

Decision 16-11-013 November 10, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of GoDaddy Operating Company, LLC and CallCatchers Inc. d/b/a Freedom Voice Systems (U7139C) to Authorize the Transfer of Control of CallCatchers Inc. d/b/a Freedom Voice Systems.

Application 16-08-007
(Filed August 5, 2016)

**DECISION APPROVING TRANSFER OF CONTROL OF
CALLCATCHERS INC. D/B/A FREEDOM VOICE SYSTEMS**

Summary

This decision approves the application of GoDaddy Operating Company, LLC (GoDaddy), and CallCatchers Inc., d/b/a Freedom Voice Systems (Freedom Voice), for a change in the ultimate ownership and control of Freedom Voice to GoDaddy.

This proceeding is closed.

1. Procedural Background

In Decision (D.) 09-04-042, the Commission granted CallCatchers Inc. d/b/a Freedom Voice Systems (Freedom Voice), a Certificate of Public Convenience and Necessity (CPCN) to provide inter- and intra-local access and transport area services in California as a non-dominant interexchange carrier (NDIEC) in California.

On May 17, 2016, GoDaddy Operating Company, LLC (GoDaddy) and CallCatchers Inc. d/b/a Freedom Voice Systems (Freedom Voice) (collectively,

Joint Applicants) executed an agreement which provides Freedom Voice will become an indirect, wholly-owned subsidiary of GoDaddy.

2. The Application

On August 5, 2016, Joint Applicants filed the current application. The application does not seek to transfer Freedom Voice's CPCN. Rather, it seeks authorization for an indirect change in control of Freedom Voice as a result of the proposed merger between GoDaddy and Freedom Voice.

The application is uncontested.

2.1. The Applicants

GoDaddy is a Delaware limited liability company and is duly authorized to transact business in California. Its principal executive office is in Scottsdale, Arizona. GoDaddy, through its parent company, GoDaddy, Inc., is a global internet domain registrar and web hosting company serving over 14 million customers.

Freedom Voice is a Delaware corporation and is duly authorized to transact business in California. Its principal executive office is in Encinitas, California. Freedom Voice provides limited facilities-based interexchange and interconnected voice over internet protocol services throughout the State of California and several other states.

2.2. The Proposed Transaction

Joint Applicants seek Commission authorization for a change in the ultimate ownership and control of Freedom Voice to GoDaddy as a result of an agreement and plan of merger between GoDaddy, San Fernando Merger Sub, Inc. (Merger Sub), (a GoDaddy wholly-owned subsidiary), Freedom Voice, and certain Freedom Voice shareholders (the Merger Agreement).

Pursuant to the Merger Agreement, Merger Sub will be merged with and into Freedom Voice, and Freedom Voice will be the surviving entity. All equity securities of Freedom Voice will be cancelled, and Freedom Voice will become an indirect, wholly-owned subsidiary of GoDaddy. Attached hereto as Appendix A are pre-transaction ownership charts for GoDaddy and Freedom Voice, and attached hereto as Appendix B is a post-transaction ownership chart for the merged entities.

2.3. Requested Authority

The Joint Applicants submit their application pursuant to Public Utilities Code Section 854.

California Public Utilities Code Section 854(a) requires authorization from the Commission before a company may “merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state . . .” The purpose of this and related sections is to enable the Commission to review proposed transactions and to take action in the public interest, as a condition of the transfer, before any transfer of public utility authority is consummated.¹ Absent prior Commission approval, Section 854(a) provides the transaction is “void and of no effect.”

In addition, the Commission has established that an applicant seeking approval for a change of control of a holder of a CPCN must meet the requirements for granting of a CPCN under Public Utilities Code Section 1001, stating:

Where a company that does not possess a CPCN desires to acquire control of a company or companies that do possess a

¹ See *San Jose Water Co.* (1916) 10 CRC 56.

CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking a CPCN.²

2.4. Compliance With Rule 3.6

California Public Utilities Commission Rules of Practice and Procedure, Rule 3.6³ sets forth requirements for an application to acquire or control a utility. The application complies with those requirements.

The most recent financial statements from the Annual Report on Form 10-K for GoDaddy Inc. are incorporated in the application (available at <https://www.sec.gov/Archives/edgar/data/1609711/000160971116000048/gddy-12312015x10k.htm>).

A copy of the Agreement and Plan of Merger is submitted with the application for filing under seal as Exhibit E. Pursuant to the terms of the Merger Agreement and subsequent to obtaining all applicable regulatory approvals, GoDaddy will acquire Freedom Voice. The full terms and conditions, including the purchase price, are contained within the Merger Agreement.

3. Discussion

3.1. Standard of Review

The standard generally applied by the Commission to determine if a transaction should be approved under Public Utilities Code Section 854(a) is whether the transaction will be “adverse to the public interest.”⁴

² See D.15-07-015 at 4.

³ Title 20, California Code of Regulations; hereinafter, Rule or Rules.

⁴ See, for example, *Quest Communications Corp.*, D.00-06-079, 2000 Cal. PUC LEXIS 645, *18. This is also the standard applied by D.03-06-069 (2002 CalPUC LEXIS 975), in which the Commission authorized the transfer of control to EnCana, and by D.05-12-007 (2005 CalPUC LEXIS 527), which authorized the transfer of a 50 percent interest in the parent of Lodi Gas Storage, L.L.C.

Additionally, the Commission has two major criteria for determining whether a CPCN should be granted or transferred under Public Utilities Code Section 1001. An applicant who desires to provide facilities-based interexchange services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers.⁵ An applicant also is required to make a reasonable showing of managerial and technical expertise in telecommunications or a related business.⁶

Public Utilities Code Section 854, subsections (b) and (c) only apply to a transaction if a utility party has a gross annual California revenue exceeding \$500 million. Neither GoDaddy, nor Freedom Voice, has gross annual California revenues exceeding \$500 million. Therefore, Public Utilities Code Section 854, subsections (b) and (c) do not apply.

3.2. The Proposed Transaction is Not Adverse to the Public Interest

The proposed merger of GoDaddy and Freedom Voice will result in a change in ownership of Freedom Voice. It is anticipated that this proposed merger will serve the public interest. Freedom Voice will continue to be managed and operated by the same officers and personnel, with the additional support of GoDaddy management. Freedom Voice may have access to additional financial resources, enabling it to better meet its customers' needs and better compete in the marketplace. There is no anticipated adverse impact on customers, and Freedom Voice will continue to provide the same service at the

⁵ The financial requirement for Competitive Local Exchange Carriers is contained in D.95-12-056, Appendix C. The financial requirement for NDIECs is contained in D.91-10-041.

⁶ D.95-12-056 at Appendix C, Rule 4.A.

same rates and it will continue to be responsible for complying with the same terms and conditions under its CPCN. The only change apparent to the customer should be that GoDaddy will be the ultimate owner of Freedom Voice.

Given that the proposed merger will serve the public interest, the change of ownership and control may be completed provided that it is not adverse to the public interest. The Merger Agreement is essentially a “paper” transaction which is intended to be accomplished without any effect on Freedom Voice’s operations and is not anticipated to have a significant impact on the relevant marketplace. Freedom Voice will continue to operate subject to the jurisdiction of the Commission in the same manner it does today. Therefore, the transaction is not adverse to the public interest and will be authorized by the Commission under Public Utilities Code Section 854.

3.3. GoDaddy Meets the Requirements for Granting a CPCN

GoDaddy has provided financial documentation demonstrating that it has more than sufficient funds to meet the Commission’s minimum financial requirements. The availability of sufficient funds will be subject to verification and review by the Commission for one year.

We also find that GoDaddy possesses the level of technical expertise necessary to qualify for a CPCN in California. The management team for Freedom Voice will continue in their current roles following the merger. The record establishes GoDaddy has the technical and managerial qualifications to acquire and operate Freedom Voice’s existing telecommunications operations in California.

Applicants for CPCN authority must disclose any regulatory fines, penalties, or sanctions they have received and any past bankruptcies as part of

establishing the qualifications of management staff. The Joint Applicants have verified under penalty of perjury that, to the best of their knowledge and except as provided, no Applicant, and none of their affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than ten percent of Applicant, or anyone acting in a management capacity for an Applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.⁷

The Joint Applicants have disclosed by their application that GoDaddy's parent, GoDaddy Inc., has entered into four confidential settlements of claims

⁷ See, D.13-05-035, Ordering Paragraph 14.

alleging failure to disclose or misrepresentations to consumers. It was also disclosed that the Chairman of the Board of GoDaddy, Inc., is a board member of Model N, Inc. and a party to a settlement in 2015 of a lawsuit alleging misrepresentations and omissions of fact in connection with disclosures made during an initial public stock offering. Each of these actions has been resolved by the parties to them, and the record does not reflect Joint Applicants or their management teams are implicated in a course of conduct or activity which would preclude granting a CPCN.

The Joint Applicants have verified under penalty of perjury that, to the best of Joint Applicants' knowledge, neither Applicant, any affiliate, officer, director, partner, nor owner of more than 10 percent of Joint Applicants, nor any person acting in such capacity whether or not formally appointed, is being or has been investigated by the Federal Communications Commission (FCC) or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

There is nothing in the record which contradicts these assertions. Therefore, we find that the Joint Applicants have demonstrated sufficient financial strength, and managerial and technical expertise to satisfy Commission requirements for granting of a CPCN.

Based on the terms of the proposed transaction and the record, we find that approving this transaction is in the public interest. Since the transaction is in the public interest, it is also not adverse to the public interest. Thus, the proposed transaction fulfills the requirements of Public Utilities Code Section 854, and it is reasonable for the Commission to approve the transaction.

4. California Environmental Quality Act Compliance

Pursuant to the California Environmental Quality Act (CEQA)⁸ and Rule 2.4, we are required to consider the environmental consequences of projects that are subject to our approval.

We acknowledge that, in some cases, it is possible that a change of ownership and/or control may alter an approved project, result in new projects, or change facility operations in ways that have an environmental impact. However, Joint Applicants state that this transaction involves only the transfer of control of Freedom Voice. The application is a “paper” transaction and does not seek authority for new construction.

We conclude that under these circumstances it can be seen with certainty that there is no possibility that granting this application will have a significant adverse impact upon the environment and the proposed project qualifies for an exemption from CEQA pursuant to § 15061(b)(3) of the CEQA guidelines.⁹ Therefore, the Commission need perform no further environmental review. Before Freedom Voice can construct facilities other than equipment to be installed in existing buildings or structures, it must file for additional authority, and submit to any necessary CEQA review.

5. Safety Considerations

With the adoption of the *Safety Policy Statement of the California Public Utilities Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. We have considered the potential safety implications here. We are satisfied that

⁸ Public Resources Code § 21000 *et seq.*

⁹ Title 14, California Code of Regulations, § 15000 *et seq.*

Freedom Voice will continue to meet the Commission's minimum safety goals and expectations because: (1) the Joint Applicants meet the financial requirements as set forth in this decision, and (2) Freedom Voice is a public utility that is required pursuant to Pub. Util. Code § 451 to "... furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

6. Conclusion

We find that the application should be approved. This approval does not modify in any way the terms and conditions associated with the CPCN granted to Freedom Voice in D.09-04-042. Freedom Voice should continue to be bound by the terms and conditions imposed on it as part of the CPCN granted in D.09-04-042.

7. Request to File Under Seal

Pursuant to Commission Rules of Practice and Procedure Rule 11.4, GoDaddy filed motions for leave to file confidential materials under seal, Exhibits E and G to the application. GoDaddy represents that the information is sensitive, and disclosure could place GoDaddy at an unfair business disadvantage. We have granted similar requests in the past and do so here for a period of three years from the effective date of this order. During this three-year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If GoDaddy Operating Company, LLC believes that it is necessary for this information to remain under seal for longer than three years, GoDaddy Operating Company, LLC may file a

new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

8. Categorization and Need for Hearing

In Resolution ALJ 176-3384, the Commission preliminarily determined the category of this proceeding to be ratemaking, and that a hearing was not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary and it is not necessary to disturb the preliminary determinations.

9. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Eric Wildgrube is the assigned Administrative Law Judge in this proceeding.

10. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

Findings of Fact

1. GoDaddy is a Delaware limited liability company and is duly registered to transact business in California. Its principal place of business is Scottsdale, Arizona.
2. Freedom Voice is a Delaware corporation and is duly registered to transact business in California. Its principal place of business is Encinitas, California.
3. Freedom Voice was issued a CPCN in Decision 09-04-042.
4. The Application seeks authorization for an indirect change in control of Freedom Voice as the result of a proposed merger between Freedom Voice and GoDaddy.

5. Neither Freedom Voice, nor GoDaddy, has gross annual California revenues exceeding \$500 million.

6. On May 17, 2016, Freedom Voice and GoDaddy executed a Merger Agreement which provides Freedom Voice will become a wholly-owned subsidiary of GoDaddy.

7. The proposed transfer will result in the change of ownership and control of Freedom Voice but will not result in the transfer of any certificates, assets or customers.

8. The proposed transfer will not result in any change to the services provided by Freedom Voice, or to the rates or terms and conditions under which services are provided.

9. The proposed transaction is not anticipated to have an impact on Freedom Voice's operations.

10. The proposed transaction will have no significant impact on competition or the marketplace.

11. The proposed transaction will not have an adverse effect on the public interest.

12. The proposed transaction will not have an adverse impact on safety.

13. Freedom Voice will continue to be bound by the terms and conditions prescribed by the Commission in D.09-04-042.

14. This change of ownership and control will have no significant effect on the environment.

15. GoDaddy and Freedom Voice have demonstrated sufficient financial strength, and managerial and technical expertise, to satisfy Commission requirements for granting of a CPCN.

16. No one associated with or employed by GoDaddy or Freedom Voice as an affiliate, officer, director, partner, agent, or owner of more than ten percent of them, except as noted by the application: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 *et seq.*, 17200 *et seq.*, or 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general; or (i) is being, or has been investigated by the FCC or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

17. GoDaddy's parent company, GoDaddy, Inc., has entered into four confidential settlements of claims alleging failure to disclose or misrepresentations to consumers. Additionally, the Chairman of the Board of GoDaddy, Inc. is a board member of Model N, Inc., and a party to a settlement in 2015 of a lawsuit alleging misrepresentations and omissions of fact in connection

with disclosures made during an initial public stock offering. Each of these actions has been resolved by the parties to them and the record does not reflect Joint Applicants or their management teams are implicated in a course of conduct or activity which would preclude granting a CPCN.

18. Pursuant to Commission Rules of Practice and Procedure Rule 11.4, GoDaddy filed motions for leave to file confidential materials under seal, Exhibits E and G to the application.

Conclusions of Law

1. Freedom Voice is subject to the Commission's jurisdiction and will continue to be subject to jurisdiction of the Commission in the same manner as it is today.

2. Public Utilities Code Section 854(a) provides that no person or corporation shall merge, acquire, or directly or indirectly control a public utility organized and doing business in California without first securing authorization from the Commission.

3. The transaction proposed constitutes a change of control, within the meaning of Public Utilities Code Section 854.

4. The standard generally applied by the Commission to determine if a transaction should be approved under Section 854(a) is whether the transaction will be "adverse to the public interest."

5. The Application should be granted under Public Utilities Code Section 854(a).

6. Public Utilities Code Section 854, subsections (b) and (c) do not apply to this transaction.

7. Freedom Voice should continue to be bound by the terms and conditions imposed on it as part of the CPCN granted in D. 09-04-042.

8. This change of control qualifies for an exemption from CEQA under CEQA guidelines § 15061(b)(3) and therefore, additional environmental review is not required.

9. The motion to file under seal by GoDaddy Operating Company, LLC, its Exhibits E and G to the application, should be granted for three years.

10. Evidentiary hearings are not necessary. The preliminary determinations in Resolution ALJ 176-3384 should be confirmed.

11. A.16-080-007 should be closed.

O R D E R

IT IS ORDERED that:

1. The Application of CallCatchers Inc. d/b/a Freedom Voice Systems and GoDaddy Operating Company, LLC for a change in the ultimate ownership and control of CallCatchers Inc. d/b/a Freedom Voice Systems to GoDaddy Operating Company, LLC is approved pursuant to Public Utilities Code Section 854.

2. CallCatchers Inc., d/b/a Freedom Voice Systems, and its owners shall continue to be bound by all terms and conditions of CallCatchers Inc., d/b/a Freedom Voice Systems', certificate of public convenience and necessity, as granted by Decision 09-04-042.

3. The authority granted by this Order shall expire if not exercised within one year from the effective date of this Order.

4. The motion by GoDaddy Operating Company, LLC, to file under seal Exhibits E and G is granted for a period of three years after the date of this order. During this three year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If

GoDaddy Operating Company, LLC, believes that it is necessary for this information to remain under seal for longer than three years, GoDaddy Operating Company, LLC, may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

5. Application 16-08-007 is closed.

This order is effective today.

Dated November 10, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

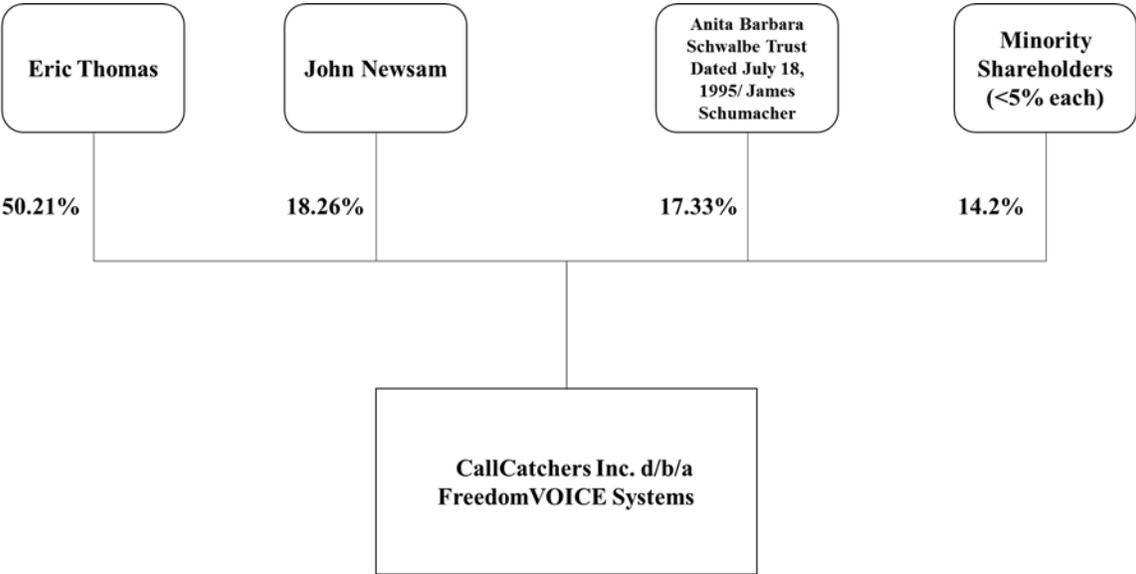
LIANE M. RANDOLPH

Commissioners

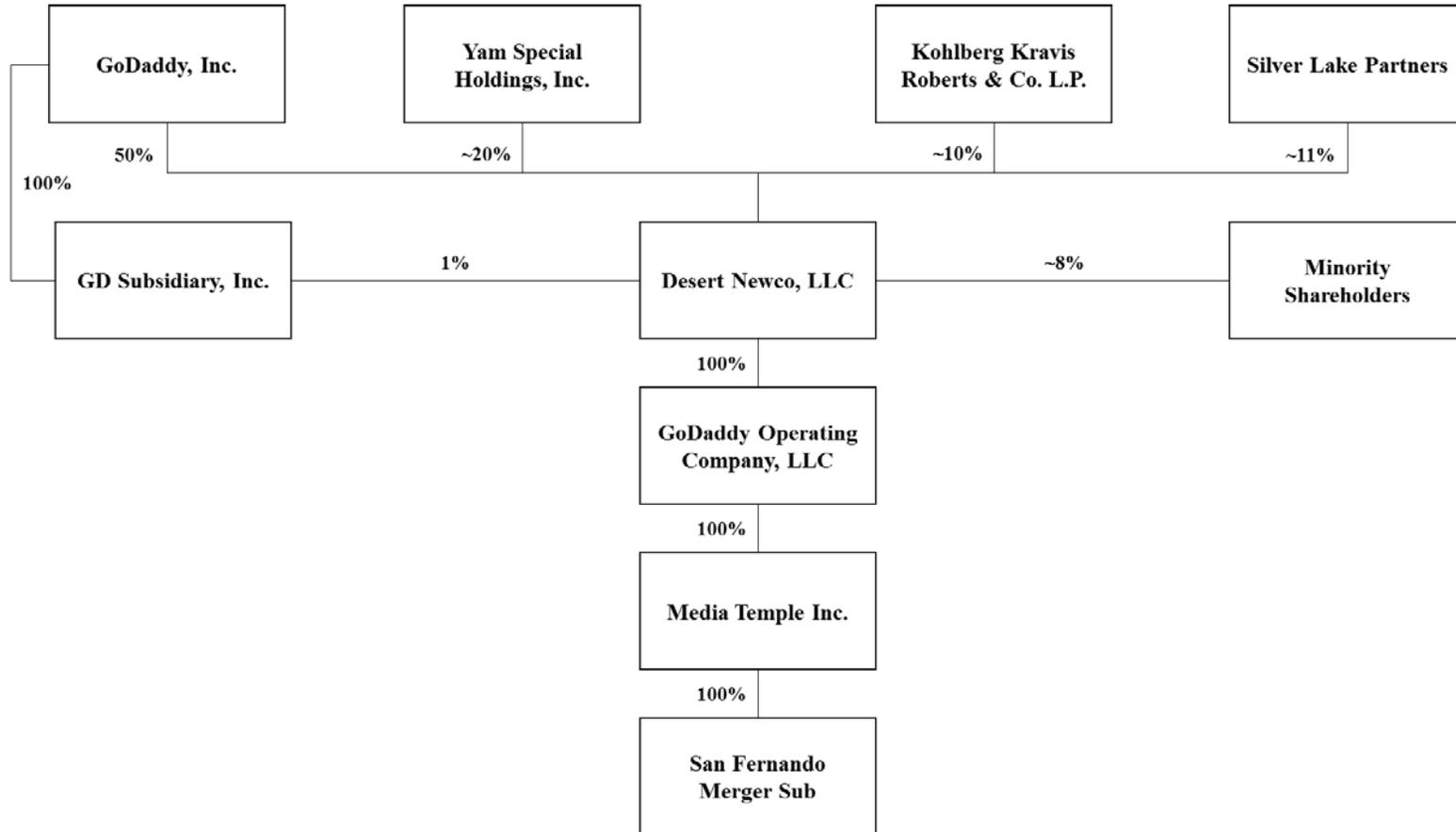
APPENDIX A

Pre-Transaction Ownership Charts

CallCatchers Inc. d/b/a FreedomVoice Systems



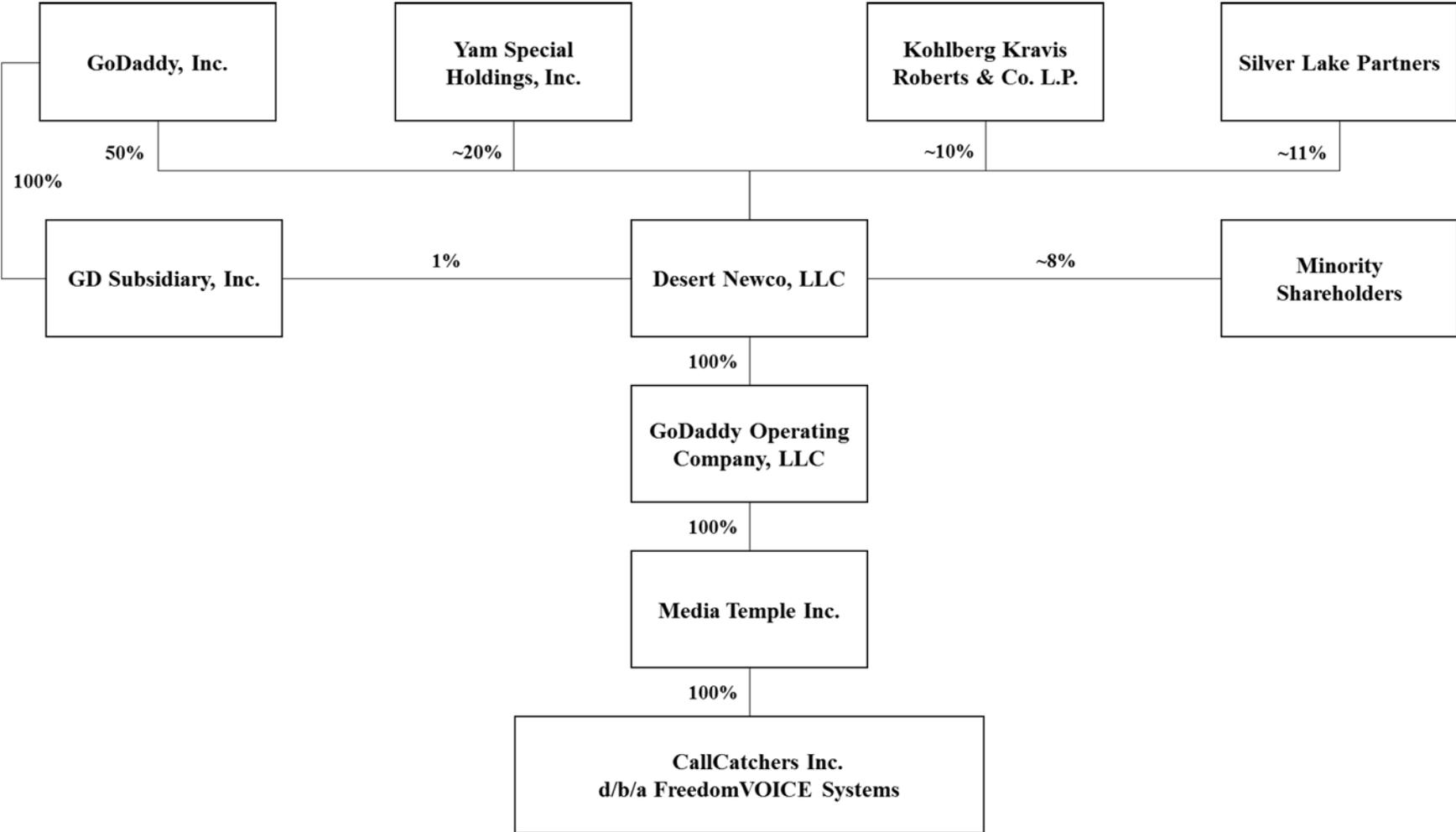
GoDaddy Operating Company, LLC



(END OF APPENDIX A)

APPENDIX B

Post-Transaction Ownership Chart



(END OF APPENDIX B)