



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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Internet: <https://www.fcc.gov>
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DA 16-733
June 28, 2016

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF AXIA NGNETWORKS USA, INC. TO AXIA NGNETWORKS TRUST

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 16-206

Comments Due: July 12, 2016

Reply Comments Due: July 19, 2016

Axia NetMedia Corporation (Axia Canada), Axia NGNetworks USA, Inc. (Axia U.S.), and Axia NGNetworks Trust (Trust) (collectively Applicants) filed an application pursuant to section 214 of the Communications Act of 1934, as amended, and section 63.03 of the Commission's rules, requesting consent for the Trust to acquire all outstanding and issued stock of Axia U.S.¹

Axia U.S. is a Delaware corporation whose parent, Axia Canada, is an Alberta (Canada) publicly listed company that does not provide telecommunications services.² Axia U.S. operates a middle mile network for the Massachusetts Technology Park Corporation³ in Western Massachusetts under the name of MassBroadband 123 Network (MB123). Applicants state that MB123 includes about 2,200 kilometers of fiber backhaul infrastructure and electronics connecting more than 120 communities.

Applicants state that the Trust is a new Delaware statutory trust that does not provide telecommunications services. Its Operating Trustee is FSM Capital Management LLC (FSM), an Ohio limited liability company. Its beneficiary is Axia Canada. Applicants state that the following U.S. citizens currently hold a 10 percent or greater direct or indirect interest in FSM and are expected to hold a ten percent or greater interest post-transaction: Terrence P. Fergus (54 percent of FSM) and David A. Lightner (33 percent of FSM).

Pursuant to the trust agreement between Axia Canada and FSM as Operating Trustee, the Trust will acquire all of the issued and outstanding stock of Axia U.S. As a result, FSM will assume all rights,

¹ 47 C.F.R. § 63.03; 47 U.S.C. § 214.

² Applicants state that investment funds and accounts managed by Ancora Advisors LLC, a Nevada entity, own in aggregate 11 percent of the shares of Axia Canada. They state that the remaining approximately 89 percent of issued and outstanding shares of Axia Canada are publicly held with no entity holding a 10 percent or greater direct or indirect interest.

³ Applicants state that Massachusetts Technology Park Corporation is an independent public instrumentality of the Commonwealth of Massachusetts.

responsibilities, and de jure and de facto control now held by the management and board of directors of Axia U.S. and will be responsible for operating the company to continue providing service to existing customers under the same rates, terms, and conditions as currently apply.

Applicants assert that this proposed transaction qualifies for streamlined treatment pursuant to section 63.03(b)(1)(ii) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.⁴

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)

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before July 12, 2016**, and reply comments **on or before July 19, 2016**. Pursuant to section 63.52 of the Commission's rules, 47 C.F.R. § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), 1-888-835-5322 (tty).

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the

⁴ 47 C.F.R. § 63.03(b)(1)(ii).

presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809.

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