



Office of the City Clerk

City Hall
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Legislation Text

File #: SR2021-388, **Version:** 1

SUBSTITUTE RESOLUTION

WHEREAS, effective June 24, 1996, the City of Chicago, Illinois ("City") awarded a cable television franchise to 21st Century Cable TV of Chicago, Inc. for Area 1 of the City ("Area 1 Franchise"); and

WHEREAS, on or about April 28, 2000, the Area 1 Franchise was acquired by RCN Cable TV of Chicago, Inc. a Delaware corporation, with its principal place of business at 350 North Orleans Street, Chicago, Illinois ("RCN Chicago"); and

WHEREAS, effective December 7, 2000, RCN Chicago was awarded a cable television franchise for Area 2 of the City, which franchise was modified by agreement of the parties on November 12, 2004 ("Area 2 Franchise"); and

WHEREAS, under the Area 1 Franchise and Area 2 Franchise (together, the "RCN Franchises"), RCN Chicago operates a cable television system ("System") that provides cable services and other communications services in portions of the City; and

WHEREAS, on October 31, 2020, the current ownership of RCN Chicago (Radiate Holdings, L.P., and its Affiliates), entered into an Agreement and Plan of Merger with StonePeak Associates IV, LLC and certain of its affiliates (the "Agreement"). As a result of the transactions contemplated by the Agreement (the "Transactions"), Radiate Holdings, L.P. will be an indirect wholly owned subsidiary of StonePeak Associates IV, LLC (the "Applicant"); and

WHEREAS, by letter dated December 21, 2020, counsel for the Applicant provided to the City's Department of Business Affairs & Consumer Protection a FCC Form 394 and associated exhibits (the "Application"), which seeks consent to the transfer of control of RCN Chicago to the Applicant (the "Transfer"); and

WHEREAS, under applicable federal law, the RCN Franchises, and Section 4-280-170 of the Municipal Code, the Transfer requires the written consent of the City; and

WHEREAS. Applicant has represented to the City that after the Transactions are completed, RCN Chicago will remain the legal entity which holds the RCN Franchises and RCN Chicago will continue to operate the System; and

WHEREAS, Applicant has agreed to use its best efforts to comply with the terms of the RCN Franchises and applicable law from and after the completion of the Transactions; and

WHEREAS, the City has reviewed the Application, has examined the legal, financial and technical qualifications of the Applicant, has followed the required procedures in order to consider and act upon the request for approval of the Transfer, and has considered the comments of all interested parties; and

WHEREAS, pursuant to its review, the City has determined that it is prudent and advisable to secure from the Applicant a Corporate Guaranty to ensure that, following completion of the

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Transactions, Radiate Holdings, L.P. will continue to possess the requisite financial qualifications to own, operate and maintain the System; and

WHEREAS, the City believes that because the current franchisee will not change following the Transactions, and in light of the protections afforded by the Corporate Guaranty described herein and appended hereto, it is in the interest of the City to approve the Transfer as described in the Application; now, therefore,

BE IT RESOLVED, the foregoing recitals are hereby incorporated by reference; and

BE IT FURTHER RESOLVED, the City hereby consents to and approves the Transfer subject to the following conditions being met within thirty (30) days following close of the Transactions:

1. Applicant shall deliver to the City a Corporate Guaranty executed by Radiate HoldCo, LLC, a copy of which is attached hereto as Exhibit A and incorporated by reference; and

,2. Applicant shall have fully, reimbursed the City for all reasonable, out of pocket costs, expenses and professional fees incurred by the City related to the City's review of the Application and consent of the Transactions (the "Reimbursement"), provided that a statement of such costs, expenses and fees is provided to the Applicant within fifteen (15) business days following approval of this Resolution. The Reimbursement shall not be itemized on cable subscribers' bills nor in any way deducted from past, present or future franchise fees or any other fees or taxes owed or paid to the City.

3. In the event the Transactions contemplated under the Application are not completed, for any reason, or if modified in any material manner, the City's consent provided hereunder shall not be effective.

This resolution shall be deemed effective as of the date of its passage.

EXHIBIT A

Corporate Guaranty

THIS AGREEMENT is made this day of , 2021, by and among Radiate HoldCo, LLC, a Delaware limited liability company (the "Guarantor"), the City of Chicago Illinois ("City"), and RCN Cable TV of Chicago, Inc. ("Company").

WITNESSETH

WHEREAS, the City has entered into Cable Television Franchises dated with the Company (hereinafter collectively the "Franchise Agreement"), pursuant to which the City has granted the Company a franchise, to construct, own, operate, and maintain a cable television system ("System") in the City; and

WHEREAS, Guarantor is the indirect owner of the Company and has a substantial interest in the System and the conduct of the Company in complying with the Franchise Agreement and any and all amendments thereof and any agreements related thereto, which Franchise Agreement and amendments are hereby specifically referred to, incorporated herein, and made a part hereof; and

WHEREAS, the Franchise Agreement requires the Company to furnish a letter of credit to ensure the faithful payment and performance of the Company's obligations under the Franchise Agreement; and

WHEREAS, the Guarantor desires to provide its unconditional guaranty to the City that Company will honor its obligations under the Franchise Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor, hereby unconditionally guarantees the due and punctual payment and performance of all of the debts, liabilities and obligations of Company contained in the Franchise Agreement ("Indebtedness").

This Agreement, unless terminated, substituted, or canceled, as provided herein, shall remain in full force and effect for the duration of the term of the Franchise Agreement, except as expressly provided otherwise in the Franchise Agreement!

Upon substitution of another guarantor reasonably satisfactory to the City, this Agreement may be terminated, substituted, or canceled upon thirty (30) days prior written notice from the Guarantor to the City and the Company.

Such termination shall not affect liability incurred or accrued under this Agreement prior to the effective date of such termination or cancellation.

The Guarantor will not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to the Guarantor against the Company or any other person

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liable for payment of the Indebtedness or any collateral security therefor, unless and until all of the Indebtedness shall have been fully paid and discharged.

The Guarantor will pay or reimburse the City for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the City in connection with the protection, defense or enforcement of this guarantee in any arbitration, litigation or bankruptcy or insolvency proceedings.

Whether or not any existing relationship between a Guarantor and the Company has been changed or ended and whether or not this guarantee has been revoked, the City may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Guarantor and without any notice to the Guarantor. The liability of the Guarantor shall not be affected or impaired by any of the following acts or things (which the City is expressly authorized to do, omit or suffer from time to time, without notice to or approval by the Guarantor): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or

renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver or indulgence granted to the Company, any delay or lack of diligence in the enforcement of any Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, the Company or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; or (x) any election by the City under § 1111 (b)(2) of the United States Bankruptcy Code.

The Guarantor waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The City shall not be required first to resort for payment of the Indebtedness to the Company or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty. The Guarantor will not assert, plead or enforce against the City any defense of discharge in bankruptcy of the Company, statute of frauds, or unenforceability of the Guaranty which may be available to the Company or any other person liable in respect of any Indebtedness, or any setoff available against the City to the Company or any such other Person, whether or not on account of a related transaction.

Any notices given pursuant to this Agreement shall be addressed to the Guarantor and Company at .

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and to the City, ,

IN WITNESS WHEREOF, the Company, City, and Guarantor have executed this Corporate Guaranty as of the day, month and year first above written.

GUARANTOR:

RADIATE HOLDCO, LLC

By:

Its:

COMPANY:

RCN CABLE TV OF CHICAGO. INC.

By:

Its:

CITY-CITY OF CHICAGO, ILLINOIS

By:

Its:

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