

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0314T

IN THE MATTER OF THE JOINT APPLICATION OF CONTERRA ULTRA BROADBAND, LLC,
CUB PARENT, INC., EAGLECREST CUB GP INC., AND DRADEN INVESTORS, LLC, TO
EXECUTE A TRANSFER.

**COMMISSION DECISION
APPROVING JOINT TRANSFER**

Mailed Date: September 22, 2020
Adopted Date: September 16, 2020

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Joint Application filed by Conterra Ultra Broadband, LLC (CUB), CUB Parent, Inc. (CUB Parent), EagleCrest CUB GP Inc. (EagleCrest CUB GP), and Draden Investors, LLC (APG-US) on July 28, 2020. The applicants request Commission authorization for a proposed transfer of indirect control of CUB to EagleCrest CUB and APG-US (the Proposed Transaction).

2. We will construe this filing as an application for approval of the transfer of indirect control of the Commission-issued telecommunications authority held by CUB pursuant to 4 *Code of Colorado Regulations* 723-2-2110 of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services.

3. CUB is authorized to provide local exchange telecommunications services pursuant to a Certificate of Public Convenience and Necessity (CPCN) granted by Decision No. C13-1474, issued in Proceeding No. 13A-1074T on December 2, 2013. In connection with Decision No. C13-1474, requiring a tariff to be filed within one year, on July 23, 2014, CUB

filed a Motion to Preserve (Motion) the certificate in lieu of filing a tariff stating that it “is not offering any regulated services at the present time” and that it “will not provide voice service in Colorado and therefore is not interconnecting with, or reselling the services of another provider of voice services.”¹ The Commission granted the Motion on May 9, 2018 in Decision No. C18-0478. The Transferees do not offer or intend to provide telecommunications services in Colorado.

4. APG-US (one of the Transferees), is a Delaware limited liability company, and a special-purpose vehicle formed for the purpose of the Proposal Transaction. Ultimate operating control of APG US is exercised by its non-member, APG Asset Management US Inc. AGP Asset Management US which itself is indirectly wholly-owned and controlled by Stichting Pensioenfond ABP, a Netherlands pension fund. APG-US’s sole member and owner of all economic interests in APG-US.

5. EagleCrest CUB GP is the general partner of EagleCrest CUB LP and will be, upon consummation of the Proposed Transaction, a general partner of CSC CUB Holdings LP (CSC CUB Holdings). CUB is a wholly-owned subsidiary of CUB Holdings, which in turn is wholly-owned by a subsidiary of CUB Parent.

6. Ultimate operating control of EagleCrest CUB GP is exercised by Fiera Infrastructure Inc., a Canadian federal corporation and Fiera Capital Corporation, an Ontario Corporation.

7. CSC CUB Holdings will hold a 25.5 percent direct voting and economic interest in CUB Parent, and EagleCrest CUB LP will hold a 23.2 percent direct voting and economic interest in CUB Parent. Thus, upon consummation of the Proposed Transaction, EagleCrest CUB

¹ Motion at p. 1.

GP will exercise control over the combined 48.7 percent voting and economic interest held by the two limited partnerships in CUB Parent. EagleCrest CUB GP will also exercise negative control over CUB Parent.

8. CUB Parent is currently majority-owned, and thus controlled by CSC CUB Holdings, with CSC CUB Holdings owning 75.4 percent of CUB Parent's Class L shares. CSC CUB Holdings also controls, in its role as general partner, the Court Square investment funds (CSC Funds) that currently holds 84.3 percent of the economic units in CSC CUB Holdings. The remaining 24.6 percent interest in CUB Parent is held by other investors, including management personnel of CUB Holdings, CUB's immediate parent.

9. Upon consummation of the Proposed Transaction, APG-US will hold a 49.9-percent voting and economic interest in and will exercise negative control over CUB Parent.

10. The Proposed Transaction will not result in any adverse impact on customers, service disruption, termination, or confusion to CUB's customers. Immediately following the Proposed Transaction, CUB will continue to provide service at the same rates, terms, and conditions without any interruption of service. Furthermore, the Proposed Transaction, as represented in the application, will not have an adverse effect on competition in the markets for intrastate and interstate telecommunications services.

11. On August 5, 2020, notice of the Joint Application was provided to all persons, firms, or corporations interested in or affected by the grant or denial of the requested relief. Interventions were due on or before September 4, 2020. No interventions were filed.

B. Discussion

12. The Commission has jurisdiction over this Joint Application pursuant to §§ 40-5-105, 40-15-204, and 40-15-303, C.R.S.

13. The application contains all of the information required by the applicable Commission Rules and is therefore deemed complete.

14. The application is unopposed and therefore may be considered without a formal hearing, pursuant to § 40-6-109(5), C.R.S.

15. Upon consummation of the Proposed Transaction, CUB will no longer be indirectly owned by CSC Funds and controlled by CSC CUB Holdings. CUB will continue to be 100 percent indirectly owned and controlled by CUB Parent. No entity or individual will exercise *de jure* control over the CUB parent. Nevertheless, through a shareholder's agreement by and among CSC CUB Parent, CUB Holdings, EagleCrest CUB LP, and APG-US, EagleCrest CUB GP and APG-US will each exercise negative control over CUB Parent.

16. Applicants EagleCrest CUB GP and APG-US provided Commission Staff with a copy of the Consent to Transfer Indirect Control of Domestic 214 Authority Application, submitted to the Federal Communications Commission on August 11, 2020.

17. CUB is a competitive local exchange provider with Commission-issued authority. Except for limited circumstances (such as for providers that are recipients of state high cost support and for the provision of basic emergency services), certifications to provide basic local exchange services are no longer regulated by the Commission. *See* § 40-15-401(1)(b), C.R.S. Similarly, the provision of any other emerging competitive services such as advanced features, premium services, intraLATA toll, non-optional operator services, and private line services, except switched access services and basic emergency services, are no longer regulated by the

Commission. *See* § 40-15-401(1)(e), (k), (n), (o), (s), (t), C.R.S. Consequently, the Commission does not have the authority to approve the transfers of the CPCNs or those parts of the Letters of Registration addressing advanced features, premium services, intraLATA toll, non-optional operator services, and private line services.

18. Switched access services and the provision of basic emergency services have not been deregulated. As a result, we have the authority to review and approve/deny the transfers and encumbrances of the part of the authorities held by providers that address those services.

19. We remind applicants that public utilities remain subject to Commission oversight that includes but is not limited to, reporting and payment obligations to the Colorado High Cost Support Mechanism and the Telecommunications Relay Services Program.

20. We find that the proposed transfer of control of the telecommunications authorities held by CUB is not contrary to the public interest and therefore grant the Joint Application for transfer of control to that extent. The Joint Application recognizes the Commission's jurisdiction as it now exists. Entities that hold Commission-issued authorities remain obligated to comply with any applicable requirements or regulations as stated in Article 15 of Title 40.

II. ORDER

A. The Commission Orders That:

1. The Joint Application to transfer filed by Conterra Ultra Broadband, LLC, CUB Parent, Inc., EagleCrest CUB GP Inc., and Draden Investors, LLC on July 28, 2020 is deemed complete. The request to transfer control of the Commission-issued authorities held by Conterra Ultra Broadband, LLC is granted.

2. Conterra Ultra Broadband, LLC, CUB Parent, Inc., EagleCrest CUB GP Inc., and Draden Investors, LLC or their authorized representatives shall jointly notify the Commission if the transfer has been terminated or is not completed within 60 days of the proposed effective date stated in the application or if the proposed transfer terms are changed prior to the consummation date. The notice shall include the proceeding and decision numbers which granted the authority to execute the transfer.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 16, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners