

DESCRIPTION OF THE TRANSACTION

Overview

This transaction involves the sale of radio stations owned by Galaxy Communications, L.P. (“Galaxy Communications”). Galaxy Communications is the sole member of Galaxy Syracuse Licensee, LLC (“Galaxy Syracuse”) and Galaxy Utica Licensee, LLC (“Galaxy Utica”), both New York limited liability companies. Galaxy Communications, Galaxy Syracuse and Galaxy Utica are collectively referred to herein as “Galaxy I.” Galaxy Communications is ultimately controlled by Alta Communications VIII, LP and other commonly-owned Alta entities (“Alta”).

Galaxy Syracuse is the licensee of the following radio broadcast stations (collectively, the “Galaxy Syracuse Stations”):

WKRH(FM), Minetto, New York
WKRL(FM), North Syracuse, New York
WSCP(AM), Sandy Creek-Pulaski, New York
WSGO(AM), Oswego, New York
WTKV(FM), Oswego, New York
WTKW(FM), Bridgeport, New York
WTLA(AM), North Syracuse, New York
WZUN(FM), Phoenix, New York

Galaxy Utica is the licensee of the following radio broadcast stations (collectively, the “Galaxy Utica Stations”):

WIXT(AM), Little Falls, New York
WKLL(FM), Frankfurt, New York
WOUR(FM), Utica, New York
WRNY(AM), Rome, New York
WTLB(AM), Utica, New York
WUMX(FM), Utica, New York

Galaxy I has entered into an Asset Purchase Agreement (the “Purchase Agreement”), a copy of which is attached, which contemplates that Galaxy I’s assets will be sold and transferred to a new entity, Galaxy Communications LLC (“Galaxy II”). The sole member of Galaxy II is GC Laurpam LLC (“GC Laurpam”). Galaxy II is a Manager-managed LLC. The sole member of GC Laurpam and the Manager of Galaxy II is Edward Levine. Mr. Levine holds an attributable interest in Galaxy I. He is the CEO of Galaxy Communications as well as an officer, director and shareholder of GC Radio, Inc., which is the general partner of Galaxy Communications. However, Alta will not have any interest in Galaxy II. Accordingly, the proposed sale represents a transfer of more than 50 percent of the equity of Galaxy I and the license assignment applications being filed in connection with this transaction, which are described below, are therefore being filed on FCC Form 314.

As indicated in Exhibit 18 of the assignment application for Galaxy Syracuse, according to the BIA/Kelsey Media Access Pro database, there are 43 full power commercial and noncommercial radio broadcast stations that serve the Syracuse, New York market. In accordance with Section 73.3555(a)(1)(ii) of the Commission’s rules, in markets with between 30 and 44 full-power commercial and non-commercial radio stations, a person or entity may have a cognizable interest in no more than seven radio stations, with not more than four stations in the same service. Galaxy’s interest in five FM stations in the Syracuse market is grandfathered in accordance with Note 4 to Rule 73.3555. *See In re 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620 (2003). To ensure compliance with the FCC’s multiple ownership rules, Galaxy Syracuse has proposed to assign the licenses of one of its FM stations – WZUN(FM) – to WZUN Communications LLC, an independent entity in which no person or entity with an attributable interest in Galaxy I or Galaxy II will hold any interest.

Assignment Applications

The application for consent to assign the WZUN(FM) licenses from Galaxy Syracuse to WZUN Communications LLC is one of four assignment applications being filed in connection with this transaction. In the second application, Galaxy Syracuse has requested consent to assign the licenses for all of the Galaxy Syracuse Stations, other than WZUN(FM), to Galaxy Syracuse Licensee LLC, a new Delaware limited liability company of which Galaxy II is the sole member. As shown in the multiple ownership showing included with Exhibit 18 to the Galaxy Syracuse application, with the sale of station WZUN to a third party, Galaxy II would own two AM stations and four FM stations in the Syracuse markets in compliance with Rule 73.3555(a). The WZUN and Galaxy Syracuse assignments will be consummated simultaneously.

The third assignment application requests consent to assign the FCC licenses held by Galaxy Utica to Galaxy Utica Licensee LLC, a new Delaware limited liability company of which Galaxy II is the sole member. The fourth application requests consent to assign the construction permit for FM Translator Station W263CG, Colonie, New York, from Galaxy Communications to Galaxy II.

Atalaya Fundings

Atalaya Special Opportunities Fund IV LP and Atalaya Special Opportunities Fund (Cayman) IV LP (collectively “Atalaya”) will hold Warrants for membership interests in Galaxy II.

In accordance with the Commission's attribution rules, Atalaya will not be considered to have an attributable interest in Galaxy II until the warrants are exercised.

In addition, Atalaya recently acquired Galaxy I's outstanding debt from another lender. The notes reflecting this indebtedness had been due at the end of this year; however, Atalaya and Galaxy I have entered into an Amended and Restated Credit Agreement ("Amended Credit Agreement"), which extends the term of the debt and provides Atalaya with other usual and customary creditor protections. When the transactions underlying the assignment applications described above are consummated, Galaxy II will assume Galaxy I's obligation under the Amended Credit Agreement. Galaxy II's assumption of the debt under the Credit Agreement is the consideration for the sale and assignment of the Galaxy Syracuse stations (other than WZUN) and Galaxy Utica Stations. The amount of this debt is approximately \$10,300,000.

The fact that Galaxy II is a single member manager-controlled limited liability company, that Mr. Levine is the manager and sole owner of the single member of Galaxy II and that the assets of Station WZUN(FM) must be sold to an independent buyer increase the risks that Atalaya will face as a lender to and investor in Galaxy II. Accordingly, Atalaya has required that the limited liability agreement contain certain minority investor protection rights. As described below, these investor protections are consistent with protections which the Commission has approved in other cases and ensures Atalaya's nonattributable lender/passive investor status.

In addition, to ensure that the sale of assets from Galaxy I to Galaxy II works from a lender standpoint, Atalaya has agreed to loan WZUN Communications the funds necessary to purchase WZUN. Atalaya will also hold an option to purchase WZUN. The Option is attached to Exhibit 13 of the WZUN assignment application. Atalaya's purchase of WZUN pursuant to the option is subject to receipt of prior approval from the FCC.

Minority Investor and Lender Protections

Faced with the unique risk profile presented by the Galaxy transaction, the parties sought to structure the minority investor protections to be consistent with the principles articulated in *Telemundo Communications Group, Inc.* 17 FCC Rcd 6958 (2002) and *Paxson Management Corporation and Lowell W. Paxson*, 22 FCC Rcd 22224 (2007) ("*ION Media Networks*"). First, the parties acknowledge and agree with the Commission's policy judgment that providing investor protections is "in the public interest because [such protection] encourages investment in broadcast properties, and thus enhances the ability of stations to provide better programming to the public" and because such protection provides "investors with the ability to invest in properties that they would not be able to own outright." *ION Media Networks*, 22 FCC Rcd at 22231.

Second, the parties have agreed upon investor protections that they believe in good faith are necessary and reasonable in the circumstances presented and will not allow Atalaya to "become involved in the overarching policymaking activities" of Galaxy II or the "day-to-day operations of

Galaxy II's stations." *Roy M. Speer*, 11 FCC Rcd 14147, 14158 (1996). In short, the parties believe that they have structured a transaction under which Atalaya maintains a non-attributable "lender/passive investor" status vis-à-vis both Galaxy II (unless, subject to any necessary prior consent of the Commission, Atalaya wishes to convert its warrants) and WZUN Communications, LLC (unless, subject to the prior consent of the Commission, Atalaya were to acquire WZUN).

As explained above, as consideration for the assignment of licenses from Galaxy I to Galaxy II, Galaxy II will assume the indebtedness owed by Galaxy I, thereby making Atalaya Galaxy II's lender. The terms and conditions set forth in the Credit Agreement are reasonable and grant Atalaya lender protections that are usual and customary in financings of this nature. In the event of a default under the Credit Agreement, Atalaya has the right to seek to have a receiver appointed. In addition, the Credit Agreement provides that if an event of default occurs, Galaxy II shall appoint a replacement manager, unless the Lender waives this requirement. However, neither of these remedies may be implemented until all requisite prior FCC approvals have been obtained.

Atalaya will not be a member of, or hold any membership interests (equity) in, Galaxy II. However, Atalaya will hold warrants representing (if fully converted) eighty percent (80%) of the membership interests of Galaxy II. If Atalaya wishes to convert its warrants into a sufficient number of membership units that would provide Atalaya with negative or positive control of Galaxy II, the parties would be required to obtain the prior consent of the FCC before the warrants are exercised.

The Galaxy II Limited Liability Agreement provides certain investor protections for members and warrant holders. A copy of that agreement is attached hereto. In accordance with Commission policy confidential and proprietary financial information has been redacted. Investor protection rights provided to the warrant holders include:

- a. The right to approve the company's operating budget; if the parties are not able to agree on a budget, the prior year's budget for the same item will be used. (Section 7.1(d)) This is consistent with the investor budget approval rights approved in *ION Media Network*, 22 FCC Rcd at 22231.
- b. Usual and customary investor consent rights involving fundamental corporate matters relating to mergers or consolidation (Section 7.1(f)(i)); issuance of new membership interests, recapitalization, reclassification, reorganization, splits, etc. (Section 7.1(f)(ii)); liquidation, dissolution, etc. (Section 7.1(f)(xi)); and actions that contravene or amend the formation documents or that frustrate the carrying on of the business of the company (Section 7.1(g)). The Commission approved investor consent rights for similar fundamental corporate matters in *ION Media Network*. *Id.*
- c. The right to approve incurrence of indebtedness that is not otherwise contemplated under the Credit Agreement. (Section 7.1(f)(iii)). The Credit Agreement permits Galaxy II to incur debt for ordinary course operations such as for leases of equipment. This consent right is fundamental to the creditworthiness of the company because taking on additional debt can adversely affect the viability of the company and change

its business structure and thus would customarily be viewed as an action “outside the ordinary course of business” for which the Commission has allowed comparable consent rights. See *ION Media Networks*, 22 FCC Rcd at 22231. See also *MCI Telecommunications Corp./British Telecommunications Investment*, 79 FCC Rcd 3960, 3962, (1994) (“*MCI British Telecom*”); *NBC, Inc.*, 6 FCC Rcd 4882, 4883 n.2 (1991); *Roy M. Speer*, 11 FCC Rcd 14147, 14155-56 (1996).

- d. The right to approve the acquisition or sale of assets or properties that have not otherwise been contemplated under the Company’s operating budget unless such assets/properties do not involve more than \$50,000 in the aggregate in a single year. (Section 7.1(f)(iv)). The Commission has long recognized the appropriateness of providing investors with the right to approve the sale and purchase of significant assets. In *ION Media Network* and *MCI/British Telecom*, the Commission approved this type of consent right based on asset sales and acquisitions exceeding a certain percentage of a company’s value. The parties believe that in a transaction involving a company like Galaxy II, which will own radio stations in two smaller markets, the fixed dollar benchmark is consistent with prior Commission decisions for several reasons. First, the restriction only applies to acquisitions and sales not contemplated in the operating budget. In *Ion Media Networks*, the minority investors had the right to approve expenditures that materially exceeded budgeted amounts. See File No. BTCCT-20070514AOR (Exhibit 6, Stockholders’ Agreement at 16-17). Second, the benchmark is large enough, particularly when coupled with the flexibility inherent in the budget approval mechanism (See discussion at Subsection (a), *supra*), to afford the company the necessary policymaking and decision-making flexibility to assure that the stations will continue to operate in the public interest.
- e. The right to approve distributions to members or redemption of membership units other than for tax distributions. (Section 7.1(f)(v)). This consent right is fundamental to the creditworthiness of the company and to the protection of the warrant holders’ investment because a distribution or redemption can adversely affect the viability of the company and such actions thus would customarily be viewed as “outside the ordinary course of business” and would be comparable to fundamental corporate actions for which the Commission has allowed consent rights. See *ION Media Networks*, 22 FCC Rcd at 22231; *MCI/British Telecom*, 9 FCC Rcd at 3962 (Commission approved right giving minority investors the right to withhold approval of extraordinary cash dividends and issuance of additional equity).
- f. The right to approve self-dealing by the Company through transactions with Affiliates or related parties. (Section 7.1(f)(vi)). The Limited Liability Company Agreement provides that this right is subject to Section 7.5 of the Agreement, which states that nothing in the Agreement precludes the Company from entering into transactions with Affiliates or employees of Affiliates provided that such transactions are on a fair market arm’s length basis and provides the Manager with the authority “to take any and all lawful acts that the Manager considers necessary, advisable or in the best interests of the Company” in connection with transactions with Affiliates. Therefore, this investor

protection is very limited, and would only relate to transactions with affiliates that are not fair market, arms-length transactions. Providing the investor with a right to review such insider, non-arms-length transactions is fundamental to the integrity of any company and is consistent with the decision in *ION Media Networks*. Specifically the Shareholders Agreement that the Commission reviewed in that case contained a very similar provision providing the minority investors with a right to approve certain agreements with an employee or director of the company or its affiliates which would include subsidiary companies. *See* File No. BTCCT-20070514 AOR (Exhibit 6, Stockholders Agreement at 18). *See also Roy M. Speer*, 11 FCC Rcd at 14157-58.

- g. The right to consent to the company entering into material agreements outside the approved budget involving the payment or receipt of \$100,000. (Section 7.1(f)(viii)). The parties believe that this consent right is consistent with *ION Media Network* where minority investors had the right to approve expenditures that materially exceeded budget amounts (*See* discussion at Subsection (d) *supra*).
- h. The right to consent to Company expenditures that would exceed any line item by more than 15% of the approved budget or that would exceed the approved budget as a whole by 10% of the approved budget. (Section 7.1(f) (viii)). As discussed above, this consent right is consistent with the right approved in *ION Media Network*.
- i. The right to approve compensation for officers of the Company that is not contemplated by the approved budget. (Section 7.1(f)(ix)). This right is also consistent with *ION Media Networks* as noted above. In *ION Media Networks*, the minority investors also had the right to approve compensation arrangements for top executives — those with compensation exceeding \$400,000 or who had agreements with terms longer than three years.
- j. The right to approve the Company's decisions to invest in another company, make a sizeable loan to an employee, etc. The parties submit these types of activities, particularly when engaged in outside the budget process, pose a serious risk to the creditworthiness of the company thereby justifying an investor protection in the form of a consent right. Accordingly, those types of transactions are clearly "outside the ordinary course of business" of the company thus justifying investor consent rights within the spirit of the Commission's decision in *ION Media Networks*.

The parties submit that the terms and conditions set forth in the Galaxy Communications II Operating Agreement are reasonable for a transaction of this nature, and that there is no "realistic potential [for Atalaya] to affect the programming decisions of [Galaxy II] or other core operating functions." *ION Media Networks*, 22 FCC Rcd at 22230.