

AMENDED & RESTATED

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
MIP IV MidWest Fiber, LLC	)	
	)	File No. ISP-PDR-20190304-00002
Petition for Declaratory Ruling Under Section	)	
310(b)(4) of the Communications Act of 1934,	)	
as amended	)	

**AMENDED AND RESTATED  
PETITION FOR DECLARATORY RULING UNDER SECTION 310(b)(4)  
OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED**

MIP IV MidWest Fiber, LLC (“MIP IV MW”), together with its affiliates, pursuant to Section 1.5000 *et seq.* of the Federal Communications Commission (“Commission”) rules, hereby requests that the Commission issue a declaratory ruling under Section 310(b)(4) of the Communications Act, as amended (the “Act”), finding that 100 percent indirect foreign ownership of MIP IV MW, and any of MIP IV MW’s subsidiaries and affiliates, whether currently existing or subsequently formed or acquired, is in the public interest.

This Petition is being submitted in connection with an application seeking the Commission’s consent to transfer control of PEG Bandwidth IL, LLC (“PEG IL”), which holds common carrier microwave licenses, from Uniti Fiber LLC (“Uniti Fiber”) to MIP IV MW. Because MIP IV MW is 100 percent controlled by a foreign entity, this change in ownership of PEG IL requires the Commission’s approval under Section 310(b)(4) of the Act for controlling foreign interests.

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### **I. BACKGROUND**

This Petition relates to a multi-step transaction (the “Transaction”) resulting in the transfer of control of PEG IL from Uniti Fiber to MIP IV MW. The Transaction will occur pursuant to a Purchase and Sale Agreement by and among Uniti Fiber, MIP IV MW, and PEG IL entered into as of January 10, 2019. All steps of the Transaction are anticipated to close concurrently.

In the first step of the Transaction, the existing fiber optic network (dark fiber but not any electronics to “light” the fiber optic network) and real property interests related to the PEG IL business in the states of Illinois, Indiana, Iowa and Missouri (the “PEG IL Business”) will be transferred to PEG IL’s affiliate, Uniti Leasing MW LLC (“Landlord”). Landlord will concurrently lease back the fiber optic network and real property interests to PEG IL pursuant to an affiliate lease (the “PEG IL Fiber Asset Lease”). PEG IL will continue to “light” the fiber and provide telecommunications services to customers. Immediately prior to closing, MIP IV MW will enter into a master lease agreement (the “Master Lease”) with Landlord governing the fiber optic network and real property interests held by Landlord, including those that are the subject of the PEG IL Fiber Asset Lease. Immediately thereafter, MIP IV MW will acquire 100 percent of the limited liability company interests in PEG IL from Uniti Fiber. Upon the acquisition of PEG IL, the PEG IL Fiber Asset Lease will be incorporated into and made subordinate to the Master Lease. The Master Lease will be a long-term “triple net lease” whereby MIP IV MW will have operational control over the leased assets thereunder and will be responsible for substantially all of the costs of maintaining and operating such assets.

Following the Transaction steps described above, PEG IL will continue to provide services to customers, using the fiber network and related assets leased from Landlord. Further,

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MIP IV MW (i) will own 100% of the equity of PEG IL and will thereby have legal title and interest in the operations of the PEG IL Business in the states of Illinois, Indiana, Iowa and Missouri, (ii) will have operational control of the fiber optic network and real property interests of the PEG IL Business in the states of Illinois, Indiana, Iowa and Missouri pursuant to the Master Lease with Landlord, and (iii) will thereby control through the Master Lease or own the entirety of the PEG IL Business.

Subject to a separate application being filed concurrently with the Commission, MIP IV MW and Uniti Group LP have entered into agreements on January 10, 2019, with MNA Holdings, LLC and Bluebird Media, LLC, among others, pursuant to which MIP IV MW will acquire control of Missouri Network Alliance, LLC d/b/a Bluebird Network, LLC (“MNA”), which provides transport and Internet services as a “carrier’s carrier” to wholesale and enterprise customers in Missouri, Iowa, Oklahoma, Kansas and Nebraska. MNA also provides tandem switching and transport services for interexchange carriers in Missouri pursuant to interstate and intrastate tariffs. The Master Lease referenced above will also govern the fiber optic network and associated real property interests currently held by Bluebird, which will be transferred to Landlord as described in that Commission application. MIP IV MW’s acquisition of PEG IL is contingent on the closing of the Bluebird transaction. MIP IV MW and Uniti Fiber request concurrent processing of these applications for purposes of evaluating MIP IV MW as the purchaser in both transactions.

**II. INFORMATION REQUIRED BY 47 C.F.R. § 1.5001**

**Section 1.5001(a): Contact Information, FRN, Place of Organization, and Type of Business**

Name: MIP IV MidWest Fiber, LLC  
FRN: 0028212827  
Address: 125 W. 55th Street, Level 15  
New York, NY 10019  
Telephone: (212) 231-1000  
Citizenship: Delaware  
Type of Business: Limited Liability Company

Officer certifying to the information contained in the Petition: Anton Moldan,  
Managing Director

**Section 1.5001(b): Legal Counsel Contact**

Contact: James H. Barker  
Elizabeth R. Park  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW  
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Washington, D.C. 20004-1304  
(202) 637- 2200  
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**Section 1.5001(c)(1): Licensees Covered By Declaratory Ruling**

MIP IV MW seeks a declaratory ruling for itself and all of its commonly controlled U.S. organized subsidiaries and affiliates, whether currently existing or acquired or formed subsequently, so long as the foreign ownership remains in compliance with the terms and conditions of the ruling. *See* 47 C.F.R. § 1.5004(b). If granted, MIP IV MW would be authorized with respect to common carrier fixed point-to-point microwave licenses currently held by PEG IL.

**Section 1.5001(c)(2): Associated Applications**

MIP IV MW files this Petition concurrently with an application for the transfer of control of PEG IL from Uniti Fiber to MIP IV MW, in connection with PEG IL's common carrier microwave licenses.

**Section 1.5001(d): Type of Declaratory Ruling**

MIP IV MW is requesting a declaratory ruling under Section 310(b)(4) of the Act and Section 1.5000(a)(1) of the Commission's rules. Additionally, pursuant to Section 1.5004(b), MIP IV MW is also requesting that any declaratory ruling issued apply to all of MIP IV MW's subsidiaries and affiliates, whether currently existing or subsequently formed or acquired.

**Sections 1.5001(e) and (g) – Direct Equity/Voting Interests of 10 Percent or More**

The following entity will directly hold 10 percent or more of the equity or voting interest in MIP IV MW:

Name:	MIP IV MidWest Fiber Parent, LLC
Address:	125 W. 55th Street, Level 15 New York, NY 10019
Citizenship:	Delaware
Principal Business:	Holding company for telecommunications assets
Percent Held:	100 percent equity/100 percent voting

**Sections 1.5001(f) and (g) – Indirect Equity/Voting Interests of 10 Percent or More**

The following entities will indirectly hold an interest in MIP IV MW of 10 percent or more:

Name:	MIP IV (FCC) AIV, L.P.
Address:	125 W. 55th Street, Level 15 New York, NY 10019

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Citizenship: Delaware  
Principal Business: Investment Management Company  
Percent Held: 100 percent equity/100 percent voting (indirectly through ownership of MIP IV MidWest Fiber Parent, LLC)

Name: MIP IV (ECI) GP, LLC  
Address: 125 W. 55th Street, Level 15  
New York, NY 10019

Citizenship: Delaware  
Principal Business: Investment Management Company  
Percent Held: 0.2 percent equity/100 percent voting (General Partner of MIP IV (FCC) AIV, L.P.)

Two Macquarie-controlled U.S. limited liability companies (“Feeder LLCs”) will be formed prior to the closing of the Transaction through which certain classes of investors will hold their economic interests in MIP IV (FCC) AIV, L.P. These LLCs are expected to hold approximately 24% and approximately 42% of the limited partner interests in MIP IV (FCC) AIV, L.P., subject to ultimate fundraising, respectively. The limited liability company interests in the Feeder LLCs will be insulated in accordance with Section 1.5003 of the Commission’s rules.

These limited partnership interests in MIP IV (FCC) AIV, L.P. will be insulated in accordance with Section 1.5003 of the Commission’s rules, and therefore the voting interest held by each of the Feeder LLCs will, based on current expectations, be deemed to be approximately 24% and 42%, respectively, under the FCC’s rules.

Other Macquarie-controlled entities also may hold indirect insulated limited partnership interests in MIP IV (FCC) AIV, L.P., which as of the closing of the Transactions, will represent less than 25% in the aggregate. Each of these Macquarie-controlled investment vehicles will be organized in the United States, Canada or the Cayman Islands. Any non-U.S. Macquarie entities are expected to hold under 20% in the aggregate of MIP IV (FCC) AIV, L.P. and will ultimately be controlled by Macquarie Group Limited (“MGL”), a publicly traded company incorporated in Australia. To the extent these Macquarie entities (both U.S. and non-U.S.) are investment fund limited partnerships or limited liability companies, they will be insulated in accordance with Section 1.5003 of the Commission’s rules.<sup>1</sup>

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<sup>1</sup> The limited partner investors in MIP IV (FCC) AIV, L.P. are still being identified. MIP IV MW seeks approval for investments made through funds that it controls that may be formed in the Canada or the Cayman Islands in the event certain Macquarie funds participate in this investment.

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As of the closing of the Transaction, Macquarie-controlled entities in the aggregate are expected to hold approximately 25% of the equity of MIP IV (FCC) AIV, L.P., but could increase over time.<sup>2</sup>

There are no other individuals or entities that will hold a 10% or greater voting or equity interest in MIP IV (FCC) AIV, L.P.

Name: Macquarie Infrastructure Partners Inc. (“MIP Inc.”)  
Address: 125 W. 55th Street, Level 15  
New York, NY 10019  
Citizenship: Delaware  
Principal Business: Investment Management Company  
Percent Held: 0 percent equity/100 percent voting (Through a management agreement, MIP IV (ECI) GP, LLC delegates certain duties to Macquarie Infrastructure Partners Inc.)

Name: Macquarie Infrastructure and Real Assets Inc. (“MIRA Inc.”)  
Address: 125 W. 55th Street, Level 15  
New York, NY 10019  
Citizenship: Delaware  
Principal Business: Investment Management Company  
Percent Held: <5% percent equity/100 percent voting (indirectly through ownership of Macquarie Infrastructure Partners Inc. and control of MIP IV (ECI) GP, LLC)

MIRA Inc. is the sole member of MIP IV (ECI) GP, LLC and the sole shareholder of MIP Inc. MIP Inc. is the manager and attorney-in-fact of the private equity fund vehicles described above that will invest in MIP IV (FCC) AIV, L.P. Each of MIRA Inc. and MIP Inc. are investment advisors registered with the United States Securities and Exchange Commission.

Name: Macquarie Holdings (U.S.A.), Inc.  
Address: 125 W. 55th Street, Level 15  
New York, NY 10019  
Citizenship: Delaware  
Principal Business: Holding Company  
Percent Held: <5 percent equity/100 percent voting (indirectly through ownership of Macquarie Infrastructure and Real Assets Inc.)

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<sup>2</sup> Out of an abundance of caution, MIP IV MW seeks advance approval for Macquarie-controlled interests to hold up to 100% of the equity interests in MIP IV FCC AIV, L.P., pursuant to Section 1.5001(k).

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Name: Macquarie Equities (US) Holding Pty Limited  
Address: 50 Martin Place  
Sydney, NSW 2000, Australia  
Citizenship: Australia  
Principal Business: Holding Company  
Percent Held: <5 percent equity/100 percent voting (indirectly through ownership of Macquarie Holdings (U.S.A.), Inc.)

Name: Macquarie Group (US) Holdings No. 1 Pty Limited  
Address: 50 Martin Place  
Sydney, NSW 2000, Australia  
Citizenship: Australia  
Principal Business: Holding Company  
Percent Held: <5 percent equity/100 percent voting (indirectly through ownership of Macquarie Equities (US) Holding Pty Limited)

Name: Macquarie Corporate International Holdings Pty Limited  
Address: 50 Martin Place  
Sydney, NSW 2000, Australia  
Citizenship: Australia  
Principal Business: Holding Company  
Percent Held: <5 percent equity/100 percent voting (indirectly through ownership of Macquarie Group (US) Holdings No. 1 Pty Limited)

Name: Macquarie Corporate Holdings Pty Limited  
Address: 50 Martin Place  
Sydney, NSW 2000, Australia  
Citizenship: Australia  
Principal Business: Holding Company  
Percent Held: <5 percent equity/100 percent voting (indirectly through ownership of Macquarie Corporate International Holdings Pty Limited)

Name: Macquarie Financial Holdings Pty Limited  
Address: 50 Martin Place  
Sydney, NSW 2000, Australia  
Citizenship: Australia  
Principal Business: Holding Company  
Percent Held: <5 percent equity/100 percent voting (indirectly through ownership of Macquarie Corporate Holdings Pty Limited)

Name: Macquarie Group Limited  
Address: 50 Martin Place  
Sydney, NSW 2000, Australia  
Citizenship: Australia



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Principal Business: Investments  
Percent Held: <5 percent equity/100 percent voting (indirectly through ownership of Macquarie Financial Holdings Pty Limited)

To the best knowledge of MIP IV MW and its affiliates, no individual or entity holds directly or would be treated as indirectly holding 10% or more of the outstanding capital or voting stock, or a controlling interest, in Macquarie Group Limited.

### **Sections 1.5001(h)(1), (i) and (k) – Estimate of Aggregate Foreign Ownership and Requests for Specific and Advance Approval**

Upon the acquisition by MIP IV MW, non-U.S. entities would indirectly control PEG IL. MIP IV MW is ultimately controlled by MGL. MIP IV MW seeks approval for the 100% equity and voting interests of MGL and its Australian subsidiaries identified above in connection with the indirect controlling interests in PEG IL that will result from the Transaction. The request in this Petition assumes that the ownership of MGL by non-U.S. individuals and entities through publicly traded shares exceeds 25 percent. The only holder of greater than five percent of MGL is BlackRock Group, a U.S. investment fund, which as of March 2019 was registered with approximately 6% of outstanding shares of MGL. There are no non-U.S. holders of MGL for whom specific approval is sought in this Petition.

In addition, the non-U.S. individuals and entities directly or indirectly holding insulated limited partner interests of MIP IV (FCC) AIV, L.P. hold an approximately 76% ownership interest in the aggregate. Some non-U.S. individuals or entities holding interests in MIP IV (FCC) AIV, L.P. will hold their interest indirectly through insulated interests in the Feeder LLC entities or through other insulated Macquarie-managed vehicles. For purposes of this Petition, the aggregate foreign ownership in MIP IV (FCC) AIV, L.P. has been calculated without regard to whether the interest is held through a Feeder LLC entity or an insulated Macquarie managed vehicle (i.e., any indirect interest in MIP IV (FCC) AIV, L.P. has been treated as if it were held

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directly). No non-U.S. individual or entity would hold a 10% or greater equity or voting interest in MIP IV (FCC) AIV, L.P., and all such individuals or entities will hold insulated interests. Therefore, no specific approval is requested for any particular non-U.S. interest holders in MIP IV (FCC) AIV, L.P., except for Macquarie-controlled interests.

MIP IV MW requests advance approval for up to 100% aggregate foreign ownership in MIP IV (FCC) AIV, L.P., including up to 100% of the voting and equity interests held by Macquarie-controlled entities, out of an abundance of caution, to cover any future changes to ownership in the insulated equity or voting interests in MIP IV (FCC) AIV, L.P. MIP IV MW or its affiliates, as appropriate, will seek Commission approval prior to any changes in ownership that would require any specific approval under Section 1.5001(i).

### **Section 1.5001(h)(2) – Ownership and Control Structure Diagram**

Exhibit A depicts the ownership and control structure of MIP IV MW.

### **III. GRANT OF THIS PETITION IS IN THE PUBLIC INTEREST**

The public interest will be served by the Commission issuing a declaratory ruling approving the indirect foreign ownership of MIP IV MW, its subsidiaries and affiliates, entities currently or existing or subsequently formed or acquired, including PEG IL. The Commission has recognized that foreign investment has been and will continue to be an important source of financing for U.S. telecommunications companies, fostering technical innovation, economic growth, and job creation.<sup>3</sup> For more than a decade, the Commission has consistently permitted non-U.S. individuals and entities to hold up to 100 percent of the equity

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<sup>3</sup> See *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Second Report and Order, 28 FCC Rcd 5741, 5744 (2013).

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and voting power in holders of FCC licenses subject to Section 310(b)(4) of the Act.<sup>4</sup>

Australia is a member of the World Trade Organization and, as such, there is no basis to conclude that the proposed foreign control over PEG IL's common carrier microwave licenses would harm competition in the U.S. market. Moreover, the proposed transactions will not pose any national security or law enforcement issues or concerns. MGL, through its U.S. affiliates, has invested in a wide range of businesses in the U.S., including in infrastructure companies with a focus on utilities and energy, transportation, communications infrastructure and waste management.

In fact, grant of the petition for declaratory ruling will affirmatively advance the public's interest and increase competition. Upon the consummation of the proposed transactions, PEG IL's day-to-day operations will be managed by Bluebird, which has extensive expertise in the region operating telecommunications networks and providing telecommunications services substantially similar to those provided by PEG IL. Bluebird's management will be supplemented by the management capabilities of MIRA. Specifically, MIRA seeks to grow PEG IL's business in the region and expand PEG IL's high-speed connectivity offerings, enabling PEG IL to better meet the needs of its customers and thus better compete in the telecommunications marketplace. MIRA and its affiliates are experienced, responsible asset managers and operators of comparable infrastructure companies, including communications and utilities companies, and will be able to leverage their considerable track-record to effectively manage its investment in PEG IL.

Thus, issuance of the requested declaratory ruling will benefit the public interest.

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<sup>4</sup> See, e.g., *Intelsat, Ltd., Transferor, and Zeus Holdings Ltd., Transferee*, 19 FCC Rcd 24820 (2004); *Comsat General Corp.*, 19 FCC Rcd 21216 (2004); *Voicestream Wireless Corp.*, 16 FCC Rcd 9779 (2001).

**IV. CONCLUSION**

For the reasons set forth herein, MIP IV MW and its affiliates respectfully request that the Commission issue a declaratory ruling that the public interest will be served by authorizing 100 percent indirect foreign ownership structure for MIP IV MW and all of MIP IV MW's subsidiaries and affiliates, whether currently existing or subsequently formed or acquired.

Respectfully submitted,

**MIP IV MIDWEST FIBER, LLC**

/s/ James H. Barker

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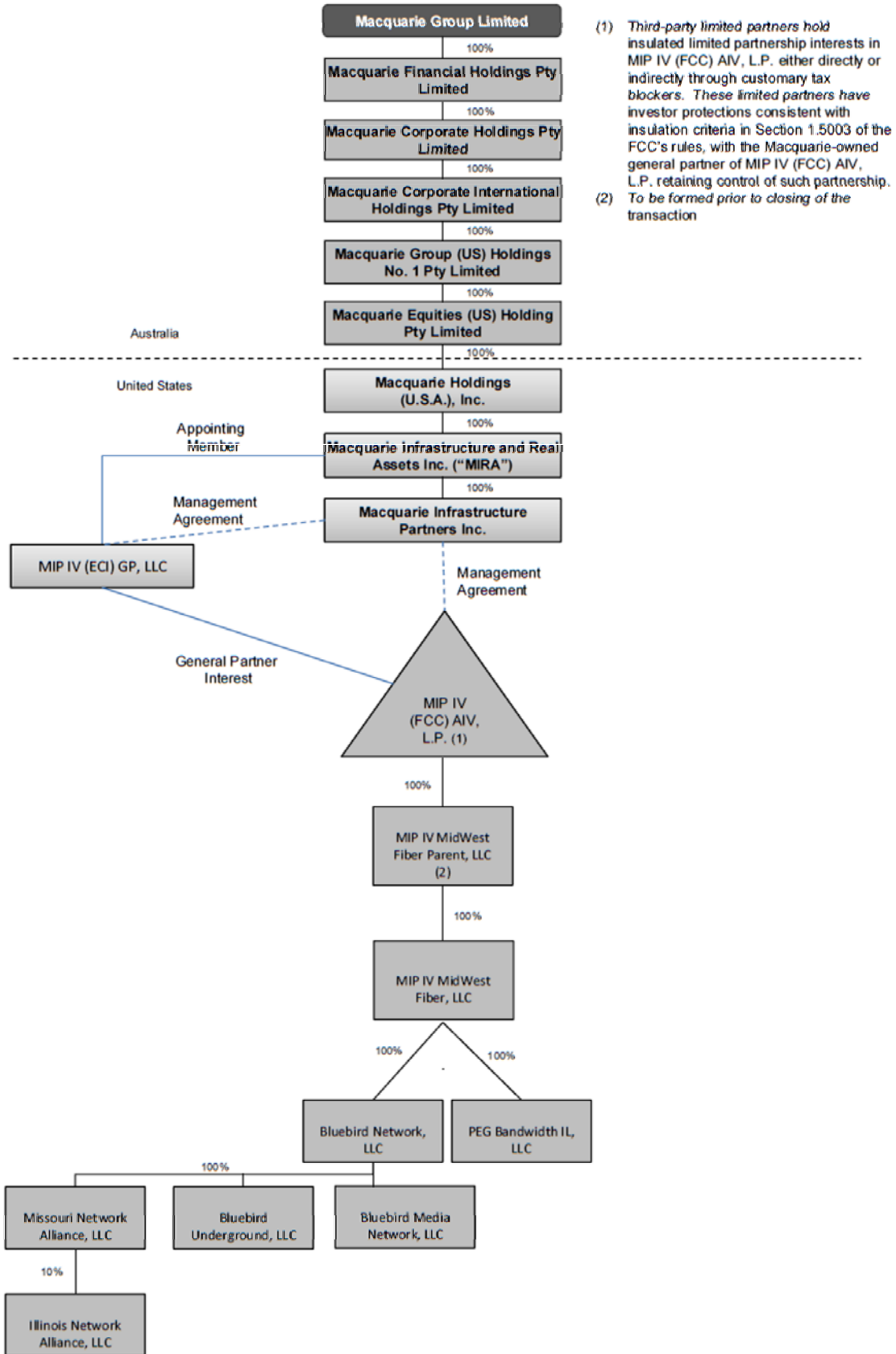
*Counsel for MIP IV MidWest Fiber, LLC*

Dated: April 24, 2019

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## **EXHIBIT A**

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- (1) *Third-party limited partners hold insulated limited partnership interests in MIP IV (FCC) AIV, L.P. either directly or indirectly through customary tax blockers. These limited partners have investor protections consistent with insulation criteria in Section 1.5003 of the FCC's rules, with the Macquarie-owned general partner of MIP IV (FCC) AIV, L.P. retaining control of such partnership.*
- (2) *To be formed prior to closing of the transaction*