

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of	)	
	)	
Masergy Investment Holdings, LLC	)	
	)	
Transferor,	)	
	)	
and	)	WC Docket No. _____
	)	File No. ITC-T/C-2016_____
MAS Group Holdings, LLC	)	
	)	
Transferee	)	
	)	
	)	
Consolidated Application for Consent to	)	
Transfer Control of Subsidiaries of	)	
Masergy Investment Holdings, LLC, Possessing	)	
Blanket Domestic and International Section 214	)	
Authority	)	
_____	)	

**CONSOLIDATED APPLICATION**

Pursuant to Section 214 of the Communications Act, as amended, 47 U.S.C. § 214 (the “Act”), and Part 63 of the Commission’s rules, 47 C.F.R. § 63.01, *et seq.*, Masergy Investment Holdings, LLC (“Masergy Investment”), and MAS Group Holdings, LLC (“MAS Group Holdings” and together with Masergy Investment, the “Applicants”), respectfully request Commission approval to consummate a transaction pursuant to which MAS Group Holdings will acquire indirect control of Masergy Communications, Inc. (“Masergy Communications”), a wholly-owned, indirect subsidiary of Masergy Investment (the “Transaction”). Masergy Communications holds a blanket domestic Section 214 authorization to provide interstate telecommunications service and an international section 214 authorization to provide global and

limited global and resold international telecommunications service. As explained below, this Application qualifies for streamlined treatment.

The Transaction involves a change in the ultimate ownership and control of Masergy Investment and will not result in an assignment of Masergy Communications's licenses, assets or customers. Masergy Communications will continue to provide service to customers under existing rates, terms and conditions, and future changes (if any) in these rates, terms or conditions will be subject to compliance with governing contractual provisions and applicable law. As a result, the proposed Transaction will be seamless, transparent and beneficial to consumers and is in the public interest.

## **I. DESCRIPTION OF THE APPLICANTS**

### **A. Masergy Investment Holdings, LLC, Masergy Holdings, Inc., and Masergy Communications, Inc.**

Masergy Investment is a Delaware limited liability company that wholly owns Masergy Holdings, Inc. ("Masergy Holdings"), a Delaware corporation. Masergy Holdings wholly owns Masergy Communications. Masergy Communications is a Delaware corporation headquartered in Plano, Texas that holds authority under Section 214 of the Communications Act to provide domestic interstate and international telecommunications services. Masergy Communications holds blanket domestic Section 214 authority pursuant to its provision of interstate telecommunications service and an authorization to provide global and limited global facilities-based and resold international telecommunications service from the U.S. to points abroad.<sup>1</sup> Masergy Communications does not own any of its own transmission facilities and utilizes the leased fiber capacity of other providers.

These authorizations enable Masergy Communication to provide transmission services in connection with the managed, secure virtualized network services Masergy Communication

provides to enterprise customers. These services in turn support the deployment of IT applications such as video, voice, and data on a global basis. In connection with these enterprise service offerings, Masergy Cloud Communications, Inc. (“Masergy Cloud”), a direct subsidiary of Masergy Communications, provides customers with interconnected VoIP service.<sup>2</sup>

**B. MAS Group Holdings, LLC**

MAS Group Holdings is owned by certain investment funds affiliated with Berkshire Partners LLC (“Berkshire Partners”). Berkshire Partners is a Boston-based investment firm that has invested in over 115 middle market companies since 1986 through nine investment funds with aggregate capital commitments of \$16 billion. Berkshire Partners has developed specific industry experience in several areas including communications. Berkshire Partners has a strong history of partnering with management teams to grow companies in which it invests.

**II. DESCRIPTION OF THE TRANSACTION**

On October 17, 2016, MAS Purchaser, Inc., a Delaware corporation formed solely for the purpose of engaging in the Transaction and owned by Berkshire Partners through a series of intervening Delaware holding companies, entered into a Stock Purchase Agreement with Masergy Investment and Masergy Holdings pursuant to which MAS Purchaser, Inc. will purchase from Masergy Investment 100% of the shares of Masergy Holdings and thereby indirectly acquire 100% of the equity interests in Masergy Communications. Upon consummation of the Transaction, MAS Purchaser, Inc. will be owned by MAS Intermediate II, Inc., which in turn will be owned by MAS Intermediate I, Inc., which in turn will be owned by

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<sup>1</sup> See File Nos. ITC-214-20010820-00432 and ITC-T/C-20110624-00179.

<sup>2</sup> Because the Commission has not applied a regulatory classification to VoIP service, Masergy Cloud does not (and is not required to) hold a license from the Commission to provide this service and thus is not subject to this Application.

MAS Group Holdings.<sup>3</sup> For the Commission's reference, pre- and post-Transaction organization charts are provided as Exhibit A.

### **III. PUBLIC INTEREST STATEMENT**

The proposed Transaction will serve the public interest. Under new ownership, Masergy Communications will continue to provide high-quality telecommunications services to U.S. enterprise customers while gaining access to the additional financial resources and the operational expertise of Berkshire Partners.

With the strong financial backing of Berkshire Partners, the transfer of control will bolster Masergy Communications's ability to provide innovative enterprise services and will enable Masergy Communications to become a stronger competitor. The improved financial environment resulting from the proposed Transaction will help ensure a continued high level of service to existing and new customers. Masergy Communications will continue to be operated by highly experienced, well-qualified management, operating and technical personnel.

In addition, the Transaction will not result in a change in carrier, services, rates, terms or conditions for customers, or the assignment of existing Commission authorizations. The Transaction therefore will be seamless and transparent to customers. Future changes in rates, terms and conditions of service, if any, will be undertaken pursuant to applicable law and contract provisions.

### **IV. REQUEST FOR STREAMLINED TREATMENT**

*Domestic.* This Consolidated Application qualifies for presumptive streamlined treatment, pursuant to Section 63.03 of the Commission's rules, 47 C.F.R. § 63.03(b)(2)(i), for the portion that pertains to the domestic Section 214 authorization held by Masergy

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<sup>3</sup> Promptly following the closing of the Transaction, MAS Purchaser, Inc. will merge with and into Masergy Holdings, and as a result Masergy Holdings will thereafter be wholly owned by MAS Intermediate II, Inc. MAS Purchaser, Inc. therefore is not listed below in Section V(h).

Communications because immediately following the Transaction (1) Masergy Communications and its affiliates, as defined in Section 3(1) of the Act (“Affiliates”), collectively will have less than a ten percent (10%) share of the domestic interstate, interexchange market; (2) Masergy Communications and its Affiliates will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the Transaction; and (3) none of the Applicants or their Affiliates is dominant with respect to any U.S. service.

*International.* Applicants respectfully request streamlined processing, pursuant to Section 63.12 of the Commission’s rules, 47 C.F.R. § 63.12, for the portion of this Application that pertains to the international Section 214 authorizations held by Masergy Communications. This portion of the Application is eligible for streamlined processing because the Applicants’ foreign carrier affiliates in certain destination markets (upon consummation of the Transaction) will be presumptively non-dominant pursuant to Section 63.10(a)(3), as each has less than a 50 percent (50%) market share in the international transport and local access markets on the foreign (*i.e.*, non-U.S.) end of the route, *see* 47 C.F.R. § 63.12(c)(1)(ii). The Applicants’ foreign carrier affiliates, along with their destination markets, are listed in Section V(i).

**V. INFORMATION REQUIRED BY SECTION 63.24(e) OF THE RULES**

In accordance with Section 63.24(e) of the Commission’s rules, the Applicants submit the following information as requested in Section 63.18(a) through (d) and Section 63.18(h) through (p):

**(a) Name, Address and Telephone Numbers of Applicants**

Masergy Investment Holdings, LLC  
2740 North Dallas Parkway  
Plano, TX 75093 , Ste 260  
(214) 442-5700

and

MAS Group Holdings, LLC  
c/o Berkshire Partners LLC  
200 Clarendon Street, 35th Floor  
Boston, MA 02116  
(617) 227-0050

**(b) Government, State or Territory of Incorporation**

Masergy Investment and MAS Group Holdings are organized under the laws of the State of Delaware.

**(c) Contacts**

For Masergy Investment

Douglas D. Orvis II  
Morgan, Lewis & Bockius LLP  
2020 K Street NW  
Washington, DC 20006  
Tel: (202) 373-6041  
E-mail: douglas.orvis@morganlewis.com

For MAS Group Holdings

Yaron Dori  
Ani Gevorkian  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, N.W.  
Washington, DC 20001  
Tel: (202) 662-6000  
E-mail: ydori@cov.com  
agevorkian@cov.com

**(d) Existing Section 214 Authorizations**

Masergy Investment

Masergy Communications holds section 214 authority to provide international and domestic telecommunications services that is the subject of this transaction. *See* File No. ITC-214-20010820-00432 and 47 C.F.R. § 63.01.

Neither Masergy Investment nor Masergy Holdings or any of its subsidiaries other than Masergy Communications holds a Section 214 authorization.

MAS Group Holdings

MAS Group Holdings is affiliated (as that term is defined in Section 3(1) of the Act) with the following holders of Section 214 authorizations by virtue of existing ownership by certain Berkshire entities of interests in the following entities' parent companies:

- **Lightower Fiber Networks II, LLC (“LFN2”)**. LFN2 holds an international Section 214 authority to provide (1) global or limited global facilities-based service granted in IB File No. ITC 214-20101019-00408, and (2) global or limited global facilities-based and resale service granted in IB File No. ITC-214-20001128-00698. LFN2 also is authorized to provide domestic interstate telecommunications service by virtue of blanket domestic Section 214 authority. 47 C.F.R. § 63.01.
- **Lightower Fiber Networks I, LLC (“LFN1”)**. LFN1 is authorized to provide domestic interstate telecommunications service pursuant to the blanket Section 214 authorization granted under Section 63.01 of the Commission’s rules. 47 C.F.R. § 63.01.
- **Fiber Technologies Networks, L.L.C. (“Fibertech”)**. Fibertech is authorized to provide domestic interstate telecommunications service pursuant to the blanket Section 214 authorization granted under Section 63.01 of the Commission’s rules. 47 C.F.R. § 63.01.

**(e)-(g) Not applicable**

**(h) Name, address, citizenship, and principal business of entities that will own at least 10 percent of the Applicants, and identification of interlocking directorates**

Upon consummation of the Transaction, the following entities will hold a direct or indirect ten percent (10%) or greater ownership interest in Masergy Communications, Inc.:

Name:	Masergy Holdings, Inc.
Address:	2740 North Dallas Parkway, Ste 260 Plano, TX 75093
Citizenship:	Delaware
Principal Business:	Holding company
Interest:	Holds a 100% direct equity interest in Masergy Communications, Inc., the licensee

Name:	MAS Intermediate II, Inc.
Address:	2740 North Dallas Parkway Plano, TX 75093
Citizenship:	Delaware

Principal Business: Holding company  
Interest: Holds a 100% direct equity interest in Masergy Holdings, Inc., and thus an indirect 100% equity interest in Masergy Communications, Inc., the licensee

Name: MAS Intermediate I, Inc.  
Address: 2740 North Dallas Parkway  
Plano, TX 75093

Citizenship: Delaware  
Principal Business: Holding company  
Interest: Holds a 100% direct equity interest in MAS Intermediate II, Inc., and thus an indirect 100% equity interest in Masergy Communications, Inc., the licensee

Name: MAS Group Holdings, LLC  
Address: c/o Berkshire Partners LLC  
200 Clarendon Street, 35th Floor  
Boston, MA 02116

Citizenship: Delaware  
Principal Business: Holding company  
Interest: Holds a 100% direct equity interest in MAS Intermediate I, Inc., and thus an indirect 100% equity interest in Masergy Communications, Inc., the licensee

Name: Berkshire Fund VIII, L.P.  
Address: 200 Clarendon Street, 35th Floor  
Boston, MA 02116

Citizenship: Delaware  
Principal Business: Investment fund  
Interest: Will hold a 32.26% direct equity interest in MAS Group Holdings, LLC, and thus a 32.26% indirect equity interest in Masergy Communications, Inc., the licensee

Name: Berkshire Fund VIII-A, L.P.  
Address: 200 Clarendon Street, 35th Floor  
Boston, MA 02116

Citizenship: Delaware  
Principal Business: Investment fund  
Interest: Will hold a 13.44% direct equity interest in MAS Group Holdings, LLC, and thus a 13.44% indirect equity interest in Masergy Communications, Inc., the licensee

Name: Berkshire Fund IX, L.P.  
Address: 200 Clarendon Street, 35th Floor  
Boston, MA 02116  
Citizenship: Delaware  
Principal Business: Investment fund  
Interest: Will hold a 31.1% direct equity interest in MAS Group Holdings, LLC, and thus a 31.1% indirect equity interest in Masergy Communications, Inc., the licensee

Name: Berkshire Fund IX-A, L.P.  
Address: 200 Clarendon Street, 35th Floor  
Boston, MA 02116  
Citizenship: Delaware  
Principal Business: Investment fund  
Interest: Will hold a 12.77% direct equity interest in MAS Group Holdings, LLC, and thus a 12.77% indirect equity interest in Masergy Communications, Inc., the licensee

Berkshire Partners is the management company for all the Berkshire funds. Berkshire Partners, in turn, is controlled by its 24 Managing Directors (the “Berkshire Managing Directors”), all of whom are U.S. citizens, acting by a majority in voting interest. The Berkshire Managing Directors, acting in each case by a majority in voting interest, also are the managers of, respectively, the general partners of Berkshire Fund VIII, L.P., Berkshire Fund VIII-A, L.P., Berkshire Fund IX, L.P., and Berkshire Fund IX-A, L.P.<sup>4</sup>

**(i) Foreign Carrier Affiliation**

MAS Group Holdings is affiliated, through certain Berkshire entities, with two non-dominant foreign carriers: LFN2, which is a non-dominant foreign carrier in Canada holding a reseller registration and a license to provide basic international telecommunications service (“BITS”), and Sidera Networks UK Limited (“Sidera-UK”), which is a non-dominant foreign carrier in the United Kingdom providing telecommunications services pursuant to blanket authority.

Upon consummation of the Transaction, MAS Group Holdings also will be affiliated with two foreign carriers that are subsidiaries of Masergy Communications: Masergy Communications UK Limited, a United Kingdom entity that provides authorized telecommunications services in the United Kingdom, Canada, France, Hong Kong, Japan, Spain, and Singapore, and Masergy

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<sup>4</sup> The Berkshire Managing Directors also are the managers of Berkshire Investors III LLC and Berkshire Investors IV LLC, which are investment funds in the Berkshire Partners fund family that will hold a 3.17% interest and a 3.26% interest, respectively, in MAS Group Holdings, LLC, and thus a 3.17% and 3.26%, indirect equity interest, respectively, in Masergy Communications, Inc., the licensee. In addition, certain existing members of Masergy Communications management will hold a combined 4% interest in MAS Group Holdings, LLC., and thus a 4% indirect equity interest in Masergy Communications, Inc., the licensee.

Comunicaciones S. de R.L. de C.V., a Mexican limited liability company that provides authorized telecommunications services in Mexico.<sup>5</sup>

**(j) Foreign Carrier and Destination Countries**

MAS Group Holdings certifies that, through the Transaction, it does not seek to provide international telecommunications services to any destination country where two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of MAS Group Holdings and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the U.S.

However, MAS Group Holdings certifies that it is affiliated with two non-dominant foreign carriers: LFN2, which is authorized to provide telecommunications services in Canada, and Sidera-UK, which is authorized to provide telecommunications services in the United Kingdom. MAS Group Holdings further certifies that upon consummation of the Transaction, MAS Group Holdings will be affiliated with two additional non-dominant foreign carriers, which are subsidiaries of Masergy Communications: Masergy Communications UK Limited and Masergy Comunicaciones S. de R.L. de C.V., both described above in response to Section 63.18(i).

**(k) WTO Membership for Destination Countries**

MAS Group Holdings certifies that Canada, the United Kingdom, and Mexico are members of the World Trade Organization (“WTO”). LFN2, Sidera-UK, Masergy Communications UK Limited, and Masergy Comunicaciones S. de R.L. de C.V. are not on the Commission’s List of Foreign Telecommunications Carriers that are presumed to Possess Market Power in Foreign Telecommunications Markets, released on January 26, 2007. In addition, LFN2, Sidera-UK, Masergy Communications UK Limited, and Masergy Comunicaciones S. de R.L. de C.V. offer services in competition with dominant foreign carriers and others.

- (l)** MAS Group Holdings (through its authorized subsidiaries) may resell international switched services of unaffiliated U.S. carriers in order to provide telecommunications services to countries where it is a foreign carrier or is affiliated with a foreign carrier. As demonstrated above and because LFN2, Sidera-UK, Masergy Communications UK Limited, and Masergy Comunicaciones S. de R.L. de C.V. each has less than 50 percent market share in the international transport and the local access markets on the foreign end of the route, LFN2, Sidera-UK, Masergy Communications UK Limited, and Masergy Comunicaciones S. de R.L. de C.V. (and hence MAS Group Holdings) should be presumptively found to be non-dominant pursuant to Section 63.10(a)(3) of the Commission’s rules, 47 C.F.R. § 63.10(a)(3).

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<sup>5</sup> Masergy Cloud, a subsidiary of Masergy Communications, is registered to provide VoIP services outside of the United States. As noted above, these services are not considered telecommunications services in the U.S.

**(m) Non-Dominance**

MAS Group Holdings qualifies for a presumption of non-dominance under Section 63.10(a)(1) and (3) of the Commission's rules, 47 C.F.R. § 63.10(a)(1, 3), because it is not a foreign carrier and is and will be affiliated with non-dominant foreign carriers in countries that are Members of the WTO.

**(n) Concessions**

Applicants certify that they have not agreed to accept any direct or indirect special concessions from a foreign carrier or administration with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

**(o) Federal Benefits**

Applicants certify pursuant to Sections 1.2001 through 1.2003 of the Commission's rules that they are not subject to a denial of Federal Benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. § 853a; *see also* 47 C.F.R. §§ 1.2001-1.2003.

**(p) Streamlined Processing**

Please refer to Section IV above.

**VI. INFORMATION REQUIRED BY SECTION 63.04(B) OF THE RULES**

In accordance with Section 63.04(b) of the Commission's rules specifying the additional information required in joint international and domestic Section 214 transfer of control applications, the Applicants submit the following, as requested by 47 C.F.R. §63.04(a)(6) through (a)(12).

**(a)(6) Description of the Transaction**

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

**(a)(7) Description of Geographic Service Areas**

Masergy Investment

Masergy Communications, Inc. provides interstate and international communications services to customers in virtually every state in the U.S. but does not provide intrastate telecommunications service.

MAS Group Holdings

Certain operating entities controlled by affiliates of Berkshire Partners by virtue of their role as general partners of certain Berkshire investment funds, are authorized by the FCC and state public utility commissions to provide telecommunications services in Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and Wisconsin.

**(a)(8) Eligibility for Streamlined Processing**

A statement demonstrating the Application's qualification for streamlined processing is provided in Section IV above.

**(a)(9) Other Related Applications**

There are no other applications before the Commission related to the proposed Transaction.

**(a)(10) Special Considerations**

None of the Applicants is facing imminent business failure. Nevertheless, 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) Separately Filed Waiver Requests**

No separately filed waiver requests are sought in conjunction with this Application.

**(a)(12) Public Interest Statement**

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

**VII. CONCLUSION**

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be served by grant of this Application.

Respectfully submitted,

**MASERGY INVESTMENT  
HOLDINGS, LLC**

**MAS GROUP HOLDINGS, LLC**

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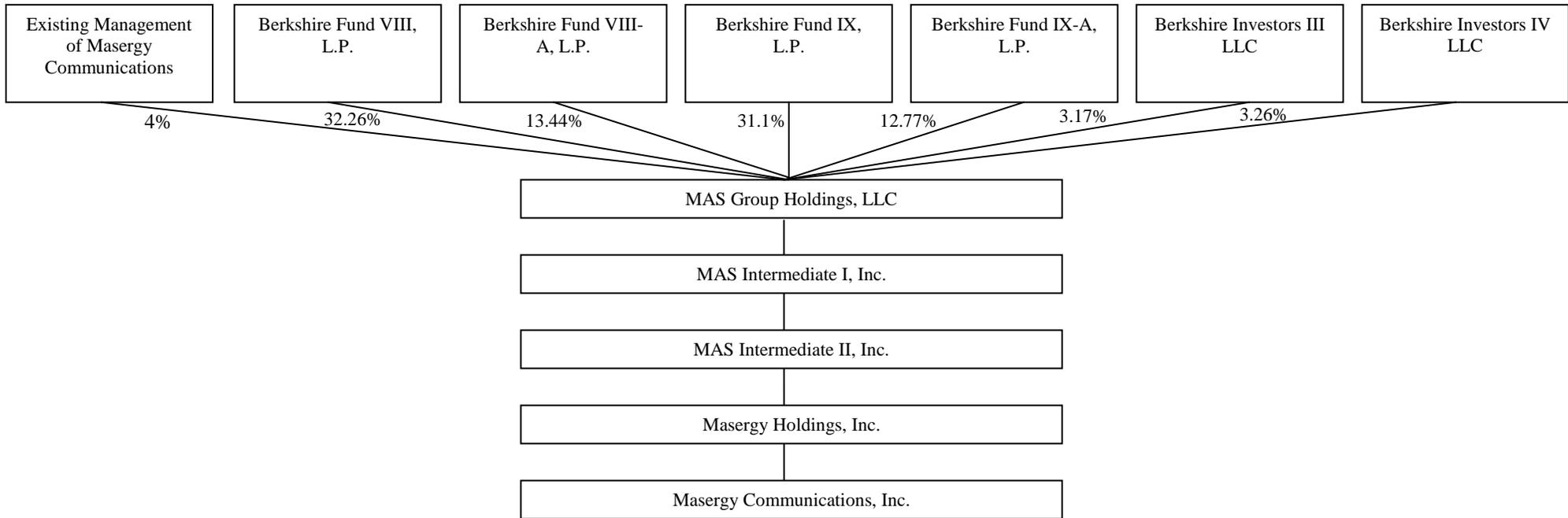
Dated: October 25, 2016

**Exhibit A**  
Pre- and Post-Transaction Corporate Organizational Charts

Pre-Transaction Organizational Chart



Post-Transaction Organizational Chart Pre-Transaction Organizational Chart



**NOTE:**  
All ownership interests 100%  
unless otherwise indicated

VERIFICATION

I, Irene Peterson, hereby declare that I am Vice President of Tax and Regulatory at Masergy Communications, Inc.; that I am authorized to make this Verification on behalf of Masergy Communications, Inc.; that foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of October, 2016.



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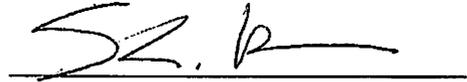
Irene Peterson

**VERIFICATION**

I, Sharlyn C. Heslam, hereby declare that I am a Managing Director of Berkshire Partners LLC; that I am authorized to make this Verification on behalf of Berkshire Partners LLC; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of October, 2016.

A handwritten signature in black ink, appearing to read "S.C. Heslam", is written above a horizontal line.

Sharlyn C. Heslam  
Managing Director