



Application Review Report

Transfer of Controlling Interest in Wave Cable
Television Franchise

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Introduction

On December 9, 2020, the Office of Cable Communications (OCC) received an official FCC Form 394¹ Application for *Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise* from Stonepeak Associates IV, LLC (“Stonepeak”). Stonepeak has entered into an agreement to acquire Radiate Holdings, L.P. (“Radiate”). WaveDivision I, LLC (“Wave”) - the holder of a Seattle Cable Television Franchise Agreement (“Franchise”) - is a wholly owned subsidiary of Radiate². The proposed purchase agreement will result in a change in the equity ownership of Radiate, which effectively results in the transfer of control of Wave.

Under federal law, the City of Seattle (“City”) has 120 days from the date of receiving a completed FCC Form 394 transfer application to approve, approve with conditions, or deny the transfer. If the City fails to act within the specified 120 period, by operation of Federal law, the City will be deemed to have consented to the transfer.

Under Seattle law the transfer of cable franchises is also governed by SMC 21.60.110, which requires the Office of Cable Communications (OCC) to submit to the Council a report summarizing the legal, financial, and technical qualifications of the proposed transferee, along with a recommendation for Council action. Accordingly, this report provides Council with information to make an informed decision on the Transfer of Controlling Interest request (“Transfer”).

The OCC’s due diligence for this report included retaining specialized legal and financial consultants to assist with the reviews to determine if Stonepeak and Radiate have the financial capability to assume the franchise obligations and comply with applicable law, and a review of the FCC Form 394 for a legal analysis of the Transfer.

The legal, financial, and technical reviews of the Transfer confirm that the proposed ownership change is a change to equity interest in Wave; it is not a change in the entity that will manage or operate the local cable system, and it will not result in reducing competition in the Seattle cable market.

This report recommends Council approval of the Transfer, subject to certain conditions and commitments that are incorporated into a Corporate Guaranty and Consent Agreement that accompany the proposed Transfer legislation.

About Stonepeak

According to the FCC Form 394, Stonepeak is a Delaware limited liability company controlled and majority owned by an entity ultimately controlled by Stonepeak Infrastructure Partners. Stonepeak Infrastructure Partners is a specialized private equity firm that invests in strategically important infrastructure assets within the communications, energy, power, water, renewables, and transportation sectors. Stonepeak Infrastructure Partners was founded in 2011, is headquartered in New York, and manages over \$29.2 billion of capital for its investors. Stonepeak has considerable experience in the digital infrastructure sector with select investments across residential broadband, data centers, enterprise fiber, towers, and small cells that give it visibility and expertise across the broader communications sector. Stonepeak is not a telecommunications service provider.

Stonepeak’s stated goal in the proposed purchase transaction is to make more resources available to an already excellent group of cable, broadband, and telephone providers. The FCC application also states there are currently no changes planned to the current terms and conditions of service or operations of the system by Wave. Wave will continue to operate in Seattle under the Wave brand and customers should not see a difference in operations.

¹ FCC Form 394 is the Federal Communications Commission (FCC) form operators use to request local franchising authority’s consent to acquisitions, mergers, and - in this case - transfer of controlling interest - of the local franchisee or any of its parent corporations.

² See Exhibits A, B and C for Pre and Post Transfer Ownership Structures, per FCC Form 394

Legal Review

The OCC retained attorney Brian Grogan with Moss & Barnett, specialized in telecommunication law, to complete a legal review of the proposed Transfer, to confirm the legal qualification of the parties involved, and to identify any adverse legal impacts from the Transfer. Mr. Grogan has prepared a report summarizing his findings (Attachment A).

The legal qualification standard relates primarily to the analysis of whether Wave, following completion of the proposed Transfer, will have the requisite authorization to operate and control the cable system and Franchise serving the City. The applicable standard of review is that the City's consent shall not be unreasonably withheld.

In this proposed Transfer, Wave will remain the "Grantee" under the Franchise. All of the membership interests in Wave will continue to be held by Wave Holdings which will continue to be an indirect wholly owned subsidiary of Wave Holdco. Wave Holdco will also continue to be an indirect wholly owned subsidiary of Radiate. What is changing is control of the equity interests in Radiate. In very basic terms, Stonepeak is acquiring indirectly an ownership interest in Radiate, which effectively results in the transfer of control of Wave.

Radiate Holdings, L.P. was formed on August 9, 2016 by the Secretary of the State of Delaware. Wave Holdco, LLC was formed on June 3, 2014 by Delaware Secretary of State. Following completion of the proposed Transfer, Radiate will continue to own indirectly 100% of the equity interests in Wave Holdco. Radiate will be owned by funds affiliated with Stonepeak through multiple intervening entities.

In concluding his legal review, Mr. Grogan, finds no basis for the City to deny the proposed Transfer based on a lack of legal qualifications of Radiate or Stonepeak. However, based on the "*Financial Review of Transfer of Franchise*" report prepared by the City's financial review consultant, Ashpaugh & Sculco, Mr. Grogan recommends that City consent to the proposed Transfer be conditioned on a guarantee from Radiate HoldCo, LLC, or another entity acceptable to the City, that requires the guarantor to irrevocably and unconditionally guarantee the full and faithful performance by Wave of all of the terms, covenants, conditions and agreements contained in the Franchise.

Financial Review

The OCC retained Garth Ashpaugh with Ashpaugh & Sculco CPAs, PLC ("A&S") to conduct a financial review of the proposed Transfer to determine what effect, if any, the Transfer will have on Wave's financial health and its ability to meet its franchise obligations and other commitments to the City. A&S has extensive experience analyzing the financial workings of cable operators and has prepared a report summarizing its findings (Attachment B).

From the review of the data obtained, A&S made the following observations:

- Stonepeak has demonstrated that it has access to the needed funding for the franchise.
- While several different companies are involved in the chain of ownership, the entities with the resources to make investments in the local cable system post-transaction will be Stonepeak and the franchisee (Wave) because it will have cash flow from the system operations and own the asset.
- Data has been provided showing that Stonepeak would have access to additional financial resources, if it chose to do so, to invest in the system in the City.
- Prior transfers of control in the equity ownership interests of Wave show a pattern of the equity ownership using debt to fund distributions to shareholders/owners. This has resulted in continued increases in the level of debt. Future cash flow will have to be used to repay the current level debt and any future debt incurred. This is not a sustainable scenario if there are changes in current financial conditions that limit the debt capacity available to meet the future needs of the company for operations and needed capital improvements (plant and equipment).

- While Stonepeak has shown that it has access to financial capability necessary for the Transfer, the City should consider what steps can be taken to assure the continued viability of the franchise.
- One potential condition would be to require a guarantee of performance from a company that is in a position to make significant capital investments as needed to ensure franchise compliance. Based on the information A&S was provided, the guarantee would need to be from Radiate HoldCo, LLC, a subsidiary of Stonepeak whose 2019 financials were provide to A&S for review.
- Stonepeak should commit to not taking any actions itself or through its subsidiary companies that would prevent the franchisee (Wave) from maintaining the cable system at a high level of performance and investing in the system so that it remains capable of providing services of a quality and type similar to that provided by other franchised operators.

A&S notes that the pattern of using debt to fund distributions to shareholders/owners has long term implications. In the case of the entities that have been part of past buyouts of Wave's parent ownership, the result has been continued increases in the level of debt. While it is not an unusual situation for cable operators to be highly leveraged, it is in the City's interest to assure that resources are not simply stripped from the local level in a way that affects the quality of service or the quality of the system.

Based on A&S's observations and recommendations, the City should consent to the proposed Transfer conditioned upon on a commitment that Radiate HoldCo, LLC guarantee the full performance by Wave under the Franchise.

Technical Review

As confirmed in the legal analysis, the Transfer application under review is a change in control of the equity interests related to Wave; it is not a change in the entity that will be operating the local cable system. Stonepeak is not a telecommunication service provider and there is no basis to conduct a review of Stonepeak's technical qualifications to operate a cable system. Instead, the OCC confirmed that the Transfer does not proposed any change in direct operations or management of Wave's cable system in Seattle. Wave has demonstrated it has existing technical expertise to operate a cable system in accordance with federal and local laws and regulations and to meet the technical and safety requirements of the FCC and the City and no technical expertise will be sought from Stonepeak.

Conclusion

Based on the OCC review, Stonepeak has sufficient legal and financial qualifications to warrant City approval of the Transfer of Controlling Interest in Wave's Franchise, subject to the conditions outlined in the proposed Corporate Guaranty and proposed Consent Agreement. Wave will continue to be the grantee under the Wave Cable Franchise and is not seeking any modification of the terms and conditions of the Wave Cable Franchise in connection with the transfer. Through the conditions of a Corporate Guaranty and Consent Agreement, Radiate HoldCo, LLC, will be an appropriate entity to ensure Wave continues to comply with the Franchise and Seattle Municipal Code requirements.

Recommendation for Council Action

The OCC recommends that Council approve the Transfer subject to the conditions of a Corporate Guaranty and a Consent Agreement which accompanies proposed legislation submitted by Seattle IT.

Among the Consent Agreement conditions the OCC recommends the Council impose on its approval of the Transfer:

- **Impact on Rates:** The Transfer shall not directly result in an increase in the rates for Wave's basic cable service in Wave's franchise area.

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- **A Performance Guarantee:** The City will require assurances that Wave will continue to meet its obligations and that Radiate HoldCo, LLC will guarantee Wave’s full and faithful performance under its Franchise.
 - **Technological Currency Commitment.** The City shall require assurances that Wave will maintain its cable system at a high level of performance and continue to invest adequate funds in the Seattle cable system to ensure that it keeps a reasonable level of technical parity, in terms of advanced services, quality and options, to that provided by other franchised operators in the City.
 - **Reimbursement of City Costs** – As required by SMC 21.60.110.D, Wave and Stonepeak must fully reimburse the City for all reasonable costs and expenses incurred by the City in reviewing and evaluating an application for Transfer, including applicable consultant and attorney fees related to the City’s review.



Exhibit A. Current Parent Entity Ownership Structure of Franchise Authority Holders

Pre-Close Ownership of Authority Holders

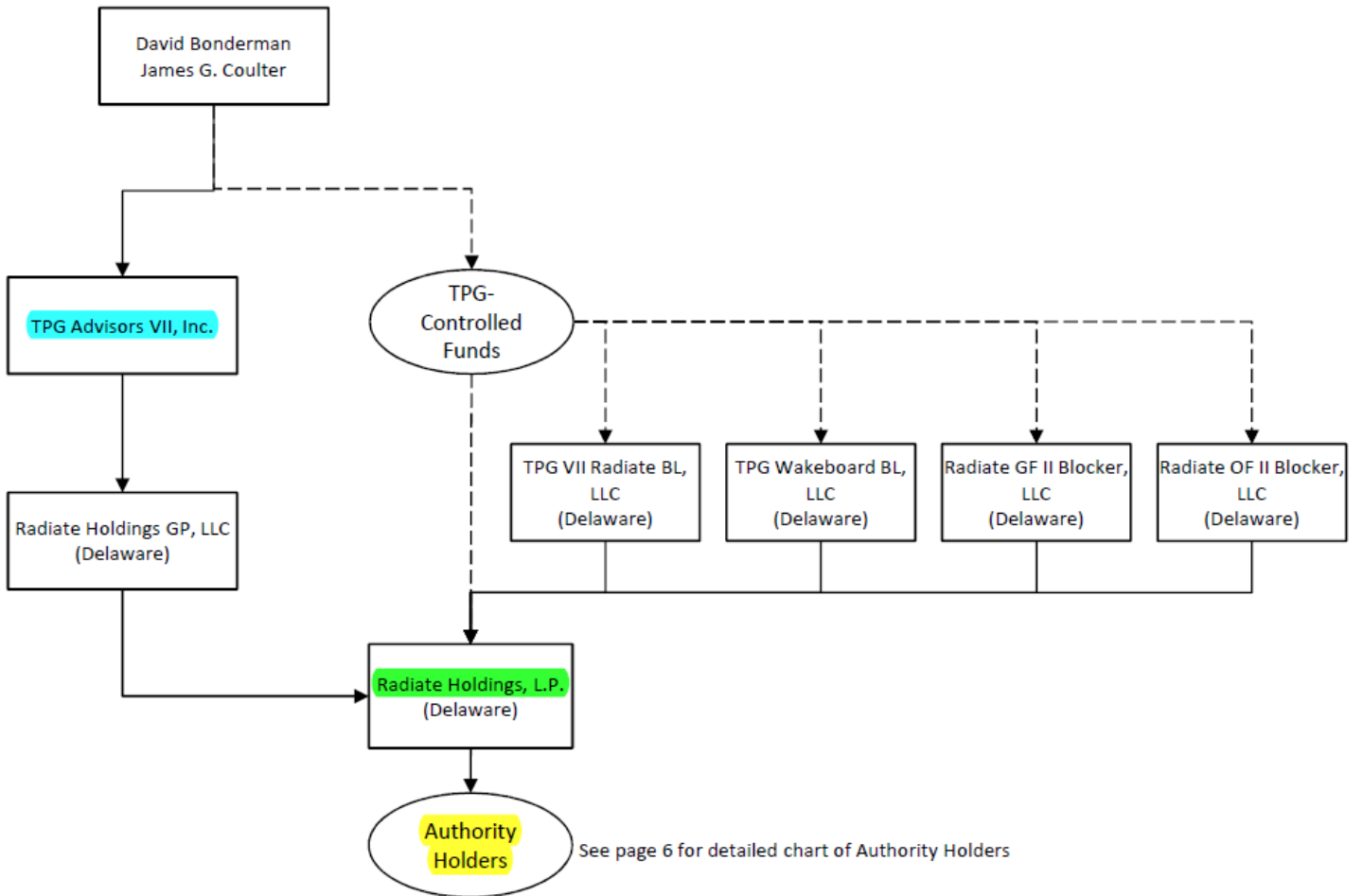


Exhibit B. Post Transfer of Controlling Interest - Ownership Structure of Franchise Authority Holders

Post-Close Ownership of Authority Holders (Indirect Control of Authority Holders)

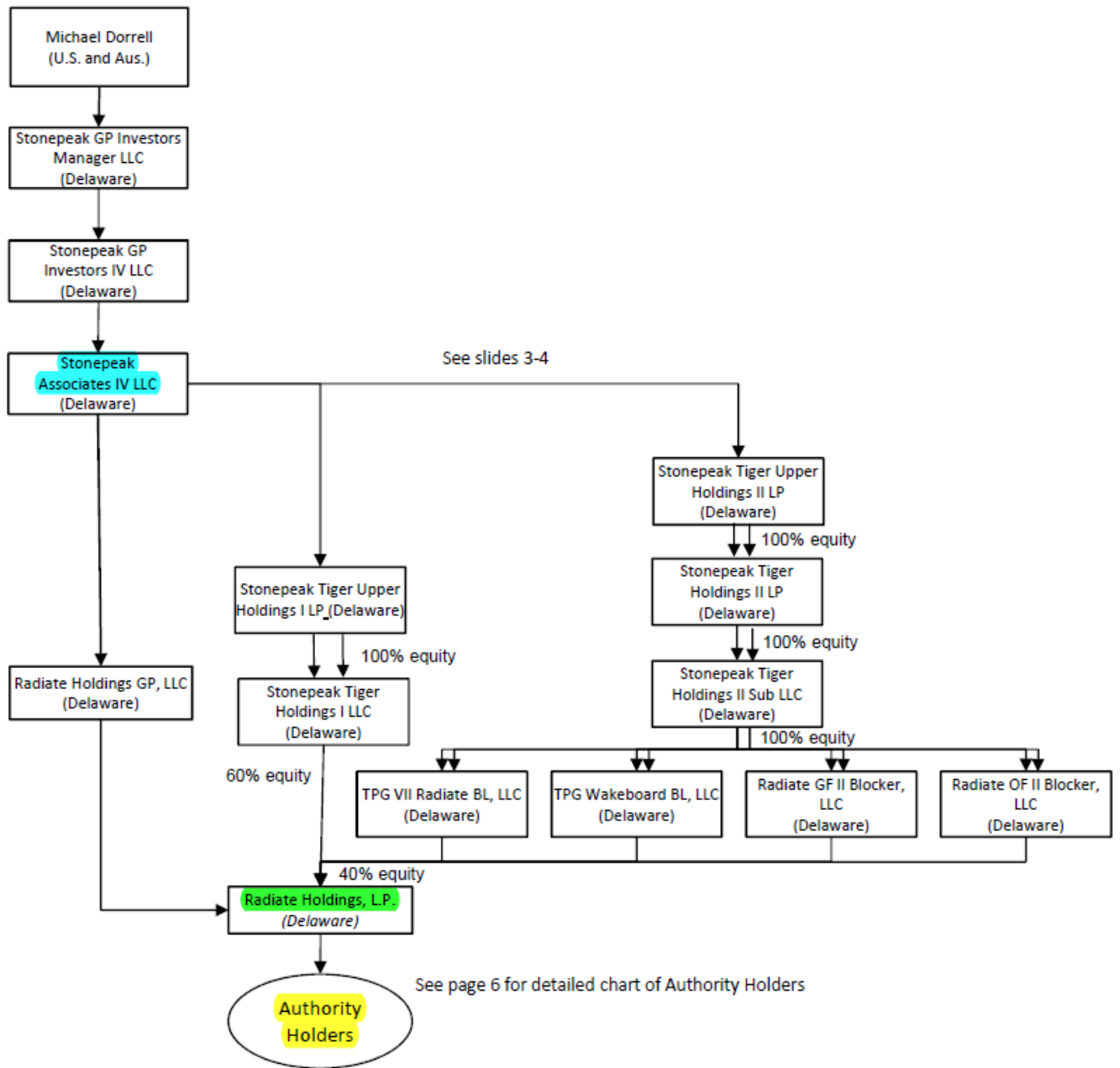


Exhibit C. Chart of Franchise Authority Holders

