

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Neutral Path Holdings, LLC,)	WT Docket No. 17-_____
<i>Transferee,</i>)	
)	
Kevin Smith)	
<i>Transferor,</i>)	
)	
And)	
)	
Infinity Fiber, LLC,)	
<i>Licensee,</i>)	
)	
For Grant of Authority Pursuant to Section 214 of)	
the Communications Act of 1934, as amended,)	
and Sections 63.04 of the Commission’s Rules to)	
Transfer Direct Control of Company Holding)	
Domestic Section 214 Authorization)	

JOINT APPLICATION

Neutral Path Holdings, LLC (“Neutral Path” or “Transferee”); Kevin Smith (“Transferor”); and Infinity Fiber, LLC (“Licensee”) (Transferee, Transferor and Licensee collectively, the “Applicants”), pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 214, and Section 63.04 of the Commission’s Rules, 47 C.F.R. § 63.04, request Commission approval to transfer direct control of Licensee to Transferee.

In support of this Application, Applicants provide the following information:

I. DESCRIPTION OF THE APPLICANTS

A. Neutral Path Holdings, LLC

Neutral Path is a Minnesota limited liability company that operates as a holding company. Neutral Path wholly owns two subsidiaries, Neutral Path Communications, LLC and Near North Partners, LLC (collectively, “Neutral Path Affiliates”) that collectively operate a fiber-based transport business providing facilities-based point to point transport communications facilities and related services.

Neutral Path Affiliates make their facilities available to Internet services providers, wireless carriers, government, data center operators and other private network operators. Example facilities offered by Neutral Path Affiliates include: dark fiber and related cross-connects and co-location facilities; point-to-point Ethernet; and, passive and optical wave facilities. Neutral Path Affiliates do not directly provide any Internet Protocol services, local exchange services, interexchange voice services or any other telecommunication service as that term is defined by the Commission. Neutral Path Affiliates’ networks and facilities are made accessible from locations in Minnesota, Iowa, Nebraska and Colorado and terminate facilities at locations in each of these states as well as Missouri and Illinois.

B. Infinity Fiber, LLC and Kevin Smith

Transferor owns, directly and indirectly, one-hundred percent of Licensee, which operates a fiber-based transport business providing facilities-based point to point fiber transport facilities in Indiana and between South Bend, Indiana and

Chicago, Illinois. Licensee's network facilities can be accessed at various locations in Indiana and certain facilities terminate in Chicago, Illinois. Licensee holds a Certificate of Territorial Authority from the Indiana Utility Regulatory Commission to provide the described fiber-based transport services in Indiana.

II. DESCRIPTION OF THE TRANSACTION

Pursuant to a certain Equity Purchase Agreement dated September 21, 2017, subject to the completion of the conditions precedent, the parties thereto will complete a series of transactions, including an equity purchase wherein Transferee will acquire from Transferor one-hundred percent (100%) of the equity of Licensee. Upon consummation of the proposed Transaction, Licensee will be a direct, wholly owned subsidiary of Transferee. Diagrams depicting the pre- and post-Transaction corporate ownership structure of Licensee are provided as **Exhibit A**.

III. PUBLIC INTEREST CONSIDERATIONS

The proposed Transaction will serve the public interest. The financial, technical, and managerial resources that Transferee will bring to Licensee are expected to enhance the ability of Licensee to compete in the fiber-transport marketplace. Further, combining the networks and systems of the Licensee with the Transferee will result in a larger network with more endpoints and service access points, thereby enhancing the ability of the combined company to serve current and potential customers. At the same time, the proposed Transaction will have no adverse impact on the customers of Licensee. Immediately following the proposed Transaction, Licensees will continue to provide service at the same rates, terms, and conditions, as governed by existing contracts. The proposed Transaction will be transparent to customers because the only change immediately following the closing from a Licensee customer's perspective is that ultimately Transferee will be the new direct owner of Licensee. Finally, the transfer of control of

the Licensee to Transferee will not have an adverse effect on competition because Licensee and Transferee do not currently operate in overlapping geographic areas. Rather, the proposed Transaction will increase competition by better positioning Transferee to compete with other fiber-based transport services whose geographic scope overlaps the combined company.

A. The Transaction Satisfies the Commission’s Public Interest Test.

Under Section 214(a) of the Act, the Commission must determine whether the proposed transfer of indirect control of Commission authorizations is consistent with the public interest, convenience, and necessity.¹

The proposed Transaction fully satisfies the public interest standard. The Commission considers the following in making its public interest assessment: (1) whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission rules; (2) whether the transaction would result in public interest harms by substantially frustrating or impairing the objectives of the Act or related statutes; and (3) whether the transaction promises to yield affirmative public interest benefits.²

The proposed Transaction satisfies all of the elements of the Commission’s test. The Application demonstrates that the proposed Transaction satisfies the first element because it does not violate any provision of the Act or any Commission rule. In assessing the remaining elements, the Commission “employs a balancing test, weighing any potential public interest harms of the proposed transaction against the potential public interest benefits.”³

¹ 47 U.S.C. § 214(a); *see Applications Filed for the Transfer of control of tw telecom inc. to Level 3 Communications, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 12842 at 12842, ¶ 2 (Wireline Comp. Bur. 2014) (“*twt-Level 3 Order*”).

² *twt-Level 3 Order* at 12844-12845, ¶ 8.

³ *Id.*

The proposed Transaction does not frustrate or otherwise interfere with the objectives of the Act or other statutes. Instead, as explained more fully below, it will yield substantial public interest benefits and will not result in any harm to customers or competition. Accordingly, the Commission should promptly approve this Application.

B. The Transaction is Likely to Generate Public Interest Benefits.

The proposed Transaction will directly benefit government, internet service provider, wireless carrier, and other wholesale customers by offering them facilities that today are only offered by either Transferee or Licensee. The combined company will be able to offer better and more comprehensive facilities to their respective customers than Transferee or Licensee currently do as unaffiliated companies. In particular, combining networks allows the combined company to offer more facility access points and more endpoints, thereby increasing the usefulness of the fiber transport network.

Multi-location customers of each company will have access to the combined company's facilities in additional locations given the expanded geographic reach of the combined company. Transferee customers will gain access to Licensee's facility points from Chicago, Illinois to South Bend, Indiana. Licensee's customers will gain access to Transferee's service points from Chicago, Illinois to endpoints such as Minneapolis, Minnesota, Omaha, Nebraska, Denver, Colorado and others.

The benefits to customers of a more robust network are not merely hypothetical: key Licensee data centers have many tenants that are destination points for current Transferee customers. Indeed, Transferee's and Licensee's networks already meet in Chicago, Illinois. Thus, approving the proposed Transaction will immediately and seamlessly result in greater interconnectivity for routes current customers already demand.

In addition to combining the individual strengths of Transferee and Licensee, the proposed Transaction will reduce costly overhead and operating expenses. For example, combining companies will allow a single maintenance call to service both companies' facilities at the data centers where the companies' networks already converge. Moreover, the combined company will have significantly greater financial assets and financial security than Licensee alone, thereby ensuring that the combined company continues to have the financial ability to provide service to Licensee's customers. Finally, in the event of a disruption in service, customers of the combined company will also benefit from increased efficiency in network recovery efforts. After the transaction, the combined company will be able to manage a single response, instead of each individual company coordinating multiple responses. Accordingly, approving the proposed Transaction is likely to benefit the public interest.

C. The Transaction Will Not Reduce Competition or Harm Retail or Wholesale Customers.

The transfer of control will not have an adverse effect on competition in the markets for intrastate or interstate telecommunications services because Licensee and Transferee do not currently have any overlapping service area. Currently, the networks of Licensee and Transferee meet in Chicago, Illinois. Thus, rather than reducing competition, the proposed Transaction will *increase* the options for fiber-transport services available to each companies' respective customers.

Currently, Licensee's or Transferee's customers who wish to access an endpoint beyond Chicago must purchase fiber-transport from another service provider. After the consummation of the Transaction, however, those customers will have the new option of continuing to use the combined company from South Bend through Denver, Minneapolis, or another service access

point on the combined companies' expanded network. Thus, the additional facility access points and more comprehensive facilities available through the combined companies will better position Transferee to compete with other fiber-transport providers whose geographic footprint overlaps that of the combined companies.

The proposed Transaction will be largely seamless to Licensee's customers, all of whom will continue to receive their facilities pursuant to their current contracts. Post-Transaction, the parties will continue to honor all contracts with their customers. The proposed Transaction itself is not expected to affect adversely the rates or other terms of service that customers currently experience, nor is it expected to have any adverse effect on the already high quality of service that Licensee's customers currently receive. As the parties integrate their operations, they expect to be able to offer each other's unique facilities and related services to all the customers of the combined company, thus increasing the competitive offerings available to existing and potential customers.

IV. INFORMATION REQUIRED BY SECTION 63.04

Pursuant to Section 63.04(a) of the Commission's Rules, 47 C.F.R. § 63.04(a), the Applicants submit the following information requested in support of their request for domestic Section 214 authority to transfer control of Licensee to Transferee in order to address the requirements set forth in Commission Rule 63.04(a)(1)-(12):

(a)(1) Name, address and telephone number of each Applicant:

Transferee:

Neutral Path Holdings, LLC
The Graif Building
3 Civic Center Plaza, Suite 204
Mankato, MN 56001
Tel: 612-877-6500

FRN: 0026888487

Transferor:

Kevin Smith
6561 Lonewolf Drive, Suite 100
South Bend, IN 46628
Tel: 574-472-0750

FRN: 0026918839

Licensee:

Infinity Fiber, LLC
6561 Lonewolf Drive, Suite 100
South Bend, IN 46628
Tel: 574-472-0750

FRN: 0023453806

(a)(2) Jurisdiction of Organizations:

Transferee: Neutral Path is a limited liability company formed under the laws of the State of Minnesota.

Transferor: Transferor is an individual and the sole owner of Licensee.⁴

Licensee: Licensee is a limited liability company formed under the laws of the State of Indiana.

(a)(3) Correspondence concerning this Application should be sent to:

For Transferee:

H. Russell Frisby, Jr.
Stinson Leonard Street LLP
1775 Pennsylvania Avenue NW
Suite 800
Washington, DC 20006-4605
Russell.frisby@stinson.com

For Transferor and Licensee:

Scott Snively
IceMiller LLP
One American Square
Suite 2900
Indianapolis, IN 46282-0200
Scott.Snively@icemiller.com

With copies for Transferee to:

Scott Bergs
Chief Executive Officer
Neutral Path Holdings, LLC
The Graif Building
3 Civic Center Plaza, Suite 204
Mankato, MN 56001
sbergs@neutralpath.net

With copies for Transferor and Licensee to:

Jan Nagy
Global Access Point, LLC
6561 Lonewolf Drive, Suite 100
South Bend, IN 46628
j.nagy@globalaccesspoint.com

⁴ As of the date of the filing of this Application, Kevin Smith owns 100% of the equity interests of Licensee. Prior to the consummation of the proposed Transaction, Global Access Point, LLC will become an owner of 7.5% of the equity interests of Licensee. (See **Exhibit A**).

(a)(4) Upon consummation of the Transaction, the following entities and persons will own a ten percent (10%) or greater interest in the Licensee, Infinity Fiber, LLC:

Name: Neutral Path Holdings, LLC
Address: 3 Civic Center Plaza, Suite 204
Mankato, MN 56001
Citizenship: United States of America (Minnesota)
Principal Business: Holding Company
% Interest: 100% (directly)

Name: Scott J. Bergs
Address: 3 Civic Center Plaza, Suite 204
Mankato, MN 56001
Citizenship: United States of America
Principal Business: Fiber Transport
% Interest: 30.555% (indirectly, as 30.555% direct owner of Neutral Path)

Name: Jason Hanke
Address: 3 Civic Center Plaza, Suite 204
Mankato, MN 56001
Citizenship: United States of America
Principal Business: Fiber Transport
% Interest: 30.555% (indirectly, as 30.555% direct owner of Neutral Path)

Name: Charles A. Frentz
Address: 3 Civic Center Plaza, Suite 204
Mankato, MN 56001
Citizenship: United States of America
Principal Business: Fiber Transport
% Interest: 24.010% (indirectly, as 24.010% direct owner of Neutral Path)

Name: Cityfront Partners, LLC
Address: 455 N. Cityfront Plaza Dr., Suite 2755
Chicago, IL 60611
Citizenship: United States of America
Principal Business: Fiber Transport
% Interest: 14.867% (indirectly, as 14.867% direct owner of Neutral Path)

(a)(5) Certification pursuant to 47 C.F.R. §§ 1.2001 through 1.2003 that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853:

Applicants so certify that no party to the Application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853.

(a)(6) A Description of the Transaction:

A description of the proposed Transaction is set forth in **Section II** above.

(a)(7) A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area:

(i) Licensee provides fiber transport services primarily in Indiana and Illinois.

(ii) Transferee is a holding company and is not, itself, authorized to provide domestic telecommunications. Transferee wholly owns two subsidiaries, Neutral Path Communications, LLC⁵ and Near North Partners, LLC⁶ (*see Exhibit A*), that provide fiber-based transport services in Minnesota, Iowa, Nebraska, Colorado, Illinois, and Missouri.

(iii) To Transferee's knowledge, Transferee is not affiliated with any other telecommunications carriers.

⁵ Neutral Path Communications, LLC is a limited liability company formed under Minnesota law, and is a wholly owned subsidiary of Transferee.

⁶ Near North Partners, LLC is a limited liability company formed under Illinois law, and is a wholly owned subsidiary of Transferee.

(a)(8) A statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment:

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 of the Commission's Rules, 47 C.F.R. §63.03. In particular, with respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(1)(ii) because the Transferee is not a telecommunications provider.

(a)(9) Identification of all other Commission applications related to the same transaction:

None.

(a)(10) A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure:

Although no party to the proposed Transaction is facing imminent business failure, prompt completion of the proposed Transaction is critical to ensure that Applicants can obtain the benefits described in this Application. Accordingly, Applicants respectfully request that the Commission approve this Application expeditiously.

(a)(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction:

None.

(a)(12) A statement showing how grant of the application will serve the public interest, convenience and necessity:

A statement showing how grant of the application will serve the public interest, convenience, and necessity is provided in **Section III** above.

V. CONCLUSION

For the foregoing reasons stated above, Applicants respectfully submit that the public interest, convenience and necessity would be furthered by a grant of this Application to transfer ownership and control of Licensee to Transferee upon the consummation of the proposed Transaction.

Respectfully submitted,

/s/ H. Russell Frisby, Jr.

H. Russell Frisby, Jr.
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Suite 800
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Russell.frisby@stinson.com

Counsel for Transferee

/s/ Scott Snively

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One American Square
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317.592.4747 (fax)
Scott.Snively@icemiller.com

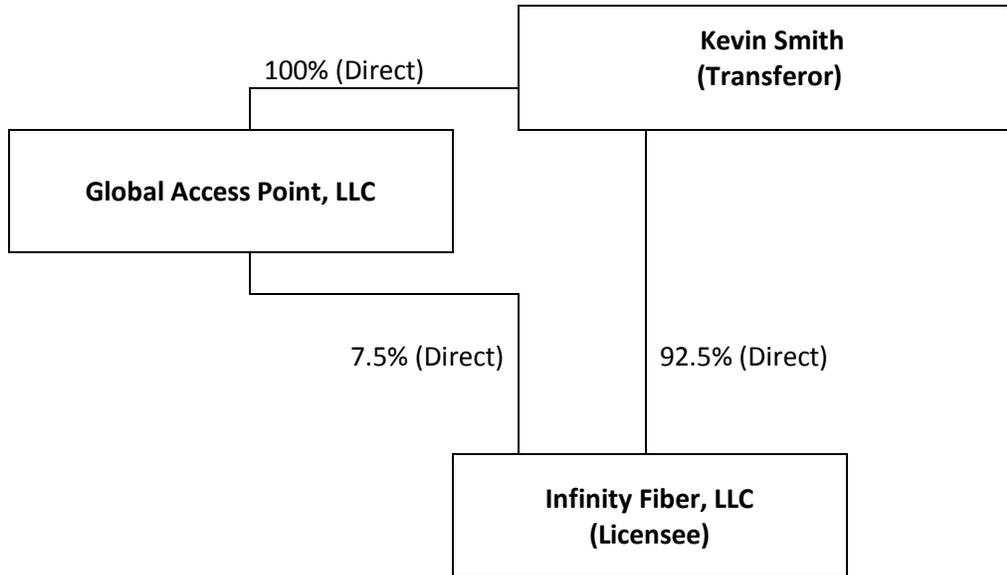
Counsel for Transferor and Licensee

Dated: October 20, 2017

EXHIBIT A:

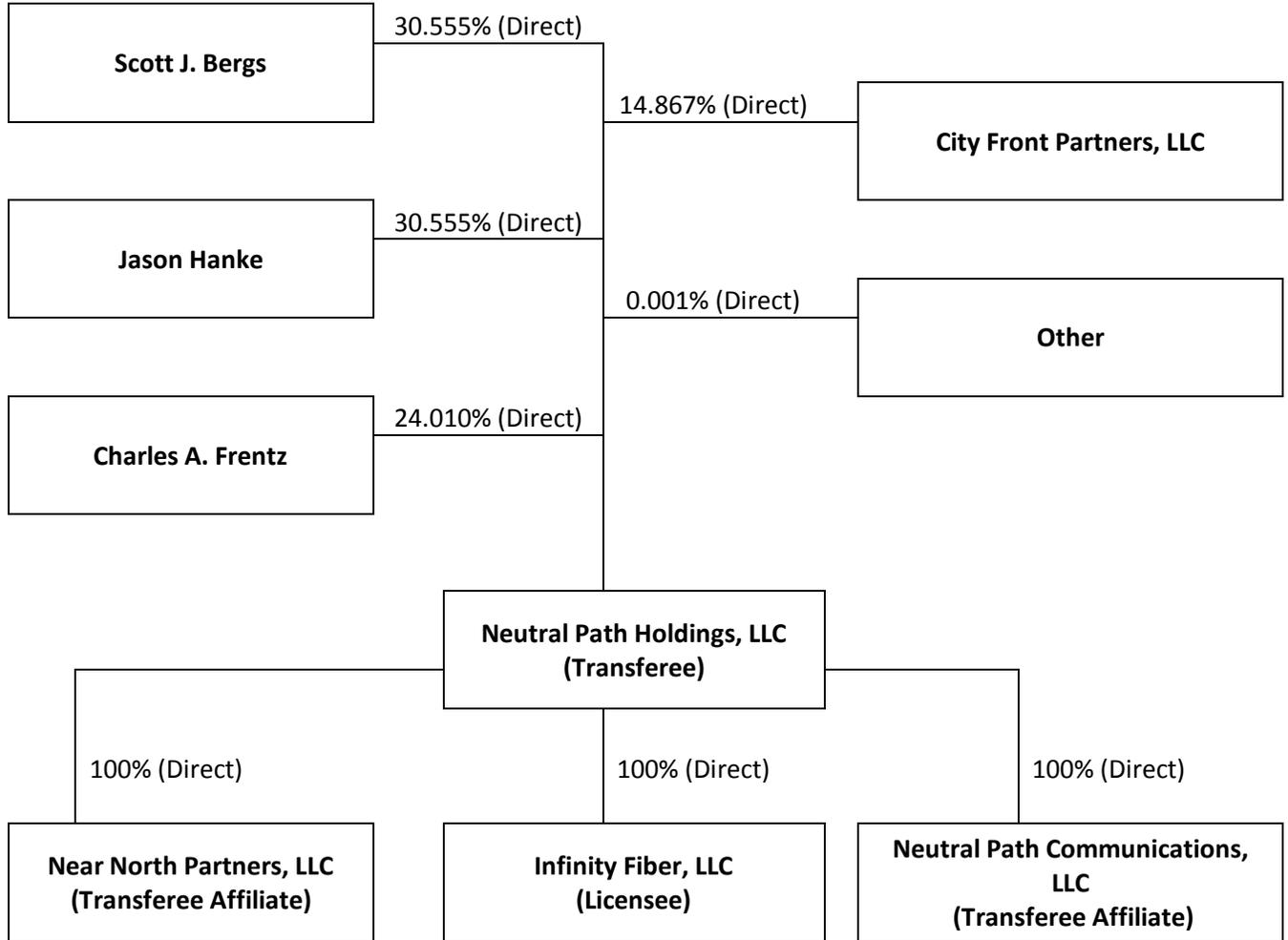
Pre- and Post-Transaction Corporate Ownership Structure Charts

Pre-Transaction Ownership Structure of Licensee⁷



⁷ As of the date of the filing of this Application, Kevin Smith owns 100% of the equity interests of Licensee. Prior to the consummation of the proposed Transaction, Global Access Point, LLC will become an owner of 7.5% of the equity interests of Licensee as shown above.

Post-Transaction Ownership Structure of Licensee



VERIFICATION

I, Scott J. Bergs, state that I am the Chief Manager and Chief Executive Officer of Neutral Path Holdings, LLC (the Company); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared at my direction; and that the contents with respect to the Company and its subsidiaries are true and correct to my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of October, 2017.

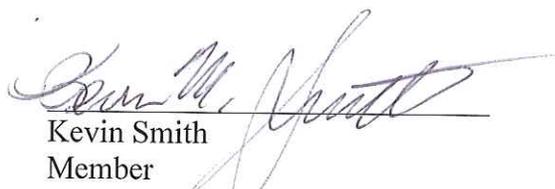


Scott J. Bergs
Chief Manager and Chief Executive Officer
Neutral Path Holdings, LLC

VERIFICATION

I, Kevin Smith, state that I am the sole member of Infinity Fiber, LLC (the "Company") as of the date of this Application; that I am authorized to make this Verification on behalf of the Company; that I have reviewed the foregoing filing; and that the contents with respect to the Company are true and correct to my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of October, 2017.



Kevin Smith
Member
Infinity Fiber, LLC