

LAWLER, METZGER, KEENEY & LOGAN, LLC

1717 K STREET, NW
SUITE 1075
WASHINGTON, D.C. 20006

JAMES C. FALVEY

PHONE (202) 777-7732
FACSIMILE (202) 777-7763

REDACTED – FOR PUBLIC INSPECTION

December 27, 2019

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Docket WC 19-325, ITC-T/C-20191028-00175: Request for Confidential Treatment for Supplement to Application for a Transfer of Control of the Stock of Nexogy, Inc. to T3 Communications, Inc., a Nevada Corporation

Dear Ms. Dortch:

Please find attached hereto a redacted version of the December 27, 2019 Supplement to the Application for a Transfer of Control of the Stock of Nexogy, Inc. to T3 Communications, Inc., a Nevada Corporation (“December Supplement”). The confidential version of the filing is marked as “**CONFIDENTIAL – SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459.**” The enclosed redacted version of the filing has been filed electronically today and is marked as “**REDACTED – FOR PUBLIC INSPECTION.**”

Pursuant to Exemption 4 of the Freedom of Information Act (“FOIA”) and FCC rules,¹ the applicants request confidential treatment for the information in Exhibit B to the December Supplement, which contains commercially sensitive information (the “Confidential Information”). The Confidential Information relates to the applicants’ customer footprints and growth and marketing strategies. It includes company-specific, highly confidential and/or proprietary commercial information, including information protected from disclosure by FOIA

¹ 5 U.S.C. § 552(b)(4); 47 C.F.R. §§ 0.457(d) and 0.459; *see also* 18 U.S.C. § 1905 (prohibiting disclosure “to any extent not authorized by law” of “information [that] concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association”).

Exemption 4² and the Commission’s rules protecting information that is not routinely available for public inspection and that would customarily be guarded from competitors.³

1. *Identification of the specific information for which confidential treatment is sought.* The applicants request that the Confidential Information be treated as confidential pursuant to Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission’s rules, which protect confidential commercial and other information not routinely available for public inspection. The Supreme Court recently reiterated that the term “confidential” in FOIA Exemption 4 should be accorded its “ordinary, contemporary, common meaning” of “private” or “secret.”⁴ The Confidential Information concerns the applicants’ customer footprints and growth and marketing strategies. This is company-specific, competitively sensitive, business confidential and/or proprietary and commercial information that would not routinely be made available to the public and has been carefully guarded from competitors. If it were disclosed, potential competitors could use it to determine information regarding the applicants’ sales and marketing strategies, competitive position, operations, and performance, and could use that information to gain a competitive advantage over the applicants.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.* The applicants are submitting the December Supplement in docket number WC 19-325 and in connection with ITC-T/C-20191028-00175.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Confidential Information contains company-specific, competitively sensitive, confidential and/or proprietary, commercial information.⁵ This information can be used to determine information about the applicants’ operations and customer base that is sensitive for competitive and other reasons. This information would not customarily be made available to the public in this form and customarily would be guarded from all others, especially potential competitors, that could use the information to enhance their market position at the applicants’ expense.

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The Confidential Information relates, *inter alia*, to the applicants’ interconnected VoIP services, which are subject to vigorous competition from other providers. If

² 5 U.S.C. § 552(b)(4).

³ 47 C.F.R. §§ 0.457(d) and 0.459.

⁴ *Food Marketing Institute v. Argus Leader Media*, 588 U.S. ____, at 5 (2019).

⁵ The Commission has broadly defined commercial information, stating that “[c]ommercial” is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business’s commercial operations.” *Southern Company Request for Waiver of Section 90.629 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

the information is not protected, the applicants' competitors and potential competitors will be able to use it to their competitive advantage.

5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Since the Confidential Information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules recognize that release of the information is likely to produce competitive harm. Disclosure could cause substantial competitive harm because the applicants' competitors and potential competitors could assess aspects of the applicants' sales, marketing, and other commercial operations and could use that information to undermine the applicants' competitive position.

6.-7. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The Confidential Information is not available to the public, has not been assembled in this form, and has not otherwise been disclosed previously to the public. The applicants' take precautions to ensure that this information is not released to the general public or obtained by its competitors and potential competitors through other means.

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.* The applicants request that the Confidential Information be treated as confidential for three (3) years, after which time the information will be sufficiently out-of-date that its disclosure would no longer cause competitive harm.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* Under applicable Commission and federal court precedent, the information provided by the applicants on a confidential basis should be shielded from public disclosure. Exemption 4 of FOIA shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. Notably, in establishing FOIA Exemption 4, "Congress has instructed that the disclosure requirements of the Freedom of Information Act do 'not apply' to 'confidential' private-sector 'commercial or financial information' in the government's possession."⁶

⁶ *Food Marketing Institute v. Argus Leader Media*, 588 U.S. ____, at 1 (2019).

If a request for disclosure occurs, please provide sufficient advance notice to the undersigned prior to any such disclosure to allow the applicants to pursue appropriate remedies to preserve the confidentiality of the information.

If you have any questions or require further information regarding this request, please do not hesitate to contact me.

Respectfully submitted,

/s/ James C. Falvey
James C. Falvey
Counsel to T3 Communications, Inc.

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Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Docket WC 19-325, ITC-T/C-20191028-00175: Application for a
Transfer of Control of the Stock of Nexogy, Inc. to T3 Communications, Inc.,
a Nevada Corporation

Dear Secretary Dortch:

This letter responds to the most recent inquiries of Commission staff in the above-captioned matter, including a detailed explanation of the changes in the ownership and structure of the various entities involved in the transaction from 2017 to the present.

I. Changes Post-2017 Transaction

Effective July 22, 2017, the Commission approved a Section 214 application for approval of a transaction between T3 Communications, Inc., a Florida corporation (“T3FL”), and Shift8 Technologies, Inc., a Nevada corporation (“Shift8”). Pursuant to that transaction, Shift8 formed T3 Acquisition, Inc., a Florida corporation, which was to be merged into T3FL, with T3FL surviving the merger as a subsidiary of Shift8.

Ownership of Digerati: At that time, and as indicated in the parties’ June 17, 2017 Section 214 application (“2017 Application”), Shift8 was 100% owned by Digerati Technologies, Inc. (“Digerati”). Digerati, in turn, was 36.43% owned by Flagship Oil and Gas Corp. (“Flagship”). Flagship, in turn, was 100% owned by Craig K. Clement. Mr. Clement is currently and has been the Chairman of the Board of Digerati since 2015. At the time of the 2017 Application, Arthur L. Smith was President and Chief Executive Officer of Digerati and owned 7.6% of Digerati. Antonio Estrada, Jr. was Chief Financial Officer of Digerati and owned 7.6% of Digerati. These percentages were less than 10% and as such not mentioned in the 2017 Application. Mr. Smith and Mr. Estrada have continued since 2017 as President/CEO and CFO, respectively. Throughout this period during which Mr. Smith and Mr. Estrada have managed

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Digerati's day-to-day operations, their respective equity ownership percentages have increased over time, as further detailed below.

Flagship Equity in Digerati: Between August 18 and December 22, 2017, Flagship began to distribute its equity in Digerati to approximately 20 different investors in a series of transactions through the end of 2017.¹ Of the total 2,643,048 shares of Digerati stock held by Flagship, 2,319,131 were distributed in these distributions, leaving 323,917 shares still in the possession of Flagship. In the distribution on November 2, 2017, CEO Arthur L. Smith received 749,685 shares and CFO Antonio Estrada, Jr. received 165,000 shares. The largest number of shares distributed to any other investor was 304,573 shares.

The September 16, 2019 Digerati S-1 Registration Statement reflects that 323,917 shares of Digerati stock remain with Flagship, which is still controlled by Craig K. Clement. That's 323,917 shares out of a total of 25,240,222 shares of common stock outstanding as of September 12, 2019,² or 1.28% of Digerati's stock. This was part of Mr. Clement's 12.58% ownership stake in Digerati as of the September 16, 2019 Form S-1 filing.³

Investment by ITN Partners, LLC. At the time of the 2017 Application and the July 22, 2017 approval order ("2017 Approval Order"), ITN Partners, LLC ("ITN Partners") did not exist and, accordingly, had no equity interest in Shift8. More than nine months after the Commission's 2017 Approval Order, ITN Partners invested in Shift8. Specifically, on April 30, 2018, ITN Partners became a minority investor in Shift8, acquiring a 19.99% interest in Shift8, with Digerati retaining the remaining 80.01%.

Because ITN Partners invested in 2018, the Response to Question No. 3 in the November 15, 2019 supplement to the above-captioned 2019 Section 214 application – stating that ITN Partners, LLC was "formed for the sole purpose of this [2019] transaction"⁴ – is inaccurate and is hereby withdrawn.

¹ On August 18, 2017, a total of 530,000 shares were distributed to 5 separate investors. On August 23, 2017, a total of 292,077 shares were distributed to 7 separate investors. On November 2, 2017, 1,155,323 shares were distributed to 9 separate investors. On December 22, 2017, 341,731 shares were distributed to 3 separate investors.

² See Digerati Form S-1 Registration Statement, at 44 & fn. 3 (Sept. 16, 2019).

³ *Id.* at 44.

⁴ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Leon L. Nowalsky, counsel to T3NV, Docket WC 19-325, ITC T/C 20191028-00175, at 2 (Nov. 15, 2019) ("*November 15 Supplemental Letter*").

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Shift8 Name Change. On April 10, 2019, Shift8 changed its name to T3 Communications, Inc., remaining, of course, a Nevada corporation (“T3NV”). It was T3NV, formerly known as Shift8, that filed the subsequent Section 214 application on October 28, 2019 – *i.e.*, the instant application for a transfer of control of Nexogy, Inc. to T3NV. And because ITN Partners first invested in T3NV (f/k/a Shift8) in 2018, ITN Partners was listed as a 19.99% owner of T3NV in the October 28, 2019 application.

T3NV Subsidiaries, T3FL and T3TX. T3NV has two subsidiaries, T3FL, as a result of the prior transaction, and Shift8 Networks, Inc. d/b/a T3 Communications, a Texas corporation (“T3TX”), as detailed in the first page of the *November 15 Supplemental Letter*. This Shift8 entity (T3TX), is now a subsidiary of a T3 entity, T3NV, whereas in the 2017 Application, a T3 entity, T3FL, was anticipated to become and did become a subsidiary of a Shift8 entity (now T3FL). This is simply a function of the fact that Shift8 underwent a name change to T3NV and that T3NV has a separate Texas subsidiary, Shift8 Networks, Inc. All of the changes that took place to the T3NV corporate structure are detailed in the diagrams attached hereto as Exhibit A, which detail the corporate structure at the time of the 2017 Application, how that corporate structure evolved through today, and the proposed post-transaction ownership structure.

Additional Information About MaReHa. MaReHa is a limited liability company that holds a 12.9% interest in ITN Partners, LLC. MaReHa acquired this interest in April 2018 by making an investment in ITN Partners, LLC. Matt Bernhardt and Reema Bhatia each own a 48.75% interest in MaReHa. The 2019 Application, at the top of page 6, inaccurately states that there “are no other 10% or more owners voting or equity in ITN Partners, LLC,” because the application immediately proceeds to state, accurately, that MaReHa owns more than 10% of ITN Partners. That statement should have come after the description of MaReHa because there are no other 10% or more owners voting or equity in ITN Partners other than MaReHa.

No Transfer of Control of Digerati. There was no unauthorized transfer of control of Digerati or any of its subsidiaries between the time of the 2017 Application and 2019 Application. As detailed above, ITN Partners took a 19.99% minority interest in Digerati’s subsidiary Shift8 (later changed to the name T3NV). This represented a minority investment in one subsidiary of Digerati and not a transfer of control of either Digerati or that subsidiary.

As detailed above, at the time of the 2017 Application, Flagship, wholly owned by Craig K. Clement, owned 36.43% of Digerati. Between August 18 and December 22, 2017, also as detailed above, Flagship distributed its interest in Digerati to approximately 20 investors. Nonetheless, Craig K. Clement remains the Executive Chairman of Digerati and, as of November 21, 2019, the date when Digerati filed its most recent Form S-1/A Securities Registration Statement (“*November 2019 S-1/A Statement*”), is one of the three largest equity owners in Digerati, owning 13.31% of the company’s equity. The two other largest shareholders in Digerati are its CEO, Arthur L. Smith, and CFO, Antonio Estrada, Jr., who held those positions at the time of the 2017 Application. However, as noted above, each held less than 10% of Digerati and therefore were not mentioned in the 2017 Application.

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As of the *November 2019 S-1/A Statement*, Mr. Smith held 18.23% of Digerati's shares and Mr. Estrada held 14.17%.⁵ Today, as in 2017, Mr. Clement, Mr. Smith, and Mr. Estrada are the three largest equity holders in Digerati, albeit much of Mr. Clement's interest in the company in 2017 was held through Flagship, which he wholly owned and controlled. In addition, these three individuals as directors and/or officers⁶ have been running Digerati since prior to 2017, are the three principal drivers of the company today, and expect to continue in their respective roles for the foreseeable future. No other entity or individual has had or currently has any comparable equity interest or actual control of Digerati from the time of the 2017 Application to the present.

II. Additional Information Requested

The following additional information was requested to supplement the pending application:

Geographic Location of Nexogy, T3FL, and T3TX Customers: Additional information was requested as to the locations where Nexogy, T3FL, and T3TX provide services. Based on a more thorough analysis of each company's records, the companies represent that:

- Nexogy provides service to customers in Alabama, Arkansas, California, Colorado, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington.
- T3FL provides service to customers in Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Minnesota, Mississippi, Missouri, New York, Pennsylvania, Tennessee, Texas, Virginia, and Wisconsin.
- T3TX provides service to customers in Alabama, Arizona, Arkansas, California, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

The companies also attach hereto, as Confidential Exhibit B, three lists showing the location of their respective customers by state and county.

⁵ Ownership percentages are reported in a manner consistent with Securities and Exchange Commission rules. See *November 2019 S-1/A Statement* at 48.

⁶ Mr. Clement, as Executive Chairman of the Board, is a director; Mr. Smith is both an officer and a director; and Mr. Estrada, as CFO, is an officer.

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Description of Nexogy Services. Nexogy provides business communication services for small and medium businesses in the United States and has done so since 2004. Nexogy's services include business telephony, including VoIP services, as well as business Internet solutions. Nexogy's telephony services are reliable, effective, affordable, and adapt to the needs of individual business customers. For example, for smaller companies, Nexogy offers an Advanced PBX User service for \$17.99 that includes all PBX features, unlimited ring groups and queues, unlimited conference calling, call center features, a free soft phone, and unlimited long distance, subject to country limitations. For bigger companies, Nexogy offers its Advanced Call Path service for \$39.99 that includes all the same services as Advanced PBX User service, as well as additional free soft phones and simultaneous call paths allowing discrete callers to make multiple calls at once.

Nexogy users also receive its Officeline service, Nexogy's free smartphone app that allows callers to make high-quality calls over 4G LTE or Wi-Fi. Officeline allows a user to communicate from their smartphone with the same features as their office phone system, including call forwarding, call transfer, hold, and do-not-disturb features. Nexogy offers unified communications services as an additional service, with such features as voice and video calling, chat, screen sharing, file sharing, and meeting scheduling. Nexogy strives to meet all its customer communications requirements, also offering Broadcast SMS, vFax Service, Key System Emulation, Toll-Free Numbers, and Advanced call center wallboard with enhanced reporting. Additional information about Nexogy's services can be found at www.nexogy.com.

Additional Information About NexGen Integrated Communications, LLC. Commission Staff requested additional information regarding NexGen Integrated Communications, LLC ("NexGen"). Ms. Pamela G. Reel owns 43.75% of NexGen. NexGen provides a comprehensive suite of Internet, voice telephony, Wi-Fi, and private cable services, all engineered to serve multi-tenant/multi-dwelling resident communities. NexGen provides services in Iowa, Texas, and Florida.

Digerati is a fast-growing company and the proposed Nexogy transaction is an important part of its strategy to drive growth, create new jobs, and proliferate innovative, new service offerings. By this filing, Digerati and Nexogy are making their best efforts to expand on their prior responses in this proceeding and, where necessary, make corrections. Verifications of Craig K. Clement, Arthur L. Smith, Antonio Estrada, Jr., and Juan Carlos Canto, Chief Financial Officer of Nexogy, which attest to the accuracy of the information contained herein as it relates to their respective companies, are attached hereto. As a publicly traded company accustomed to transparency and disclosure, Digerati is making every effort to comply with the Commission's requirements and intends to continue such efforts in the future.

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Supplemental Filing of T3 Communications, Inc.
Docket WC 19-325, ITC-T/C-20191028-00175
December 27, 2019

If you have any questions regarding this filing, please do not hesitate to contact me at 202.777.7732 or jfalvey@lawlermetzger.com or Emily Daniels at 202.777.7723 or edaniels@lawlermetzger.com. Thank you for your ongoing attention to this matter.

Sincerely,

/s/ James C. Falvey

James C. Falvey

Counsel to T3 Communications, Inc.

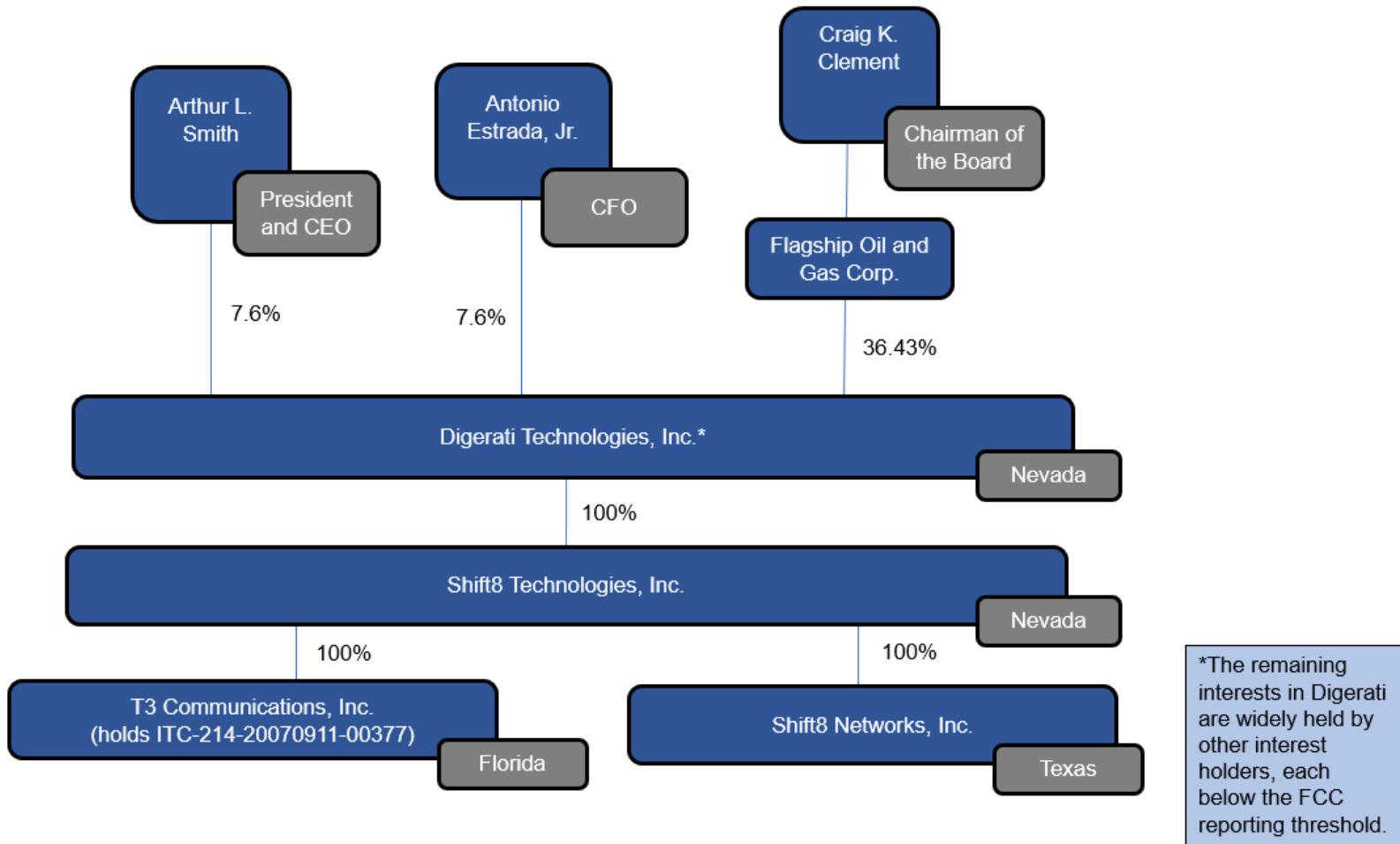
cc: Gregory Kwan

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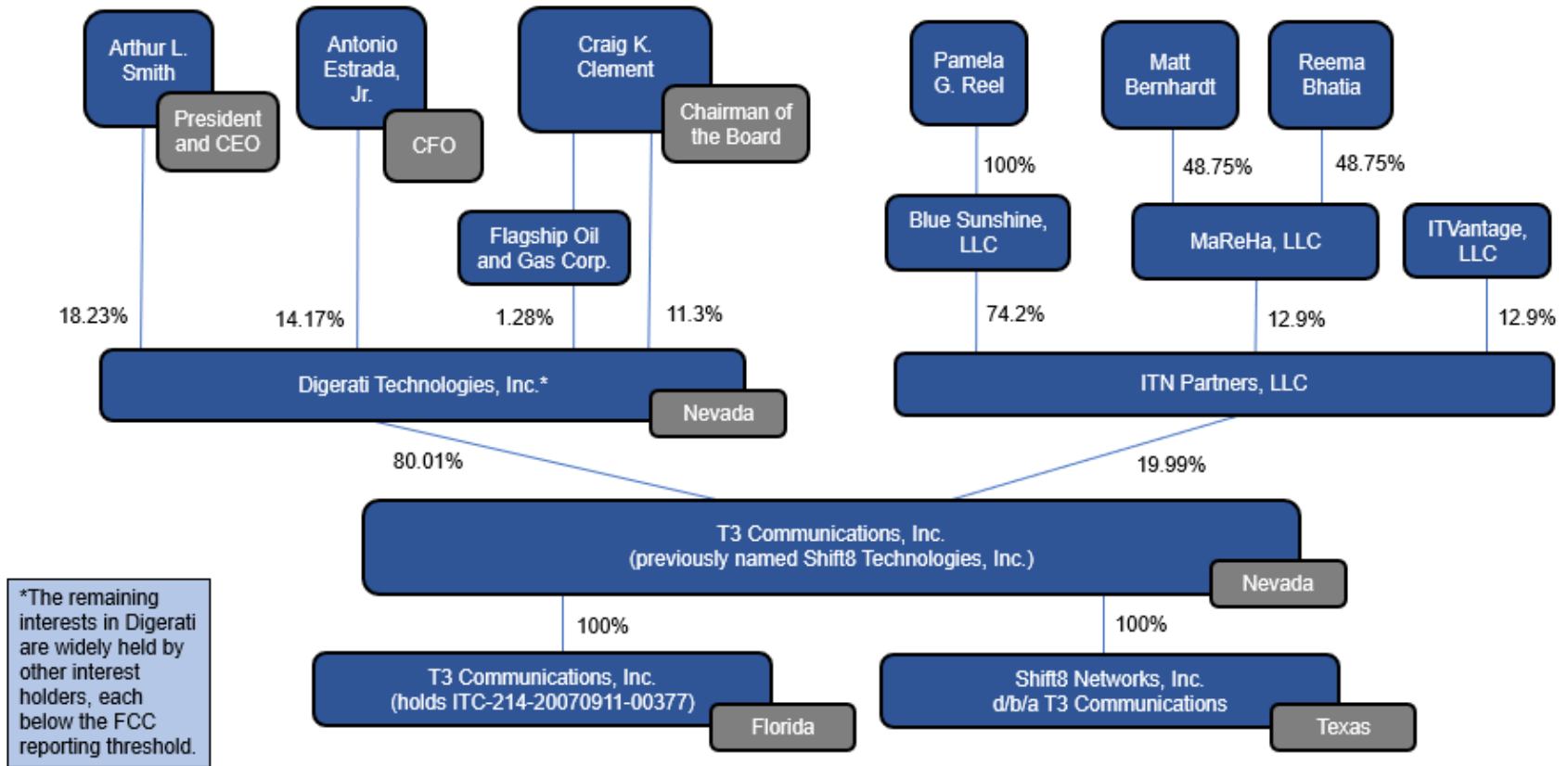
EXHIBIT A

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T3 Organizational Structure – 2017

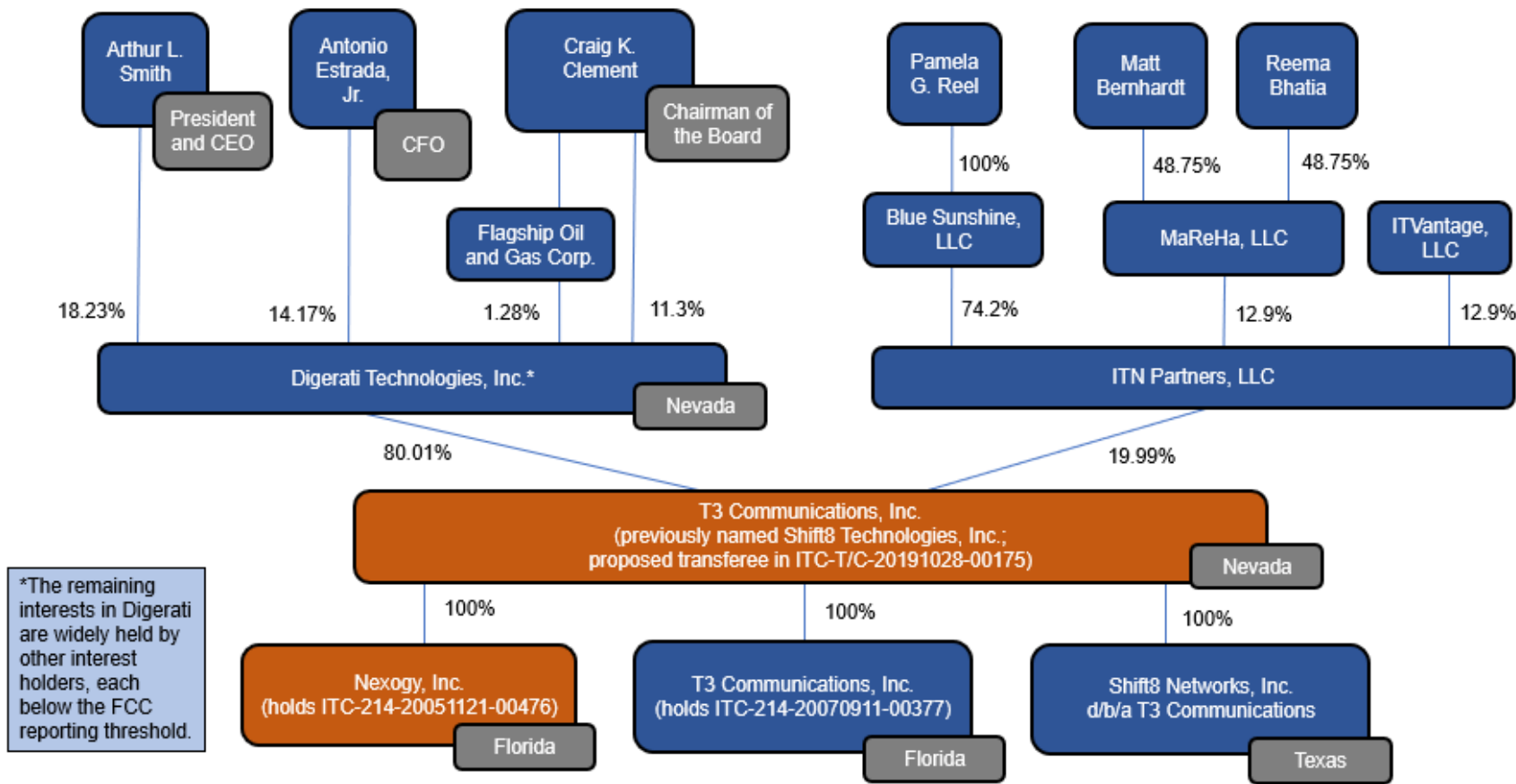


T3 Organizational Structure – Current



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T3 Organizational Structure – Proposed



*The remaining interests in Digerati are widely held by other interest holders, each below the FCC reporting threshold.

EXHIBIT B

REDACTED – FOR PUBLIC INSPECTION

REDACTED IN FULL

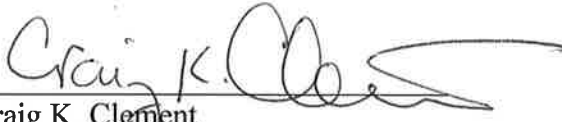
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VERIFICATIONS

REDACTED – FOR PUBLIC INSPECTION

VERIFICATION

I, Craig K. Clement, am Chairman of the Board of Digerati Technologies, Inc. (“Digerati”) and am authorized to make this verification on its behalf. The statements made in the foregoing Application supplement relating to Digerati and its affiliates are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By: 
Name: Craig K. Clement
Title: Chairman of the Board
Date: December 27, 2019

VERIFICATION

I, Arthur L. Smith, am President, CEO and Director of Digerati Technologies, Inc. (“Digerati”) and am authorized to make this verification on its behalf. The statements made in the foregoing Application supplement relating to Digerati and its affiliates are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By: 

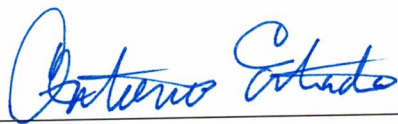
Name: Arthur L. Smith

Title: President and CEO

Date: December 27, 2019

VERIFICATION

I, Antonio Estrada, Jr., am Chief Financial Officer of Digerati Technologies, Inc. (“Digerati”) and am authorized to make this verification on its behalf. The statements made in the foregoing Application supplement relating to Digerati and its affiliates are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By: 
Name: Antonio Estrada, Jr.
Title: CFO
Date: December 27, 2019

VERIFICATION

I, Juan Carlos Canto, am Chief Financial Officer of Nexogy, Inc. (“Nexogy”) and am authorized to make this verification on its behalf. The statements made in the foregoing Application supplement relating to Nexogy are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By: 

Name: Juan Carlos Canto

Title: Chief Financial Officer

Date: December 27, 2019