



# PUBLIC NOTICE

Federal Communications Commission  
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## DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF PEERLESS NETWORK, INC. TO OPENMARKET INC.

### WC Docket No. 21-434

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, as conditioned, the application 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.<sup>1</sup>

On November 19, 2021, the Bureau released a public notice seeking comment in this proceeding and did not receive comments or petitions in opposition to the Application.<sup>2</sup>

On June 10, 2022, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), submitted a Petition to Adopt Conditions to Authorizations (Committee Petition).<sup>3</sup> We grant the Committee Petition and condition grant of the Application on compliance by the Applicants with the commitments and undertakings set out in the Letter of Agreement filed with the Committee Petition.

### Applicants and Services Provided

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

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<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. 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). On January 20, 2022, Applicants filed a supplement to the Application. Letter from Elizabeth R. Park, Counsel to Infobip, Inc., and Nancy J. Victory, Counsel to Peerless Network Holdings, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-434 (filed Jan. 20, 2022) (notifying the Commission that, effective on December 31, 2021, OpenMarket Inc. has been merged with Infobip LLC (a U.S. affiliate of Infobip Limited), with OpenMarket Inc. as the surviving entity and that the name OpenMarket Inc. has been changed to Infobip Inc.). Applicants also filed an application 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.

<sup>2</sup> *Domestic Section 214 Application Filed for the Transfer of Control of Peerless Network, Inc. to OpenMarket Inc.*, WC Docket No. 21-434, Public Notice, DA 21-1460 (WCB 2021) (2021 Public Notice).

<sup>3</sup> Petition to Adopt Conditions to Authorizations, WC Docket No. 21-434, ITC-T/C-20211108-00165 (filed Jun. 10, 2022) (Committee Petition).

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services in 49 states and the District of Columbia.<sup>4</sup>

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.<sup>5</sup> 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);<sup>6</sup> Silvio Kutić (49.66% equity and 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).<sup>7</sup> 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.<sup>8</sup>

Pursuant to the terms of the proposed transaction, OpenMarket will acquire Peerless Holdings.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

### **National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns**

When analyzing a transfer of control or assignment application that includes foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.<sup>12</sup> As part of our public interest analysis, the Commission coordinates with the

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<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> 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.

<sup>7</sup> *Id.* at 8-9. Infobip Holdings is managed by its board of directors, which 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.*

<sup>8</sup> *Id.* at 5 and 17.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *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) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Order*); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of application for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act). *See also Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

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relevant Executive Branch agencies that have expertise in these particular issues.<sup>13</sup> The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.<sup>14</sup> The Commission, however, ultimately makes an independent decision on the application based on the record in the proceedings.<sup>15</sup>

Pursuant to Commission practice, the Application and the associated international application, IB File No. ITC-T/C-20211108-00165, were referred to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.<sup>16</sup> On November 22, 2021, the Committee notified the Commission that it was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application.<sup>17</sup> We deferred action in response to this request from the Committee. On February 11, 2022, the Committee notified the Commission that the Applicants had provided complete responses to initial questions posed by the Committee and that the Committee was conducting an initial review to assess whether granting the Application would pose a risk to the national security or law enforcement interests of the United States.<sup>18</sup>

In the Committee Petition, the Committee advises the Commission that it has no objection to the Commission granting the Application provided that the Commission conditions its approval on the assurances “of Peerless Network, Inc. (PNI), and its subsidiaries Airus, Inc., and WaveNation, LLC, (with PNI, collectively the PNI Companies), Infobip, Ltd., and Infobip, Inc., to abide by the commitments and undertakings set forth in the May 23, 2022, Letter of Agreement (LOA)” attached to the Committee Petition.<sup>19</sup>

In accordance with the request of the Committee, and in the absence of any objection from the Applicants, we grant the Committee Petition, and, accordingly, we condition grant of the transfer of domestic section 214 authority on compliance by the Applicants with the commitments and undertakings

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<sup>13</sup> See *Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

<sup>14</sup> *Id.* at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission’s Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179, 182 (1997)). See also *T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *Pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

<sup>15</sup> 47 CFR § 1.40001(b) (“The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) . . . that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.”).

<sup>16</sup> See *2021 Public Notice* at 2.

<sup>17</sup> Letter from Christine M. Quinn, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-434; ITC-T/C-20211108-00165, and Attach. (November 2021 Notification from Chair) (filed Nov. 22, 2021) (on file in WC Docket No. 21-434) (filed Nov. 22, 2021).

<sup>18</sup> Letter from Christine M. Quinn, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-434; ITC-T/C-20211108-00165, and Attach. (February 2022 Notification from Chair) (filed Feb. 11, 2022) (on file in WC Docket No. 21-434) (filed Feb. 11, 2022).

<sup>19</sup> Committee Petition at 1.

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set out in the LOA that apply to the Application.<sup>20</sup> A failure to comply with and/or remain in compliance with any of the provisions of the LOA shall constitute a failure to meet a condition of this grant and the underlying authorizations and licenses and thus grounds for declaring the underlying authorizations and licenses terminated without further action on the part of the Commission. Failure to meet a condition of this grant and the underlying authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission.

**Grant of Application, Subject to Condition**

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.<sup>21</sup> This grant of the Application is conditioned as set out in this Public Notice.

Pursuant to sections 214 of the Act, 47 U.S.C. §§ 214 and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03-63.04, we grant the Application with the condition described above. Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

Pursuant to sections 4(i)-(j) and 214(a), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j) and 214(a), and sections 63.03-63.04, of the Commission's rules, 47 C.F.R. §§ 63.03-63.04, we grant the Committee Petition to Adopt Conditions to Authorizations filed by the NTIA. Grant of the Application is conditioned upon compliance by the Applicants with the Letter of Agreement from John Barnacle, PNI, Silvio Kutić, Infobip Inc. and Infobip Ltd., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, National Security Division, United States Department of Justice, dated May 23, 2022. Any failure to comply and/or remain in compliance with any of the conditions set out in the Public Notice shall constitute a failure to meet a condition of the grant and the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without any further action on the part of the Commission. Failure to meet a condition of the grant and the underlying authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission

For further information, please contact Gregory Kwan, Wireline Competition Bureau, (202) 418-1191.

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<sup>20</sup> *T-Mobile/Sprint Order*, 34 FCC Rcd at 10732-33, para. 349; *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66.

<sup>21</sup> See 47 U.S.C. § 214(a); 47 CFR § 63.03.