

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE: Joint Application of WH i3B Bidco LLC, :
Service Area 5 Holdings, LLC and Service :
Area 5 Cable, LLC to Transfer Control of : Docket No. D-20-13
CATV Certificate :
:

REPORT AND ORDER

1. INTRODUCTION

On September 22, 2020, WH i3B Bidco LLC (“Transferee”), a Delaware limited liability company, Service Area 5 Holdings, LLC, (“Holdings”), and Service Area 5 Cable, LLC d/b/a i3 Broadband (“Area 5 Cable” or “Transferor”) (jointly, the “Co-Applicants”) filed a joint application with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking authority to transfer the Cable CATV Certificate¹ for Service Area 5 (comprised of the towns of Bristol, Warren and Barrington) to Transferee. The joint application was filed pursuant to R.I. Gen. Laws §39-19-4 and Section 4.1 of 815-RICR-10-05-1 the Division’s *“Rules Governing Community Antenna Television Systems”* (“Cable Rules”). There were no motions to intervene received in this docket. The Division’s Advocacy Section (“Advocacy Section”), an indispensable party, also entered an appearance in the instant docket.

¹ Although the record in this docket frequently contains reference to the “Certificate,” suggesting a single license to operate as a CATV operator in Rhode Island, the so-called “Certificate” is actually comprised of three (3) separate Certificates; namely, a “Compliance Order Certificate,” a “Construction Certificate” and a “Certificate of Authority to Operate.”

2. THE APPLICATION

The application provided the following information about the Co-Applicants, their plans and the reasons why the Co-Applicants believe their transfer application should be granted by the Division:

1. Co-Applicant Area 5 Cable is a longstanding provider of CATV Services within R.I. Service Area 5, and is the current holder of the Area 5 Cable CATV Certificates.
2. Co-Applicant Transferee is a Delaware Limited Liability Company formed for the purposes of the Transaction (as defined below), is owned by the Kuwait Investment Authority ("KIA"), and is managed by Wren House Infrastructure Management Limited ("Wren House"), the KIA's global investment manager for direct infrastructure investments.
3. Pursuant to the Membership Interest Purchase Agreement dated September 8, 2020 by and among Transferee, Seaport/CWBG Broadband Holdings, LLC, and the KIA, Transferee will purchase all issued and outstanding membership interests in Holdings, the direct parent company of Area 5 Cable and its affiliates, iTV-3, LLC, and i3 Broadband, LLC (the "Transaction"). The Transaction will result in Area 5 Cable becoming an indirect, wholly owned subsidiary of Transferee.
4. The Co-Applicants respectfully request Division approval to transfer the control of the Area 5 Cable CATV Certificates to Transferee in accordance with requirements established in Division CATV Rule 4.1.
5. Pursuant to Division CATV Rule 4.1, an application to transfer the substantial control of a CATV Certificate must include a completed Federal Communications Commission ("FCC") Form 394² and a statement from the transferee establishing (1) the transferee possesses the requisite financial and technical fitness; (2) management's experience operating a CATV System; (3) the transferee's willingness and ability to conform to the requirements, orders, rules and regulations of the Division; and (4) why the proposed

² Bidco, Exhibit 1.

transfer of control is consistent with the public interest. To the extent there is ambiguity, the substantive criteria is intended to be the same as for a Compliance Order Certificate pursuant to Division CATV Rule 3.3.

6. In accordance with these requirements, the Co-Applicants are filing herewith a completed FCC Form 394, with supporting pre-filed testimony and exhibits of Dan Kennedy and Samuel Valencia of Area 5 Cable, and Mark Keller of Transferee, with certain confidential and proprietary information having been redacted. The FCC Form 394 and the pre-filed testimony establish that Co-Applicants satisfy the requirements in Division CATV Rule 4.1 to transfer control of the Area 5 Cable CATV Certificates. Versions of Co-Applicants' FCC Form 394, disclosing the information redacted from the attached version, and other confidential exhibits are provided to the Division under seal and pursuant to Co-Applicants Request for Confidential Treatment, which is being filed concurrently herewith.

7. In particular, as discussed in more detail in the FCC Form 394 and supporting testimony, the Transferee has the financial and technical fitness to operate a CATV system in R.I. Service Area 5.

8. As previously noted, the Transferee is managed and controlled by Wren House. Based in London, United Kingdom, Wren House is a captive global infrastructure investment manager with a clear mandate that drives a flexible and commercial approach to investment and a focus on delivering attractive risk-adjusted equity returns. Wren House's portfolio includes investments in airports, ports, water, energy generation (conventional and renewables), distribution and transmission, and spans 12 countries and over 10,000 employees in the UK, Europe, Australia, Central and South America. Wren House is also active in midstream, digital infrastructure-including towers, fiber and data centers, healthcare and education infrastructure. Wren House is a wholly owned subsidiary of KIA, which is the oldest and one of the largest sovereign wealth funds in the world.

9. The Transferee intends to retain Area 5 Cable management, who have extensive experience in operating CATV and broadband systems in Rhode Island, and specifically R.I. Service Area 5. In addition, Area 5 Cable will

also have access to the broad and senior management team of i3 Broadband, and the management and expertise of Wren House and its executive team.

10. The Transferee is willing and able to conform to all applicable law and Division rules.

11. The Transferee submits that the public interest would be served by approval of the proposed transfer of control. The proposed Transaction will have no adverse impact on Area 5 Cable customers and will not alter the manner of service delivery or billing. The proposed Transaction will not result in any immediate change of CATV service provider for Area 5 Cable customers, nor any assignment of authorizations, and in no event will it result in the disconnection, reduction, loss, or impairment of service to customers. Following consummation of the Transaction, Area 5 Cable will continue to provide high-quality services to its customers without interruption and without immediate change in rates, terms, or conditions.

12. Further, Area 5 Cable customers will benefit from the extensive experience and expertise of Wren House, an established investor in the infrastructure sector. The financial, technical, and managerial expertise that Wren House will bring to Area 5 Cable are expected to enhance Area 5 Cable's ability to compete in the Rhode Island CATV marketplace. The proposed Transaction will not result in a reduction of competitors, and Rhode Island customers will continue to have access to the same competitive alternatives they have today.

13. Co-Applicants respectfully request a hearing date as expeditiously as possible and in any event during the first week of October.

14. Pursuant to Division CATV Rule 4.1(f), the Division should complete its review and rule on the proposed transfer not later than 120 days from the date of filing of the instant Joint Application, *i.e.*, on or before January 19, 2021.³

³ *Id* at 4.

3. SUPPORTING TESTIMONY

Co-Applicants proffered pre-filed direct testimony from three (3) witnesses in this docket. The witnesses were identified as: Mr. Marc Keller, Director at Wren House Infrastructure Management Limited, 55-58 Pall Mall, London, SW1Y 5JH, United Kingdom; Mr. Dan Kennedy, Area 5 Cable's Chief Executive Officer, 602 High Point Lane, East Peoria, IL; and Mr. Samuel Valencia, Area 5 Cable's Chief Financial Officer, 602 High Point Lane, East Peoria, IL.⁴

The testimony from Mr. Keller and the Area 5 witnesses echoed much of the information contained in the application. Additionally, the witnesses discussed their individual business experiences and their collective fitness to take over Area 5 Cable's CATV operations. The curriculum vitae of Mr. Keller and each of the Area 5 Cable's witnesses was attached to their pre-filed testimony.

According to the record, Mr. Keller, is an officer of the Transferee and the Director at Wren House Infrastructure Management Limited.⁵ Prior to joining Wren House in 2013, Mr. Keller worked for Bank of America Merrill Lynch's Corporate Finance and M&A team in London.⁶ The main focus of his position is the sourcing and execution of global infrastructure investment opportunities, as well as asset management. He further related that he has been involved in the successful acquisition of a number of Wren House's investments in various

⁴ Bidco Testimony, Exhibit 1. Together, Messrs. Kennedy and Valencia are referred to herein as the "Area 5 Witnesses."

⁵ *Id* at 2.

⁶ *Id*

industries around the world and has been focusing his origination activities on digital infrastructure globally.⁷

Mr. Kennedy's resume reflects that he has had an extensive career developing, managing and marketing complex telecommunications networks in roles including corporate executive, entrepreneur, and consultant before joining i3 Broadband. Mr. Kennedy also worked at Fidelity Communications for six years as the Vice President of Sales and Business Development; and before that, at Memphis Networx as Vice President of Engineering and Product Development. Mr. Kennedy began his telecommunications career in the U.S. Army, where he served on a communications maintenance team.

Mr. Valencia also works for i3 Broadband, as its Chief Financial Officer. Before that, he was employed at PricewaterhouseCoopers LLP as an Assurance Partner. During his time with these companies, Mr. Valencia has created accounting systems, developed and executed strategies to protect corporate assets, managed debt facilities and related compliance, ensured accuracy in financial reporting and implemented internal control strategies. Mr. Valencia is also experienced in the area of mergers & acquisitions.

After their introductions, Mr. Keller and the Area 5 witnesses offered an additional overview of the purchase transaction. The testimony reflects that Transferee was newly formed for the purpose of this transaction.⁸ The Transferee, Seaport/CWBG Broadband Holdings, LLC ("Seaport"), and KIA entered into a Membership Interest Purchase Agreement on September 8,

⁷ *Id.*

⁸ *Id.*

2020. Under the agreement, the Transferee agreed to purchase all issued and outstanding membership interests in Holdings, the direct parent company of Area 5 Cable, and its affiliates, iTV-3, LLC and i3 Broadband, LLC (together, “i3 Broadband”) (the “Transaction”).⁹ The Transaction will result in Area 5 Cable becoming an indirect, wholly owned subsidiary of the Transferee with the Transferee intending to retain Area 5 Cable management .¹⁰

The testimony also covered the FCC Form 394 filing, which supplemented the application. The witnesses related that all of the sections of the FCC Form 394 and its attached exhibits are relevant to this transfer matter. Specifically, the witnesses explained that the information contained in the FCC Form 394 supplement many of the detailed statements made in the pre-filed testimony in the areas of Area 5 Cable’s legal, financial, and technical qualifications.¹¹

With respect to the issue of the Transferee’s financial and technical fitness, the witnesses testified that, following the close of the transaction, Area 5 Cable will have access to all funds required to continue to operate its business from equity investments by its indirect controlling party, Wren House.¹² With respect to technical fitness, they related that they intend to retain Area 5 Cable management, who have extensive experience in operating

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 5.

¹² *Id.*

CATV and broadband systems in Rhode Island, and specifically R.I. Service Area 5.¹³

Mr. Keller and the Area 5 witnesses next addressed the Transferee's management experience at operating a CATV system. The witnesses related that the Transferee intends to retain Area 5 Cable management, who have extensive experience in operating CATV and broadband systems in Rhode Island, and specifically R.I. Service Area 5.¹⁴ The witnesses also related that the Transferee's management team "...[has] extensive experience building, operating, expanding, marketing and successfully developing, fiber optic, hybrid fiber/coax and similar consumer communications systems."¹⁵ The Area 5 witnesses thereupon provided detailed biographical summaries of the day-to-day operations and management staff which included their relevant individual experiences in these industries.¹⁶ The testimony further provided that Area 5 Cable will have access to the management and expertise of Wren House and its executive team with additional detailed biographical summaries provided for each member.¹⁷

Mr. Keller and the Area 5 witnesses next addressed the Transferee's willingness and ability to conform to the Division's regulatory requirements. Noting that Wren House "has extensive experience in conforming with,

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 6-8.

¹⁷ *Id.* at 8-10.

applicable local, state, federal and international regulatory requirements.”¹⁸ The witnesses testified that the Area 5 Cable “staff looks forward to working with the Division to meet all applicable legal and regulatory requirements.”¹⁹

Lastly, with respect to the issue of “public interest,” Mr. Keller and Area 5 Witnesses contend that the proposed Transaction will have no adverse impact on Area 5 Cable customers and will not alter the manner of service delivery or billing.²⁰ They further contend the proposed Transaction will not result in any immediate change of CATV service provider for Area 5 Cable customers, nor any assignment of authorizations, and in no event will it result in the disconnection, reduction, loss, or impairment of service to customers.²¹ Testimony further provides that, following consummation of the Transaction, Area 5 Cable will continue to provide high-quality services to its customers without interruption and without immediate change in rates, terms, or conditions.²²

In additional support of Transferees contention that the proposed Transaction is in the public interest, the witnesses related further that Area 5 Cable customers will benefit from the extensive experience and expertise of Wren House, an established investor in the infrastructure sector.²³ They went on to state that the financial, technical, and managerial expertise that Wren House will bring to Area 5 Cable are expected to enhance Area 5 Cable’s ability

¹⁸ *Id.* at 10.

¹⁹ *Id.*

²⁰ *Id.* at 11.

²¹ *Id.*

²² *Id.*

²³ *Id.*

to compete in the Rhode Island CATV marketplace. They expressed that the proposed Transaction will not result in a reduction of competitors, and Rhode Island customers will continue to have access to the same competitive alternatives they have today.²⁴

4. REGULATORY RESPONSE TO THE APPLICATION FILING

In Rhode Island, proposed CATV Certificate transfers are subject to the regulatory requirements contained in Section 1.4.1 of 815-RICR-10-05-1, the Division's Cable Rules. That section is reproduced below:

Section 1.4.1 Transfer of Certificates

(a) A Certificate or substantial control thereof may not be sold, assigned or transferred, either in whole or part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to, or vest in any person, firm, corporation or other organization, group or body, either through an act of the awardee or operator, by merger, consolidation, or by operation of law, whether by foreclosure, judicial sale, receivership, bankruptcy, reorganization, condemnation or other action or proceeding, without the approval of the Administrator in a written order, following a duly noticed public hearing.

(b) An application for a transfer or assignment shall be commenced by filing a copy of FCC Form 394, together with all exhibits, with the Division, along with a statement by the transferee as to: (i) its financial and technical fitness, (ii) management's experience operating a CATV system, (iii) a sworn affirmation that the transferee will conform to the requirements, orders, rules and regulations of the Division, and (iv) why the proposed transfer is consistent with the public interest.

²⁴ *Id.*

(c) The criteria for approval of any assignment or transfer by the Administrator shall be identical with the criteria required to be met at the awarding of an original Compliance Order Certificate.

(d) The granting of approval by the Administrator in any one instance, shall not constitute a waiver or grant in any other instance nor render unnecessary any other or subsequent approval.

(e) Nothing in this section contained shall be deemed to prohibit a mortgage, pledge or sale and lease back of a system, or any part thereof, for financing purposes with the consent of the Administrator.

(f) The Administrator shall have one hundred and twenty (120) days from the date of an application for transfer or assignment to act upon an application to transfer or assign unless the applicant and the Administrator agree to an extension of time.

(g) Upon approval of any such sale, transfer, or assignment, the purchaser, transferee, or assignee shall return all certificates to the Administrator who shall then issue new Certificates in the name of the new Certificate holder.

For additional clarification, the Division notes that under Section 1.4.1(c), above, the criteria for approval of any assignment or transfer “shall be identical with the criteria required to be met at the awarding of an original Compliance Order Certificate.” Under 1.1.2(12) of the Division’s Cable Rules, a Compliance Order Certificate is defined as: *“a certificate issued by the Administrator designating a particular applicant as grantee and holder of franchise and ownership rights to a CATV system within a specified service area.”*

*Such certificate does not constitute authority to construct or operate a CATV system.*²⁵

Procedurally, applicants seeking a Compliance Order Certificate must file an application that, inter alia, provides complete responses to twelve informational questions contained in Section 1.3.3(c)(1-12) of 815-RICR-10-5-01 supra. Applicants are also encouraged to submit supporting documents with their applications.

Based on the information provided in the application, and, if after public hearing and investigation, the Division finds that the applicant is fit, willing, technically qualified, and financially able to perform the service for which it has applied, and is willing and able to comply with the Division Rules and the laws of the State of Rhode Island, then the Division is required to issue a Compliance Order Certificate to the applicant.²⁶

The Division evaluated the merits of the instant application filing predicated on the regulatory standards delineated above.

5. HEARING AND APPEARANCES

The Division conducted a duly noticed public hearing in this docket on November 09, 2020. The hearing was conducted remotely from the Division's hearing room, located at 89 Jefferson Boulevard in Warwick.²⁷ The following counsel entered appearances in this docket:

²⁵ See 815-RICR-10-05-1.1.2(12).

²⁶ See Section 1.3.3(d) of 815-RICR-10-05-01.

²⁷ Due to COVID 19 related travel restrictions, compliance with proper social distancing measures, and as a matter of convenience to the parties, the Division granted Transferee's request to conduct the hearing via Zoom.

For Transferee:

Ronald W. DelSesto, Jr., Esq.

For the Division's Advocacy
Section:

Leo Wold, Esq.
Deputy Chief of Legal Services

6. PUBLIC COMMENTS

There were no public comments offered in this docket.

7. ADVOCACY SECTION'S DIRECT CASE AND RECOMMENDATION

The Advocacy Section did not to proffer any witnesses in this proceeding. Instead, it submitted a Settlement Agreement ("Settlement") between the Advocacy Section and the Co-Applicants executed during the discovery phase of this case.²⁸ The Settlement memorialized the recommendation of the Advocacy Section which was based on 1.) The Advocacy Section's submission of data requests to the Co-Applicants concerning the Transaction; 2.) Responses to said requests by Co-Applicants; and 3.) The Advocacy Sections review of Co-Applicant's application, FCC form 394, and prefiled testimony.²⁹ The Advocacy Section's Settlement was admitted as a full exhibit.³⁰ The Settlement agreement provides the following recommendations concerning the transfer of the CATV Certificate:

1. The Advocacy Section recommends that the Division find that (1) the Transferee is fit, willing, technically qualified,

²⁸ See 815-RICR-00-00-1.27(B) Division Rules of Practice and Procedure concerning Stipulations and Settlement Offers.

²⁹ See Advocacy Section Joint Exhibit 1.

³⁰ Tr. at 6.

and financially able to own and control Service Area 5 Cable; and upon consummation of the proposed transaction, Service Area 5 Cable shall continue to perform the service for which it has applied and to conform to the requirements, orders, rules, and regulations of the Division and the laws of the State of Rhode Island;

2. The Advocacy Section further recommends that the Division grant the Joint Application and approve the transfer of control of Service Area 5 Cable, including its Compliance Order Certificate, Construction Certificate, and Certificate of Authority to Operate (collectively the "Certificates") to the Transferee.
3. To effect transfer and control, upon approval of the Division of the Joint Application, Service Area 5 will continue operating under its existing Certificates. The Division files shall be updated to reflect Transferee as the new controlling member of Service Area 5 Cable.
4. Transferee agrees to comply with and will cause Service Area 5 Cable to comply with federal law, The Rhode Island General Laws, the *Rules Governing Community Antenna Television Systems 815-RICR-10-05-1*, as amended ("*Rules*") and all Orders of the Division.
5. Transferee agrees that it will cause Service Area 5 Cable to continue operating in a manner consistent with the public interest.
6. Transferee will cause Service Area 5 Cable to maintain liability insurance in accordance with Section 1.12.3 of the Rules and a performance bond (in an amount no less than \$50,000) in accordance with section 1.12.5 of the *Rules*.
7. Transferee agrees that its present intention is to maintain the operations and existing location of the PEG studio of Service Area 5 Cable.

The undersigned Hearing Officer next addressed the Transferee's Joint Request for Confidential Treatment of certain exhibits attached to Co-

Applicants application for transfer and control of CATV Certificate. The exhibits, described as proprietary and confidential, were identified as exhibit 1, Membership Interest Purchase Agreement dated September 8, 2020 and exhibit 4, Documents governing ownership or future ownership rights in Area 5 Cable and the Transferee.³¹ Based on the arguments contained in the request for a confidential treatment, the Division agreed to seal the relevant exhibits.³²

The Co-Applicants presented three witnesses in support of its application. The witnesses were identified for the record as Messrs. Marc Keller, Sam Valencia, and Mark Torrenti.³³ Counsel for Transferee related that the purpose of Mr. Torrenti's participation was to act as a substitute witness for Dan Kennedy and adopt Mr. Kennedy's pre-filed testimony.³⁴ The testimony presented by Messrs. Keller, Valencia, and Torrenti was brief and directly mirrored the pre-filed testimony provided in Co-Applicants original application.³⁵ There was no cross-examination of the witnesses by the Advocacy Section.

Based on this record, the Advocacy Section recommended that the Division approve the instant transfer application as per the Settlement executed between the Co-Applicants and the Advocacy Section.

³¹ Hearing Transcript p. 4.; Transferees Joint Request for Confidential Treatment p. 1.

³² Tr. At 4.

³³ Tr. at 8-9.

³⁴ Tr. at 8.

³⁵ Tr at 10-14.

8. FINDINGS

After a thorough review of the record in this docket, the Division finds that the Co-Applicants have satisfied the requisite criteria prescribed in 815-RICR-10-05-01 sections 4.1(c) and 3.3(d) of the Division's Cable Rules and are fit, willing, technically qualified, and financially able to own and control Service Area 5 Cable and are willing and able to comply with the Division Rules and the laws of the State of Rhode Island . Accordingly, the Division shall approve the Co-Applicant's joint application.

The Division additionally finds that, after an independent review of the proposed settlement, the executed Settlement Agreement between the Advocacy Section and the Co-Applicants is reasonable, in the public interest, and in accordance with law and regulatory policy. Accordingly, the Settlement Agreement is hereby accepted.

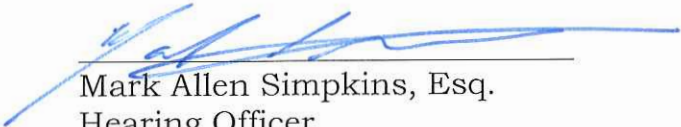
Now, Accordingly, it is

(23951) ORDERED:

1. That the September 22, 2020 joint application filing from WH i3B Bidco LLC, Service Area 5 Holdings, LLC, and Service Area 5 Cable, LLC d/b/a i3 Broadband seeking authority for transfer of control of Service Area 5 Cable CATV Certificates for Service Area 5 (comprised of the towns of Bristol, Warren and Barrington) to WH i3B Bidco LLC , is hereby granted.
2. That Service Area 5 Cable continue to operate under existing Certificates.

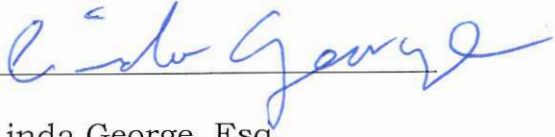
3. That Division files shall be updated to reflect the Transferee as the new controlling member of Service Area 5 Cable.
4. That WH i3B Bidco LLC and Service Area 5 Cable comply with all of the provisions of the executed Settlement Agreement as provided for herein.

Dated and Effective at Warwick, Rhode Island on November 30, 2020.



Mark Allen Simpkins, Esq.
Hearing Officer

APPROVED:



Linda George, Esq.
Administrator