

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Application Filed for the Transfer of Control of) WC Docket No. 16-206
Axia NGNetworks USA, Inc. to Axia)
NGNetworks Trust)

ORDER ON RECONSIDERATION

Adopted: November 17, 2016

Released: November 17, 2016

By the Chief, Wireline Competition Bureau

I. INTRODUCTION

1. In this Order on Reconsideration, we address a Petition for Reconsideration filed on August 24, 2016 by the Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative (MTC). In the Petition, MTC requests that the Wireline Competition Bureau (Bureau) reconsider its July 29, 2016 decision approving the transfer of control of Axia NGNetworks USA, Inc. (Axia U.S.) to Axia NGNetworks Trust (Trust). For the reasons stated below, we dismiss the Petition on procedural grounds and, in the alternative, deny it on the merits.

II. BACKGROUND

2. Under the name of MassBroadband 123 Network, Axia U.S. serves as the operator for MTC's middle-mile broadband network in Western Massachusetts, which includes about 2,200 kilometers of fiber backhaul infrastructure connecting more than 120 communities. On June 22, 2016, Axia NetMedia Corporation (Axia Canada), Axia U.S., and the Trust (collectively, Applicants) filed a joint application seeking approval of an agreement between Axia Canada and the Trust's Operating Trustee, FSM Capital Management LLC (FSM), whereby the Trust would acquire all of the issued and outstanding stock of Axia U.S., and FSM, as Operating Trustee, would then assume complete control of

1 47 CFR § 1.106; Petition for Reconsideration by the Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative, WC Docket No. 16-206 (filed Aug. 24, 2016), https://ecfsapi.fcc.gov/file/108240930628212/MTC%20Petition%20for%20Reconsideration.pdf (Petition).

2 Domestic Section 214 Application Filed for the Transfer of Control of Axia NGNetworks USA, Inc. to Axia NGNetworks Trust, WC Docket No. 16-206 (filed June 23, 2016) (Application); Notice of Domestic Section 214 Authorizations Granted, Public Notice, 31 FCC Rcd 8635 (WCB 2016) (granting the proposed transfer of control of Axia U.S. to the Trust as requested in the Application).

3 Axia U.S. states that it connects carriers serving MTC's end users, which include anchor institutions and local government facilities, to broadband backbone providers. Application at 7. MTC states that it is an "instrumentality of the Commonwealth of Massachusetts and owner of the MBI123 fiber optic network." It states that it used federal stimulus funds under the American Recovery and Reinvestment Act of 2009 to build a broadband network serving a portion of the commonwealth. Petition at 1-2.

the Trust and the day-to-day operations of Axia U.S.⁴ On June 28, 2016, the Bureau released a public notice establishing a streamlined pleading cycle for comments and reply comments on the Application by interested parties.⁵ MTC was not a party to the underlying Application proceeding, and neither MTC nor any other commenter filed a petition to deny the transaction or otherwise opposed a grant of the Application.⁶ On July 29, 2016, the Bureau granted the transfer of control proposed in the Application.⁷

3. In the Petition, MTC states that, while it was aware Axia U.S. was contemplating a sale of assets, it failed to file in the underlying proceeding because Axia U.S. did not specifically inform MTC of the transfer of control between Axia U.S. and the Trust until after the Bureau authorized the transfer. MTC asserts this lack of notice violated a Network Operating Agreement between MTC and Axia U.S. (2011 Agreement) that MTC claims requires Axia U.S. to seek MTC's written consent prior to any proposed transfer of control.⁸ MTC asserts we should reverse our grant of the Application, or retroactively impose a condition mandating that Applicants fulfill all contract obligations in the 2011 Agreement, because the transfer of control of Axia U.S. to the Trust jeopardizes the continued operation of MTC's middle mile network.⁹ According to MTC, Applicants have failed to provide adequate assurances that Axia U.S. will continue operating MTC's network under the terms of the 2011 Agreement—a contract MTC states extends until the year 2023.¹⁰ MTC also asserts that the Applicants intended the transfer to the Trust, without seeking MTC's consent under the 2011 Agreement, to be an "end-around" of a 2014 state court injunction (2014 Injunction), which MTC argues requires Axia U.S. to continue to perform all of its payment and other obligations under the 2011 Agreement.¹¹

4. Applicants oppose the Petition by describing MTC as a "contract counterparty and litigation adversary of Axia U.S." contending that Commission precedent favors dismissal because the

⁴ Application at 5-6. Axia Canada, an Alberta (Canada) publicly listed company that does not provide telecommunications services, is the parent company of Axia U.S.

⁵ *Domestic Section 214 Application Filed for the Transfer of Control of Axia NGNetworks USA, Inc. to Axia NGNetworks Trust*, Public Notice, 31 FCC Rcd 7162 (WCB 2016).

⁶ Application at 7.

⁷ On August 2, 2016, Axia U.S. notified the Bureau that the proposed transaction had been consummated. See Letter from George M. Foote, Counsel to Axia U.S., Axia Canada, and Axia NGNetworks, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-206 (filed Aug. 2, 2016).

⁸ Petition at 2, 4-5; Massachusetts Technology Park Corporation's Reply in Support of Petition for Reconsideration, WC Docket No. 16-206 at 2-3, 5-6 (filed Sept. 13, 2016) (MTC's Reply). MTC states that Axia U.S. sought MTC's consent to a prior proposed transfer of control of Axia Canada to a different entity named Digital Connection Canada (DCC) (an entity not a party to the Application nor at issue in the Petition). See *Domestic Section 214 Application Filed for the Transfer of Control of Axia NGNetworks USA, Inc. to Digital Connection (Canada) Corp.*, Public Notice, 31 FCC Rcd 3880 (WCB 2016) (accepting for filing the application by Axia Canada and DCC). No comments, oppositions, or petitions to deny were filed by MTC nor any other party. Axia U.S. and DCC subsequently withdrew that application, stating that their business plans had changed and that "Axia Canada and Axia U.S. intend to enter into a transaction that would allow for the transfer of control of Axia U.S. to Axia NGNetworks Trust, a U.S. owned trust." *Domestic Section 214 Application Filed for the Transfer of Control of Axia NGNetworks USA, Inc. to Digital Connection (Canada) Corp., Request to Withdraw Joint Application for Domestic Control*, WC Docket No. 16-110, at 3 (filed June 22, 2016) (DCC Withdrawal Request).

⁹ Petition at 5-6; MTC's Reply at 6.

¹⁰ Petition at 4; MTC's Reply at 6.

¹¹ Petition at 2-4. According to MTC, "[the 2014 Injunction] was issued in 2014 after [Axia Canada] threatened to cause Axia U.S. to cease making payments required by the [2011 Agreement]. The [2014 Injunction] requires that Axia U.S. continue to perform all of its obligations under the [2011 Agreement] and to refrain from 'withholding all fees and payments to or on behalf of MTC' in connection with the [2011 Agreement]." *Id.*

Commission is not the proper forum for contract disputes.¹² According to the Applicants, Public Notice in this proceeding constitutes constructive notice to all interested parties, including MTC, and therefore MTC has failed to show good cause for failing to file a petition to deny.¹³ Applicants further assert that MTC has not demonstrated that a reversal is in the public interest and that it fails to show that Axia U.S. plans to default on its obligations, liquidate, or violate the 2014 Injunction.¹⁴ Finally, Applicants assert that the trust agreement between Axia Canada and FSM provides the necessary authority and funding for FSM to control and operate Axia U.S.¹⁵

III. DISCUSSION

5. Because MTC has failed to establish any of the limited circumstances contemplated in section 1.106(c) by which the Bureau may grant a petition for reconsideration that relies on facts and arguments not previously raised before it, we dismiss the Petition on procedural grounds.¹⁶ While dismissing on procedural grounds, we also deny the Petition on the merits finding that the public interest would not be served by reversing the Bureau's authorization for the transfer of control of Axia U.S. to the Trust—a transaction that has already been consummated—or, alternatively, conditioning the grant by requiring Applicants to perform all of the obligations contained in the 2011 Agreement.¹⁷

6. Section 1.106(c)(1) of the Commission's rules establishes the narrow circumstances in which the Commission or a designated authority may grant a petition for reconsideration that contains facts or arguments not presented in the underlying proceeding.¹⁸ Under the rule, the Bureau may only grant the Petition if the facts or arguments asserted (i) relate to circumstances that have changed since the last opportunity for MTC to present them, or (ii) the facts or arguments were unknown to MTC until after its last opportunity to present them, and it could not have known them through ordinary diligence.¹⁹ Parties that fail to file petitions to deny, even if they file comments, generally may not seek reconsideration of decisions regarding the transfer of control of licenses or other authorizations, such as at issue here, and MTC has not shown good cause as to why we should deviate from this standard.²⁰

¹² Joint Opposition to Massachusetts Technology Park Corporation's Petition for Reconsideration, WC Docket No. 16-206, at 1-2 (filed Sept. 2, 2016) (Opposition).

¹³ *Id.* at 6-8. Applicants also contest MTC's assertion that the 2011 Agreement requires MTC's consent prior to Axia U.S. entering into a transfer of control. *Id.* at 3-4, n. 2.

¹⁴ *Id.* at 9-10.

¹⁵ *Id.* at 10.

¹⁶ 47 CFR § 1.106(c). We note that the Bureau has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 CFR § 1.106(a)(1).

¹⁷ See Petition at 5-6 (stating that “[u]nless [Axia Canada] and Axia U.S. provide adequate assurances to MTC and the FCC that they will continue to meet their obligations under the [2011 Agreement] for its full term, the [Bureau] should certainly reconsider this grant”); see also MTC Reply at 8 (requesting that the Commission “grant this Petition, reconsider its order granting the Applicants’ domestic Section 214 application, and set aside, dismiss or return the application, or retroactively condition or amend it as requested above,” which refers to MTC’s request to condition the transaction on “ensuring Axia US fulfill[s] its obligations under the [2011] Agreement for its full term...”).

¹⁸ 47 CFR § 1.106(c)(1).

¹⁹ *Id.* Section 1.106(c)(1) incorporates by reference section 1.106(b)(2), which addresses the circumstances under which the Commission or Bureau may consider arguments from a non-party to the underlying proceeding.

²⁰ 47 U.S.C. §405(a); 47 CFR §1.106(b)(1); *Shareholders of Tribune Co., Transferors & Sam Zell, et al. Transferees*, Memorandum Opinion and Order on Reconsideration, 29 FCC Red 844, 847-49, paras. 10-15 (2014) (discussing prerequisites for petitions to deny).

7. As a threshold matter, we find that MTC, like any other interested party, received the required and sufficient notice of this proceeding, as mandated by the Commission's rules, through the public notice accepting the Application for filing.²¹ "[P]ublic notice constitutes constructive notice to interested parties of the filing of an application," and entities filing petitions for reconsideration lack good cause for failing to participate in earlier proceedings merely because they lacked actual notice of the proceedings.²² Moreover, as MTC admits, it had been generally aware that Axia U.S. had been contemplating a sale of assets since April 2016 when Axia U.S. had informed it of the proposed sale to DCC.²³ In addition, the withdrawal notice that Axia U.S. filed in the DCC proceeding clearly stated that in light of the cancellation of that transaction, Axia U.S. intended instead to transfer control of the company to the Trust.²⁴ We therefore agree with Applicants that MTC, through the exercise of ordinary diligence, could have learned about the Application²⁵ and it cannot now argue that any lack of actual notice prevented it from presenting its arguments in the underlying proceeding.

8. We also reject MTC's suggestion that it would have been able to file a petition to deny in the underlying proceeding only if Applicants had properly notified it of the Trust transaction as it asserts Applicants were required to do under the 2011 Agreement.²⁶ As set forth above, this reasoning is contrary to the Commission's view that a "would-be petitioner's lack of actual notice of the pendency of a proceeding does not establish good cause for its failure to participate."²⁷ Further, we note that the Commission's rules do not require that applications be served on those parties that may file in opposition.²⁸ Based on our finding that MTC had constructive notice, we also find that the Petition does not rely on changed circumstances or facts that were unknown to MTC. Accordingly, we dismiss the Petition under section 1.106(c)(1) of the Commission's rules.

9. As a separate and independent ground to dismiss, section 1.106(c)(2) of the Commission's rules states that the Bureau may grant a petition for reconsideration that presents facts or arguments not previously presented if it determines that consideration of them is required in the public

²¹ Under our rules addressing streamlining procedures for domestic transfer of control applications, such as the case here, the Bureau is required to issue a public notice once it has determined an applicant has filed a complete application that is appropriate for streamlined treatment. 47 CFR 63.03(a). Unless otherwise notified by the Commission, that applicant is thereafter permitted to transfer the control proposed in its application on the 31st day after the date of such public notice. *Id.*

²² See *Rupert Murdoch Applications for Transfer of Control of Fox Television Stations, Inc.*, Memorandum and Opinion and Order on Reconsideration, 24 FCC Rcd 5824, 5827 (2008) (*Rupert Murdoch*); see also *Fox Television Stations, Inc.; Application for Renewal of License*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9580 (MB 2014). We therefore reject MTC's claim that it did not file a petition to deny because it was not aware of the Application and that "it relied on Axia [Canada's] and Axia [U.S.'s] prior representation to MTC that the application for transfer of control was between Axia [Canada] and Digital Connection (Canada) Corp., not an attempt to transfer Axia U.S. to a Trust...." Petition at 2.

²³ Although MTC had notice from Axia Canada and Axia U.S. about the contemplated transfer of control with DCC, MTC did not file comments or a petition to deny in that proceeding. See *supra* n. 8.

²⁴ DCC Withdrawal Request at 1; see *supra* n. 8.

²⁵ See 47 CFR § 1.106(b)(2)(ii); see also Opposition at 8 ("MTC is in the telecommunications industry and by its own acknowledgement had actual notice of a pending transaction and that transfer of control proceedings would be required at the Commission. Commission rules and rulings treat the Public Notice as notice to MTC. MTC neglected or ignored the opportunity to monitor the Daily Digest or otherwise obtain information about the Public Notice.").

²⁶ Petition at 2; see also *supra* para. 3.

²⁷ See *Applications of Powell Meredith Comm'n Co.*, Memorandum Opinion and Order, 31 FCC Rcd 2647, 2648, para. 3 (2016).

²⁸ See *Rupert Murdoch*, 24 FCC Rcd at 5827, para.12.

interest.²⁹ MTC has not demonstrated that consideration of the facts and arguments on which it relies is required in the public interest, and we therefore also dismiss the Petition under this section.

10. MTC's dispute with Applicants over the implication and enforcement of the 2011 Agreement, including issues related to the interpretation of its notice requirements, as well as the effect of the 2014 Injunction, are contractual disputes between the parties. We find that it is not in the public interest to set aside the transfer of control of Axia U.S. to the Trust based on the asserted contractual disputes between the parties; rather, these issues are more appropriately resolved in a court of competent jurisdiction.³⁰

11. The circumstances here fall within the Commission's clear precedent holding that the Commission is not the proper forum for resolving private contract disputes. Nor should the Commission inject itself into the parties' litigation pending in a state court.³¹ As the Commission has concluded, "[i]t is well established that the Commission is not the proper forum for resolving private contractual disputes, and that the Commission will not defer action on transfer applications pending state court litigation or private contractual matters."³² Even assuming MTC is correct that the transfer of control at issue in the Application violated the 2011 Agreement and/or the 2014 Injunction, issues tied to the breach of that private contract and its related injunction should not be resolved here without further evidence demonstrating that the public interest demands such a resolution.³³

²⁹ 47 CFR § 1.106(c)(2).

³⁰ In particular, Applicants and MTC assert different interpretations of the contract language in the 2011 Agreement to argue whether Applicants were required to notify MTC of the Trust transaction. Petition at 4-5; MTC's Reply at 2-3; Opposition at 3.

³¹ MTC acknowledges that it "is aware that the FCC generally does not intervene in contract disputes in the context of transfer and assignment applications." Petition at 5; *see also Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon for Consent to Assign and Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8762-63, para. 139 (WTB 2010) (declining to defer action on transfer applications pending state court litigation of a contractual dispute); *Applications of Cricket License Co.*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2790, para. 120 (WTB/IB 2014) (declining to impose certain conditions on transfer of control of wireless licenses and international section 214 authorization because "such an action would be an inappropriate interference with a private contractual agreement"); *Applications of Cellco P'ship d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manger and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order, 23 FCC Rcd 17444, para. 214 (2008) (refusing to consider the question of whether the transaction would violate existing reseller agreements because it is a private contractual dispute); *id.* at para. 214 and n.742 (citing *A.L.Z. Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 23200, 23201 para. 3 (2000) (finding contractual dispute concerning payment obligations to be within the province of a court of competent jurisdiction, not the Commission)) (citations omitted); *Applications of Cellco P'ship, et al. for Consent to Assign or Transfer Control of Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 10985, 11021, para. 91 (WTB/IB 2010) (rejecting objections to the transfer of certain wireless licenses and related authorizations because the "complaint constitutes a private contractual matter between [the parties], that is beyond the Commission's jurisdiction").

³² *Domestic Section 214 Application Filed for the Transfer of Control of Stanacard, LLC*, Public Notice, 27 FCC Rcd 2381, 2383 (WCB 2012) (rejecting arguments that a contract dispute over the ownership of company shares should delay a grant of the transfer application and stating that the Commission will not defer action on transfer applications pending state court litigation of private contractual matters).

³³ *See, e.g., Verizon Communications, Inc. and MCI, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18529, para. 191 (2005) (rejecting a petition to deny raising employment concerns not related to the Commission's public interest analysis). With respect to the 2014 Injunction, Applicants argue that "the Commission should continue to act on an application unless an injunction 'is specifically directed against the filing or processing of the application,' which is not the case here." Opposition at 6 (citing *Application of Wireless US, LLC, For Consent to Assignment*, File No. 0002584442, Order, 22 FCC Rcd 8643, 8645-46, para. 10 (WTB 2007) (finding that "absent a
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12. Further, we find that the record does not support MTC's claims that, in connection with the Bureau's grant of the Application, Axia U.S. plans to abandon its obligations to MTC.³⁴ We agree with MTC that the continued operation of its middle mile network is in the public interest, and we note that Applicants filed the trust agreement and related documents in the underlying proceedings in order to demonstrate that Axia U.S. would remain qualified to provide service.³⁵ Without additional evidence in the record, we find that MTC's claims are mere speculation; it is not in the public interest to unwind a completed transaction on the basis of MTC's speculation about what "could" happen.³⁶ MTC fails to demonstrate that the Trust plans to default on Axia U.S.'s obligations, liquidate the company, or otherwise jeopardize the continued operation of MTC's network by Axia U.S.³⁷ Without more, the record in this proceeding does not convince us the public interest would be served by a departure from the Commission's general rule against taking up issues arising from contract disputes. We therefore dismiss the Petition on procedural grounds pursuant to section 1.106(c) of our rules.³⁸

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final court judgment raising issues within the Commission's jurisdiction, we would not ordinarily act on matters stemming from private contracts, and, absent a prior court injunction specifically directed against the filing or processing of the application, we would not ordinarily withhold consent to an otherwise acceptable application"). We decline to take up issues related to the 2014 Injunction because these claims arise from a contract dispute and are not specifically directed to the Application. *See supra* paras. 10-11.

³⁴ At the heart of the Petition is MTC's assertion that the transfer of control of Axia U.S. to the Trust is, in actuality, an attempt by the Applicants to "avoid the obligations" it owes MTC required under the 2011 Agreement and its related 2014 Injunction and, therefore, it potentially jeopardizes the continued operation of the MTC network by Axia U.S. *See, e.g.*, Petition at 4 (asserting the Application was an attempt by the Applicants to "avoid the obligations of the [2014 Injunction] by transferring Axia US into a shell entity which, although effectively controlled by [Axia Canada], has no assets other than the stock of Axia US and the proceeds of a limited, non-recourse loan provided by [Axia Canada.]").

³⁵ Letter from George M. Foote, Counsel for Axia Canada and Axia U.S., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-206 (filed June 30, 2016). Applicants assert the trust agreement between Axia Canada and FSM provides the necessary authority and funding for FSM to control and operate Axia U.S., stating FSM may "exercise all rights, powers, authorities, privileges, and duties that had been possessed by the officers, directors, and managers of Axia U.S.; and take all actions to manage, maintain, and/or wind down the business operations of Axia U.S., including making legally required payments to creditors, employees, and agents in the ordinary course of business." Opposition at 10. Thus, Applicants argue MTC "wrongly asserts that the Operating Trustee [FSM] is controlled by Axia Canada." *Id.* Applicants also note that, in order to assure continuity of service, Axia Canada provided a loan to FSM and entered into a services agreement to continue to provide technical, security, and customer support services. *Id.*

³⁶ Petition at 5 (stating "[a]ny attempt by [Axia Canada] to transfer Axia US to a Trust that *could* allow it to withdraw from its obligations under the [2011 Agreement] would have a severe adverse effect on those customers and would be contrary to the public interest") (emphasis added); *see also* MTC's Reply at 6. We note that Applicants state that "contrary to MTC claims, Axia U.S. is not attempting to abandon its obligations . . . Nothing about the representations of the Applicants or the structure and financing of the Trust suggest that Axia U.S. is defaulting or plans to default on any obligation or to violate any court order. In fact, the operations of Axia U.S. in service to MTC customers have continued uninterrupted, as planned." Opposition at 9-10.

³⁷ According to MTC, Applicants also violated Commission rules and precedent requiring "material information" to be presented to the Bureau with "candor" because the Application failed to disclose that MTC's written consent was necessary prior to getting approval for the transfer of control at issue here. MTC's Reply at 5. As discussed *supra* paras. 10-11, we decline to take up this issue because it is tied to the contract dispute between the parties regarding whether the 2011 Agreement requires MTC's prior written consent for the transaction.

³⁸ 47 CFR § 1.106(c). The Commission has held it may deny a petition to deny if the petition fails to raise new facts or demonstrate that the Commission made a material error. *See, e.g., Applications for Consent to the Assignment and/or Transfer of Control of Licenses: Adelpia Communications Corp. (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees; Adelpia Communications, Corp. (and subsidiaries, debtors-in-possession), Assignors and Transferors, to Comcast Corp. (subsidiaries), Assignees and*

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13. Finally, as a separate and independent ground for denial, we deny the Petition on the merits under section 1.106(c)(2) of the Commission's rules because we are not persuaded by MTC that the public interest requires us to reverse our grant of the Application or, alternatively, condition the grant to ensure that Axia U.S. continues to perform all of its obligations under the 2011 Agreement for the full term of the Agreement.³⁹ In addition to the fact that the Commission does not interpret, modify, or enforce private contracts as explained above,⁴⁰ Applicants have represented on the record that Axia Canada and the Trust have provided for the continuity of service to the customers of Axia U.S.⁴¹ Applicants further acknowledged that in the event FSM seeks to transfer control of the stock or assets of Axia U.S. to another entity, they may not do so without prior approval of the Commission.⁴² In that event, the Bureau would undertake a new proceeding to review the proposed transaction and determine whether it is in the public interest.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED**, pursuant to Section 1.106 of the Commission's rules, 47 CFR § 1.106, that the Petition for Reconsideration filed on August 24, 2016 by the Massachusetts Technology Park Corporation d/b/a Massachusetts Technology Collaborative **IS DISMISSED**, and considered in the alternative, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief, Wireline Competition Bureau

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Transferees; Comcast Corp., Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corp., Transferee, Order on Reconsideration, 23 FCC Rcd 14241, 14242, para. 2 (2008).

³⁹ MTC's Reply at 8.

⁴⁰ See *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9230, paras. 257-59 (2015) (denying a request to impose a condition on the transaction that would modify private contract provisions related to contract period, termination of rights, and compensation contained in certain existing contracts between DIRECTV and private cable operators).

⁴¹ See *supra* at n. 35; Application at 6 (stating that Axia Canada took two specific actions to provide for the continuity of service to the customers of Axia U.S., including funding to be used for the operation of Axia U.S. and the payment of its business obligations, as well as a service agreement under which Axia U.S. will continue to use the technical, security, and customer support services provided to it by affiliates of Axia Canada).

⁴² Application at 6.