**DA 21-741**

**June 23, 2021**

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE**

**TRANSFER OF CONTROL OF METRONET HOLDINGS, LLC**

**STREAMLINED PLEADING CYCLE ESTABLISHED**

 **WC Docket No. 21-237**

**Comments Due: July 7, 2021**

**Reply Comment Due: July 14, 2021**

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by MetroNet Holdings, LLC (Holdings) and OHCP MGP V, Ltd. (MGP V) (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 Holdings and its subsidiaries, CMN-RUS, Inc. (CMN), Jaguar Communications, Inc. (Jaguar), and Metro FiberNet, LLC (MFN) (CMN, Jaguar, and MFN, collectively the Licensees).[[1]](#footnote-3)

Holdings, a Delaware corporation, through its direct and indirect wholly owned subsidiaries, provides competitive telecommunications services in several states. Specifically, CMN, an Indiana corporation, provides competitive telecommunications services in Indiana and Kentucky; Jaguar, a Minnesota corporation, provides local, long distance, and other competitive telecommunications services in certain areas of Minnesota;[[2]](#footnote-4) and MFN, a Nevada limited liability company, is authorized to provide competitive telecommunications services in Florida, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, North Carolina, Wisconsin, and Virginia. Applicants state that Holdings is currently owned primarily by: (i) certain funds and entities managed by or affiliated with Oak Hill Capital Management (Oak Hill)[[3]](#footnote-5) (these current investors, collectively, the Oak Hill III/IV Investors), which collectively hold a majority (approximately 48.6%) of the common interests in Holdings,[[4]](#footnote-6) and (ii) the Cinelli Investors,[[5]](#footnote-7) which collectively hold a minority (approximately 32.2%) of the common interests in Holdings and also hold *de facto* control of Holdings.[[6]](#footnote-8)

According to Applicants, while certain Cinelli Investors will continue to hold a minority of the common interest in Holdings following the proposed transaction, the Oak Hill III/IV Investors will have no equity interest in Holdings. Instead, other funds and entities managed by Oak Hill (the New Oak Hill Investors) will hold equity in Holdings. Following the proposed transaction, the New Oak Hill Investors, which are controlled by MGP V, and the remaining Cinelli Investors will each have negative *de facto* control of Holdings.[[7]](#footnote-9) The common interests of Holdings will be held, either directly or through holding companies, primarily by (a) the New Oak Hill Investors, (b) the Cinelli Investors, and (c) a new minority investor owned and/or managed by KKR & Co. Inc. (KKR), a Delaware investment entity.

Pursuant to the terms of the proposed transaction, Holdings and other parties thereto, have agreed to a series of transactions and amendments to the limited liability company agreement (LLC Agreement) of Holdings that will result in changes to the ownership and control of Holdings (the Recapitalization).[[8]](#footnote-10) Applicants state that the Recapitalization will consist of multiple steps and merger transactions, upon completion of which (a) there will be no majority equity owner in Holdings, and (b) *de facto* or actual control of Holdings will be split on an equal basis between the New Oak Hill Investors and the Cinelli Investors through their representation on the Board.[[9]](#footnote-11)

Applicants request streamlined treatment of the proposed transaction under the Commission’s rules and assert that a grant of the application would serve the public interest, convenience, and necessity. We accept the application for filing under section 63.03(b)(2)(ii) of the Commission’s rules.[[10]](#footnote-12)

Domestic Section 214 Application Filed for the Transfer of Control of

MetroNet Holdings, LLC, WC Docket No. 21-237 (filed June 3, 2021).

**GENERAL INFORMATION**

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission’s rules and policies. Pursuant to section 63.03(a) of the Commission’s rules, 47 CFR § 63.03(a), interested parties may file comments **on or before July 7, 2021**, and reply comments **on or before July 14, 2021**. Pursuant to section 63.52 of the Commission’s rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission’s rules, 47 CFR § 63.03, parties to this proceeding should file any documents using the Commission’s Electronic Comment Filing System (ECFS): http://apps.fcc.gov/ecfs/.

**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; and
3. Kimberly Cook, Telecommunications and Analysis Division, International Bureau, kimberly.cook@fcc.gov; and
4. Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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.

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 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.[[11]](#footnote-13) 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.

**FCC**

1. *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Applicants also filed applications for the transfer of authorizations associated with international services. On June 17, 2021 and June 22, 2021, Applicants filed supplements to their domestic section 214 application. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications. [↑](#footnote-ref-3)
2. Applicants state that Jaguar is an Eligible Telecommunications Carrier in Minnesota and has been awarded funds in the Connect America Fund II Auction 903 to provide voice and broadband services in certain census blocks in Minnesota. Applicants further state that Jaguar offers Lifeline services but does not currently serve any Lifeline customers. [↑](#footnote-ref-4)
3. Oak Hill is a private equity fund based in the United States but whose funds are organized in the Cayman Islands. Applicants state that the equity in the Oak Hill funds is held through limited partnership interests which are, in turn, held by numerous, primarily U.S.-based investors, including individuals, trusts, institutions and business entities, and that control of these funds ultimately rests in U.S. entities or citizens. Oak Hill is currently affiliated with carriers that provide incumbent local exchange carrier (LEC), competitive LEC, cable, and other services in multiple states. Applicants state that the service territories of those entities are not adjacent to and do not overlap with the service territories of the Licensees. [↑](#footnote-ref-5)
4. Applicants provide, as pages 3-7 of Exhibit A to their application, information on each of the entities and individuals included in the Oak Hill III/IV Investors. Applicants state that OH Metro Holdings LLC (OH-MH) holds approximately 32.2% of the equity in Holdings, while OH Metro Holdings 2, LLC (OH-MH 2) holds approximately 16.4% of the equity of Holdings. Applicants state that the limited partnership interests in OH-MH and OH-MH 2, which are both U.S.-based, are currently held by numerous, primarily U.S.-based investors, including individuals, trusts, institutions, and business entities, and that control of these funds ultimately rests in U.S. entities or citizens. [↑](#footnote-ref-6)
5. Applicants provide, in Exhibit A, note 1, and Exhibit C, note 1 to their application, information on each of the entities and individuals who are included in the Cinelli Investors. Applicants state that all of the Cinelli Investors are U.S. citizens, trusts, or entities. [↑](#footnote-ref-7)
6. Applicants state that while the Oak Hill III/IV Investors and Cinelli Investors each appoint three of six managers of the Board of Managers (the Board) of Holdings, the Cinelli Investors have control of the day-to-day management of Holdings by virtue of their appointment of the Chairman of the Board. As a result, Applicants state that the Cinelli Investors, collectively, have current *de facto* control of Holdings. Applicants further state that no individual or entity currently owns a majority of the common interests in Holdings. [↑](#footnote-ref-8)
7. MGP V is a Cayman Islands entity, the shares of which are distributed equally among twelve U.S. citizens. [↑](#footnote-ref-9)
8. Applicants state that, while certain Cinelli Investors will continue to hold a minority of the common interest in Holdings following the consummation of the proposed transaction, the Oak Hill III/IV Investors will have no equity interest in Holdings. Applicants provide, as Exhibit C to their application, information on entities and individuals who will hold a direct and indirect 10% or greater interest in Holdings. Applicants state that other than what is described in their application, no person or entity that will directly or indirectly own or control 10% or more of Holdings upon completion of the Recapitalization, including the KKR investor entities, also directly or indirectly owns or controls 10% or more of another telecommunications provider. [↑](#footnote-ref-10)
9. Applicants state that, upon completion of the Recapitalization and amendment and restatement of the LLC Agreement, the Board of Holdings will be comprised of nine managers as follows: three managers will be appointed by the New Oak Hill Investors; three managers will be appointed by the Cinelli Investors; and three managers will be appointed by fund vehicles managed by KKR. Applicants further state that, under the amended and restated LLC Agreement, actions by the Board will require approval of the majority of the Board with the consent of the New Oak Hill Investors and the Cinelli Investors acting through the majority of their respective managers and, therefore, the New Oak Hill Investors and the Cinelli Investors will each hold negative *de facto* control of Holdings. Since the Cinelli Investors currently control the day-to-day decisions of Holdings under the current LLC Agreement, Applicants state these changes would result in a change in control of Holdings. [↑](#footnote-ref-11)
10. 47 CFR § 63.03(b)(2)(ii). [↑](#footnote-ref-12)
11. *See* 47 CFR § 1.45(c). [↑](#footnote-ref-13)