

Resolution No.: 18-731
Introduced: February 28, 2017
Adopted: February 28, 2017

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the request of the County Executive

SUBJECT: Transfer of control of cable franchisee Starpower Communications, L.L.C

Background

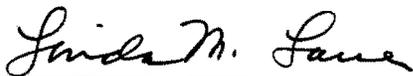
1. Chapter 8A of the County Code governs franchise agreements for cable systems. Section 8A-23 governs transfers of franchise agreements. Under Section 8A-23(g), the County Council must take final action on an application for transfer of a franchise after receiving a recommendation from the County Executive.
2. On May 3, 2016, the County Council approved Resolution No. 18-469, which approved a Cable Franchise Agreement with Starpower Communications L.L.C.
3. On February 7, 2017, the Council received the Executive's recommendation to approve a transfer of control of Starpower Communications, L.L.C. from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P.
4. Under federal law, the County has until March 14, 2017 to act on the application for transfer for a franchise.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Council approves the transfer of control of cable franchisee Starpower Communications, L.L.C. from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P. under the terms of the attached Transfer Agreement.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

TRANSFER AGREEMENT

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TRANSFER AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 2017, by and between:

- 1.1.1. Montgomery County, Maryland (the "County");
- 1.1.2. Starpower Communications, L.L.C. ("Franchisee");
- 1.1.3. RCN Telecom Services, L.L.C. ("RCN"); and
- 1.1.4. Radiate Holdings GP, LLC, ("RHGP") on behalf of itself and Radiate Holdings, L.P. ("Radiate Holdings").
- 1.1.5. Starpower, RCN, RHGP and Radiate Holdings may be referred to herein individually as "Company," and jointly as "Companies."

RECITALS

WHEREAS, the County has granted the Franchisee a nonexclusive franchise (the "Franchise") for a term of fifteen (15) years pursuant to Montgomery County Code Chapter 8A, as amended (the "Cable Law"), and Article 25A, Section 5(B) of the Annotated Code of Maryland, 1957, as amended; and the Franchise Agreement between the Franchisee and the County dated July 1, 2016 (the "Franchise Agreement"), as amended by a settlement agreement executed by Franchisee and by the County Executive on September 15, 2015 (the "Settlement Agreement") the Franchise Agreement and the Settlement Agreement are referred to collectively as "Franchise Documents");

WHEREAS, Franchisee Starpower is a wholly owned subsidiary of RCN, which is a wholly-owned subsidiary of Yankee Cable Acquisition, L.L.C., which is a wholly-owned subsidiary of Yankee Cable Parent, L.L.C. ("Cable Parent");

WHEREAS, pursuant to a transaction described in a Federal Communications Commission Form 394 dated September 7, 2016 (the "Proposed Transaction") and other written materials submitted in response to notices and document requests (collectively the "Application"), Radiate Holdings would acquire control of the Franchisee and the cable system serving the County (the "System");

WHEREAS, more specifically, the Proposed Transaction contemplates the purchase by Radiate HoldCo, L.L.C. of the outstanding equity interests of Cable Parent from Yankee Cable Partners, L.L.C. pursuant to that certain Membership Interest Purchase Agreement by and among Yankee Cable Partners, L.L.C., Yankee Cable Parent, L.L.C., and Radiate HoldCo, L.L.C., dated August 12, 2016;

WHEREAS, under the Proposed Transaction, Cable Parent will become a wholly owned subsidiary of Radiate HoldCo, L.L.C., which is a wholly owned subsidiary of Radiate TopCo L.L.C., which is a wholly owned subsidiary of Radiate Holdings. Radiate Holdings is 100 percent controlled by Radiate Holdings, GP, L.L.C., a Delaware Limited Liability Company, of which TPG Advisors VII, Inc. is the sole member;

WHEREAS, if the Proposed Transaction is consummated, the Franchisee will continue to own and operate the System and will continue to hold the Franchise, but control of the Franchisee will be transferred to Radiate Holdings (the "Transferee");

WHEREAS, Section 3(a)(1) of the Franchise Agreement provides that the prior approval of the County, and of the municipalities within the County (listed in Exhibit 1) that have agreed to have the County administer and enforce the Franchise Agreement within their corporate limits ("Participating Municipalities"), is required for this transaction;

WHEREAS, the Application requests that the County approve the Proposed Transaction;

WHEREAS, pursuant to Section 8A-23 of the Cable Law, the County must consider the legal, financial, technical and character qualifications of the transferee to operate the system, and whether operation by the proposed Franchisee will adversely affect the cable services to subscribers or otherwise be contrary to the public interest;

WHEREAS, the Companies have represented to the County that, under the Proposed Transaction, the Franchisee will continue to be run by highly experienced, well-qualified

personnel, and that, as a result, any changes to the System will not have a detrimental effect on, or result in material change to, the service provided to existing customers and to the County;

WHEREAS, the Franchisee reaffirms its continuing obligations under the Cable Law and the Franchise Documents; and Transferee and agrees to abide by and accept all terms of the Franchise Documents and the Cable Law, as they may be amended, to the extent applicable to it; and agrees that from and after the transaction, it will take no action inconsistent with the same and Franchisee will continue to be responsible for the obligations and liabilities, and continue to have responsibility for all acts and omissions, known and unknown, under the Franchise Documents and the Cable Law for all purposes, including renewal, unless waived, in whole or in part, by the County and Participating Municipalities;

WHEREAS, after review, it is the recommendation of the County Executive that the approval of the Proposed Transaction is in the public interest, in light of the promises made in the foregoing clauses and if subject to certain conditions;

WHEREAS, the County and the Companies have reached agreement on those conditions.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES DO HEREBY AGREE:

1. **TRANSFER**

1.1. The foregoing recitals are true and correct and are incorporated herein by reference, including without limitation, the acceptance and reaffirmation of the Franchise Documents by Franchisee and Transferee.

1.2. This Agreement shall be binding on the parties if the Proposed Transaction is approved by the County either affirmatively, or as the result of the passage of time. Except as to Section 6.1, which is binding as of the date that this Agreement is signed, it shall not be binding

on the parties if the Proposed Transaction is denied, or subject to substantially different additional conditions than set forth in this Agreement (unless the conditions are mutually agreed upon).

2. **ACCEPTANCE AND CLARIFICATION OF OBLIGATIONS UNDER THE FRANCHISE DOCUMENTS**

2.1. Nothing in this Transfer Agreement amends or alters the Franchise Documents.

2.2. The scope of the Franchise, as set forth in the Franchise Agreement, is unchanged. Neither the County's consent to the transfer, nor any of the past practices of the County, shall be deemed to be a consent to use or occupancy of the public rights of way by any of the Companies, or any of their affiliates, for any purpose other than the provision of cable service via a cable system.

2.3. The County reserves all of its rights regarding the charging of a franchise fee or other compensation for the right to provide cable modem service, broadband service, information services, and any other service that the System has the technical capability of delivering using the rights-of-way within the County. The County's consent to the Proposed Transaction shall not relieve the Franchisee of any obligation to pay such compensation, past, present, or future. Nor shall the County's consent be deemed to permit the Franchisee to recover the amounts of any past payments from subscribers, or to itemize the amount of any fee related to cable modem service on subscriber bills.

2.4. Subject to the foregoing, the Proposed Transaction shall not restrict or expand the rights of the Franchisee under the Franchise Documents as compared to those rights that could have been exercised by the Franchisee prior to the Proposed Transaction.

2.5. The Companies shall ensure that all records pertaining to the Franchise, including financial records, shall continue to be available after the Proposed Transaction in the same way and to the same extent such information was available prior to the Proposed Transaction.

2.6. Companies agree that, from and after the consummation of the Proposed Transaction, they will not take any action inconsistent with the promises contained in the Franchise Documents and this Agreement.

2.7. Radiate Holdings shall provide a guarantee from RHGP in a form acceptable to the County Attorney. The Transferee, or the agreed entity, shall guarantee performance by Franchisee of all of Franchisee's obligations under the Franchise Documents and this Agreement. The guarantee shall state that the financial condition of the Franchisee or any parent or affiliate of the Franchisee, including the Companies, shall not limit the ability of the Franchisee to properly and fully comply with the terms of the Franchise Documents and this Agreement. The Transferee must provide to the County the signed guarantee, using the form attached as Exhibit 2, within ten (10) days of the closing of the Proposed Transaction.

3. **RESERVATION OF RIGHTS**

3.1. The County reserves all rights not expressly granted in this Transfer Agreement, including without limitation those specified below.

3.2. The County waives none of its rights with respect to the Franchisee's compliance with the requirements set forth in the Franchise Documents. At no time will the Companies contend, either directly or indirectly, that the County is barred, by reason of the Proposed Transaction, from considering, or raising claims based on, any defaults of Franchisee, any failure by Franchisee to provide reasonable service in light of the community's needs, or any failure by Franchisee to comply with the terms and conditions of the Franchise Documents or with applicable law. The County's approval of the Proposed Transaction shall in no way be deemed a representation by the County that the Franchisee is in compliance with all of its obligations under the Franchise Documents.

3.3. Neither this Transfer Agreement, nor any other action or omission by the County at or before the execution of this Transfer Agreement, shall be construed to grant the County's consent to any future transfer of the Franchise and/or the System, and/or any future change in

ownership and/or control of the Franchise and/or the System, or to mean that the County's consent to any future transaction is not required.

3.4. Any consent given by the County to the Proposed Transaction is made without prejudice to, or waiver of, the County's right to investigate and take into account any lawful considerations during any future franchise renewal or transfer process.

4. NO EFFECT ON RATES

The Companies represent and warrant that neither the Proposed Transaction nor this Transfer Agreement will result in any increase in subscriber rates.

5. REPRESENTATIONS AND WARRANTIES

5.1. Each of the Companies hereby represents and warrants that at the time of the execution of this Agreement: (a) it is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized; (b) the Franchise Documents and, assuming due execution hereof by the other parties hereto, this Transfer Agreement constitute legal, valid, and binding obligations of such Company enforceable in accordance with their terms; (c) the execution and delivery of, and performance by such Company under this Transfer Agreement and the Franchise Documents where applicable, are within such Company's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite corporate or limited liability company action on the part of such Company and are not in contravention of such Company's limited liability company operating agreement, charter, bylaws, and/or other organizational documents; and (d) no representation made to the County by such Company is incomplete, untrue, or inaccurate in any material respect.

5.2. Franchisee represents and warrants that neither the Proposed Transaction nor this Agreement will adversely affect its ability to meet the requirements of the Franchise Documents.

5.3. The Companies represent and warrant that the Proposed Transaction will not have any adverse financial effect on the System, or adversely affect either the performance of the System or the Franchisee's financial obligations with regard to the System.

5.4. Franchisee represents and warrants that after the Proposed Transaction, Franchisee's financial qualifications will be such as shall enable it to maintain and operate its system in the County.

5.5. Franchisee represents and warrants that the Proposed Transaction will not in any respect reduce the quality of customer service in the County.

5.6. Franchisee represents and warrants that the Proposed Transaction will not reduce the quality of existing system maintenance or repair.

5.7. Franchisee represents and warrants that it has not and will not grant any other entity any right to use the System or any portion of the System, whether by means of a lease, irrevocable right of use, or any other type of grant or conveyance, without the prior written consent of the County, to the extent such consent would be required under the Franchise Agreement or applicable law.

6. COMMITMENTS BY THE TRANSFEREE

Transferee agrees to pay \$10,000 to cover administrative costs incurred by the County in the course of the consideration of the Application, which fee shall be paid by January 31, 2017.

7. INDEMNIFICATION

7.1. Each Company agrees to indemnify and hold the County, its elected and appointed officers, officials, employees, agents, and contractors, harmless against third party claims any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) caused by any representation or warranty made by such Company herein which is determined by the parties or by a court of competent jurisdiction to be untrue or inaccurate in any material respect.

7.2. Franchisee shall indemnify and hold the County, its elected and appointed officers, officials, employees, agents, and contractors, harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) incurred by the County in connection with any action or proceeding commenced by a third party (not one of the parties to this Transfer Agreement) claiming or asserting any liability of the County relating to or arising from the Proposed Transaction or this Transfer Agreement.

8. ADDITIONAL CONDITIONS

8.1. If the Proposed Transaction does not close within 180 days after the date of the County's consent to the Proposed Transaction, or closes on terms that are in any material respect different from the terms disclosed to the County in writing, then any County consent to the Proposed Transaction shall be void and of no force or effect, and the Proposed Transaction deemed to have been timely denied.

8.2. The Companies hereby waive any and all claims that they may have that any denial of the Application that results from failure of the conditions in Section 8.1 violates the deadlines established by applicable law including, without limitation, claims based on, arising out of, or relating to 47 U.S.C. § 537, as amended, and agree that they shall be deemed to have agreed to an extension of the time to act on the Application as required to make any such denial effective.

9. BREACHES

Any breach of this Transfer Agreement or any exhibit thereto shall be deemed a breach of the Franchise Agreement and shall be subject to all remedies available for a breach of the Franchise Agreement, in addition to any other remedies the parties may have under this Transfer Agreement at law or equity.

10. MISCELLANEOUS PROVISIONS.

10.1. This Transfer Agreement shall be effective and binding upon the signatories beginning on the date of approval by the County Council, subject to other conditions on effectiveness in Sections 1.2 and 8.

10.2. This Transfer Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported assignment of this Transfer Agreement is void without the express written consent of the signatories.

10.3. This Transfer Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Transfer Agreement. Neither any of the Companies, nor any of their affiliates, nor the County, will take any action to challenge any provision of this Transfer Agreement; nor will they participate with any other person or entity in any such challenge.

10.4. If any term, condition, or provision of this Transfer Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

10.5. This Transfer Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

10.6. This Transfer Agreement shall be governed in all respects by the law of the state of Maryland.

10.7. The captions and headings of sections throughout this Transfer Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Transfer Agreement. Such captions shall not affect the meaning or interpretation of this Transfer Agreement.

AGREED TO BY THE PARTIES:

MONTGOMERY COUNTY, MARYLAND

Feb 2, 2017
Date

By: 

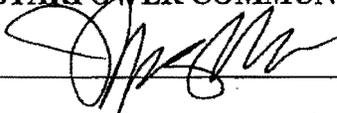
By: _____

APPROVED AS TO FORM: + ~~LIBERTY~~

Afford Loyalty 1/30/17
is reference on legal opinion
of JUE AT BRK.

STARPOWER COMMUNICATIONS, L.L.C.

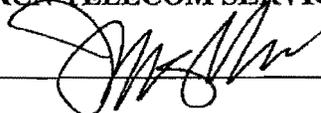
January 19, 2017
Date

By: 

Its: EVP, GENERAL COUNSEL - SECRETARY

RCN TELECOM SERVICES, LLC

January 19, 2017
Date

By: 

Its: EVP, GENERAL COUNSEL - SECRETARY

**RADIATE HOLDINGS GP, LLC ON BEHALF
OF ITSELF AND RADIATE HOLDINGS, L.P.**

Date

By: _____

Its: _____

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Agreement. Such captions shall not affect the meaning or interpretation of this Transfer Agreement.

AGREED TO BY THE PARTIES:

Feb 2, 2017
Date

MONTGOMERY COUNTY, MARYLAND

By: [Signature]

By: _____

APPROVED AS TO FORM:

STARPOWER COMMUNICATIONS, L.L.C.

Date

By: _____

Its: _____

RCN TELECOM SERVICES, LLC

Date

By: _____

Its: _____

RADIATE HOLDINGS GP, LLC ON BEHALF OF ITSELF AND RADIATE HOLDINGS, L.P.

19 January 2017

Date

By: [Signature]

Michael LaGatta

Its: Vice President

EXHIBIT 1
PARTICIPATING MUNICIPALITIES

Town of Chevy Chase*
Chevy Chase Section 3
Chevy Chase Section 5*
Chevy Chase View
Chevy Chase Village
Garrett Park
Glen Echo
Kensington
Village of Martins Addition*
Village of North Chevy Chase*
Rockville
Somerset
Takoma Park*
Washington Grove

*RCN Subscribers in these municipalities in 2016

EXHIBIT 2
GUARANTEE OF PERFORMANCE

WHEREAS, the County has granted Starpower Communications, L.L.C. (the "Franchisee") a nonexclusive franchise (the "Franchise") for a term of fifteen (15) years pursuant to Montgomery County Code Chapter 8A, as amended (the "Cable Law"), and Article 25A, Section 5(B) of the Annotated Code of Maryland, 1957, as amended; and the Franchise Agreement between the Franchisee and the County dated July 1, 2015, as amended by a Settlement Agreement executed by Franchisee and by the County Executive on September 15, 2015 (collectively, the Franchise Agreement and the Settlement Agreement are the "Franchise Documents"); and as further clarified by a Transfer Agreement approving the transfer of the control of the Franchisee to Radiate Holdings, L.P. (the "Transfer Agreement");

WHEREAS, Radiate Holdings GP, LLC (the "Guarantor") will control Radiate Holdings, L.P., the parent of the Franchisee, and will have a substantial interest in the Franchise, in the conduct of the Franchisee, and in the Franchise Documents and Transfer Agreement, which are incorporated herein by this reference;

NOW, THEREFORE, the Guarantor hereby unconditionally guarantees the due and timely performance of any and all obligations of the Franchisee required by the Franchise Documents and the Transfer Agreement, whether the obligation, or the failure to perform arose before or after Radiate Holdings, L.P. became the parent of Franchisee. The financial condition of the Franchisee or any parent or affiliate of the Franchisee shall not limit the ability of the Franchisee to properly and fully comply with the terms of the Franchise Agreement. This Guarantee, unless terminated, substituted or canceled as hereinafter provided, shall remain in full force and effect for the term of the Franchise; provided, however, that upon the County's prior written approval of a substitute guarantor, which approval shall not be unreasonably withheld, this Guarantee may be terminated, substituted or canceled upon written notice from the Guarantor to the County and the Franchisee; and provided, further, however, that the County's prior approval, written or otherwise, of a substitute guarantor, shall not be required if, due to internal restructuring that is neither part of a transfer of a franchise nor a transfer of an interest in a franchisee that would require County approval under the Franchise Agreement, the Guarantor's board no longer is the controlling board

of the Franchisee, the entity will be similarly situated in terms of control of the Franchisee post-restructuring will sign and become the Guarantor hereunder, and at least five (5) business days' notice has been given to the County of the substitution. Any such substitution of the Guarantor will be implemented in a manner that ensures that the substitute guarantee is in place and effective prior to or contemporaneously with the termination, substitution or cancellation of this Guarantee so that there is no breach in coverage.

Any such notice to be given hereunder shall be addressed to the County at

County Executive
Office of County Executive
Montgomery County Maryland
Executive Office Building
Second Floor
101 Monroe Street
Rockville, Maryland 20850

with a copy to the Franchisee. Such termination shall not affect liability incurred or accrued under this Guarantee prior to the effective date of such termination or cancellation.

By:  _____

Name: Jeffrey B. Kramp

Title: EJP, Secretary*, Gen Counsel