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June 22, 2016

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Joint Application for Domestic Transfer of Control

Dear Ms. Dortch:

Transmitted herewith is the Joint Application for Domestic Transfer of Control filed with the Federal Communications Commission by Axia NetMedia Corporation as Transferor, Axia NGNetworks USA, Inc. as Licensee, and the Axia NGNetworks Trust as Transferee.

Respectfully submitted,



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Attorney for Operating Trustee of Transferee

cc: Dennis Johnson, FCC Wireline Competition Bureau
Jodie May, FCC Wireline Competition Bureau
Arthur Price, Chairman and CEO, Axia NetMedia Corporation
Esther Peiner, Digital Connection (Canada) Corp.
Jeffrey M. Embleton

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of the Joint Application of)
)
Axia NetMedia Corporation, Transferor)
Axia NGNetworks USA, Inc., Licensee)
)
and)
)
Axia NGNetworks Trust, Transferee) WC Docket No. _____
FSM Management, LLC, Operating Trustee)
)
)
Application for Authorization Pursuant to)
Section 214 of the Communications Act of 1934,)
As Amended, for Transfer of Control of)
Axia NGNetworks USA, Inc., an authorized)
Domestic Section 214 Carrier, to)
Axia NGNetworks Trust)

JOINT APPLICATION FOR DOMESTIC TRANSFER OF CONTROL

I. Introduction

Axia NetMedia Corporation (“Axia Canada” or “Transferor”), Axia NGNetworks USA, Inc.¹ (“Axia U.S.” or “Licensee”), Axia NGNetworks Trust (“Trust”), (collectively “Applicants”) through their undersigned counsel and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Sections 63.03 and 63.04 of the rules of the Federal Communications Commission (“FCC” or the “Commission”), 47 C.F.R. §§ 63.03, 63.04, hereby respectfully request Commission approval or such authority as may be necessary or required to enable the parties to consummate a transaction whereby the Trust will acquire all outstanding and issued stock of Axia U.S., a non-dominant carrier holding blanket domestic Section 214 authority from the Commission to provide interstate telecommunications services.

Axia U.S. is a Delaware based corporation whose parent, Axia Canada, is an Alberta (Canada) publicly listed company. In the proposed transaction, all stock of Axia U.S. will be transferred to the Trust, resulting in a change of the ownership and control of Axia U.S. FSM Capital Management LLC (“FSM” or “Operating Trustee”), as Operating Trustee, will assume all rights, responsibilities, and de jure and de facto control now held by the management and

¹ FRN: 0022558662

board of directors of Axia U.S. and will be responsible for operating the company to continue providing service to existing customers in Western Massachusetts under the same rates, terms, and conditions as currently apply.

II. Information Required for Filing a Domestic Transfer of Control Application

Pursuant to 47 C.F.R. § 63.04(a) and in support of this Application, Applicants provide the following information:

1. Name, Address, and Telephone Number of Each Applicant, 47 C.F.R. § 63.04(a)(1).

Transferor

Axia NetMedia Corporation
220-12 Ave SW, Suite 110 Calgary, Alberta T2R OE0
Telephone: (403) 538-4000

Licensee

Axia NGNetworks USA, Inc.
One International Place
100 Oliver Street, Suite 1400
Boston, MA 02110
Telephone: (617) 535-7530

Transferee

Axia NGNetworks Trust
c/o FSM Capital Management LLC, Operating Trustee
Attn: Terrence P. Fergus, CPA PFS
FSM Capital Management LLC
6060 Parkland Blvd., Suite 100
Cleveland, Ohio 44124
(216) 916-8425

2. Government, State, or Territory under the Laws of Which Each Corporate Applicant is Organized, 47 C.F.R. § 63.04(a)(2)

Transferor: Axia Canada is a publicly traded corporation formed under the laws of Alberta, Canada.

Licensee: Axia U.S. is a corporation formed under the laws of Delaware.

Transferee: The Trust is a Delaware statutory trust formed under the Delaware Statutory Trust Act (12 Del. C. § 3801 et seq.) (the “Act”).

The Trust is managed by Operating Trustee FSM, a limited liability company formed under the laws of Ohio.

3. **Name, Title, Address, and Telephone Number of Officer or Contact Point to whom Correspondence Regarding the Application should be Addressed, 47 C.F.R. § 63.04(a)(3)**

For Transferor and Licensee:

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For Transferee:

Axia NGNetworks Trust
Jeffrey Embleton, MansourGavin LPA
Jennifer Horn, MansourGavin LPA
North Point Tower
1001 Lakeside Ave., Suite 1400
Cleveland, OH 44114
(216) 523-1500

4. **The Name, Address, Citizenship, and Principal Businesses of any Person or Entity that Directly or Indirectly owns at least 10% of the Equity of the Applicant, and the Percentage of Equity Owned by each of those Entities (to the nearest 1%), 47 C.F.R. § 63.04(a)(4)**

Pre- and Post-Transaction Ownership of Transferor:

To Axia Canada's knowledge, the following entities currently hold, and will continue to hold, a 10% or greater direct or indirect interest in Axia Canada pre- and post-transaction:

Ancora Advisors LLC ("Ancora")
6060 Parkland Boulevard, Suite 200
Cleveland, Ohio 44124 USA

Ancora is a registered investment advisory firm formed under the laws of Nevada. Investment funds and accounts managed by Ancora own in aggregate approximately 11% of the issued and outstanding shares of Axia Canada. In its capacity as investment manager of these funds and accounts, Ancora exercises control or direction over such shares.

The remaining approximately 89% of the issued and outstanding shares of Axia Canada are publicly held, with no entity holding a 10% or greater direct or indirect interest.

Pre- and Post-Transaction Ownership of Licensee:

The following entity currently holds a 10% or greater direct or indirect interest in Axia U.S.:

Axia Canada owns 100% of the issued and outstanding stock of Axia U.S.

The following entity will hold a 10% or greater direct or indirect interest in Axia U.S. upon completion of the transaction:

The Trust will own 100% of the issued and outstanding stock of Axia U.S. Axia U.S. will no longer be controlled by Axia Canada upon completion of the proposed transaction. Under the trust agreement, Operating Trustee will have all powers and responsibilities to exercise de jure and de facto control of and operate Licensee.

Pre- and Post-Transaction Ownership of Transferee:

The Trust is a new Delaware statutory trust organized under the Act. It has and will have no equity and no ownership. Its Operating Trustee is FSM. Its beneficiary is Axia Canada.

The following individuals currently hold a 10% or greater direct or indirect interest in the Operating Trustee and are expected to hold a ten percent or greater interest in the Operating Trustee post-transaction:

Terrence P. Fergus owns 54% of FSM. He is a Certified Public Accountant and a United States citizen. His address is 6060 Parkland Blvd, Suite 100, Cleveland, OH 44124.

David A. Lightner owns 33% of FSM. He is a Certified Public Accountant and a United States citizen. His address is 6060 Parkland Blvd, Suite 100, Cleveland, OH 44124.

For the Commission's convenience, a chart of the pre- and post-transaction structures of the Applicants is attached as Exhibit A.

5. Certification 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, 47 C.F.R. § 63.04(a)(5)

None of the parties is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. § 853a; 47 C.F.R. §§ 1.2001-1.2003.

6. Description of the Transaction, 47 C.F.R. § 63.04(a)(6)

Pursuant to a trust agreement (“Agreement”) executed June 22, 2016 between Axia Canada as Depositor and FSM as Operating Trustee, the Trust will acquire all of the issued and outstanding stock of Axia U.S. upon approval by the Commission of the transfer of control of the authorization to operate held by Axia U.S. to the Trust.

As required by the Act, the Trust has a Delaware Trustee, Wilmington Trust, N.A. (“Delaware Trustee” or “Wilmington Trust”) to perform statutory administrative duties in Delaware; Wilmington Trust has assumed the duties of Delaware Trustee.

It is the intent of the Applicants to transfer complete control of management and operations of Axia U.S. to the Trust. FSM, as Operating Trustee will assume complete control of the Trust and the day-to-day operations of Axia U.S. Mr. Terrence Fergus, President of FSM, will be responsible for leadership of the Trust, as well as management and direction of Axia U.S. The Agreement gives the following authority and responsibility to the Operating Trustee

The Operating Trustee is authorized and directed to operate Axia NGNetworks USA, Inc. (the “Company”) [defined in this Application as “Axia U.S.”] and, as determined in the sole discretion of the Operating Trustee, to (i) sell the stock of the Company as a going concern (a “Stock Sale”) or (ii) sell the assets of the Company (an “Asset Sale”), whichever is believed by the Operating Trustee to be in the best interests of the Issuer [defined in this Application as “Trust”]. The Stock Sale or the Asset Sale, as appropriate, can be at either a public or private sale and will be on terms and in the manner the Operating Trustee deems most beneficial to the Issuer.

In the event of an Asset Sale, following the closing of such sale, the Operating Trustee is authorized and directed to wind down and dissolve the Company in accordance with 8 Del. C. §§ 275 – 285 (the “Delaware Dissolution Statute”). Notwithstanding Section 281 of the Delaware Dissolution Statute, in the event that the proceeds of an Asset Sale are insufficient to pay all claims, including the claim of the Issuer, in full, the Operating Trustee shall pay all claims that are not rejected pro rata in accordance with the Delaware Dissolution Statute, prior to payment of the claim of the Issuer. In no event shall the Operating Trustee have any personal liability for any claims of the beneficiary.

The Operating Trustee is authorized and directed to exercise all rights, powers, authorities, privileges and duties heretofore possessed by the officers, directors, managers, and general and limited partners of the Company under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements. Without limitation, the Operating Trustee is authorized and directed to exercise all rights, powers, authorities, privileges and duties provided for by law or equity to the Company’s sole shareholder and to the Board of Directors of the Company. These rights, powers, authorities, privileges and duties will be exercised by the Operating Trustee or by someone under the Operating Trustee’s sole direction, to the exclusion of any other party, including, without limitation, any party in those

positions at the time of the creation of the Issuer. The Operating Trustee may authorize the exercise by corporate officers and agents of all rights, powers, authorities, privileges and duties granted him or her under this paragraph, except for the rights, powers, authorities, privileges and duties of the Board of Directors of the Company.

The Operating Trustee is authorized and directed to take all actions to manage, maintain, and/or wind down the business operations of the Company, including making legally required payments to creditors, employees, and agents in the ordinary course of business.

Any and all net proceeds realized by the Operating Trustee from a Stock Sale or an Asset Sale shall be applied, first, to pay all unpaid fees and expenses of the Operating Trustee and all unpaid fees, expenses and indemnities of the Delaware Trustee, and then any remaining proceeds shall be distributed to the Issuer after all other claims that are not rejected have been paid. This trust is intended to be a grantor trust for U.S. federal income tax purposes. Accordingly, no distribution will be made in violation of the provisions of Section 672(f) of the United States Internal Revenue Code of 1986, as amended.

Upon or prior to the transfer of the stock of Axia U.S. to the Trust, Axia Canada will take two specific actions to provide for continuity of service to the customers of Axia U.S. First, Axia Canada will provide a loan of \$2 million to Axia U.S. to be used by the Operating Trustee in operation of Axia U.S. and payment of Axia U.S. and Trust obligations in the ordinary course of business. The loan agreement will not provide for foreclosure upon default in repayment, imposition of Axia Canada management controls upon default, or a lien or security filing to provide priority of Axia Canada over other creditors. The loan agreement will require Axia Canada consent to further borrowing by Axia U.S.

Second, affiliates of Axia Canada and Axia U.S. will enter into a "Transition Support Agreement" ("TSA") whereby Axia U.S. will continue to use the technical, security, and customer support services currently provided to Axia U.S. by such affiliates of Axia Canada. The support provided under the TSA will be purely support for operation of the network currently operated by Axia U.S. (see network description below). The TSA is not intended to provide and will not provide management or direction for Axia U.S. or control of its Section 214 authorization.

In the event that the Operating Trustee decides, pursuant to its obligations under the Agreement, that a sale of the stock or assets of Axia U.S. is in the best interest of the beneficiary, the Operating Trustee may undertake such a sale. Neither the Agreement nor any other agreement provides an option or right of first refusal to any person or entity. The Operating Trustee understands that it cannot transfer control over the Axia U.S. blanket domestic Section 214 authorization without the prior approval of the Commission.

7. 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, 47 C.F.R. § 63.04 (a)(7)

Transferor/Licensee:

Axia U.S. is a wholly owned subsidiary of Axia Canada. Through a Master Agreement for Network Operator Services (“Master Agreement”) Axia U.S. operates a middle mile network (“MTC Network”) for the Massachusetts Technology Park Corporation² in Western Massachusetts under the name of MassBroadband 123 Network (“MB123”). MB123 includes about 2,200 km of fiber backhaul infrastructure and electronics connecting more than 120 communities. In its role as Network Operator, and subject to MTC oversight, Axia U.S. is responsible for all aspects of the management, sales, billing, staffing, monitoring, operations, customer support, and maintenance of the MTC Network. Axia U.S. provides “middle mile” broadband, meaning the connection between the larger broadband backbone providers and the carriers that serve the end users (the end users being anchor institutions such as hospitals, local government facilities, etc. served by the MTC Network). Axia also offers lit and dark fiber services over the MB123 network. Axia U.S. operates under blanket domestic Section 214 authority pursuant to 47 C.F.R. § 63.01. Axia U.S. does not provide telecommunications services that originate in the U.S. and terminate in a foreign point; terminate in the U.S. and originate in a foreign point; or originate and terminate in a foreign point but transit the U.S.

Axia Canada is a Canadian based corporation that is listed on the Toronto Stock Exchange. Axia Canada is in the fiber infrastructure business. Axia Canada does not provide voice, video, or data services to any customers. Axia Canada, through subsidiaries and other investment vehicles, sells fiber optic communications network services to government, commercial, and retail service provider customers in Alberta, Canada and France. Neither Axia Canada, nor its subsidiaries and other investment vehicles, provide telecommunications services that originate in the U.S. and terminate in a foreign point; terminate in the U.S. and originate in a foreign point; or originate and terminate in a foreign point but transit the United States. As a result, no international Section 214 authorization is needed by Axia Canada or Axia U.S.

Transferee:

The Trust does not offer telecommunications services.

8. A Statement Regarding how the Application fits into one or more Presumptive Streamlined Categories, 47 C.F.R. § 63.04(a)(8)

This application is eligible for streamlined processing pursuant to Sections 63.03(b)(i) and (ii) of the Commission’s rules because none of the Applicants is a facilities-based carrier, and the Transferee is not a telecommunications provider.

9. Identification of all other Commission Applications related to the same Transaction, 47 C.F.R. § 63.04(a)(9)

² Massachusetts Technology Park Corporation is an independent public instrumentality of the Commonwealth of Massachusetts established, organized, and existing pursuant to Chapter 40J of the Massachusetts General Laws and doing business as the Massachusetts Technology Collaborative, together with its successors and assigns, (“MTC”).

There are no other applications related to this transaction pending with the Commission.

10. **A Statement of Whether the Applicants are Requesting Special Consideration because Either Party to the Transaction is Facing Imminent Business Failure, 47 C.F.R. § 63.04(a)(10)**

The Applicants do not request special consideration and neither of the Applicants is facing imminent business failure.

11. **Identification of any Separately Filed Waiver Requests Being Sought in Conjunction with the Transaction, 47 C.F.R. § 63.04(a)(11)**

There are no separately filed waiver requests being sought in conjunction with the transaction.

12. **A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets, 47 C.F.R. § 63.04(a)(12)**

A grant of the instant Application will serve the public interest because, under the new ownership, Axia U.S. will continue to provide high quality telecommunications services on the MTC Network to its existing customer base in Western Massachusetts. The rates, terms, and conditions of service currently provided by Axia U.S. to its customers will not change and the transaction will be seamless and transparent. Any future changes in rates, terms, or conditions will be undertaken pursuant to applicable federal and state telecommunications and notice laws. Granting this request for domestic Section 214 Authority ensures continuity, allowing Axia U.S.'s customers to continue to receive reliable telecommunications services.

For the foregoing reasons, Applicants respectfully request the Commission promptly grant this Application.

Respectfully submitted,



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Dated: June 22, 2016