



State of Utah

Department of Commerce Division of Public Utilities

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Action Request Response

To: Public Service Commission of Utah

From: Utah Division of Public Utilities

Chris Parker, Director

Artie Powell, Manager

Brenda Salter, Utility Technical Consultant Supervisor

Ron Slusher, Utility Technical Consultant

Date: December 7, 2021

Re: **Docket No. 21-2552-01**, Notice of Indirect Transfer of Control of Peerless Network of Utah, LLC and Airus, Inc. Subsidiaries of Peerless Network Holdings, Inc.'s to OpenMarket, Inc.

Recommendation (Acknowledge)

The Division of Public Utilities (“Division”) has reviewed the notification of the indirect transfer of control of Peerless Network of Utah, LLC, (“Peerless”), and Airus, Inc. (“Airus”), to OpenMarket, Inc. (“OpenMarket”) (together the “Applicants”). The public interest will be promoted by the Public Service Commission (“Commission”) acknowledging this Indirect Transfer of Control. As a result of the transfer, the companies should be in a better position to provide expanded and advanced telecommunications services in the State of Utah.

The Division expects that, based on history that a filing of this type and with the information submitted by the company, there will be no objections or opposition to this recommendation. Therefore, the Division requests that this docket be adjudicated informally in accordance with R746-110-1.

Discussion

On or about November 30, 2021, Peerless, Airus, and OpenMarket notified the Commission of a transaction, which will result in an indirect transfer of control of Peerless and Airus, to OpenMarket.

Peerless is a Utah registered corporation, headquartered at 222 South Riverside Plaza, Suite 2730, Chicago, IL 60606. Peerless received authorization to provide public telecommunications services in the State of Utah by the Commission on November 19, 2014, Docket No.14-2552-01.

Airus is a Delaware registered corporation, headquartered at 222 South Riverside Plaza, Suite 2730, Chicago, IL 60606. Airus received authorization to provide public telecommunications services in the State of Utah by the Commission on March 25, 2010, Docket No.09-2518-01.

Both companies are subsidiaries of Peerless Holdings, Inc. (“Peerless Holdings”).

OpenMarket is a Michigan corporation, headquartered at 27777 Franklin Road, Suite 1545, Southfield, MI 48034. OpenMarket provides business communications and messaging services to mobile operators, messaging apps, banks, social networks, tech companies, and aggregators in the United States.

On October 29, 2021, Peerless Holdings and OpenMarket entered into an agreement in which OpenMarket will acquire Peerless Holdings. 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. As a result of this merger, Peerless Holdings will be a wholly owned direct subsidiary of OpenMarket.

The Applicants submit that the transaction described herein will serve the public interest. The Applicants expect that the merger will enable the combined entities to better meet the needs of enterprises, wholesale buyers, and other customers. The transaction will help create a stronger competitor by bringing together each organization’s respective strengths. Operating as an integrated company will allow each of the operating companies to be more competitive and to deliver greater value and variety of services to their customers than they do individually.

The Applicants further submit that the transaction will be conducted in a manner that will be largely transparent to their customers. The transaction will not result in a change of carrier for customers or any assignment of authorizations, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers.

Conclusion

The Division has reviewed the notice filed by the Applicants for the transfer of control and concludes that the Applicants are in compliance with Commission Rule R746-349-7, and have provided reasonable documentation of the following:

1. The CLEC shall submit an application which includes but is not limited to:
 - a. Identification that it is not an ILEC,
 - b. Identification that it seeks approval of the application pursuant to this rule,
 - c. A reasonably detailed description of the transaction for which approval is sought,
 - d. A copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and,
 - e. Copies of any notices, correspondence, or orders from any federal agency or any other state utility regulatory agency reviewing the transaction, which is the subject of the application.

The Division recommends the Commission acknowledge this notice.

Cc: Julie Oost, Vice President, Regulatory Affairs, Peerless Network, Inc.
Nancy Victory, DLA Piper LLP, Counsel for Peerless Network Holdings, Inc.
Brandon Wayman, OpenMarket, Inc.
James H. Barker, Counsel for OpenMarket, Inc.
Justin Jetter, Assistant Attorney General, State of Utah
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