

# Morgan Lewis

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September 23, 2021

## **Via Electronic Filing**

Patricia Van Gerpen, Executive Director  
South Dakota Public Utilities Commission  
Capitol Building, First Floor  
500 East Capital Avenue  
Pierre, South Dakota 57501

### **RE: Notification Regarding the Transfer of Control of Clear Rate Communications, Inc. to Clear Rate Holdings, Inc.**

Dear Ms. Van Gerpen:

Clear Rate Holdings, Inc. ("Transferee" or "Holdings") and Clear Rate Communications, Inc. ("Licensee" or "Clear Rate") (collectively, the "Parties"), by undersigned counsel, notify the Commission of the transfer of control of Licensee to Holdings. Pursuant to SDCL § 49- 31-20, prior Commission action is not required for the Transaction. Accordingly, the Parties submit this letter for informational purposes.

### **Description of the Parties**

#### **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 & 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

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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 26,000 customers in 24 different states. 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 South Dakota: California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, New York, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, 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 provide non-facilities based local exchange service and resold long-distance service, pursuant to a Certificate of Public Convenience and Necessity (“CPCN”) granted in Case No. TC20-051 on October 5, 2020. 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 and granted on March 5, 2021.

**Designated Contacts**

Questions, correspondence or other communications concerning this filing should be directed to:

For Clear Rate Holdings:

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with copies to:

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### **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 Stephen Oyer as the new Chief Executive Officer. Stephen Oyer has over 30 years experience in the telecommunications industry.

Applicants therefore notify the Commission of the transfer of control of Clear Rate to Holdings as well as Clear Rate's engagement in the *Pro Forma* Restructuring prior to closing of the transaction with Holdings. 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**.

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 South Dakota 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 South Dakota.

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

Patricia Van Gerpen, Executive Director  
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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.

\* \* \* \*

Please acknowledge receipt and acceptance of this electronic filing. Please do not hesitate to contact us if you have any questions.

Respectfully submitted,

*/s/ Joshua M. Bobeck*

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Counsel for Clear Rate Holdings, Inc.

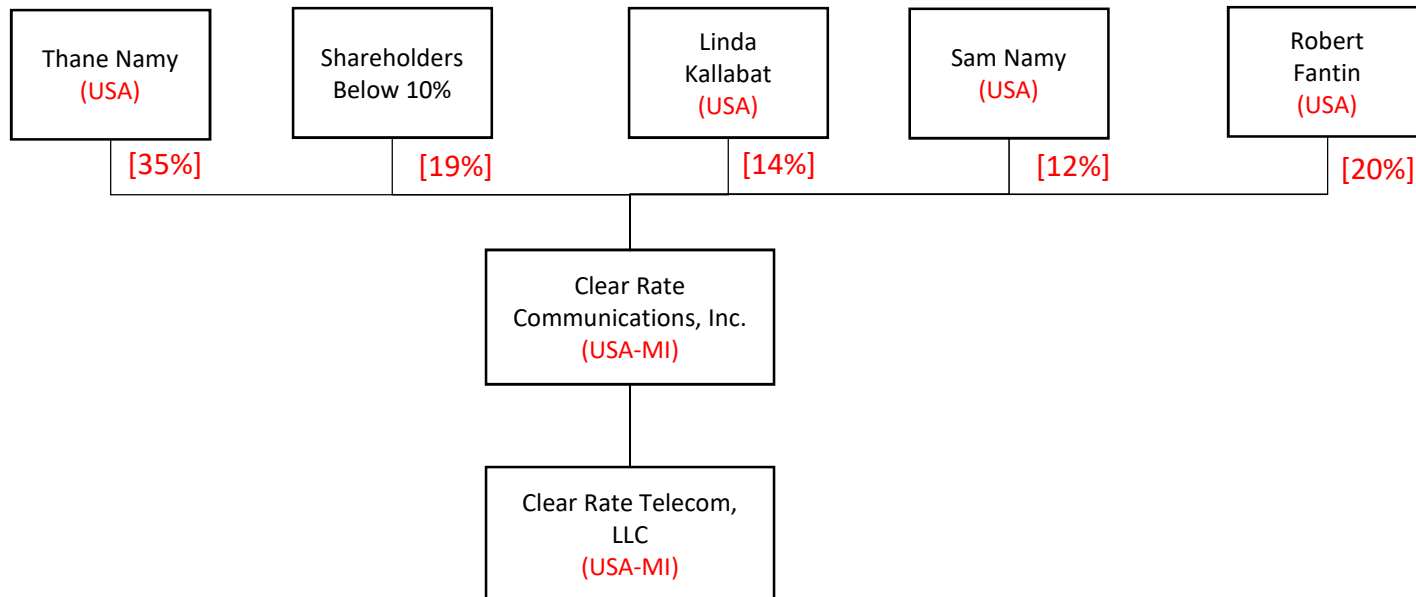
Attachments

cc: Roderick S. Coy  
Steven R. Pacynski  
Omar Bustami

**EXHIBIT A**

**Current and Post-Transaction Corporate Ownership Structure Charts**

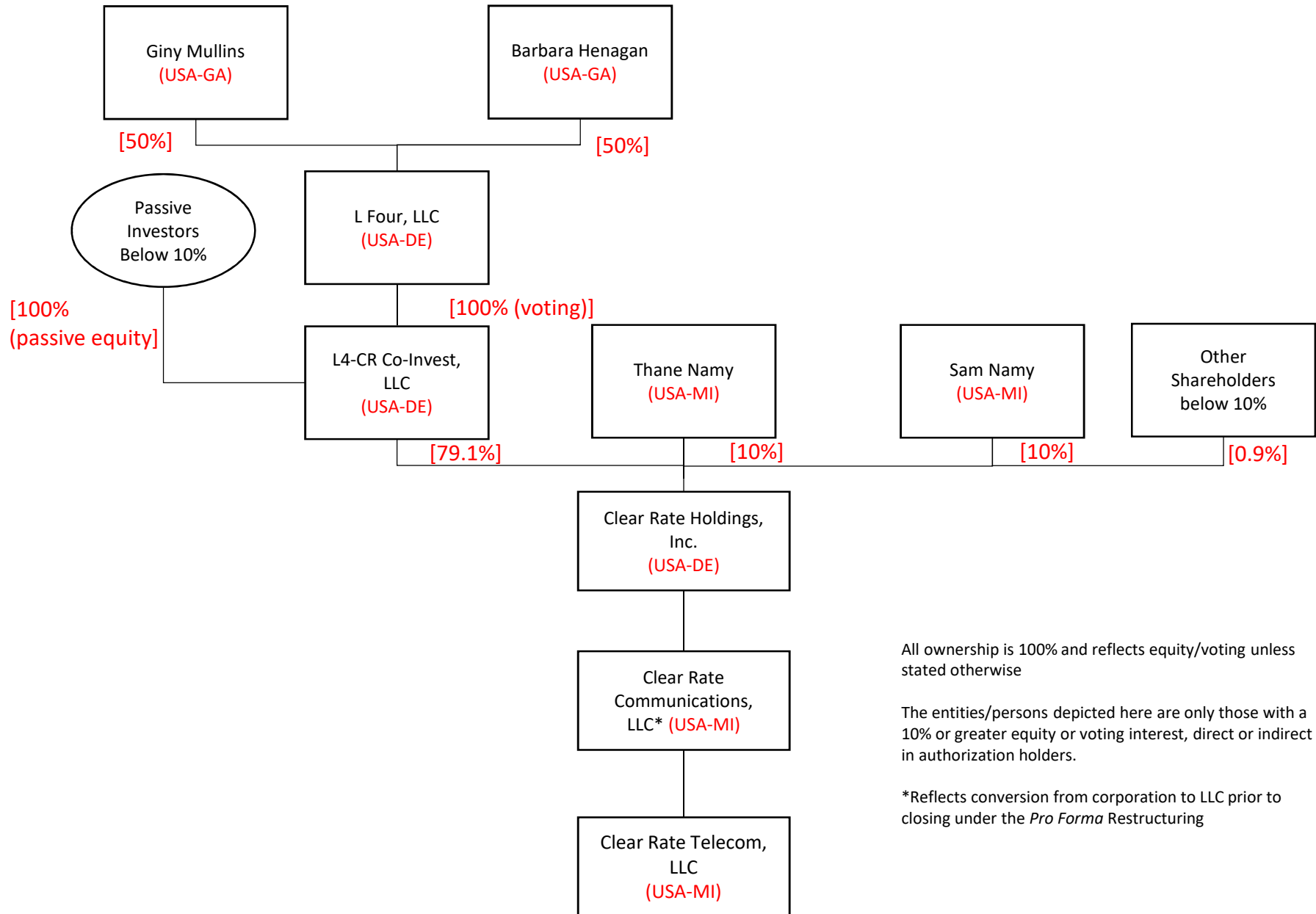
# Pre-Transaction Corporate Structure of Clear Rate Communications, Inc.



All ownership is 100% unless stated otherwise

The entities/persons depicted here are only those with a 10% or greater equity or voting interest, direct or indirect in authorization holders.

# Post-Transaction Corporate Structure of Clear Rate Communications, LLC\*



All ownership is 100% and reflects equity/voting unless stated otherwise

The entities/persons depicted here are only those with a 10% or greater equity or voting interest, direct or indirect in authorization holders.

\*Reflects conversion from corporation to LLC prior to closing under the *Pro Forma* Restructuring

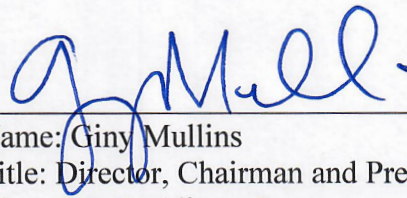


## **Verifications**

## VERIFICATION

I, Giny Mullins, state that I am Director, Chairman and President of Clear Rate Holdings, Inc. (“Holdings”); that I am authorized to make this Verification on behalf of Holdings; that the foregoing filing was prepared under my direction and supervision; and that the contents thereof and the certifications contained therein regarding Holdings are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed: September 22, 2021.



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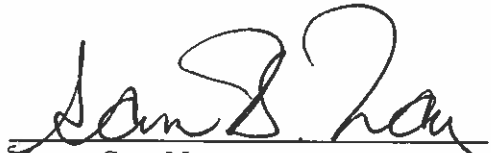
Name: Giny Mullins  
Title: Director, Chairman and President  
Clear Rate Holdings, Inc.

## VERIFICATION

I, Sam Namy, state that I am Vice President, Secretary-Treasurer, and Chief Financial Officer of Clear Rate Communications, Inc. and its subsidiaries (the "Company"); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents thereof and the certifications contained therein regarding the Company and its subsidiaries are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: September 22, 2021

  
Name: Sam Namy  
Title: Vice President, Secretary-Treasurer, and  
Chief Financial Officer  
Clear Rate Communications, Inc.