion of the customer transfer.”¹⁰

Finally, the Applicants also seek a waiver of the Anti-Slamming Statute and related regulations regarding the transfer of customers. As noted above, the Applicants represent that the rates, and terms and conditions of customers’ services will not change because of the internal reorganization. Based on these representations, the PSC concludes that Applicants’ internal reorganization and subsequent transfer of customers does not violate the statute and related regulations.¹¹

Accordingly, based on DPU’s comments and recommendation that it is in the public interest for the PSC to acknowledge the internal reorganization and the transfer of customers, and the representations in the Notification, we find and conclude that the internal reorganization and subsequent transfer of customers is in the public interest. We also find there is no violation of the Anti-Slamming Statute and related regulations, thus no waiver is necessary.¹² Finally, and consistent with Applicants’ representations concerning the timing of seeking cancellation of

¹⁰ *Id.*

¹¹ In addition, we rely on the Federal Communications Commission’s guidance related to anti-slamming laws and policies. In this regard, the FCC concluded that, “. . . a change in corporate structure that is invisible to the affected subscribers does not constitute a sale or transfer for purposes of section 258 ...” See First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129, FCC 01-156.

¹² Based on this conclusion, no hearing on this request is necessary. See Utah Code Ann. § 54-8b-3.

BullsEye's CPCN, we find that issue is not ripe for ruling because no customer transfers have yet occurred, and we will wait for a future submission on this issue.

ORDER

We acknowledge that a notification of Applicants' internal organization was filed as part of the Notification. Additionally, based on our review and analysis of the Notification and DPU's comments and recommendations, and in the absence of any opposition to the Notification, the PSC authorizes the transfer of customers from BullsEye to Lingo, effective July 1, 2023.

DATED at Salt Lake City, Utah, June 7, 2023.

/s/ John Delaney
Presiding Officer

Approved and Confirmed June 7, 2023, as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#328271

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on June 7, 2023, a true and correct copy of the foregoing was served upon the following as indicated below:

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