PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Enforcement Division
Utility Enforcement Branch

Resolution UEB-014
November 2, 2023

R E S O L U T I O N

RESOLUTION UEB - 014 APPROVING ADMINISTRATIVE CONSENT ORDER AND SETTLEMENT AGREEMENT OF THE UTILITY ENFORCEMENT BRANCH OF THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION AND LINGO TELECOM OF THE WEST, LLC REGARDING VIOLATIONS OF PUBLIC UTILITIES CODE SECTION 2890(d)(2)(B).

SUMMARY

In this Resolution, the California Public Utilities Commission (Commission) approves an Administrative Consent Order (ACO) and Settlement Agreement between the Utility Enforcement Branch (UEB) of the Commission's Consumer Protection and Enforcement Division (CPED), and Lingo Telecom of the West, LLC (the Company) to resolve the Company's alleged noncompliance with Public Utilities Code (Pub. Util. Code) Section 2890 (d)(2)(B) for failing to include the Commission's phone number on 277,200 customer bills, between October 2015 and December 2018.[1] In full settlement of UEB's investigation, the Company agrees to make a payment of $320,000 to the General Fund.

BACKGROUND

Pub. Util. Code Section 2890 sets out the requirements for information that all telephone companies must include in every customer bill.[2] For example, Section 2890(d)(2)(B) states: "Each telephone bill shall include the appropriate telephone number of the commission that a subscriber may use to register a complaint."[3]

This Resolution explains how the proposed Settlement meets all five of the Enforcement Policy's factors. UEB acknowledges that the Company fully cooperated with UEB in

[1] Pub. Util. Code § 2890(d)(2)(B).

[2] Pub. Util. Code § 2890.

[3] Pub. Util. Code § 2890(d)(2)(B).

negotiating the ACO and Settlement Agreement.[4] In addition, UEB specifically considered a range of evidentiary and other matters, including all five factors set forth, that would bear upon its pursuit of enforcement actions seeking penalties for the Company's alleged violations.[5] When taken as a whole, the Parties agree that the ACO's negotiated penalty amounts are within the range of reasonable outcomes, had the matter proceeded to formal litigation.[6]

PENALTY ASSESSMENT

Resolution M-4846 requires that when Commission applies the Enforcement Policy to a utility, the Penalty Assessment Methodology (Methodology) must be used to calculate the penalty amounts.[7] The Methodology sets forth five factors to consider when determining the penalty amount:[8] They are the severity or gravity of the offense; the conduct of the regulated utility; the financial resources of the regulated utility, including the size of its business; the totality of the circumstances in furtherance of the public interest; and the role of precedent.

1. Severity or Gravity of the Company's Offense

The issue to be considered is the harm to the regulatory process. The Methodology document states that compliance is essential to the functioning of the regulatory process. And then it states: "[D]isregarding a Commission directive, regardless of the effects on the public, will be accorded a high level of severity."[9]

In addition, the number of violations is a consideration. For example, the Methodology states: "[A] widespread violation which affects a large number of consumers is a more severe offense than one that is limited in scope."[10]

The Company's alleged failure to ensure compliance with Pub. Util. Code 2890(d)(2)(B) harmed the proper functioning of the Commission's regulatory process. For example, between October 1, 2015, and December 1, 2018, the Company allegedly repeatedly and continually issued approximately 277,200 customer bills without the required

[4] See Attachments A (ACO) and B (Settlement Agreement).

[5] Attachment A, ACO, Section II, "Recitals."

[6] See Attachment A (ACO) p. A-3 and Attachment B (Settlement Agreement), p. B-3.

[7] Resolution M-4846, *Resolution Adopting Commission Enforcement Policy* (Nov. 5, 2020); Resolution M-4846, Attachment: *CPUC Enforcement Policy* (Enforcement Policy) (Nov. 5, 2020); Enforcement Policy; Appendix I, Penalty Assessment Methodology (Methodology) (Nov. 5, 2020), pp. 16-21.

[8] Methodology (Nov. 5, 2020), pp. 16-21.

[9] Methodology (Nov. 6, 2020), p. 17.

[10] Methodology (Nov. 6, 2020), p. 17.

Commission's phone number. Moreover, several complaints submitted to the Commission prior to October 1, 2015, indicate potential noncompliance with Pub. Util. Code 2890(d)(2)(B) since the inception of the Company's Certificate of Public Convenience and Necessity (CPCN). As a result, the Company's customers were only directed to contact the Company for billing issues, and they were not notified that they had the option to also readily contact the Commission. Depriving Company customers of the information needed to readily access the Commission's phone number to register a complaint, is contrary to the purpose and intent of Pub. Util. Code 2890(d)(2)(B).

2. The Company's Conduct

The second factor the Methodology requires is consideration of the entity's conduct. The issues to consider are the degree of culpability, the actions taken to rectify the violations, and whether there was a prior history of violations.

The Methodology explains that the expeditious correction of violations promotes transparency and public trust and furthers the public interest, and that steps taken by a regulated entity to cooperatively correct violations may be considered in assessing any penalty.[11]

UEB outlined above the billing compliance issues the Company allegedly had on a repeated basis. Overlapping that time period, in December of 2016, the Company's prior parent company, Birch Communications, Inc. (Birch), entered into a Consent Decree with the Federal Communications Commission (FCC). The FCC Consent Decree resolved an investigation into the placement of unauthorized charges on customers' telephone bills, unauthorized carrier changes, and deceptive marketing. It required Birch to implement a compliance plan, file periodic compliance reports with the FCC, pay a civil penalty, and provide relief to affected consumers who filed complaints within a specific period. Pursuant to the Consent Decree, several hundred California consumers that filed complaints received redress in 2017.[12]

From September of 2017 through November of 2018, UEB's efforts to bring the Company into compliance with Pub. Util. Code 2890(d)(2)(B) were unsuccessful. In September of 2017, UEB issued a Cease and Desist Order, directing the Company to immediately discontinue omitting the Commission's telephone number from customer bills.[13] The Company responded by denying that it had engaged in unfair business practices in California but agreed to comply with Pub. Util. Code Section 2890(d)(2)(B)

[11] Methodology (Nov. 6, 2020), p. 18.

[12] See *Before the Federal Communications Commission, In the Matter of Birch Communications, Inc.*, *Order*, DA-16-1458 (Dec. 29, 2016).

[13] UEB's Cease and Desist Order to Birch (September 26, 2017), p. 1.

within 90 days of the Cease and Desist Order.[14] However, UEB discovered that the Company did not comply with the Cease and Desist Order based on its admission that the language required by Pub. Util. Code section 2890(d)(2)(B), was not added to the Company's California invoices - due to an "inadvertent error…"[15]

The Company allegedly continued violating Pub. Util. Code Section 2890(d)(2)(B) until December of 2018, pursuant to CPED's "Utility Bill Change" notice sent to utilities on August 2, 2018.[16]

Since December of 2018, the Company has complied with Pub. Util. Code Section 2890(d)(2)(B). Although the Company did not comply with UEB's Cease and Desist Order, the Company subsequently fully cooperated with UEB's requests for information and data requests. Moreover, between August of 2021 and the present, the Company and UEB participated in settlement discussions to resolve this matter.

3. The Company's Financial Resources, Including the Size of Its Business

The third factor is the financial resources of the utility, and the Methodology states: "[P]enalty levels will be adjusted to achieve the objective of deterrence, without becoming excessive, based on each regulated entity's financial resources."[17]

The Commission seeks to ensure that excessive fines or penalties are not assessed while imposing an effective fine/penalty. An effective fine or penalty reflects the severity of the harm. An appropriate penalty amount should be proportionate to the offending entity's financial resources to deter future similar offense of violations, without putting the entity out of business or otherwise catastrophically impacting the entity.

Throughout the alleged noncompliance period between October of 2015 and December 2018, the Company underwent multiple mergers and acquisitions to enhance and improve its market presence. The Company was first known as Birch and later Lingo under the CPCN U-7118-C. The Company is currently structured under Lingo Management, LLC, a global Cloud/UC and managed service provider.

[14] The Company's response to UEB's Cease and Desist Order to Birch (Oct. 17, 2017), p. 1.

[15] See the Company's response to UEB's Data Request No. 6, question No. 5.

[16] The Company became compliant on December 1, 2018. See the Company's response to Data Request No. 8, question No. 1.

[17] Methodology (Nov. 6, 2020), p. 19.

On May 9, 2022, Decision 22-05-004 approved the Transfer of Indirect Control,[18] where Lingo Management, LLC, now holds a 20% interest in the Company, and B. Riley Principal Investments, LLC (a subsidiary of B. Riley Financial, a publicly traded company), holds an 80% interest. Lingo Management, LLC, announced that the transaction will enhance its presence as a global communications, Cloud/UC and managed services provider focused on serving business and carrier customers located in all 50 states, Canada and around the globe.[19] Subsequently, Lingo Management, LLC acquired BullsEye Telecom, Inc., doubling the size of the Company.[20]

According to B. Riley Financial's first quarter 2023 results filed with the Securities and Exchange Commission (SEC), total revenues increased 75% to $432.1 million for the first quarter of 2023, up from $246.8 million in the prior year quarter. The increase in revenues was primarily related to recent acquisitions, including Targus, the Company, and BullsEye Telecom, in addition to a significant increase in interest income from securities lending.[21] Based on the Company's current financial resources, a payment in the amount of $320,000 to the General Fund is reasonable and appropriate to achieve the objective of deterrence, without being excessive.

4. Totality of the Circumstances in Furtherance of the Public Interest

The Commission's objective is to establish a penalty that effectively deters further unlawful conduct. When setting the penalty, staff is to specifically tailor the package of sanctions to the unique facts of the case. In addition, the staff needs to evaluate the facts that tend to mitigate or exacerbate the degree of wrongdoing. Further, the Methodology states: "In all cases, the harm will be evaluated from the perspective of the public interest."[22]

The facts that mitigate the degree of wrongdoing are the Company's eventual compliance with Pub. Util. Code Section 2890(d)(2)(B) in December of 2018, and the Company's cooperation with UEB to finalize the Settlement Agreement. The exacerbating facts are the Company's alleged repeated and continuous failure to include the Commission's

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[18] D.22-05-004, *Decision Approving the Transfer of Indirect Control of Lingo Telecom of the West, LLC and Matrix Telecom LLC (Licensees) from Lingo Communications, LLC (Transferor) to B.Riley Principal Investments, LLC. (Transferee)* (May 9, 2022).

[19] https://www.lingo.com/2020/12/17/lingo-announces-new-capitalization-led-by-b-riley-and-appoints-new- leadership/.

[20] See https://brileyfin.com/capabilities/principal-investments, Equity Investments.

[21] Securities and Exchange Commission form 8-K, Exhibit 99.1, Earnings Release (May 4, 2023). First quarter results for the period ending March 31, 2023. https://www.sec.gov/Archives/edgar/data/1464790/000121390023036419/ea177983ex99-1_brileyfin.htm.

[22] Methodology (Nov. 6, 2020), p. 19.

phone number on approximately 277,200 customer bills between October of 2015 and December of 2018.[23] Another exacerbating factor was the Company's failure to comply with UEB's Cease and Desist Order from September of 2017 to place the Commission's phone number on the customer bills.

For these reasons, a penalty amount of $320,000.00 is reasonable under the totality of the circumstances and adequately reflects the seriousness of the public harm in violating Commission requirements relating to the Public Utilities Code Section 2890(d)(2)(B).

5. The Role of Precedent

For this factor, the Methodology states:

> [W]hen a case involves reasonably comparable factual circumstances to another case where penalties were assessed, the similarities and differences between the two cases should be considered in setting the penalty amount.[24]

This requires an examination of fines in other Commission Decisions with similar and dissimilar factual situations. For example, the settlement agreement between CPED and Cox California Telecom, LLC (Cox) (U-5684-C), in Resolution UEB-005 was also for alleged failures to comply with Pub. Util. Code Section 2890(d)(2)(B).[25] In contrast, while the Company allegedly repeatedly and consistently issued noncompliant customer bills, Cox's noncompliant billing practices were inconsistently applied to bills. Additionally, UEB never issued a Cease and Desist Order to Cox. Furthermore, the Cox bills were issued to residential customers as opposed to the Company's mostly business customers. Moreover, the Cox bills affected more customers than the Company's bills did. In resolution of the matter, Cox contributed $350,000 to its Connect2Compete program,[26] implemented new customer notification and billing review practices verification procedures, and it reported these results to CPED. For these reasons, UEB believes a $320,000.00 payment to the General Fund can serve as an adequate deterrence from this code violation and is reasonable, appropriate under Resolution M-4846, and is in the public interest.

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[23] Overlapping the alleged noncompliance period between October of 2015 and December of 2018, the prior parent company of the Company, Birch Communications, Inc., entered into a consent decree with the FCC to resolve an investigation into consumer violations. See *Before the Federal Communications Commission, In the Matter of Birch Communications, Inc.*, *Order*, DA-16-1458 (Dec. 29, 2016).

[24] Methodology (Nov. 6, 2020), p. 21.

[25] Resolution UEB-005 (Sept. 24, 2020) (to approve a Settlement Agreement Between CPED and Cox California Telecom, LLC (U-5684-C) in Resolution of Billing Practice Investigation).

[26] Cox's Connect2Compete program provides low-cost home internet to customers with school-age children.

COMMENTS ON DRAFT RESOLUTION

The Draft Resolution was served on September 29, 2023 to interested parties in accordance with Pub. Util. Code § 311(g). No comments were received.

FINDINGS AND CONCLUSIONS

1. Resolution M-4846 authorized Commission staff to negotiate and propose Administrative Consent Orders (ACO) to resolve enforcement matters, subject to review and consideration by the Commission.[27]
2. UEB and the Company have engaged in settlement negotiations and, consistent with the Commission's Enforcement Policy and Penalty Methodology within Resolution M-4846, have memorialized their proposed settlement in the attached ACO and Settlement Agreement.[28]
3. UEB and the Company have agreed that the attached ACO and Settlement Agreement resolve all issues related to UEB's investigation of and any enforcement action UEB might have brought related to or arising from the Company's alleged noncompliance related to Public Utilities Code section 2890(d)(2)(B) between October 2015 and December 2018.[29]
4. The agreed-upon payment of $320,000 appropriately resolves all issues related to UEB's investigation regarding the Company's alleged noncompliance related to Public Utilities Code Section 2890(d)(2)(B) and any enforcement action UEB might have brought. In addition, the penalty amount is reasonable in light of the circumstances, consistent with law, and is in the public interest.[30]

THEREFORE, IT IS ORDERED that:

1. The attached Administrative Consent Order and Settlement Agreement between UEB and the Company relating to the requirements of Public Utilities Code section 2890(d)(2)(B) addressed therein is adopted.[31]

[27] See Enforcement Policy (Nov. 5, 2020), pp. 10-11.

[28] See Enforcement Policy, Ordering Paragraph No. 1 (Nov. 5, 2020), p. 16 (to adopt the Methodology). See also *CPUC Rules of Policy and Procedure*, Article 12, "Settlements" (May 1, 2021).

[29] See Pub. Util. Code § 2890(d)(2)(B). See also See Resolution M-4846; Attachment: CPUC Enforcement Policy (Nov. 5, 2020).

[30] See Pub. Util. Code § 2890(d)(2)(B). See also Methodology (Nov. 5, 2020).

[31] Pub. Util. Code § 2890(d)(2)(B); Attachment A (ACO); Attachment B (Settlement Agreement).

This Resolution is effective today.

I certify that the foregoing Resolution was adopted by the California Public Utilities Commission at its regular meeting on November 2, 2023, and the following Commissioners approved favorably thereon:

/s/ *RACHEL PETERSON*

Rachel Peterson
Executive Director

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

ATTACHMENT A

ADMINISTRATIVE CONSENT ORDER

CALIFORNIA PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the matter of:

Lingo Telecom of the West, LLC (f/k/a Birch Telecom of the West, LLC) – re: Public Utilities Code § 2890(d)(2)(B) requirements.

ADMINISTRATIVE CONSENT ORDER

I. INTRODUCTION

This proposed Administrative Consent Order (ACO) is agreed to by and between the Utility Enforcement Branch (UEB) of the Consumer Protection and Enforcement Division (CPED) of the California Public Utilities Commission (Commission) and Lingo Telecom of the West, LLC (formerly known as Birch Telecom of the West, LLC) (the Company)[1] (UEB and the Company collectively, the Parties). As a result of negotiations between UEB and the Company, this proposed ACO shall be presented to the Commission for adoption as a final ACO pursuant to the Commission's Enforcement Policy in Resolution M-4846.[2] Under the Enforcement Policy, UEB may draft ACOs to resolve allegations of violations of law or Commission order, resolution, decision, or rule that will subsequently be subject to Commission review and disposition.[3]

This ACO resolves UEB's allegations that the Company failed to comply with the Public Utilities (Pub. Util.) Code requirement that telecommunications carriers include the Commission's telephone number on every customer telephone bill. For example, Pub. Util. Code Section 2890(d)(2)(B) requires any "person, corporation, or billing agent that charges subscribers for products or services on a telephone bill" to "include the appropriate telephone number of the [C]ommission that a subscriber may use to register a complaint."[4]

The Company's responses to UEB's data requests revealed consumer invoices for the period between October 1, 2015 and December 1, 2018 without the appropriate telephone number of the

[1] During the alleged period of non-compliance, the Company was first known as Birch and later Lingo under the Certificate of Public Convenience and Necessity (CPCN) U-7118-C. On November 1, 2018, the Company changed its name with the California Secretary of State from "Birch Telecom of the West, LLC" to "Lingo Telecom of the West LLC." On December 28, 2018, the Company changed its name from "Birch Telecom of the West, LLC" to "Lingo Telecom of the West LLC" at the Commission. See Advice Letter (AL) #39 (Dec. 28, 2018). Thereafter, the Company undertook other business reorganizations to enhance and improve its market presence and customer services. See AL #80 of Lingo Telecom, LLC (Dec. 17, 2020); D.22-05-004, *Decision Approving the Transfer of Indirect Control of Lingo Telecom of the West, LLC and Matrix Telecom LLC (Licensees) from Lingo Communications, LLC (Transferor) to B. Riley Principal Investments, LLC (Transferee)* (May 9, 2022); and AL #50 (June 6, 2022).

[2] Resolution M-4846, *Resolution Adopting Commission Enforcement Policy* (Nov. 5, 2020).

[3] Resolution M-4846, Attachment, *CPUC Enforcement Policy* (Nov. 5, 2020), p. 10.

[4] Pub. Util. Code § 2890(d)(2)(B).

Commission on approximately 277,200 telephone bills[5] it had issued to its California consumers. The telephone bills issued during this timeframe, however, did include the Company's toll-free number, which allowed subscribers to contact the Company to register a complaint with the Company.

The penalty amount in the Settlement Agreement was determined by factors including those set forth in the Enforcement Policy's "Penalty Assessment Methodology."[6] UEB maintains that prompt, certain, and effective settlement of this matter is in the best interest of the people of the State of California. This ACO will become final and effective upon its approval by the Commission.

II. RECITALS

The relevant factual background, the violations alleged by UEB, and the Company's responses to the alleged violations are set forth in the attached Settlement Agreement. Without waiving the protections of Rule 12.6 of the Commission's Rules of Practice and Procedure[7] for the Parties' settlement communications that resulted in the ACO and the Settlement Agreement, the attached Settlement Agreement addresses the elements required by the Enforcement Policy's Section III.A.7, for "Administrative Consent Order:"

i. The law or Commission order, resolution, decision, or rule alleged to be violated by the regulated entity;

ii. The facts that form the basis for each alleged violation;

iii. The number of alleged violations, including the dates on which the alleged violations occurred;

iv. Information related to the potential for additional or ongoing violations;

v. An agreement by the regulated entity to correct each alleged violation;

vi. A date by which the regulated entity must certify it corrected all alleged violations; and

vii. An agreement by the regulated entity to pay any penalty by a date specified.[8]

III. TERMS

The terms of this ACO are set forth in the attached Settlement Agreement.

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[5] Data Response No. 6 (to question No. 1); Data Response No. 7 (to question No. 3); Data Response No. 8 (to question No. 1c).

[6] Resolution M-4846, Attachment, *CPUC Enforcement Policy*, Appendix I, *Penalty Assessment Methodology* (Nov. 5, 2020), pp. 16-21.

[7] Rule 12.6 (May 1, 2021).

[8] Resolution M-4846, Attachment: *CPUC Enforcement Policy* (Nov. 5, 2020), p. 10.

Any penalty amounts that are agreed to be paid pursuant to this ACO shall be paid in a manner consistent with the attached Settlement Agreement. With respect to payments to the State of California General Fund, agreed to pursuant to the Settlement Agreement, they shall be by check or money order and shall be made payable to the California Public Utilities Commission. The Company shall write on the face of the check or money order: "For deposit to the State of California General Fund," and should identify that it relates to this ACO regarding Pub. Util. Code Section 2890(d)(2)(B) requirements. The Company shall deliver payment to:

California Public Utilities Commission Fiscal Office
505 Van Ness Avenue
Room 3000
San Francisco, CA 94102

If the Company becomes aware that it will be unable to perform any activity or submit any document within the time required under the attached Settlement Agreement, the Company shall promptly inform UEB.

The Company is responsible for compliance with the obligations it has agreed to assume under the Settlement Agreement, as approved by this ACO, and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, and agents comply with such ACO.

If the Company fails to comply with the terms of this ACO, as reflected in the Settlement Agreement, nothing in this ACO or the Settlement Agreement limits the authority of UEB or the Commission to take any and all actions within their authority to ensure the Company's compliance.

Public Notice

The Parties understand that this ACO, including the attached Settlement Agreement, will be noticed for public review and comment prior to consideration by the Commission, consistent with the Public Utilities Code and the Commission's Rules of Practice and Procedure.

Regulatory Notice

The Parties agree to seek prompt Commission approval of this ACO, including the attached Settlement Agreement, without modification.

Dated: 09/19/2023

By: _____

Ananthan Veluppillai
Chief Executive Officer
Lingo Management, LLC

Dated: 9/19/2023

By: _____

Jeanette Lo
Utilities Enforcement Branch, Chief
Consumer Protection and Enforcement Division

ATTACHMENT B

SETTLEMENT AGREEMENT BETWEEN LINGO TELECOM OF THE WEST, LLC (F/K/A BIRCH TELECOM OF THE WEST, LLC) AND THE UTILITY ENFORCEMENT BRANCH OF THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION)

SETTLEMENT AGREEMENT BETWEEN LINGO TELECOM OF THE WEST, LLC (F/K/A BIRCH TELECOM OF THE WEST, LLC) AND THE UTILITY ENFORCEMENT BRANCH OF THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION RESOLVING THE INVESTIGATION INTO ALLEGED NONCOMPLIANCE WITH THE REQUIREMENTS OF CALIFORNIA PUBLIC UTILITIES CODE SECTION 2890(d)(2)(B) (RESOLUTION M-4846)

Lingo Telecom of the West, LLC (f/k/a Birch Telecom of the West, LLC) (the Company) [1] and the Utility Enforcement Branch (UEB) of the Consumer Protection and Enforcement Division (CPED) of the California Public Utilities Commission (Commission) are hereinafter collectively referred to as the Settling Parties. On the following terms and conditions, the Settling Parties hereby agree to settle, resolve, and dispose of all claims, allegations, liabilities, and defenses within the scope of UEB's investigation into the Company's compliance with Public Utilities (Pub. Util.) Code Section 2890(d)(2)(B).

This Settlement Agreement is entered into as a compromise of disputed claims and defenses in order to minimize the time, expense, and uncertainty of an Order Instituting Investigation and/or other litigation. The Settling Parties agree to the following terms and conditions as a complete and final resolution of all claims that have been or could be made by UEB and all defenses that were or could have been raised by the Company related to alleged noncompliance with Pub. Util. Code Section 2890(d)(2)(B) as set forth herein and in the proposed Administrative Consent Order submitted herewith.

I. SETTLING PARTIES

A. UEB is a branch of CPED. CPED is a division of the Commission charged with enforcing compliance with the Pub. Util. Code and other relevant utility laws and the Commission's rules, regulations, orders, and decisions.

B. The Company is a public utility, as defined by the California Pub. Util. Code. During UEB's investigation, the Company, under Certificate of Public Convenience and Necessity U-7118-C, provided local exchange and interexchange telecommunications services primarily to business/commercial subscribers throughout the state of California. As of the date

[1] During the alleged period of non-compliance, the Company was first known as Birch and later Lingo under the Certificate of Public Convenience and Necessity (CPCN) U-7118-C. On November 1, 2018, the Company changed its name with the California Secretary of State from "Birch Telecom of the West, LLC" to "Lingo Telecom of the West LLC." On December 28, 2018, the Company changed its name from "Birch Telecom of the West, LLC" to "Lingo Telecom of the West LLC" at the Commission. See Advice Letter (AL) #39 (Dec. 28, 2018). Thereafter, the Company undertook other business reorganizations to enhance and improve its market presence and customer services. See AL #80 of Lingo Telecom, LLC (Dec. 17, 2020); D.22-05-004, *Decision Approving the Transfer of Indirect Control of Lingo Telecom of the West, LLC and Matrix Telecom LLC (Licensees) from Lingo Communications, LLC (Transferor) to B. Riley Principal Investments, LLC (Transferee)* (May 9, 2022); and AL #50 (June 6, 2022).

of this Settlement Agreement, the Company no longer provides telecommunications services in California, and is in the process of cancelling its Certificate of Public Convenience and Necessity.

II. RECITALS

A. Stipulated Facts. The Settling Parties have stipulated to the facts set forth below for purposes of this Settlement Agreement. The facts stipulated herein are solely for the purpose of reaching this Settlement Agreement. If the Settlement Agreement is not approved by the Commission, the Settling Parties hereby fully reserve their rights and remedies.

1. In relevant part, Pub. Util. Code Section 2890(d)(2)(B) states: "Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill" shall take certain steps to "include the appropriate telephone number of the [C]ommission that a subscriber may use to register a complaint."[2]

2. The purpose of Pub. Util. Code Section 2890(d)(2)(B) is to ensure consumers have the Commission's contact information for lodging disputes. Pub. Util. Code Section 2890(d)(2)(B) also requires the carrier to include its toll-free telephone number on the telephone bill as well as information on how to resolve a dispute with the carrier.[3]

3. UEB initiated its review of the Company's billing practices in October 2015, and issued a series of eight data requests and two cease and desist orders within a four-year period. The Company fully cooperated with UEB's investigation and complied with all requests for information and documentation issued by UEB during its investigation. However, the Company did not comply with UEB's second Cease and Desist Order relating to its compliance with Pub. Util. Code Section 2890(d)(2)(B).

4. The Company's prior parent, Birch Communications, Inc. (Birch Comm), entered into a Consent Decree with the Federal Communications Commission (FCC) in December 2016.[4] The Consent Decree required Birch Comm to implement a compliance plan, file periodic compliance reports with the FCC, pay a civil penalty, and provide relief to affected consumers who filed complaints within a specific period. Several hundred California consumers that filed complaints received redress pursuant to the Consent Decree during 2017.

5. On August 2, 2018, CPED issued a Utility Bill Change notice to all telecommunications carriers operating in California to remind them of their obligations under Pub. Util. Code Section 2890(d)(2)(B) and require them to update the information contained in their billing statements within 120 days, or by December 1, 2018.

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[2] Pub. Util. Code § 2890(d)(2)(B).

[3] Pub. Util. Code § 2890(d)(2)(B).

[4] See *Before the Federal Communications Commission, In the Matter of Birch Communications, Inc.*, *Order*, DA-16-1458 (Dec. 29, 2016).

6. The Company's customer billing statements were compliant with Pub. Util. Code Section 2890(d)(2)(B) as of December 1, 2018, in accordance with the Utility Bill Change notice.

7. Since 2015, the Company has undergone a series of reorganization, ownership, and management changes.

B. Noncompliance Alleged by UEB. As a result of its investigation, UEB alleges the Company violated the portion of Pub. Util. Code Section 2890(d)(2)(B) that requires a telecommunications carrier to include on its telephone bills "the appropriate telephone number of the [C]ommission that a subscriber may use to register a complaint …" The period between October 1, 2015 and December 1, 2018 represents approximately 277,200 telephone bills (the Timeframe), even though the Company provided no evidence of its compliance prior to October 1, 2015. Commission complaints prior to October 1, 2015 indicate potential non-compliance since the inception of the Company's CPCN. In reaching this Settlement Agreement, UEB has considered the Company's mitigating factors to the alleged noncompliance with this portion of Pub. Util. Code Section 2890(d)(2)(B) during the Timeframe, including: (1) the Company's toll-free number was included on all customer bills during the Timeframe, which allowed customers to lodge complaints with the Company; (2) the majority of the Company's California customers during the Timeframe were business/commercial customers; (3) California consumers filed complaints against the Company during the Timeframe, which indicates California consumers may not have been harmed by the lack of the Commission's telephone number on the bill; and (4) hundreds of California consumers that filed complaints received redress during the Timeframe pursuant to the settlement between Birch Comm and the FCC.

III. AGREEMENT

A. To settle this investigation and resolve all matters pertaining to the Company's alleged violation of Pub. Util. Code Section 2890(d)(2)(B), as set forth above, the Company shall pay a total of $320,000 to the State of California General Fund (General Fund). The amount of $320,000 will be paid to the General Fund within 30 days of the Effective Date of this Agreement, as defined in Section III.B. below.

B. This Settlement Agreement shall become effective (Effective Date) upon final Commission approval of the proposed Administrative Consent Order submitted by UEB pursuant to Resolution M-4846, as set forth in Section IV.A. below.[5] Commission approval of the Administrative Consent Order shall be deemed final when the Administrative Consent Order approving the Settlement Agreement (either without modification or with modification ordered by the Commission and accepted by both Settling Parties) shall no longer be subject to any challenge, appeal, review, or modification.

[5] Resolution M-4846, *Resolution Adopting Commission Enforcement Policy* (Nov. 5, 2020).

IV. ADDITIONAL TERMS

A. The Settling Parties agree to seek expeditious approval of this Settlement Agreement and the terms of the settlement, and to use their reasonable efforts to secure Commission approval of it without change, including by UEB submitting a proposed Resolution and Administrative Consent Order containing this Settlement Agreement as well as any other written filings, appearances, and other means as may be necessary to secure Commission approval.

B. The Settling Parties agree to actively and mutually defend this Settlement Agreement if its adoption is opposed by any other party in proceedings before the Commission. In accordance with Rule 12.6 of the Commission's Rules of Practice and Procedure, if this Settlement Agreement is not adopted by the Commission, its terms are inadmissible in any evidentiary hearing unless their admission is agreed to by the Settling Parties.[6] In the event the Commission rejects or proposes alternative terms to the Settlement Agreement, the Settling Parties reserve all rights set forth in Rule 12.4 of the Commission's Rules of Practice and Procedure.[7] The provisions of Section IV.A. and IV.B. herein shall impose obligations on the Settling Parties immediately upon the execution of this Settlement Agreement.

C. The Settling Parties agree to continue to abide by the confidentiality provisions and protections of Rule 12.6 of the Commission's Rules of Practice and Procedure, which governs the discussions, admissions, concessions, and offers to settle that preceded the execution of the Administrative Consent Order and Settlement Agreement and that were exchanged in all efforts to support Commission approval.[8] Those prior negotiations and communications shall remain confidential indefinitely, and the Settling Parties shall not disclose them without the consent of both Settling Parties.

D. UEB shall not assert or support any argument or assertions that any noncompliance or conduct underlying the alleged noncompliance identified herein are or can be the basis for future disallowances, violations, or penalties.

E. UEB agrees to release and refrain from instituting, directing, or maintaining any noncompliance or enforcement proceedings against the Company related to the alleged noncompliance addressed herein based on information: (a) known, or that could have been known, to UEB at the time that UEB executes this Settlement Agreement, or (b) substantially similar to the alleged violations referenced in this Settlement Agreement.

F. Subject to Section IV.E. herein, nothing in this Settlement Agreement constitutes a waiver by UEB of its legal obligations, authority, or discretion to investigate and enforce applicable requirements as to other conduct by the Company unrelated to the alleged noncompliance addressed herein that UEB may identify as the basis for any alleged violation(s). UEB shall retain such authority regardless of any factual or legal similarities that other conduct,

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[6] *CPUC Rules of Practice and Procedure* (Rules), Rule 12.6 (May 1, 2021).

[7] Rule 12.4 (May 1, 2021).

[8] Rule 12.6 (May 1, 2021).

and any alleged violation(s), may have to the Company's alleged noncompliance addressed herein. Accordingly, any such similarities shall not preclude UEB from using other conduct and alleged violation(s) as a basis for seeking future enforcement action.

G. The Settling Parties have bargained in good faith to reach this Settlement Agreement. The Settling Parties intend the Settlement Agreement to be interpreted as a unified, interrelated agreement. The Settling Parties agree that no provision of this Settlement Agreement shall be construed against any of them because a particular party or its counsel drafted the provision. The representatives of the Settling Parties signing this Settlement Agreement are fully authorized to enter into this Settlement Agreement.

H. The rights conferred and obligations imposed on any of the Settling Parties by this Settlement Agreement shall inure to the benefit of or be binding on that Settling Party's successors in interest or assignees as if such successor or assignee was itself a party to this Settlement Agreement.

I. Should any dispute arise between the Settling Parties regarding the manner in which this Settlement Agreement or any term shall be implemented, the Settling Parties agree, prior to initiation of any other remedy, to work in good faith to resolve such differences in a manner consistent with both the express language and the intent of the Settling Parties in entering into this Settlement Agreement.

J. This Settlement Agreement is not intended by the Settling Parties to be precedent for any other proceeding, whether pending or instituted in the future. The Settling Parties have assented to the terms of this Settlement Agreement only for the purpose of arriving at the settlement embodied in this Settlement Agreement. Each Settling Party expressly reserves its right to advocate, in other current and future proceedings, or in the event that the Settlement Agreement is rejected by the Commission, positions, principles, assumptions, arguments, and methodologies that may be different than those underlying this Settlement Agreement, and the Settling Parties expressly declare that, as provided in Rule 12.5 of the Commission's Rules of Practice and Procedure, this Settlement Agreement should not be considered as a precedent for or against them.[2]

K. Regarding any issue resolved in this Settlement Agreement, the Settling Parties are prohibited from filing a petition for modification or application for rehearing of a Commission decision that approves this Settlement Agreement without modification.

L. The Company's waiver of its due process rights to an evidentiary hearing on the matters set forth herein is conditioned on a final Commission resolution or order approving the Administrative Consent Order and Settlement Agreement without modification, or with modification(s) agreeable to the Settling Parties.

[2] Rule 12.5 (May 1, 2021).

M. This Settlement Agreement may be executed in counterparts.

N. The Settling Parties hereby agree that this Settlement Agreement is entered into as a compromise of disputed violations and defenses in order to minimize the time, expense, and uncertainty of an Order Instituting Investigation and/or other litigation.

O. Nothing in this Settlement Agreement relieves the Company from any responsibilities imposed on it by law or Commission rules, orders, or decisions.

P. In reaching this Settlement Agreement, the Settling Parties expect and intend that neither the fact of this settlement nor any of its specific contents will be admissible as evidence of fault or liability in any other proceeding before the Commission, any other administrative body, or any court. In this regard, the Settling Parties are relying on Evidence Code Section 1152(a) and Pub. Util. Code Section 315.[10] Furthermore, such use of this Settlement Agreement or any of its contents in any other proceeding before the Commission, any other administrative body, or any court would frustrate and interfere with the Commission's stated policy preference for settlements rather than litigated outcomes. *See* Pub. Util. Code Section 1759(a).[11]

Q. The Administrative Consent Order and Settlement Agreement constitutes the entire agreement between the Settling Parties and supersedes all prior or contemporaneous agreements, negotiations, representations, warranties, and understanding of the Settling Parties with respect to the subject matter set forth therein and herein.

IN WITNESS WHEREOF, the Settling Parties hereto have duly executed this Settlement Agreement.

Dated: 09/19/2023

By: _____

Ananthan Veluppillai
Chief Executive Officer
Lingo Management, LLC

Dated: 9/19/2023

By: _____

Jeanette Lo
Utilities Enforcement Branch, Chief
Consumer Protection and Enforcement Division
California Public Utilities Commission

[10] Evid. Code § 1152(a); Pub. Util. Code § 315.

[11] Pub. Util. Code § 1759(a).