

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
TX Communications LLC) File No. ISP-PDR- _____
)
Petition for Declaratory Ruling Under)
Section 310(b)(4) of the Communications Act of)
1934, as Amended)

PETITION FOR DECLARATORY RULING

TX Communications LLC (“TXC”), pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”), hereby petitions the Commission to adopt a declaratory ruling finding that the indirect ownership of more than 25% of the shares of TXC by an entity organized under the laws of the Cayman Islands will be consistent with the public interest under precedents applying Section 310(b)(4) of the Act. TXC is an applicant through a separate, contemporaneously-filed application for assignment of 505 FCC microwave authorizations, which include a number of common carrier point-to-point licenses. Specifically, the application proposes the assignment of these FCC licenses from Trillion Partners, Inc., under receivership (“Trillion”), to TXC consistent with the terms of a private sale of Trillion’s assets approved on October 26, 2012 by the U.S. District Court of Colorado.¹ TXC is indirectly controlled by Global Leveraged Capital Credit Opportunity Fund I (“GLC COF I”), an entity established under the laws of the Cayman Islands.

¹ See *Tatonka Capital Corp. v. Trillion Partners, Inc.*, 11-cv-01787, “Order Approving the Private Sale of All of Trillion’s Assets,” filed October 26, 2012 (D. Colo.).

I. BACKGROUND

a. Trillion's Business

Trillion is one of the nation's leading providers of E-Rate eligible Voice over Internet Protocol (VoIP) and broadband wide area network (WAN) services to K-12 schools districts and consortia. Currently, Trillion provides services to over 800 schools and approximately half a million students, many of which are located in rural and economically disadvantaged areas. It is not uncommon for Trillion to be the only service provider to respond to requests for proposals issued by school districts and consortia located in rural areas. Following consummation of the transaction described herein, TXC will provide the same services that Trillion currently provides.

b. The Transaction

On July 8, 2011, Tatonka Capital Corporation ("Tatonka") filed a civil action in the United States District Court for the District of Colorado ("Court") against Trillion because Trillion was in material default on its payment and other obligations to Tatonka.² On July 27, 2011, the Court entered an order appointing the Receiver to oversee the assets of Trillion ("Receivership Assets"), which include the licenses issued by the Commission providing Trillion with the authority to operate both common carrier and private microwave facilities.³ On August 27, 2012, the Receiver and TXC's sole member, TX Broadband Holding Co. ("TX Broadband"), executed an Asset Purchase Agreement, subsequently amended as of October 24, 2012 by a First Amendment to the Asset Purchase Agreement (collectively, the "APA"), whereby the Receiver agreed to sell the Receivership Assets to TX Broadband. On the same

² See *Tatonka Capital Corp. v. Trillion Partners, Inc.*, 11-cv-01787-MSK-MJW, filed July 8, 2011 (D. Colo.).

³ See *Order Granting Motion To Appoint Receiver, Tatonka Capital Corp. v. Trillion Partners, Inc.*, Civil Action No. 11-cv-01787-MSK-MJW (D. Colo.) (entered July 27, 2011).

date, the Receiver filed a motion with the Court seeking approval for the sale of the Receivership Assets to TX Broadband.⁴ On October 26, 2012, the Court granted that motion, giving the Receiver authority to sell the Receivership Assets to TX Broadband.⁵

In accordance with the APA, TX Broadband Holding, Inc., the parent company of TXC, will acquire certain assets of Trillion, subject to the necessary approvals. The assets include all of the FCC Licenses, which would be assigned to TXC.

c. Ownership of the TXC

TX Broadband, the holding company for the proposed licensee, TXC, is owned by three entities that are currently creditors of Trillion. Following consummation, the largest share of TX Broadband will be held by GLC COF I. The remaining equity will be held by two other current creditors of Trillion: Global Leveraged Capital Primary Credit Fund, LLC (“GLC PCF”) and Tatonka. A chart depicting the ownership structure of TXC is set forth at Exhibit A hereto. Each of these entities is described in greater detail below.

GLC COF I: GLC COF I is an entity organized under the laws of the Cayman Islands as an Exempted Company with Limited Liability. The company currently has no officers and two directors, both of whom are citizens of the Cayman Islands. Because it is an investment fund, the company has no tangible assets or business headquarters. The majority of the revenues derived by GLC COF I are from investments in U.S. companies. The day-to-day management, operational and investment decisions for the fund are made by Global Leveraged Capital, LLC (“GLC”), a Delaware limited liability company, pursuant to a Management

⁴ See *Motion to Approve the Private Sale of All of Trillion’s Assets, or in the Alternative, Approval of Sales and Bidding Procedures for a Public Sale*, Civil Action No. 11-cv-01787-MSK-MJW (U.S. District Court for the District of Colorado) (filed August 27, 2012).

⁵ See *Tatonka Capital Corp. v. Trillion Partners, Inc.*, 11-cv-01787-MSK-MJW, “Order Approving the Private Sale of All of Trillion’s Assets,” filed October 26, 2012 (D. Colo.). A copy of this Order is Exhibit B hereto.

Agreement. GLC is ultimately controlled, in turn, by the three individuals, listed below, who are each citizens of the United States:

Name	Title	Ownership	Business Address	Phone No.
Thomas M. Benninger	Managing General Partner	33.333%	451 Jackson St. 2 nd Floor San Francisco, CA 94111	415-962-8515
Lee S. Buckner	Managing General Partner	33.333%	451 Jackson St. 2 nd Floor San Francisco, CA 94111	415-962-8515
Jeffrey J. Youle	Managing General Partner	33.333%	805 Third Avenue 20 th Floor New York, NY 10022	212-835-9955

GLC COF I will hold 63.81%, of the equity in TX Broadband. The equity is held by numerous investors, the substantial majority of which (62.1%) are citizens of or are organized in the United States.⁶ A total of 37.9% of the investment equity is held by non-U.S. citizens or entities organized under the laws of other countries. No single non-U.S. person or entity holds a 10% or greater share of GLC COF I. Under the terms of the Management Agreement referenced above, none of the fund's investors has the ability to control or be involved in the day-to-day business operations, activities, or decisions of GLC COF I. Accordingly, through application of the FCC's multiplier for equity ownership, less than 25% of the indirect equitable interests to be held in TXC will be attributable to non-U.S. individuals and entities (63.81 x 37.9 = 24.18%).⁷

⁶ One entity, JH Capital Partners II, LP ("JHCP"), a Delaware limited partnership, holds a 10.55% indirect attributable interest in the proposed licensee, TXC, through GLC COF I. This same entity also holds a 6.3% indirect interest in TXC through GLC PCF, and thus has an aggregate attributable interest in TXC of approximately 16.85%. All of the investment shares in JHCP are held by individuals who are citizens of the United States or entities in which all investors are U.S. citizens.

⁷ See, e.g., *BBC License Subsidiary L.P.*, 10 FCC Rcd 10968, 10973-74 (¶¶ 24-25) (1995).

GLC PCF: GLC PCF is a Delaware limited liability company managed by Global Leveraged Capital Advisors, LLC (“Advisors”), an affiliate of GLC. None of GLC PCF’s investors has the ability to control or be involved in the day-to-day business operations, activities, or decisions of GLC PCF. The company currently has no officers or directors. Because it is an investment fund, GLC PCF has no tangible assets or business headquarters. The majority of the revenues derived by GLC PCF are from investments in U.S. companies.

GLC PCF will hold 22.82% of TX Broadband. The equity in GLC PCF is held by numerous investors, all of whom are citizens of or are entities organized in the United States. One entity, Farallon Capital Partners LP (“FCP”), a California limited partnership, holds 66.667% of the equity interests in GLC PCF, giving it a 15.2% indirect attributable interest in the proposed licensee. More than 99% of FCP’s investors are U.S. persons.⁸

Tatonka: Tatonka is a corporation incorporated under the laws of the State of Colorado. Its headquarters are in Denver, Colorado. All of Tatonka’s officers and directors are U.S. citizens. The majority of the tangible property it holds is located in the United States, and it derives the greatest portion of its revenues from operations in the United States.

Tatonka will hold 13.37 % of the equity of TX Broadband. All of the owners of Tatonka are U.S. citizens or entities in which all investors are U.S. citizens.

II. GRANT OF THE RELIEF REQUESTED IS IN THE PUBLIC INTEREST

Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”), establishes a 25-percent threshold limitation on indirect, attributable non-U.S. investment in an entity that holds U.S. common carrier radio licenses under Title III of the Act, including

⁸ Farallon’s attributable interest in TXC is 15.21%, so that the very limited non-U.S. ownership in this entity increases the aggregate non-U.S. ownership in the proposed licensee to just 24.33% (24.18 + 0.15).

control “by any corporation organized under the laws of a foreign country.”⁹ This benchmark cannot be exceeded without a specific Commission finding that an interest in excess of the threshold is consistent with the public interest. For the past decade and a half, the determination of the public interest in such circumstances has been governed by the Commission’s 1997 finding that it would serve the public interest to allow indirect foreign ownership in U.S. Title III common carrier licensees in excess of the 25% threshold set forth in Section 310(b)(4) of the Act where such interests are held by entities that are based in or organized under the laws of countries that are members of the World Trade Organization (“WTO”).¹⁰ This presumption arises from mutual commitments made by WTO members in the context of the WTO Basic Telecom Agreement, as well as increased competition in the global marketplace. This approach benefits U.S. consumers by fostering the availability of additional capital to U.S. companies from non-U.S. sources, encouraging additional competition in the U.S. market for telecommunications services, allowing the Commission mechanisms for preventing anticompetitive conduct in the provision of international services and facilities more effectively, and promoting the opening of foreign markets to U.S. carriers. Accordingly, the Commission applies a presumption that non-U.S. investment that exceeds the 25% benchmark is permitted when that investment is attributable to investors from countries that are members of the WTO and grants permission to exceed the benchmark where there is no evidence to rebut that presumption.

⁹ See 47 U.S.C. § 310(b)(4) (“No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by ... any corporation directly or indirectly controlled ... by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.”)

¹⁰ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, 12 FCC Red 23891, 23896-97 (¶¶ 8-12) & 23913 (¶ 50) (1997) (“*Foreign Participation Order*”).

Through this petition, TXC seeks a ruling permitting it to be indirectly controlled by GLC COF I, a non-U.S. investment entity established under the laws of the Cayman Islands. As outlined above, GLC COF I will hold 63.81% of the equity in TX Broadband, the U.S. holding company that owns 100% of TXC. Although GLC COF I is a Cayman Islands entity, the substantial majority of the investors owning shares in the fund are currently U.S. citizens, such that the application of the multiplier with respect to the indirect equity ownership in TXC falls below the 25% statutory benchmark. As stated above, actual management and operational control of TX Broadband and TXC is exercised by a manager, GLC, pursuant to a Management Agreement. All major day-to-day decisions concerning GLC COF I's investment in TX Broadband and TXC are made by GLC, which is itself controlled by its officers and owners, all of whom are U.S. citizens.

As discussed above, it is well established that applicants for a declaratory ruling under Section 310(b)(4) of the Act are entitled to a presumption that non-U.S. investment is in the public interest where the home market of the investing entity is a WTO member country. The Cayman Islands, where GLC COF I is organized, are a protectorate of the United Kingdom, a WTO member country, and therefore are considered a WTO signatory for purposes of the FCC's foreign ownership analysis.¹¹ Accordingly, as the sole reason that TXC is required to seek a declaratory ruling under Section 310(b)(4) of the Act is the presence of the Cayman

¹¹ See *Cable & Wireless USA, Inc.*, 15 FCC Red 3050, 5052 & n.14 (¶ 7) (IB 2000) (relying on an opinion of the U.S. Department of State to conclude that the 1994 Marrakesh Agreement Establishing the WTO applies to the United Kingdom's overseas territories) (“*Cable & Wireless*”) and *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom, Inc.*, 18 FCC Red 23140, 23152 & n.80 (¶ 25) (IB/WCB/WTB 2003) (specifically applying the holding in *Cable & Wireless* to a Cayman Islands entity). See also *SkyTerra Communications, et al.*, 25 FCC Red 3059, 3072 (¶ 22) & n.83 (IB/OET/WTB 2010); *Mobile Satellite Ventures Subsidiary, et al.*, 23 FCC Red 4436, 4452 & n.62 (¶ 7) (Appendix B) (2008).

Islands entity in the control chain as its indirect majority shareholder, TXC is entitled to the benefit of this public interest presumption in connection with this Petition.

As detailed above, in all other respects, the interests held through GLC COF I and the other indirect investors in TXC are U.S.-based. The fund itself derives a majority of its revenues through operations based in the United States. The day-to-day management, operational and investment decisions for the fund are made by GLC, a U.S. entity organized under the laws of the State of Delaware. The majority of the equity in the fund itself is held by U.S. citizens or entities organized and based in the United States, and the remaining indirect interests in TXC are held by U.S. investors through GLC PCF and Tatonka. Finally, through the Management Agreement, the management decisions for GLC COF I are made by GLC, which is controlled by three U.S. citizens. Under similar circumstances, the Commission has found that a Cayman Islands entity may also be deemed to have its “principal place of business” in the United States for purposes of the 310(b)(4) ownership analysis.¹²

The Commission has found that the public interest presumption favoring approval of investment from WTO member countries could be overcome only in "exceptional circumstances" involving national security or law enforcement concerns,¹³ or where control of a U.S. common carrier licensee by a foreign carrier would pose a risk to competition due to the foreign carrier's ability to exercise market power in order to benefit its U.S. affiliate.¹⁴ The Commission found that it is "highly unlikely that a carrier from a WTO Member country that

¹² See *Mobile Satellite Ventures Subsidiary, et al.*, 23 FCC Red 4436, 4452 & n.62 (¶ 7) (Appendix B) (2008).

¹³ See *Foreign Participation Order*, 12 FCC Rcd at 23940-41 (¶ 113).

¹⁴ See *Foreign Participation Order*, 12 FCC Rcd at 23913-15 (¶¶ 51-54).

has open, competitive markets and a pro-competitive regulatory regime in place could pose a very high risk to competition.”¹⁵

No adverse circumstances exist with respect to the proposed transaction. Operation of TXC under the control of GLC COF I and its U.S.-based management should pose no national security or law enforcement concerns. In addition, neither GLC COF I nor any other party to the application is a foreign carrier, or is controlled by or under common control with a foreign carrier. The acquisition of the FCC licensees subject to assignment therefore will not result in any increased concentration in any market for telecommunications services in the United States and will not otherwise result in a foreign carrier being able to exercise market power to favor a U.S. affiliate.

Moreover, grant of the requested relief will affirmatively advance the public interest by allowing the business established by Trillion to emerge from receivership without interruption of service to its customers. Under a new corporate structure, the assets assembled to provide E-Rate broadband services to schools and consortia around the country will continue to be used to provide critical connectivity for these users.

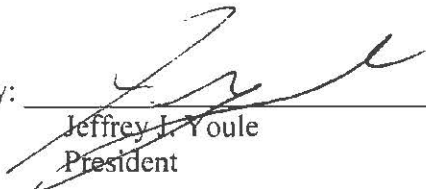
¹⁵ See *Foreign Participation Order*, 12 FCC Rcd at 23914 (¶ 52).

III. CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that a declaratory ruling be issued on an expedited basis, subject to standard conditions, that it is in the public interest for TX Communications LLC to be indirectly controlled by an entity organized in the Cayman Islands as described herein.

Respectfully submitted,

TX COMMUNICATIONS LLC

By: 
Jeffrey I. Youle
President

Dennis P. Corbett
David S. Keir
Nancy A. Ory
Laura M. Berman

Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006-1809
(202) 429-8970

Counsel to TX Communications LLC

November 21, 2012

EXHIBIT A

Ownership Structure Chart

Ownership Chart for Interests Held in Proposed FCC Licensee, TX Communications LLC

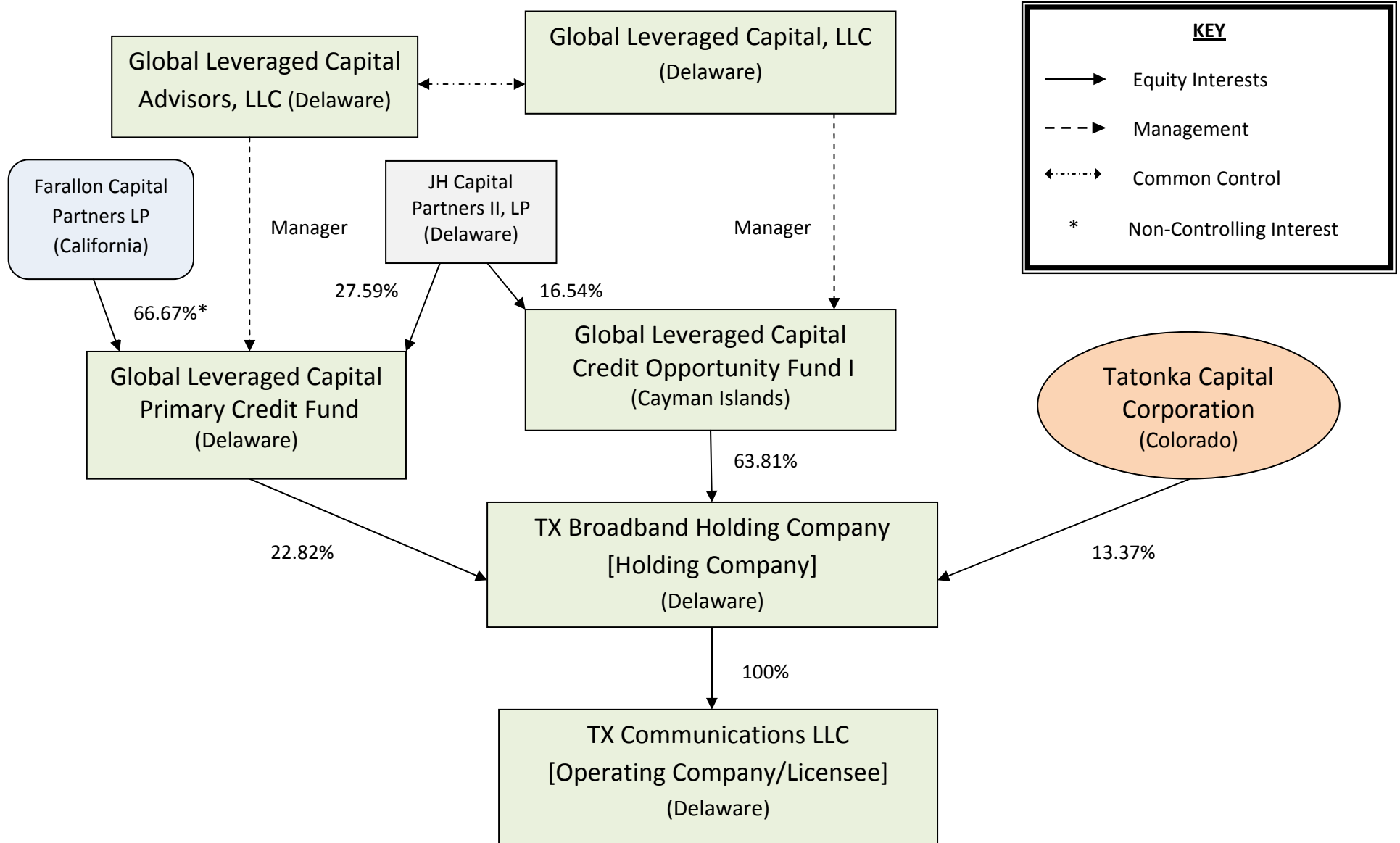


EXHIBIT B

Court Order Approving Private Sale of Trillion's Assets

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 1:11-cv-01787-MSK-MJW

TATONKA CAPITAL CORPORATION,

Plaintiff,

v.

TRILLION PARTNERS, INC.,

Defendant.

ORDER APPROVING THE PRIVATE SALE OF ALL OF TRILLION'S ASSETS

The Receiver's Motion For An Order Approving The Private Sale of All of Trillion's Assets, Or In The Alternative, Approval Of Sales and Bidding Procedures For A Public Sale (the "Sale Motion") [Docket 70]; filed by Byron P. Smyl, in his capacity as receiver (the "Receiver") of all of the operations and assets (the "Receivership Estate") of Trillion Partners, Inc. ("Trillion") having come before me, due notice having been provided to all interested parties, upon determination by this Court that no hearing is necessary since no objections were filed,

IT IS THEREFORE ORDERED:

1. The Motion is **GRANTED**.
2. The Receiver of the Receivership Estate, has good, marketable and valid title to, or, in the case of property leased or licensed by Trillion, a valid and subsisting leasehold interest in or a legal, valid and enforceable licensed interest in or right to use, and pursuant to this Order has the right to sell, transfer, convey, assign and deliver, the Purchased Assets to TX Broadband Holding

Co. (or its designee or assignee) (the “Purchaser”) on the terms of this Order.

3. The Receiver is authorized: (a) to consummate the NewCo Private Sale¹; (b) to sell the Purchased Assets to Purchaser under the terms and conditions of the APA (including, without limitation, Federal Communications Commission approval) and to perform his obligations and undertakings thereunder; and (c) to perform under the assignment and assumption of the Assumed Contracts and Assumed Leases to Purchaser. No Excluded Assets, if any, shall be sold or assigned to Purchaser. The Receiver is also authorized to execute, deliver, and perform under and consummate, the APA, together with all additional instruments and documents desirable to implement the APA and to take all further actions (a) reasonably requested by Purchaser to assign, transfer and convey to Purchaser the Purchased Assets, the Assumed Contracts and/or the Assumed Leases; (b) appropriate to the performance of its obligations under the APA; and (c) as may be reasonably requested by Purchaser to consummate the NewCo Private Sale under the APA, and may modify the APA and schedules to make immaterial changes, without further order of this Court.

4. This Order and the APA shall bind in all respects the Purchaser, the Receiver, the Receivership Estate and Trillion and their affiliates, all creditors (known or unknown) of any of the Receiver, Receivership Estate or Trillion, all interested Persons and entities, and their respective successors and assigns, including, but not limited to, any party asserting a claim or Claims (defined below) relating to the Purchased Assets.

¹ As used herein the term “NewCo Private Sale” has the meaning given to it in the Sale Motion. Other capitalized terms used herein and not defined herein have the meanings given to them in the Asset Purchase Agreement (itself, the “APA”) between the Receiver and the Purchaser in substantially the form of Exhibit A to the Sale Motion (as modified in a manner not prohibited by the terms of this Order).

5. The transfer of the Purchased Assets to Purchaser shall (a) be a valid, legal and binding transfer; (b) vest in Purchaser all right, title and interest of the Receiver, the Receivership Estate and Trillion in the Purchased Assets; and (c) convey good, marketable and valid title to, or, in the case of property leased or licensed, a valid and subsisting leasehold interest in or a legal, valid and enforceable licensed interest in or right to use, all of the Purchased Assets, free and clear of all interests, charges, liens, claims, mortgages, subleases, hypothecations, deeds of trust, pledges, security interests, options, rights of use, first offer or first refusal, easements, servitudes, restrictive covenants, encroachments, encumbrances, or similar restrictions of any kind, whether arising before or after the Receivership Date (as defined in the Sale Motion), whether at law or in equity, including all claims or rights based on any successor or transferee liability, all labor and employment claims, all environmental claims, all change in control provisions, all rights to object or consent to the transfer of the Purchased Assets to Purchaser or to be excused from accepting performance by Purchaser or performing for Purchaser under any Assumed Contracts or Assumed Leases and all rights at law or in equity (collectively, the “Claims”), except Assumed Liabilities and Permitted Encumbrances.

6. All Claims shall attach to the proceeds of the NewCo Private Sale ultimately attributable to the Purchased Assets against or in which such Claims are asserted, or other so dedicated funds held by the Receiver, in the order of their priority, with the same force and effect which they now have as against the Purchased Assets, subject to any rights, claims and defenses the Receiver may possess. Purchaser shall have no liability on account of the Claims, except to the extent of any Assumed Liabilities or Permitted Encumbrances under the APA.

7. Except as expressly provided in the APA, all Persons (and their successors and

assigns), including, but not limited to, all debt holders, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders, customers, employees, trade creditors, litigation claimants and other creditors, holding Claims (legal or equitable, secured or unsecured, known or unknown, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated), arising under, in connection with or in any way referring to, Trillion or the Receivership Estate, ownership or operation of the Purchased Assets prior to Closing, or the sale of the Purchased Assets to Purchaser, are forever barred, estopped and enjoined from asserting such Claims against Purchaser, its successors or assigns, its property or the Purchased Assets.

8. This Order: (a) shall be effective as a determination that, as of the Closing, (i) no Claims (except Assumed Liabilities and Permitted Encumbrances) may be asserted against the Purchaser, its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), whether or not due and payable as of the Closing, (ii) the Purchased Assets shall have been transferred to Purchaser free and clear of all Claims and (iii) the conveyances described herein have been effected; and (b) is binding upon and governs the acts of all Persons and entities, including, without limitation, filing and title agents and companies, registrars of intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other Persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or record or release any documents or instruments, or who may be required to report or insure any title or state of title in any lease; and each of the foregoing is directed to accept for filing all documents and instruments appropriate to consummate the APA.

9. If any Person or entity that has filed financing statements, mortgages, mechanic's liens or other similar documents evidencing Claims against the Purchased Assets shall not have delivered to the Receiver prior to the Closing of the NewCo Private Sale, in proper, executed form for filing, termination statements, instruments of satisfaction, releases of all interests (collectively, the "Releases") that the Person or entity has with respect to Trillion and the Receivership Estate or the Purchased Assets, then only with regard to the Purchased Assets that are purchased by Purchaser pursuant to the APA and this Order: (a) Receiver is authorized to execute and file such Releases on behalf of the person or entity with respect to the Purchased Assets; and (b) Purchaser is authorized to file, register or otherwise record a certified copy of this Order, which, shall constitute conclusive evidence of the release of all Claims against the applicable Purchased Assets. This Order is deemed to be in recordable form sufficient to be placed in any filing system or office.

10. After the Closing of the NewCo Private Sale, no holder of any Claim or other Person shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to any such Claim, or based on any actions the Receiver, the Receivership Estate or Trillion, their present or former agents, servants, officers, directors, representative or employees (collectively, the "Trillion Agents") may take. All Persons, including, without limitation, Trillion and the Trillion Agents are permanently enjoined from taking any action to adversely affect the APA, this Order or the operation of the Purchaser's business or its quiet enjoyment of the Purchased Assets, or from interfering with or taking action to reduce the value of any or all Purchased Assets.

11. The Receiver's assumption and assignment to the Purchaser of all of the Receiver's, the Receivership Estate's and/or Trillion's right, title and interest in or under the

Assumed Contracts and Assumed Leases are approved. The Receiver shall be deemed to have assumed and assigned all Assumed Contracts and Assumed Leases, and the Purchaser to have assumed each of the Assumed Liabilities in accordance with the terms and conditions of the APA, effective only upon the Closing of the NewCo Private Sale. Further, for purpose of clarity, the Assumed Contracts and Assumed Leases are part of the Purchased Assets.

12. The Assumed Contracts and the Assumed Leases shall be transferred to, and remain in full force and effect for the benefit of Purchaser in accordance with their respective terms, notwithstanding any provision thereof that prohibits, restricts or conditions such transfer. Purchaser will be responsible to pay all amounts accruing on and after the Closing under the Assumed Contracts and Assumed Leases. Purchaser shall have no liability or obligation on account of any due or accrued amount under an Assumed Contract or an Assumed Lease prior to the Closing Date (whether billed or unbilled), except to the extent of any Assumed Liability under the APA. Purchaser retains all of its rights under Sections 8.1 and 8.2 of the APA.

13. The NewCo Private Sale is not a bulk sale, and no bulk sales law shall apply.

14. The Purchaser is not a continuation of the Receiver, the Receivership Estate or Trillion. No common identity of incorporators, directors or stockholders exists between the Purchaser and the Receivership Estate. The NewCo Private Sale is not being entered into fraudulently and the consideration paid by the Purchaser for the Purchased Assets is fair and reasonable. The APA was negotiated, and has been entered into in good faith, at arm's length bargaining positions.

15. Absent stay pending appeal, Receiver and Purchaser will be acting in good faith, in closing the NewCo Private Sale after entry of this Order and this is a receivership action and thus

pursuant to Federal Rule of Civil Procedure 62(a)(1) the stay of enforcement by Federal Rule of Civil Procedure Rule 62(a) does not apply and the parties may close the NewCo Private Sale upon entry of this Order.

16. The failure specifically to include any particular provisions of the APA or any related agreements in this Order shall not diminish the effectiveness of such provision, it being the intent of this Court, the Receiver and the Purchaser that the APA and any related agreements are authorized and approved herein in their entirety with such amendments as are consistent herewith.

17. The APA may be modified or supplemented in accordance with its terms, without further order of this Court absent material change to the terms of the APA or this Order.

18. The District Court shall retain jurisdiction to, among other things, interpret, enforce and implement the provisions of this Order and the APA, all amendments thereto, any waivers and consents thereunder (and of all related agreements), to adjudicate disputes related to this Order or the APA and to enter any orders regarding Assumed Contracts or Assumed Leases.

19. If amounts become due from Receiver to Purchaser pursuant to Section 7.3 of the APA, such amounts shall have priority as expenses of administration ahead of all others and shall be paid promptly. Receiver shall not disburse any of the sales proceeds until all amounts due pursuant to Section 7.3 of the APA have been paid or escrowed. In the event of disputes as to amounts of obligations due to Purchaser, undisputed amounts will be paid and disputed amounts claimed shall be escrowed for Purchaser's sole benefit until resolution of such dispute. Subject to the foregoing, the Receiver is authorized to pay from sales proceeds, all reasonable and customary closing costs. Any balance of sales proceeds shall be placed in the Receiver's receivership account for distribution per the Order Granting Motion To Appoint Receiver dated July 27, 2011.

20. The relief granted herein is in the best interests of the Receivership Estate.

DATED this 26th day of October, 2012.

BY THE COURT:

A handwritten signature in black ink that reads "Marcia S. Krieger". The signature is written in a cursive style with a horizontal line underneath it.

Marcia S. Krieger
United States District Court