



PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>

DA 21-1460

Released: November 19, 2021

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF PEERLESS NETWORK, INC. TO OPENMARKET INC.

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 21-434

Comments Due: December 3, 2021

Reply Comment Due: December 10, 2021

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application¹ filed by Peerless Network Holdings, Inc. (Peerless Holdings), Peerless Network, Inc. (PNI), and OpenMarket Inc. (OpenMarket) (together, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting consent to transfer control of PNI from the shareholders of Peerless Holdings to OpenMarket.²

Peerless Holdings does not itself provide telecommunications services but is a holding company that wholly-owns PNI, which, together with its subsidiaries, provides competitive local exchange carrier services in 49 states and the District of Columbia.³

OpenMarket, a Michigan corporation that does not offer domestic telecommunications services, is indirectly wholly-owned by Infobip Limited, a United Kingdom entity, which, in turn, is wholly-owned by Infobip Holdings Limited (Infobip Holdings), a Cayman Islands entity.⁴ The following entity and individuals own Infobip Holdings: OEP IB MidCo L.P. (OEP IB MidCo) (15.55% equity and 33.33% voting, Cayman Islands citizenship);⁵ Silvio Kutić (49.66% equity and

¹ Application of Peerless Network Holdings, Inc., Peerless Network, Inc, and OpenMarket, Inc. for Consent to Transfer Control of Domestic Authority Pursuant to Section 214 of the Communications Act, as Amended, WC Docket No. 21-434 (filed Nov. 5, 2021) (Application).

² See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Applicants also filed applications for the transfer of authorizations associated with international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ Application at 1-2. Both Peerless Holdings and PNI are Delaware corporations. *Id.* Applicants provide a list of PNI's subsidiaries in the Application. *Id.* at Exh. D (Subsidiaries of Peerless Network Inc. that Provide U.S. Domestic Telecommunications Services).

⁴ Applicants provide further information on indirect entities and general partners within the ownership chain of OpenMarket. See Application at 8-11 and Exh. C (Post-Transaction Ownership).

16.67% voting, Croatian and Italian citizenship); Izabel Jelenić (21.28% equity and 16.67% voting, Croatian citizenship); and Roberto Kutić (12.52% equity and 16.67% voting, Croatian and Italian citizenship).⁶ Applicants state that no owner of a 10% or greater interest in OpenMarket has an interest of 10% or greater in any domestic telecommunications service provider.⁷

Pursuant to the terms of the proposed transaction, OpenMarket will acquire Peerless Holdings.⁸ The acquisition will occur through a merger of a special purpose subsidiary of OpenMarket with and into Peerless Holdings, with Peerless Holdings as the surviving entity.⁹ Following the consummation of the proposed transaction, Peerless Holdings will be directly wholly-owned by OpenMarket, and PNI will be indirectly wholly-owned by OpenMarket.¹⁰

Applicants assert that a grant of the application would serve the public interest, convenience, and necessity.¹¹ Applicants state that the proposed transaction will be seamless to customers, not eliminate competition, and “will strengthen the financial position of PNI by providing access to capital from new funding sources enabling accelerated investment in the company’s network and the deployment of expanded services to customers.”¹²

Applicants do not request streamlined processing for the Application, and we accept it for non-streamlined processing under the Commission’s rules.¹³

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application and the associated international application, ITC-T/C-20211108-00165, are being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.¹⁴

⁵ Application at 10 and Exh. C. Applicants state that the ultimate general partner controlling OEP IB MidCo is OEP VII GP, L.L.C. (OEP VII GP), a Cayman entity, which, in turn, is co-owned by Richard Cashin and David Han, each a U.S. citizen holding 50% of OEP VII GP. *Id.* at 11 and Exh. C.

⁶ *Id.* at 8-9. Infobip Holdings is managed by its board of directors, which currently has the following six members, each holding a 16.67% voting interest: Silvio Kutić, Roberto Kutić, Izabel Jelenić, Mario Baburić, (Croatian citizenship), Ante Kušurin, (Croatian citizenship), and Paul Carl Schorr IV (U.S. citizenship). *Id.*

⁷ *Id.* at 5 and 17.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ *Id.* at 3-5.

¹² *Id.* at 4.

¹³ 47 CFR § 63.03(c)(1)(v).

¹⁴ 47 CFR § 1.40001. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020). *See also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000).

Domestic Section 214 Application Filed for Transfer of Control of
Peerless Network, Inc. to OpenMarket Inc., WC Docket No. 21-434 (filed Nov. 5, 2021).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Interested parties may file comments **on or before December 3, 2021**, and reply comments **on or before December 10, 2021**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.¹⁵ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
- 2) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov;
- 3) David Krech, Telecommunications and Analysis Division, International Bureau, david.krech@fcc.gov; and
- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a

¹⁵ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (OS 2020).

copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹⁶ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Myrva Charles at (202) 418-1506 or Gregory Kwan at (202) 418-1191.

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¹⁶ See 47 CFR § 1.45(c).