

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

Application of

RADIATE HOLDINGS, L.P.
Transferor,

STONEPEAK ASSOCIATES IV LLC
Transferee,

RCN TELECOM SERVICES (LEHIGH) LLC
RCN TELECOM SERVICES OF PHILADELPHIA, LLC
RCN TELECOM SERVICES OF NEW YORK, LP
RCN TELECOM SERVICES OF MASSACHUSETTS, LLC
RCN TELECOM SERVICES OF ILLINOIS, LLC
STARPOWER COMMUNICATIONS, LLC
GRANDE COMMUNICATIONS NETWORKS, LLC
ASTOUND BROADBAND LLC
ASTOUND PHONE SERVICE, LLC
ETS TELEPHONE COMPANY, INC., AND
ETS CABLEVISION, INC.
Authority Holders

For Consent to Transfer Indirect Control of
Companies Holding Domestic and International
Authority Pursuant to Section 214 of the
Communications Act of 1934, as Amended

WC Docket No. 20-407
ITC-T/C-20201202-00196 through
-00203, 20201202-00205 & -00206

**REPLY COMMENTS OF RADIATE HOLDINGS, L.P., STONEPEAK
ASSOCIATES IV LLC, AND THE AUTHORITY HOLDERS**

Applicants submit these reply comments in support of their consolidated application for the transfer of control of the Authority Holders.¹ In response to the Commission's Public Notice,²

¹ "Applicants" refers to Radiate Holdings, L.P. ("Radiate Holdings" or "Transferor"), Stonepeak Associates IV LLC ("Stonepeak" or "Transferee"), and the Authority Holders identified above. Consolidated Application for Consent to Transfer Control of Section 214 Authority, WC Docket No. 20-407 (filed Dec. 2, 2020) (the "Application").

² *Section 214 Applications Filed for the Transfer of Control of Subsidiaries of Radiate Holdings, L.P. to Stonepeak Associates IV LLC* WC Docket. No. 20-407, Public Notice, DA 20-1493 (WCB, Dec. 16, 2020) ("Public Notice").

one interested party, Newsmax Media, Inc. (“Newsmax”), filed comments. Newsmax argues that the Commission should delay processing the Application until the Applicants finalize ownership interests in the Transferee and correct allegedly incomplete and inaccurate information related to the request for streamlined processing.³ Neither of the Newsmax arguments warrant the Commission denying or deferring action on the Application.

I. THE COMMISSION REGULARLY PROCESSES APPLICATIONS WHILE PERMITTING APPLICANTS TO SUPPLEMENT THE RECORD TO UPDATE FOR CHANGES IN NON-CONTROLLING OWNERSHIP PERCENTAGES

Newsmax argues that the Commission should defer action on the Application because the Applicants disclosed the possibility of changes to the percentages of interest in the Authority Holders to be held by indirect, non-controlling, minority equity owners at the closing of the proposed transaction.⁴ It also demands that the Applicants certify that there *will be* no changes to the percentages held by non-controlling investors.⁵ Yet the Commission does not treat applications this way—and it would be untenable in practice for it to start doing so now.

The Commission routinely processes transactions while making allowances for applicants to update the record prior to grant with any changes to expected non-controlling, minority equity holders. This is because many months may pass between the date the application is filed and the date that the parties can close and because markets, as well entities participating in the markets, are highly dynamic. After applications are filed, there are often changes to the precise equity ownership mix of the transferee – for instance, to further the objectives of the transferee or in response to unexpected events not under the transferee’s control. In the case of private equity

³ Comments of Newsmax Media, Inc., WC Docket No. 20-407 (filed Dec. 30, 2020) (“Newsmax Comments”).

⁴ *See id.* at 9.

⁵ *See id.*

buyers, for example, this could be because the transferee is actively raising capital in its funds, is seeking additional passive equity co-investors, must address circumstances where an existing investor needs to change its investment, and/or because the transferor is considering rolling over a portion of its existing investment. Were the Commission to adopt Newsmax’s proposed approach, applicants would have to prematurely freeze all fundraising activity even though none of the additional fundraising would change the ultimate control of the transferee or predict the future with 100% accuracy. The former option serves no policy purpose even when feasible—and would also be impossible for every transferee involving publicly traded shares. And the latter option is obviously impossible.

The Commission has consistently taken a more realistic and practical approach. For instance, in Oak Hill’s 2016 Section 214 application for consent to acquire control of FirstLight Fiber, the parties disclosed the possibility that equity interest percentages would change.⁶ Specifically, that application stated that because the funds “have not closed and additional investors could still participate, and the equity interests of other investors have not been finalized, the respective ownership percentages in Transferee disclosed [in the application] may change.”⁷ After the Commission issued a public notice, and after the comment cycle had ended, the applicants filed a supplemental letter reporting changes to the ownership information and structure.⁸ The Commission granted the application shortly after the completion of Team Telecom

⁶ See Joint Application of Tech Valley Holdings, LLC, et al., WC Docket No. 16-107 (filed Mar. 29, 2016).

⁷ *Id.* at 8 n.7.

⁸ Letter from Patrick S. Campbell & Brett P. Ferenchak to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-107 (filed July 6, 2016).

review, raising no concerns with the applicants' approach to post-application ownership changes.⁹ Likewise, in Northwest Fiber, LLC's 2019 application to acquire control of Frontier, the applicants explained that the ownership percentages of certain intermediate entities may exceed 10% after the application was filed because of co-investment syndication.¹⁰ The application was granted in due course,¹¹ without any requirement that the co-investments be finalized prior to Commission action. Similar examples abound, in cases involving still-open funds, potential co-investors, and existing owner rollovers.¹²

Nothing about the instant Application would justify the Commission taking a different approach here. As explained in the Application, the indirect ownership of the Authority Holders

⁹ *Domestic Section 214 Application Granted for the Transfer of Control of TVC Albany, Inc. and Segtel, Inc. to OHCP Northeastern Fiber Buyer, Inc.*, Public Notice, 31 FCC Rcd. 9594, WC Docket No. 16-107 (WCB 2016).

¹⁰ *See Frontier Communications Corp. and Northwest Fiber, LLC, Application for Consent to Partially Assign and Transfer Control of Domestic and International Authorizations*, at 12 n.15, WC Docket No. 19-188 (filed June 28, 2019).

¹¹ *See Applications Filed for the Transfer of Control of Certain Subsidiaries of Frontier Communications Corporation to Northwest Fiber, LLC*, Mem. Op. and Order ¶ 3, DA 19-1302 (WCB 2019).

¹² *See, e.g., West Corp. and Olympus Holdings II, LLC Joint Application for Consent to Transfer Control of Domestic and International Authorizations*, at 11 n.6, WC Docket No. 17-137 (filed May 24, 2017) ("The equity interest in Mount Olympus Parent, L.P. that is not held by AP VIII Olympus Holdings, L.P. will be held by co-investors (through AP Olympus Co-Invest, L.P.) and certain members of West management whose identities and equity interests will not be determined until closing."); *Notice of Authorizations Granted*, Public Notice, 32 FCC Rcd. 5498 (WCB 2017); *Domestic Section 214 Application Filed for the Transfer of Control of Knology, Inc. and Its Subsidiaries to WideOpenWest Finance, LLC at 6*, Public Notice, 27 FCC Rcd. 5353, WC Docket No. 12-120 (WCB 2012) ("Knology Section 214 Application") (noting that the Application did not provide "precise" ownership interests because two investment funds were open and existing owners were offered preemptive rights to newly-issued equity); *Application of ALLTEL Corp., Transferor, and Atlantis Holdings LLC, Transferee*, Mem. Op. and Order, 22 FCC Rcd. 19517, WT Docket 07-128 (2007) (approving application that stated that "prior to the consummation of this transaction," parent companies of transferee "intend to syndicate certain of their respective equity investments in Atlantis to additional limited partners or co-investors," which might entail the creation of "additional investment funds" that "may hold a passive equity interest of 10% or greater in" the transferee); *Authorizations Granted*, 22 FCC Rcd. 9325, 9326 (2007) (approving transfer of control when details of co-investment were "still being decided," including the precise ownership interest of co-investor)

is subject to change in two ways. First, TPG Global, LLC (“TPG”) holds an investment right to elect to make an investment of up to \$750 million within 75 days of signing of the merger agreement.¹³ Second, Stonepeak is exploring the possibility of further syndicating a portion of its equity interest in Radiate Holdings to other co-investors, in a yet-to-be finalized structure.¹⁴ Neither the exercise of TPG’s investment right nor co-investment will change the ultimate controlling ownership of the Authority Holders, the controlling entity of the general partner of Radiate Holdings, or the ownership structure of the Transferee. Rather, such investment may change the percentages held by certain existing reportable interest holders or result in new reportable, but non-controlling, interest holders. Like the applicants in the examples cited above, Applicants here have committed to notify the Commission if either results in changes in the ownership percentages for reportable interest holders provided in this application or a new, unidentified entity holding a 10-percent-or-greater equity interest in Radiate Holdings.

Newsmax further asserts that the Commission should defer action on the Application because of the pendency of *other* applications associated with the same proposed transaction.¹⁵ As Newsmax acknowledges, the Commission has made clear that any action on the Application does not prejudice its decision with respect to the other applications filed by the Applicants relating to different authorizations subject to different statutory provisions and rules. This practice routinely results in unsynchronized actions on separate applications related to the same underlying transaction prior to closing.¹⁶ Newsmax offers no reason for the Commission to depart from its

¹³ Application at 9.

¹⁴ *Id.* at 10.

¹⁵ *See* Newsmax Comments at 10.

¹⁶ For example, the Wireline Competition Bureau granted the 2012 Knology Section 214 Application on June 22, 2012, *see Notice of Domestic Section 214 Authorization Granted*, Public Notice, 27 FCC Rcd.

standard practice of delegating authority to act to the relevant bureaus, and the Commission should not so depart here.

II. NEWSMAX’S COMMENTS WITH RESPECT TO STREAMLINED TREATMENT OF THE APPLICATION ARE MOOT

As Newsmax recognizes, the Wireline Competition Bureau has determined that the Application is not subject to streamlined treatment.¹⁷ Newsmax nonetheless asserts that, in seeking streamlined treatment, Applicants incorrectly claimed that *Transferee* provided no telecommunications services because (as the Application stated quite clearly) a single *affiliate* of Transferee does provide telecommunications services. The Commission has granted prior applications using the same formulation Applicants employed here.¹⁸ More importantly, Newsmax’s assertion is moot because it is potentially relevant solely to whether the Application would be subject to streamlined treatment—a question that the Commission has already answered in the negative, which answer the Applicants do not dispute. In any event, Newsmax has not requested that the Commission take any specific action with respect to this issue, and it is no longer even potentially relevant to the processing of the Application.

CONCLUSION

For the reasons set forth above and in the Application, the Commission should grant consent for the transfer of control of the Authority Holders without delay.

7137 (2012), while the Wireless Bureau granted the application for the transfer of control of the licensee in the same transaction July 25, 2012, *see* ULS File No. 0005175208 (Action Date Jul. 25, 2012).

¹⁷ *See* Public Notice at Attach. A; Newsmax Comments at 4.

¹⁸ *See, e.g.*, Consolidated Application for the Partial Assignment and Transfer of Control of Domestic and International Section 214 Authorizations, at 19, WC Docket No. 19-188 (filed July 1, 2019); *Applications Filed for the Transfer of Control of Certain Subsidiaries of Frontier Communications Corp. to Northwest Fiber, LLC*, Mem. Op. and Order, 34 FCC Rcd. 12344 (WCB 2019).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of January, 2021, a copy of the foregoing pleading was served via First Class mail upon:

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