

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1325 G STREET, NW, SUITE 800  
WASHINGTON, DC 20005**

**ORDER**

**February 16, 2021**

**FORMAL CASE NO. TA2018-03, IN THE MATTER OF THE NOTIFICATION OF  
A PROPOSED TRANSFER OF INDIRECT CONTROL OF RED FIBER PARENT,  
LLC, CINCINNATI BELL INC., AND CBTS TECHNOLOGY SOLUTIONS, LLC,  
Order No. 20701**

**I. INTRODUCTION**

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) accepts the Notification of Red Fiber Parent, LLC (“Red Fiber Parent”), Cincinnati Bell Inc. (“Cincinnati Bell”), and CBTS Technology Solutions, LLC (“CBTS”) (collectively, the “Parties”), of the proposed transfer of indirect control of CBTS to Red Fiber Parent (the “Transaction”). The Commission dismisses further review of the Parties’ Transaction.

**II. BACKGROUND**

2. On February 5, 2021, the Parties filed a Notification with the Commission of the transfer of indirect control of CBTS to Red Fiber Parent.<sup>1</sup> The Parties state that submission of the Notification is for informational purposes. They assert that pursuant to D.C. Code §§ 34-1001, 34-214, 31-220, and because of prior Commission decisions, approval is not required for the Transaction because CBTS does not meet the definition of a public utility.<sup>2</sup>

**A. Description of the Parties**

**(1) Red Fiber Parent LLC**

3. The Parties assert that Red Fiber Parent is a Delaware limited liability company established as an acquisition vehicle for this Transaction.<sup>3</sup> The Parties state that Red Fiber Parent will become indirectly majority owned by MIP V RF Partners, L.P., a

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<sup>1</sup> *Formal Case No. TA2018-03*, Notification Regarding the Transfer of Indirect Control of CBTS Technology Solutions, LLC to Red Fiber Parent, LLC (“*Formal Case No. TA2018-03*”), filed February 5, 2021 (“Notification”).

<sup>2</sup> Notification at 1.

<sup>3</sup> Notification at 1.

Delaware limited partnership (“MIP V RF Partners”) at the close of the Transaction.<sup>4</sup> Following that, MIP V RF Partners will be controlled by its general partner Macquarie Infrastructure Partners V GP, LLC (“MIP V GP”). MIP V GP is also the general partner of MIP V (FCC) AIV, L.P., a Delaware limited partnership (“MIP V”), which holds a direct interest in MIP V RF Partners. The Parties describe MIP V GP as an entity within Macquarie Infrastructure and Real Assets (“MIRA”), which is a division of Macquarie Asset Management, an operating group within Macquarie Group Limited (“MGL”).<sup>5</sup>

4. The Parties describe MIRA as a global alternative asset manager with experience investing in the communications infrastructure industry.<sup>6</sup> The Parties assert that for more than two (2) decades, MIRA has partnered with investors, governments, and communities to manage, develop, and enhance assets relied on by more than 100 million people each day. They add that MIRA managed \$141.90 billion in assets as of June 30, 2020, of which \$111.58 billion were invested in infrastructure assets.<sup>7</sup> They further state that MIRA’s ultimate parent is MGL, a publicly traded company providing clients with asset management and finance, banking, advisory, and risk and capital solutions across debt, equity, and commodities, and incorporated in Australia.<sup>8</sup>

5. The Parties state that Red Fiber Parent will also become minority-owned indirectly at the close of the Transaction, by; (1) certain alternative investment vehicles managed by the Private Equity Group of Ares Management Corporation, and (2) Retail Employees Superannuation Trust, an Australian superannuation fund managed by Retail Employees Superannuation Pty Limited, as trustee of the fund.<sup>9</sup>

## **(2) Cincinnati Bell Inc. and CBTS Technology Solutions LLC**

6. The Parties describe CBTS as a Delaware limited liability company, with its principal place of business in Cincinnati, Ohio.<sup>10</sup> In the District of Columbia (“District”), the Parties state that CBTS is authorized to provide resold and facilities-based local exchange telecommunications services pursuant to a Certificate of Public Convenience and Necessity granted in *Formal Case No. TA2018-03*, Order No. 19776, on

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<sup>4</sup> Notification at 1.

<sup>5</sup> Notification at 1.

<sup>6</sup> Notification at 1.

<sup>7</sup> Notification at 1.

<sup>8</sup> Notification at 2.

<sup>9</sup> Notification at 2.

<sup>10</sup> Notification at 2.

December 13, 2018.<sup>11</sup> The Parties state that CBTS does not have any telephone lines or facilities in the District and, therefore, should not be considered a public utility for the purposes of this Transaction.<sup>12</sup> The Parties state that CBTS is an indirect wholly-owned subsidiary of Cincinnati Bell, an Ohio corporation that is publicly traded on the New York Stock Exchange.<sup>13</sup> Cincinnati Bell provides, according to the Parties, high-speed data, video, and voice solutions to residential customers and businesses over fiber and legacy copper network.<sup>14</sup>

## **B. Description of the Transaction**

7. According to the Parties, the Agreement and Plan of Merger (the “Agreement”), dated March 13, 2020, will have Red Fiber Parent, RF Merger Sub Inc. (“Merger Sub”), Cincinnati Bell, and Merger Sub, merge with and into Cincinnati Bell, and, as a result of such merger, Red Fiber Parent will acquire all of the outstanding shares of common stock of Cincinnati Bell, which shares will be converted into the right to receive \$15.50 per share in cash at closing of the Transaction.<sup>15</sup>

8. The Parties state that Merger Sub is an Ohio corporation formed for the purposes of the Transaction, and is a direct, wholly-owned subsidiary of Red Fiber Parent.<sup>16</sup> The Parties state that Merger Sub will merge with and into Cincinnati Bell upon closing of the Transaction, whereupon the separate existence of Merger Sub will cease and Cincinnati Bell will be the surviving corporation in the merger. The Parties then state that Cincinnati Bell will become a direct wholly owned subsidiary of Red Fiber Parent.<sup>17</sup> As a result of the Transaction, the Parties assert that CBTS will become an indirect subsidiary of Red Fiber Parent. The Parties state that the corporate structure of Cincinnati Bell will not change.<sup>18</sup> The Parties add that following the proposed Transaction, Red Fiber Parent

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<sup>11</sup> *Formal Case No. TA2018-03, In the Matter of the Application of CBTS Technology Solutions, LLC to Provide Local Telecommunications Services in the District of Columbia*, Order No. 19776, rel. December 13, 2018.

<sup>12</sup> Notification at 3; citing CBTS’s most recent Survey Response indicating that it does not have any telephone lines or facilities in the District. *ASMT2020-33-T-2*, Survey Response of CBTS Technology Solutions, LLC, filed March 24, 2020.

<sup>13</sup> Notification at 3.

<sup>14</sup> Notification at 3.

<sup>15</sup> Notification at 4.

<sup>16</sup> Notification at 4.

<sup>17</sup> Notification at 4.

<sup>18</sup> Notification at 4.

will own directly 100% of the stock of Cincinnati Bell.<sup>19</sup> The Notification includes diagrams depicting the pre- and post-Transaction corporate ownership structures.<sup>20</sup>

**C. Public Interest Considerations**

9. The Parties submit that the Transaction is in the public interest, pointing out that Red Fiber Parent and its owners are managerially, technically, and financially well-qualified to complete the Transaction and assume indirect ownership and control of CBTS, which will continue to be a subsidiary of Cincinnati Bell under the ownership of Red Fiber Parent.<sup>21</sup> As support, they state that CBTS is expected to continue to be managed and operated by the same officers and key personnel, and will continue to have the managerial, technical, and financial qualifications to provide high quality telecommunications services to customers in the District.<sup>22</sup> The Parties add that Cincinnati Bell's existing management team would be supplemented with the managerial capabilities and resources of Red Fiber Parent and its owners.<sup>23</sup>

10. The Parties contend that the Transaction will strengthen the financial position of the Cincinnati Bell enterprise as a whole.<sup>24</sup> As support, the Parties state that the substantial financial resources of the investors in Red Fiber Parent, Cincinnati Bell, and CBTS will be better positioned to deliver next generation and integrated communications for its customers.<sup>25</sup> They add that the financial, management, and other resources made available to Cincinnati Bell and CBTS will enhance its networks and services to the benefit of their customers.<sup>26</sup>

11. The Parties describe the Transaction as structured to reflect a change of ownership at the holding company level and will not affect any of the operations or legal identity of CBTS. They add that it will not result in a change of carrier for any customers or any assignment of existing Commission authorizations.<sup>27</sup> The Parties further state that Red Fiber Parent has no immediate plans to change CBTS's current rates or terms and conditions of services in connection with the Transaction.<sup>28</sup> They further explain that the

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<sup>19</sup> Notification at 4.

<sup>20</sup> Notification at 4; citing Exhibit A.

<sup>21</sup> Notification at 5.

<sup>22</sup> Notification at 5.

<sup>23</sup> Notification at 5.

<sup>24</sup> Notification at 5.

<sup>25</sup> Notification at 5.

<sup>26</sup> Notification at 5-6.

<sup>27</sup> Notification at 6.

<sup>28</sup> Notification at 6.

Transaction will be seamless to customers, and they will not experience any immediate changes in services, rates, or terms and conditions of service.<sup>29</sup> They pledge that any future changes will be executed with careful planning and implementation in the normal course of business.<sup>30</sup>

12. The Parties further explain that there will be no need to change any billing systems or operational support systems before closing the Transaction.<sup>31</sup> They add that any future information technology upgrades to Cincinnati Bell's systems will occur with careful planning and will be executed in the normal course of business.<sup>32</sup>

### **III. DECISION**

#### **A. Transfer of Control**

13. D.C. Code § 34-1001 sets forth the Commission's authority to review the transactions filed for Commission consideration and approval.<sup>33</sup> In addition, Title 15 of the District of Columbia Municipal Regulations ("DCMR") § 2511.2 provides the application requirements for entities seeking Commission approval for a corporate restructuring.<sup>34</sup> The first step in this process, however, is for the Commission to determine whether it has authority to review and approve an application for transfer of control or a corporate restructuring, in accordance with D.C. Code § 34-1001. If it determines that it has authority to review the transaction in accordance with D.C. Code § 34-1001, then the Commission will conduct an analysis of the application based on the requirements provided in 15 DCMR § 2511.2.<sup>35</sup>

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<sup>29</sup> Notification at 6.

<sup>30</sup> Notification at 6.

<sup>31</sup> Notification at 6.

<sup>32</sup> Notification at 6.

<sup>33</sup> In pertinent part, D.C. Code § 34-1001 provides that: No franchise nor any right to or under any franchise to own or operate any public utility as defined in this subtitle . . . shall be assigned [or] transferred . . . nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer . . . or agreement shall have been approved by the Commission in writing.

<sup>34</sup> See 15 DCMR § 2511.2 (2015). Specifically, 15 DCMR § 2511.2 states: For any change of ownership or control involving a certificated local exchange carrier that must be approved by the Commission pursuant to D.C. Official Code § 34-1001 (2001), all of the entities involved in the transaction must file an application with the Commission at least sixty (60) days before the proposed closing date of the transaction.

<sup>35</sup> See 15 DCMR § 2511.2(d) (2015) stating the five standards an application for transfer of control or other type of corporate reorganization must meet in order to receive Commission approval.

14. As cited by the Parties in their Notification, the Commission has interpreted D.C. Code §§ 34-1001, 34-214, 34-220 and 34-221<sup>36</sup> to mean that if a Competitive Local Exchange Carrier (“CLEC”) has facilities in the District, then it can be classified as a public utility under the D.C. Code and certain transactions, such as assignments, reorganizations or transfers, require prior Commission review and approval.<sup>37</sup> In the instant case, the Parties represent, and Commission review confirms, that the certificated CLEC, CBTS, has no telecommunications service lines within the District.<sup>38</sup> Inasmuch as CBTS has no telecommunications service lines and thus, no facilities within the District, it does not meet the definition of a public utility. Because CBTS does not meet the statutory definition of a public utility, there is no need for the Commission to analyze the merits of this transaction in accordance with 15 DCMR § 2511.2. Consequently, the Commission accepts the Parties’ Notification of the proposed transfer of indirect control of CBTS to Red Fiber Parent and the Commission shall dismiss further review of this Transaction.

**THEREFORE, IT IS ORDERED THAT:**

15. The Notification of Red Fiber Parent, LLC, Cincinnati Bell Inc., and CBTS Technology Solutions, LLC of the proposed transfer of indirect control of CBTS Technology Solutions, LLC to Red Fiber Parent, LLC is **ACCEPTED**, and further Commission review of this matter is **DISMISSED**.

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<sup>36</sup> A public utility as defined in D.C. Code § 34-214 includes, *inter alia*, a “telephone corporation” or a “telephone line.” Under D.C. Code § 34-220, a “telephone corporation” includes every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers . . . owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communications for hire, or which licenses, lets, or permits telephonic communication for hire. And under D.C. Code § 34-221, a “telephone line” includes conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication.

<sup>37</sup> See *Formal Case No. 990, In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 13139, ¶ 22, rel. March 25, 2004; See also *Formal Case No. 892, In the Matter of the Joint Application of CTC Communications Corp., Conversant Communications Resale, L.L.C., and Choice One Communications Resale, L.L.C. for Approval of Pro Forma Intra-Company Changes*, Order No. 16933, rel. October 12, 2012, citing *Formal Case No. 968, Joint Application of AT&T Corporation and Teleport Communications Group, Inc., for Approval of a Transfer of a Franchise*, Order No. 11532 at 5, rel. November 5, 1999, which provided the context for the Commission’s authority to review certain transactions. See also *Formal Case No. 892, In the Matter of the Joint Application of Crown Castle International Corp., LTS Group Holdings LLC, and Lightower Fiber Networks I, LLC and Lightower Fiber Networks II, LLC for Approval to Transfer Indirect Control of Lightower Fiber Networks, I LLC and Lightower Fiber Networks II, LLC to Crown Castle International Corp.*, Order No. 19116, rel. September 21, 2017, wherein the Commission approved the joint application for transfer of control, finding the Applicants to be public utilities under Commission statutes and rules.

<sup>38</sup> See ASMT2020-33-T-2, Survey Response of CBTS Technology Solutions, LLC (cited earlier).

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

**CHIEF CLERK:**

**BRINDA WESTBROOK-SEDGWICK  
COMMISSION SECRETARY**