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**BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH**

Joint Application of Clear Rate Holdings, Inc. and Clear Rate Communications, Inc. for Approval of a Transfer of Control of Clear Rate Communications, Inc. to Clear Rate Holdings, Inc.	JOINT APPLICATION Docket No. 21-2581-01
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JOINT APPLICATION

Clear Rate Holdings, Inc. (“Transferee” or “Holdings”) and Clear Rate Communications, Inc. (“Licensee” or “Clear Rate”) (collectively, “Applicants”), pursuant to Utah Code Ann. §§ 54-4-28 & 54-4-29 and the rules of the Public Service Commission of Utah (“Commission”), including R746-349-7, hereby request Commission approval, to the extent required,¹ for the proposed transfer of control of Licensee to Transferee.

¹ See UTAH CODE ANN. §54-8b-3.4 (exempting competitive entrants from requirements of UTAH CODE ANN. § 54-4-28 and § 54-4-29 and requiring only notices of transfer of control).

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

I. DESCRIPTION OF THE APPLICANTS

A. Clear Rate Holdings (“Transferee” or “Holdings”)

Holdings is a Delaware corporation and a holding company established as an acquisition vehicle solely for purposes of this Transaction. L Four, LLC will be the manager of the co-investment vehicle L4-CR Co-Invest, LLC that will hold a majority of the stock of Clear Rate Holdings, Inc. L Four, LLC is owned 50/50 by Barbara Henagan and Giny Mullins. Mrs. Mullins and Mrs. Henagan have worked together for approximately 15 years at Linx Partners, a private equity investment firm, and through L Four, LLC, will be the managers of L4-CR Co-Invest, LLC. Mrs. Henagan has been investing in privately held businesses for over 40 years. Most recently, Mrs. Henagan founded Linx Partners where she has worked as a Managing Director and Founder for over 20 years. Mrs. Mullins has been investing in privately held businesses for approximately 15 years during her time at Linx Partners. At Linx, Mrs. Henagan and Mrs. Mullins have invested through Linx funds and co-investment vehicles in 19 platforms, as well as a number of add-on acquisitions and financial recapitalizations. Mrs. Mullins and Mrs. Henagan have primarily invested in US-based industrial distribution, business services and manufacturing businesses in the lower middle market. Currently, across the investment funds managed by Mrs. Henagan and Mrs. Mullins, assets under management are approximately \$200 million, and there are approximately 1,175 employees at existing portfolio companies. To date, they have made one investment that focuses on the telecommunications, cable/MSO and enterprise end markets which is Sagent, Inc. Sagent is an equipment distributor and repair services provider to those industries.

B. Clear Rate Communications, Inc. (“Licensee” or “Clear Rate”)

Clear Rate is a Michigan corporation. Clear Rate is a Competitive Local Exchange Carrier (“CLEC”) with its corporate headquarters located in Troy, Michigan. Clear Rate, in operation for

two decades, provides a full suite of telecommunication services for both consumers and businesses including voice, Internet, wireless, colocation and IT managed services. Currently, Clear Rate has approximately 27,000 customers in 19 different states, including Utah. Clear Rate's business and government customers include customers in the higher and secondary education, financial, automotive, manufacturing, and hospitality sectors.

Clear Rate is currently owned by six private investors: Thane Namy (35%), Sam Namy (12%), Robert Fantin (20%), Linda Kallabat (14%), Joseph Morelli (9.5%) and Kenneth Morelli (9.5%). Clear Rate's management team includes Thane Namy as the CEO and Sam Namy as the CFO. Both Thane and Sam Namy have been with Clear Rate since inception of the business.

Clear Rate is licensed as a CLEC in the following states in addition to Utah: California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, New York, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Washington, and West Virginia. Clear Rate's wholly owned subsidiary Clear Rate Telecom, LLC is licensed as a CLEC in Arizona and Virginia.

Clear Rate is authorized by the Commission to resell local exchange and interchange services, pursuant to a Certificate of Public Convenience and Necessity ("CPCN") granted in Case No. 15-2581-01 on June 10, 2015. Clear Rate is also authorized by the Federal Communications Commission ("FCC") to provide interstate and international telecommunications services and an application for authorization to transfer control of Clear Rate's FCC licenses to Holdings was filed on January 21, 2021.

II. DESIGNATED CONTACTS

Questions, correspondence or other communications concerning this Application should be directed to Applicants' counsel of record:

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III. DESCRIPTION OF THE TRANSACTION

On December 30, 2020, Holdings entered into a Membership Interest Purchase Agreement (the “Purchase Agreement”) by and among Holdings, Clear Rate, the stockholders of Clear Rate (the “Stockholders”) and Sam Namy, in his capacity as the Stockholders Representative. The Purchase Agreement provides that prior to the occurrence of the closing thereof, the Stockholders and Clear Rate will complete a restructuring transaction (the “*Pro Forma* Restructuring”) pursuant to which (i) the Stockholders will incorporate a new holding company, NNFKMM Holdings, Inc., a to be formed Michigan corporation (the “Seller”), (ii) the Stockholders will contribute all of the outstanding equity interests of Clear Rate to the Seller, and (iii) following such contribution, the Seller will convert Clear Rate from a Michigan corporation to Clear Rate Communications LLC, a to be formed Delaware limited liability company (the “CR LLC”). Following completion of the *Pro Forma* Restructuring, the Seller will then sell 100% of the outstanding equity interests in CR LLC (as the successor to Clear Rate) to Holdings at the closing of the transactions contemplated by the Purchase Agreement. A portion of the consideration to be paid to the Seller in connection with closing will be equity of Holdings, which will ultimately to be held by each of Thane and Sam Namy representing 10% each, or 20% in total, of the outstanding equity of Holdings.

The remaining equity of Holdings will be held by L4 CR Co-Invest, LLC (79.1%) and other investors, including management. Thane and Sam Namy will remain in management positions as the Chief Operating Officer and Chief Financial Officer respectively and will be joined by Thomas A. Prestwood as the new Chief Executive Officer. Mr. Prestwood has over 30 years’ experience in the telecommunications industry.

Applicants therefore request Commission approval of the transfer of control of Clear Rate to Holdings but also request approval for Clear Rate to engage in the *Pro Forma* Restructuring

prior to closing of the transaction with Holdings. Because under the *Pro Forma* Restructuring the ultimate ownership of Clear Rate will not change, it is *pro forma* in nature. Further, as with the transaction with Holdings, the *Pro Forma* Restructuring will have no effect on Clear Rate, its customers or operations, but will facilitate the sale to Holdings.

For the Commission's reference, diagrams depicting the pre- and post-Transaction ownership structures are provided in **Exhibit A**.

IV. INFORMATION REQUIRED BY R746-349-7

Pursuant to R746-349-7, Applicants provide the following information:

a. identification that it is not an ILEC,

Applicants confirm that no Applicant or an affiliate of an Applicant is an ILEC in Utah.

b. identification that it seeks approval of the application pursuant to this rule,

Applicants confirm that they seek approval of the application pursuant to the informal adjudication process set forth in R746-349-7.

c. a reasonably detailed description of the transaction for which approval is sought,

A detailed description of the Transaction is provided in Section III, above.

d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction,

Applicants and/or their affiliates have filed applications with the FCC seeking authority for a transfer of control of domestic and international authorizations held pursuant to Section 214 of the Communications Act, as amended.² A copy of the combined domestic and international Section 214 application (as supplemented) is attached as **Exhibit B**. In connection with this Transaction,

² 47 C.F.R. § 214.

Applicants and/or their affiliates also expect to request approval for the Transaction from the public utility commissions (“PUCs”) in the following states in addition to Utah: California, Colorado, Indiana, Minnesota, New York, Pennsylvania, Texas, Virginia and West Virginia. Due to the voluminous nature of these state filings, most of which contain the same basic information, Applicants have attached as **Exhibit C** a copy of only the New York filing requesting approval as a representative example of the Applicants’ state public utility commission filings. Applicants will also provide notice to the PUCs in the following jurisdictions: Arizona, Idaho, North Carolina, Ohio, South Dakota, and Washington. Due to the voluminous and repetitive nature of the notices to be sent to the PUCs, Applicants have not included copies of the notice filings. Applicants will provide any additional filings or notices at the request of the Commission or the parties to this docket.

- e. copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the application.**

Applicants have not yet received correspondence or notices from the federal and state agencies reviewing the Transaction; however, due to the voluminous nature of their federal and state filings, Applicants expect to receive countless additional correspondence and notices from these agencies. Accordingly, Applicants have not provided any such correspondence as part of this Application but will provide any such materials at the request of the Commission or the parties to this docket. Additionally, Applicants will, upon request, provide the Commission with copies of any orders or similar actions approving or denying approval of the Transaction as such orders become available.

V. PUBLIC INTEREST CONSIDERATIONS

The proposed Transaction will serve the public interest, convenience, and necessity by providing Licensee with access to Transferee’s financial and operational expertise, permitting Licensee to continue to provide robust communications solutions to its customers and to better

compete in the Utah telecommunications marketplace. Holdings is managerially, technically, and financially well-qualified to complete the Transaction and assume ownership and control of Clear Rate, which is expected to continue to be managed and operated by the same officers and key personnel. Clear Rate will continue to have the managerial, technical, and financial qualifications to provide high quality telecommunications services to customers in Utah.

The Transaction and the *Pro Forma* Restructuring will be seamless to customers and will not affect any of the operations or Clear Rate's legal identity. After the transfer of control to Holdings, Clear Rate will continue to provide high-quality communications services under the Clear Rate brand name on reasonable terms and conditions to customers, and there will be no interruption of service. Upon the *Pro Forma* Restructuring and after closing of the Transaction, Clear Rate will continue to provide service at the same rates, terms, and conditions, as governed by existing tariffs and contracts, which are subject to change in the ordinary course of business. Future changes, if any, in rates, terms and conditions of service will be made in accordance with applicable rules and notice requirements.

In short, the only change immediately following the closing from a customer's perspective will be the new ownership of Clear Rate. Holdings and its owners further expect that existing management will continue to oversee Clear Rate on a day-to-day basis, especially as the existing Clear Rate management will have an equity stake in Holdings.

Lastly, the Transaction will enhance not diminish competition. Because Holdings is neither itself a provider of telecommunications nor affiliated with any such providers, there will be no reduction in competition. Indeed, the purchase by Holdings will provide fresh capital for Clear Rate to continue and expand its operations to the benefit of competition and consumers.

VI. CONCLUSION

For the foregoing reasons, Applicants submit that the public interest, convenience, and necessity would be furthered by grant of this Application, authorizing Applicants to complete the Transaction described herein.

Respectfully submitted February 16, 2021.



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LIST OF EXHIBITS

Exhibit A Diagrams of the Pre- and Post-Transaction Corporate Ownership Structures

Exhibit B Copy of FCC Section 214 Application

Exhibit C Copy of Petition to New York Public Service Commission

Verifications