Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of KKR MANAGEMENT LLP *Transferor*, PONTEGADEA INVERSIONES, S.L., *Transferee*, TELXIUS CABLE USA, INC., AND TELXIUS CABLE PUERTO RICO, INC., *Authorization Holders*, Application for Consent to Transfer Certain Negative Control Rights over Carriers Holding International Section 214 Authority	File Nos. ITC-T/C-2022-____________ ITC-T/C-2022-____________

CONSOLIDATED APPLICATION FOR CONSENT TO TRANSFER CERTAIN NEGATIVE CONTROL RIGHTS OVER CARRIERS HOLDING INTERNATIONAL SECTION 214 AUTHORITY—STREAMLINED PROCESSING REQUESTED

Pursuant to 47 U.S.C. § 214 and 47 C.F.R. § 63.24(e), KKR Management LLP ("KKR Management") and Pontegadea Inversiones, S.L. ("Pontegadea") apply for Commission consent to transfer certain negative control rights over Telxius Cable USA, Inc. ("Telxius USA"), and Telxius Cable Puerto Rico, Inc. ("Telxius Puerto Rico," together with Telxius USA, the "Telxius 214 Holders," together with KKR Management and Pontegadea, the "Applicants") from KKR Management to Pontegadea. Telefónica, S.A. ("Telefónica") holds—and will continue to hold, as described below—indirect, *de jure* control of the Telxius 214 Holders. Pontegadea currently holds an indirect, minority voting and equity interest in the Telxius 214 Holders.

In a series of transaction steps agreed on February 1, 2022, (collectively, the "Proposed Transaction"), the 40-percent voting and equity interest and negative control rights currently indirectly controlled (as that concept is defined in 47 C.F.R. § 63.09(b)) by KKR Management will be acquired and reorganized such that Telefónica and Pontegadea will increase their indirect voting and equity interests in the Telxius 214 Holders, and Pontegadea will also acquire certain negative control rights over the Telxius 214 Holders. Subject to receipt of regulatory consents and clearances and satisfaction of other customary closing conditions, the parties expect to close the Proposed Transaction in the third calendar quarter of 2022.[1]

Consummation of the Proposed Transaction will serve the public interest, convenience, and necessity by ensuring the continued growth of Telxius Telecom, S.A. ("Telxius Parent") and its subsidiaries (collectively, "Telxius"). Pontegadea will continue to partner with Telefónica to optimize Telxius's existing assets and, eventually, to support investment in new infrastructure and services in Europe and the Americas. The Proposed Transaction will also streamline and simplify the capital and ownership structures of the Telxius 214 Holders.

The Proposed Transaction raises no public-interest concerns that would warrant an extended review or transaction-specific conditions for consent. Indeed, this consolidated application qualifies for presumptive streamlined processing under 47 C.F.R. § 63.12(a), as Pontegadea is not affiliated with any foreign carriers in any foreign destination market. Moreover, the Proposed Transaction would create no new combinations that would adversely affect competition on any U.S.-international route.

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[1] Concurrent with this application, the parties have also filed an application to transfer certain negative control rights over cable landing license interests held by Telxius USA, Telxius Puerto Rico, Telxius Cable América, S.A., and Telxius Cable Colombia, S.A.

I. BACKGROUND

A. Relevant Parties

1. Telefónica, S.A. ("Telefónica")

Telefónica currently holds, and will continue to hold following the consummation of the Proposed Transaction, *de jure* control over Telxius Parent. As shown in the pre-consummation ownership chart in **Exhibit A**, Telefónica holds its existing interest in the Telxius 214 Holders through an intermediate holding company, Pontel Participaciones, S.L. ("Pontel") in which it holds an 83.35-percent voting and equity interest. Pontel, in turn, holds a 60-percent voting and equity interest in Telxius Parent. Telefónica is one of the world's largest telecommunications providers with 330 million customers and a strong presence in 13 countries. Its subsidiaries also provide services under the Movistar, O_2, and Vivo brands. It is a Spanish corporation headquartered in Madrid, Spain. Its shares trade publicly on the Bolsa de Madrid, and its American Depositary Receipts ("ADRs") trade on both the New York Stock Exchange and the Lima Stock Exchange. Telefónica has no 10-percent-or-greater direct or indirect owners.

2. KKR Management LLP ("KKR Management")

KKR Management is deemed to exercise indirect control Taurus Bidco S.à r.l. ("Taurus Bidco") and is the ultimate transferor in the Proposed Transaction, as shown in **Exhibit B**. KKR Management holds the sole share of Series I preferred stock of KKR & Co., Inc. ("KKR & Co.," and together with its subsidiaries, "KKR"), which is entitled to vote on practically all matters submitted to a vote of the stockholders of KKR & Co. (including election of the board of directors of KKR & Co.), except for those reserved for the vote of holders of common stock. KKR & Co. is a Delaware corporation and a global investment firm that offers alternative asset management and capital markets and insurance solutions, and sponsors investment funds that invest in private equity, credit and real assets and have strategic partners that manage hedge funds. KKR Management is a Delaware limited-liability partnership headquartered in New York, New York. KKR Management is owned by senior KKR employees, and KKR Management holds no economic interest in KKR & Co.

3. Taurus Bidco S.à r.l. ("Taurus Bidco")

Taurus Bidco is the seller in the Proposed Transaction. As shown in the pre-consummation ownership chart in **Exhibit A**, it holds a 40-percent voting and equity interest and certain negative control rights that could provide it with *de facto* control over the Telxius 214 Holders. It acquired these interests from Telefónica in 2017 following a grant of Commission consent.[2] KKR Management is deemed to have indirect control over Taurus Bidco, which is a special-purpose investment vehicle created for certain KKR-sponsored private equity funds and co-investment vehicles to invest indirectly in Telxius Parent. Taurus Bidco is a Luxembourg private limited company headquartered in Luxembourg.

3. Pontegadea Inversiones, S.L. ("Pontegadea")

Pontegadea is the ultimate transferee in the Proposed Transaction. Pontegadea currently holds a 16.65-percent voting and equity interest in Pontel. It is the investment company of Mr. Amancio Ortega Gaona and his family. It is a Spanish *sociedad limitada*, similar to a limited liability company, headquartered in the northern Spanish city of A Coruña. Pontegadea holds diverse investments in various economic sectors and geographic regions, including a controlling investment in Industria de Diseño Textil, S.A. ("Inditex," the parent company of retail brands Zara, Zara Home, Bershka, Massimo Dutti, Oysho, Pull & Bear, Stradivarius, and Uterqüe) and real estate in urban markets worldwide. Pontegadea acquired a 16.65-percent indirect voting and

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[2] *International Authorizations Granted*, Public Notice, 32 FCC Rcd. 7520 (Int'l Bur. 2017).

equity interest in Pontel in 2018, giving it a 9.996-percent indirect voting and equity interest in the Telxius 214 Holders on a fully diluted basis.

4. Pontel Participaciones, S.L. ("Pontel")

Pontel is the buyer in the first step of the Proposed Transaction. It currently holds a 60-percent voting and equity interest in Telxius Parent. Following the consummation of all steps in the Proposed Transaction, it will be merged into Telxius Parent, with Telxius Parent surviving, and Telefónica and Pontegadea will hold their interests directly in Telxius Parent. Pontel operates as a holding company and is a Spanish *sociedad limitada* headquartered in Madrid.

5. Telxius Telecom, S.A. ("Telxius Parent")

Through its operating subsidiaries, Telxius Parent owns and operates submarine cables in the Americas and Europe. It is a Spanish private company headquartered in Madrid, Spain. The Telxius submarine cable infrastructure business was originally known as Emergia and later Telefónica International Wholesale Services but rebranded as Telxius in 2016. In 2016, Telefónica created Telxius Parent as a holding company for all of its submarine cable infrastructure assets and a significant percentage of its wireless tower infrastructure (with none of the wireless tower infrastructure located in the United States). In 2017 it consummated the two-stage sale of a 40-percent voting and equity interest in Telxius, including certain negative control rights, to Taurus Bidco. Telxius Parent sold its wireless tower infrastructure business to American Tower Corporation in 2021.

6. Telxius Cable USA, Inc. ("Telxius USA")

Telxius USA is the principal U.S. operating subsidiary of Telxius Parent. It offers wholesale submarine cable capacity on a non-common-carrier basis to carriers, Internet service providers, and content providers in the United States. It does not offer any services to consumers. It is a Florida corporation headquartered in Miami, Florida. It holds international Section 214 authority for global facilities-based and global resale services.[3] It is also a joint cable landing licensee for the BRUSA, Marea, PCCS, and SAm-1 submarine cable systems.[4]

7. Telxius Cable Puerto Rico, Inc. ("Telxius Puerto Rico")

Telxius Puerto Rico is the Puerto Rico operating subsidiary of Telxius Parent. It offers wholesale submarine cable capacity to carriers, Internet service providers, and content providers in Puerto Rico. It does not offer any services to consumers. It is a Puerto Rico corporation headquartered in Miami, Florida. It holds international Section 214 authority for global facilities-based and global resale services.[5] It is also a joint cable landing licensee for the BRUSA, PCCS, and SAm-1 submarine cable systems.[6]

B. The Proposed Transaction

In the Proposed Transaction, Taurus Bidco's interests will be acquired by Telefónica and Pontegadea, the two other existing indirect shareholders of the Telxius Licensees. Consummation of the Proposed Transaction will result in Telefónica retaining *de jure* control

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3 FCC File Nos. ITC-214-20080709-00314, ITC-214-20040518-00203.

4 *Actions Taken Under Cable Landing License Act*, Public Notice, 32 FCC Rcd. 6524 (Int'l Bur. 2017) ("*BRUSA Cable Landing License*"); FCC File No. SCL-LIC-20160330-00011; *Actions Taken Under Cable Landing License Act*, Public Notice, 32 FCC Rcd. 3791 (Int'l Bur. 2017); FCC File No. SCL-LIC-20160525-00012; *Telefónica International Wholesale Services USA, Inc.*, Order and Authorization, 29 FCC Rcd. 496 (Int'l Bur. 2014) ("*PCCS Cable Landing License*"); FCC File No. SCL-LIC-20130122-00001; *Telefónica SAM USA, Inc., and Telefónica SAM de Puerto Rico, Inc.*, Cable Landing License, 15 FCC Rcd. 14,915 (Int'l Bur. 2000) ("*SAm-1 Cable Landing License*"); FCC File No. SCL-LIC-20000204-00003.

5 FCC File No. ITC-214-20131121-00316.

6 *BRUSA Cable Landing License*, 32 FCC Rcd. at 6524; *PCCS Cable Landing License*, 29 FCC Rcd. at 496; *SAm-1 Cable Landing License*, 15 FCC Rcd. at 14,915.

and Pontegadea acquiring interests and negative control rights that could be deemed to constitute *de facto* control. This will be accomplished by three agreements:

1. Taurus Bidco and Pontel entered into a Share Purchase and Sale Agreement dated February 1, 2022, pursuant to which Pontel will acquire from Taurus Bidco 104,000,000 of Telxius Parent's ordinary shares (with Telxius Parent having only one class of shares), representing 40.0 percent of the ordinary shares outstanding, and certain negative control rights (detailed in part I.C below) over Telxius Parent. As consideration for the shares, Taurus Bidco will receive €215,657,796, subject to application of specified ticking fees and price adjustments.
2. On the closing date, Telefónica, Pontegadea, Pontel, and Telxius Parent will enter into a Shareholder Agreement (described in greater detail in part I.C below), the text of which has already been agreed and pursuant to which Pontegadea will acquire certain negative control rights over shareholder, board of directors, and third-party-transaction matters of Pontel and, upon completion of a restructuring eliminating Pontel from the ownership structure, Telxius Parent.
3. Simultaneously with completion of Pontel's acquisition of the Taurus Bidco interests in Telxius Parent and in accordance with the Investment and Non-Terminating Novation Agreement executed on February 1, 2022, Telefónica and Pontegadea will carry out a capital increase that will result in Telefónica holding a 70-percent voting and equity interest in Pontel and Pontegadea holding a 30-percent voting and equity interest in Pontel. As soon as possible thereafter, Telefónica and Pontel will restructure their interests by merging Pontel into Telxius Parent, with Telxius Parent

surviving, such that Telefónica and Pontegadea will hold their interests directly in Telxius Parent.

Exhibits A and **B** show the pre-consummation ownership and control of the Telxius 214 Holders. **Exhibit C** shows the post-consummation ownership and control of the Telxius 214 Holders. **Exhibit D** shows the post-consummation ownership and control of the Telxius 214 Holders following the restructuring and elimination of Pontel from the ownership structure.

The Proposed Transaction is subject to regulatory approvals and clearances and other customary closing conditions, including consent by the Federal Communications Commission ("FCC") and clearance by the Committee on Foreign Investment in the United States. The parties expect to close the Proposed Transaction in the third calendar quarter of 2022.

C. The Shareholder Agreement

On February 1, 2022, Telefónica, Pontegadea, Pontel, and Telxius Parent agreed on the form of a Shareholder Agreement to be executed on the closing date for the Proposed Transaction. This agreement will govern the respective rights of Telefónica and Pontegadea with respect to (1) the operations of Pontel (and following the restructuring, Telxius Parent, as described in part I.D below) that depend directly or indirectly on the decisions of the shareholders or board of directors of Pontel (and following the restructuring, Telxius Parent) and (2) the direct or indirect transfer of Pontel's ordinary shares.

Section 2.5 of the Shareholder Agreement provides that:

> The Majority Shareholder [Telefónica] records and the Minority Shareholder [Pontegadea] recognises and accepts that it is essential for Holdco [Pontel] (and, indirectly, Telxius) to continue to be considered a company controlled by Telefónica, S.A. and, therefore, a member of the Telefónica Group and fully consolidated with the Telefónica Group.

Notwithstanding this provision, the Shareholder Agreement gives Pontegadea certain rights—beyond standard minority shareholder protections—that will provide Pontegadea with an effective veto over certain Pontel (and following the restructuring, Telxius Parent) matters, including business plan, annual budget, ability to enter into contracts above a certain value threshold, ability to enter into related-party transactions with Telefónica and its non-Telxius subsidiaries, and influence over the appointment, replacement, and removal of the CEO and CFO. Because these arrangements could be construed as conferring negative control on Pontegadea,[7] the Applicants have sought Commission consent to consummate the Proposed Transaction.

1. Transitory Application to Pontel

The parties intend the application of the Shareholder Agreement to Pontel to be transitory, with completion of the restructuring specified in the Investment and Non-Terminating Novation Agreement (as described in part I.D below) to be completed as soon as possible following Pontel's acquisition of Taurus Bidco's interests in Telxius Parent. Consequently, Section 2.6 of the Shareholder Agreement provides that the parties intend that "all the covenants and agreements included in this Agreement are fully planned in relation to Telxius as if the Shareholders are directly shareholders of that company and, for these purposes and until the Restructuring is effectively completed." Specifically:

[7] *Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd. 22,612, 22,632 (2004) (stating that "negative control is held by a person or entity that can block decisions but cannot compel action without the concurrence of another party."); *Applications of Space Station System Licensee, Inc., Assignor et al.*, Memorandum Opinion and Order, 17 FCC Rcd. 2271, 2282-85 ¶¶ 24-28 (Int'l Bur. 2002) (finding that an LLC agreement requiring the unanimous consent of a particular class of members for any contract outside the ordinary course of business or valued in excess of $1 million in aggregate conferred negative control on a foreign investor with voting and equity interests of less than 25 percent).

- Telefónica and Pontegadea agree that the board of directors of Pontel and Telxius Parent will have the same composition and equal distribution of positions.
- Pontel's board of directors will limit its duties and activities to those that are strictly necessary under the applicable law for Pontel to function as a mere holding company of Telxius Parent and to complete the restructuring as soon as possible.
- Pontel's decisions as Telxius Parent's sole shareholder will be determined by Pontel's general shareholders meeting in accordance with the Shareholder Agreement.

The substantive provisions of the Shareholder Agreement, as detained in parts I.C.2 through I.C.5 below, therefore reference application to "the Company," as they will apply equally to Pontel prior to completion of the restructuring and to Telxius Parent following the completion of the restructuring.

2. Corporate Governance Limitations

The Shareholder Agreement provides the Company will have the number of directors established by its shareholders meeting within the minimum and maximum stipulated in its Articles of Association. (Pontel currently has six directors. Telxius Parent currently has ten directors.) Each of Telefónica and Pontegadea is entitled to appoint directors in proportion to its stake in the company, as follows:

- Pontegadea may appoint a number of directors equal to the result, rounded down, of multiplying its shareholding in the Company by the total number of board members, subject, in any case, to the following minima:
    - At least two directors as long as Pontegadea's stake is equal to or greater than 16.65 percent; and

    - At least one director as long as Pontegadea's stake is equal to or greater than 9.99 percent; and

- If Pontegadea's stake falls below 9.99 percent, it will lose the right to appoint directors to the board.
- Telefónica may appoint the other board members.

For as long as Pontegadea holds a stake equal to or greater than 16.65 percent of the Company's share capital, it is entitled to appoint a Deputy Secretary.

3. Reserved Matters and Deadlocks

The Shareholder Agreement requires a "Super Majority" for "Reserved Matters," with the nature of the Reserved Matters depending on whether Pontegadea's interest in the Company is equal to or greater than 25 percent of the Company's share capital, or if it is equal to or greater than 9.99 percent but less than 25 percent of the Company's share capital. For a Reserved Matter requiring approval by the Company's shareholders, both Telefónica and Pontegadea must vote in favor of the matter. For Reserved Matters requiring approval by the Company's board of directors, a majority of directors (including at least one director appointed by each of Telefónica and Pontegadea) must vote in favor of the matter.

a. Reserved Matters Where Pontegadea Holds an Interest Equal to or Greater than 25 Percent of the Company's Share Capital

Reserved Matters requiring a Super Majority when Pontegadea's interest in the Company is equal to or greater than 25 percent of the Company's share capital include the following:

(i) Amending the Company's Articles of Association, except where required by law or by the Shareholder Agreement;

(ii) Modifying the Company's management body or the number of its board members;

(iii) Materially changing to the Company's business;

(iv) Purchasing, selling, or redeeming Company shares or granting options over them;

(v) Issuing or modifying shares in the Company with different voting or economic rights;

(vi) Issuing shares convertible into shares of the Company, except where required by law;

(vii) Eliminating or restricting the pre-emption right to issue shares or securities convertible into Company shares;

(viii) Reducing the Company's share capital, except where required by law;

(ix) Entering into a merger, demerger, segregation, global assignment of assets and liabilities, or similar business transactions or operations or structural modifications affecting the Company, except for intra-group combination operations within the Telxius Group that do not contravene the principles established in the Shareholder Agreement;

(x) Initiating a public offering for sale or subscription of the Company's shares (except as consistent with the Shareholder Agreement;

(xi) Dissolving, liquidating, or applying for a declaration of the Company's insolvency, except where required by law;

(xii) Acquiring, disposing of, or contributing essential assets to another company;

(xiii) Approving a new Telxius Business Plan;

(xiv) Making any variation to the Telxius Business Plan (with certain limited exceptions);

(xv) Approving the annual budget when there is a Telxius Business Plan in force and when the consolidated earnings before interest, taxes, depreciation, and amortization ("EBITDA") resulting from the budget deviates by more than 20 percent from the consolidated EBITDA of the corresponding year of the business plan, with limited exclusions, exceptions, and fallback options in the event the board is unable to adopt an annual budget;

(xvi) Acquiring or selling by Telxius of submarine cable infrastructure or cable landing stations in an inorganic growth transaction valued in excess of €25,000,000 in a transaction or group of related transactions during a financial year (with limited exceptions);

(xvii) Entering into, amending, or supplementing of any Telxius commercial contract with a total consideration for the whole life of the contract (including mandatory renewals) in excess of €15,000,000 per contract or group of related contracts (with limited exceptions);

(xviii) Executing joint venture or partnership agreements by any Telxius company with third parties outside Telxius;

(xix) Entering into an organic growth transaction (including a capitalized lease) involving the Company's submarine cable business in excess of €85,000,000 resulting from the aggregate of any amounts to be spent in a financial year plus any amounts to be spent in the years following such financial year resulting from a project or group of projects to be approved in that financial year, provided that Telefónica retains the right to build submarine cable infrastructure by itself in the event that a Super Majority is not achieved at the board level;

(xx) Approving any financial transaction (including the grant of any guaranty or security) that involves an increase in the level of consolidated net financial debt to more than three times the consolidated EBITDA of Telxius;

(xxi) Approving any acquisition or disposal of companies or assets from or to Telefónica or its non-Telxius subsidiaries, absent certain market conditions and transaction thresholds;

(xxii) Approving or amending material related-party transactions with Telefónica (including adoption of new terms and conditions for existing material related-party transactions with Telefónica);

(xxiii) Making any decision to concede claims made by the tax authorities exceeding an amount of €5,000,000; and

(xxiv) Granting of any loan or advance or provide any credit to any person other than to any Telxius Parent subsidiary or employee or any of its subsidiaries in the ordinary course of business or the acquisition of any loan capital of any corporate body (wherever incorporated) or the giving of any indemnity or guarantee or entering into any material off balance sheet arrangements except in the ordinary course of business.

b. Reserved Matters Where Pontegadea Holds an Interest Equal to or Greater than 9.99 Percent, but Less than 25 Percent, of the Company's Share Capital

Reserved Matters requiring a Super Majority when Pontegadea's interest in the Company is equal to or greater than 9.99 percent, but less than 25 percent, of the Company's share capital include the following:

(i) Amending to the Company's Articles of Association, except where required by law or by the Shareholder Agreement;

(ii) Modifying of the Company's management body or the number of its board members;

(iii) Materially changing to the Company's business;

(iv) Entering into a merger, demerger, segregation, global assignment of assets and liabilities, or similar business transactions or operations or structural modifications affecting the Company, except for intra-group combination operations within the Telxius Group that do not contravene the principles established in the Shareholder Agreement;

(v) Amending of the Company's dividend policy;

(vi) Amending of the Company's financing policy;

(vii) Approving any financial transaction (including the grant of any guaranty or security) that involves an increase in the level of consolidated net financial debt to more than three times the consolidated EBITDA of Telxius;

(viii) Entering into any agreement that entails the amendment, breach, or repeal of the provisions of the Shareholder Agreement in force at that time;

(ix) Granting of powers in the Company that entail the delegation of all or practically all the board of directors' powers;

(x) Entering into an inorganic growth transaction involving the acquisition of submarine cable infrastructure and cable landing valued in excess of €50,000,000, where, due to the cash needs for financing the transaction, the dividends to be paid by Telxius will be less than €50,000,000, subject to certain criteria; and

(xi) Approving or modifying of related party transactions with Telefónica, with certain exclusions.

c. Deadlocks

If a deadlock occurs, Telefónica and Pontegadea are each entitled to send a "Deadlock Notice" to the other party. Once this Deadlock Notice has been issued, appointed representatives of Telefónica and Pontegadea will seek to resolve the Deadlock. If they are unable to do so within 15 business days of the issuance of the Deadlock Notice, either party may submit the matter to more senior designated representatives of Telefónica and Pontegadea, who must negotiate in good faith to seek resolution of the Deadlock within 15 business days following consultation with their respective representatives on the Company's board. If Telefónica and Pontegadea are unable to resolve the matter causing the Deadlock within this process, the status quo before the Deadlock will prevail, and the matter or issue that gave rise to it will not be implemented.

4. Management Limitations

Pursuant to the Shareholder Agreement, the Company's CEO and management team are responsible for implementing resolutions adopted by the board. The CEO and members of the management team may be directors. The CEO is appointed, replaced, and dismissed by the board at the proposal of Telefónica, while the CFO is appointed, replaced, and dismissed by the board at the proposal of Pontegadea, so long as Pontegadea's interest in the Company is equal to or greater than 25 percent of the Company's share capital. Other than the CFO, members of the management team may be appointed, replaced, or dismissed by the board at the proposal of the CEO. If during any financial year the consolidated EBITDA of the Company and its subsidiaries is below the consolidated EBITDA envisaged in the business plan for such financial year, Pontegadea will have the right to request the termination of the agreement and replacement of the CEO, and Telefónica will have the same rights in respect of the CFO. Telefónica and Pontegadea must consult with each other in good faith regarding the appointment of replacements for the CEO and CFO; if they fail to do so within two months of the date of the exercise of a replacement right by Telefónica or Pontegadea, Telefónica will have the right to nominate the CEO, and Pontegadea will have the right to nominate the CFO. The remuneration of the members of the Management Team must be approved by the board, in accordance with market practice, and consistent with Telefónica policies and practices.

If Pontegadea's interest in the Company falls below 25 percent of the Company's share capital, but is still equal to or greater than 16.65 percent, Pontegadea will be entitled to appoint a member of the Telxius management team reporting directly to the CFO. In such case, Pontegadea may have direct access to the Telxius employee for information and reporting purposes.

5. Limitations on Related-Party Transactions

With certain exceptions for existing transactions, the Shareholder Agreement requires the voting of a supermajority of the Company's directors (defined to mean a majority of the directors, including at least one director nominated by Telefónica and one nominated by Pontegadea) for the approval or amendment of material related-party transactions between the Company and its subsidiaries on one hand and Telefónica and its non-Telxius subsidiaries on the other. Such transactions are material if valued in excess of €5,000,000 per transaction, accounting for the life of the contract and mandatory renewals, or per group of related transactions within a 12-month period. For non-material related-party transactions with a value in excess of €100,000 and up to €5,000,000 per transaction, accounting for the life of the contract and mandatory renewals, or per group of related transactions within a 12-month period, a decision to undertake the transaction requires joint approval of the Company's CEO and CFO. In the event of a disagreement between the CEO and CFO, the CEO may take a decision only if the Company obtains a report from an independent expert selected by Pontegadea confirming that the terms and conditions of the transaction are in line with prevailing market practice.

D. The Investment and Non-Terminating Novation Agreement

Upon completion of Pontel's acquisition of the Taurus Bidco interests in Telxius Parent and in accordance with the Investment and Non-Terminating Novation Agreement, Telefónica and Pontegadea will restructure their interests in Telxius Parent to grant Telefónica a 70-percent voting and equity interest in Telxius Parent and Pontegadea a 30-percent voting and equity interest in Telxius Parent. First, simultaneously with Pontel's acquisition of the Taurus Bidco interests in Telxius Parent, the parties will carry out a capital increase, resulting in Telefónica holding a 70-percent voting and equity interest in Pontel and Pontegadea holding a 30-percent voting and equity interest in Pontel. Second, Pontel will be merged into Telxius Parent, with Telxius Parent surviving. The post-restructuring ownership of the Telxius 214 Holders is shown in **Exhibit D**.

II. THE PROPOSED TRANSACTION WOULD SERVE THE PUBLIC INTEREST AND WOULD NOT HARM COMPETITION

A. Standard of Review

Under 47 C.F.R. § 214(a), the Commission must determine whether a proposed assignment or transfer of control of a provider of interstate or international telecommunications services is consistent with the public interest, convenience, and necessity.[8] In making such a determination, the Commission first assesses "whether the proposed transaction complies with the specific provisions of the [Communications] Act,[9] other applicable statutes, and the Commission's rules."[10] Second, if a proposed transaction would not violate the Act, any other applicable statute, or any of the Commission's rules, the Commission then considers whether a

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8 *See, e.g., Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd. 9581, 9585 ¶ 8 (2017) ("*Level 3-CenturyLink Order*"); *Applications of AT&T Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd. 9131, 9139-40 ¶ 18 (2015) ("*AT&T-DIRECTV Order*"); *Applications of XO Holdings and Verizon Communications Inc. For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd. 12,501, 12,504-05 ¶ 7 (Wireline Comp., Int'l, and Wireless Tel. Burs. 2016) ("*Verizon-XO Order*").

9 Communications Act of 1934, as amended ("Communications Act").

10 *See Level 3-CenturyLink Order*, 32 FCC Rcd. at 9585 ¶ 8; *AT&T-DIRECTV Order*, 30 FCC Rcd. at 9139-40 ¶ 18 (citations omitted); *Verizon-XO Order*, 31 FCC Rcd. at 12,504-05 ¶ 7 (citations omitted); *Applications of SoftBank Corp., Starburst II, Inc., Sprint Nextel Corp., and Clearwire Corp.*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd. 9642, 9650 ¶ 23 (citations omitted) ("*Softbank-Sprint-Clearwire Order*"); *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink For Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd. 4194, 4198-99 ¶ 7 (citation omitted) ("*Qwest-CenturyLink Order*").

proposed transaction "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the [Communications] Act or related statutes."[11] Third, where a transaction raises no public interest harms or where any such harms can be ameliorated by narrowly-tailored conditions, the Commission considers the transaction's public interest benefits, with the applicants bearing the burden of proving those benefits by a preponderance of the evidence.[12] Finally, if the Commission finds that narrowly-tailored, transaction-specific conditions would ameliorate any public interest harms for a transaction that is otherwise in the public interest, it may approve the transaction as so conditioned.[13]

B. The Proposed Transaction Will Serve the Public Interest

Here, the Proposed Transaction would not violate any provision of the Communications Act or any Commission rule, nor would it substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of the Act or other statutes. To the contrary, as detailed below, the Proposed Transaction will offer substantial public interest benefits without any material countervailing harms. In the absence of any such harms, the Applicants believe that transaction-specific conditions are unnecessary.

Telefónica and Pontegadea will work with Telxius's management team to support investment in existing and, eventually, new trans-Atlantic and Latin America-region submarine

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[11] *See Level 3-CenturyLink Order*, 32 FCC Rcd. at 9585 ¶ 9; *AT&T-DIRECTV Order*, 30 FCC Rcd. at 9140 ¶ 18 (citation omitted); *Verizon-XO Order*, 31 FCC Rcd. at 12,504-05 ¶ 7 (citation omitted); *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd. at 9651 ¶ 23 (citation omitted); *Qwest-CenturyLink Order*, 26 FCC Rcd. at 4199 ¶ 7.

[12] *See Level 3-CenturyLink Order*, 32 FCC Rcd. at 9586 ¶ 10. In earlier transactions, the Commission weighed any potential public interest harms of the proposed transaction against any potential public interest benefits. *See AT&T-DIRECTV Order*, 30 FCC Rcd. at 9140 ¶ 18 (citation omitted); *Verizon-XO Order*, 31 FCC Rcd. at 12,504-05 ¶ 7 (citation omitted); *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd. at 9650-51 ¶ 23 (citation omitted).

[13] *See Level 3-CenturyLink Order*, 32 FCC Rcd. at 9586 ¶ 11.

cable infrastructure by Telxius. Consummation of the Proposed Transaction will simplify the capital and management structure of Telxius. Ultimately, these factors will strengthen Telxius's ability to compete more vigorously as a developer and operator of submarine cable infrastructure.

The Proposed Transaction would create no new combinations that would adversely affect competition on any U.S.-international route. Pontegadea does not currently control, and is not affiliated with, any international telecommunications services providers licensed by the Commission. The Telxius 214 Holders will continue to accept dominant-carrier regulation on the U.S.-Argentina, U.S.-Brazil, U.S.-Chile, U.S.-Colombia, U.S.-Peru, and U.S.-Spain routes due to their affiliates with Telefónica operating subsidiaries in those markets and continue to abide by the reporting requirements in 47 C.F.R. § 63.11.

III. INFORMATION REQUIRED BY 47 C.F.R. § 63.24(e)

Pursuant to 47 C.F.R. § 63.24(e), the Applicants provide the following information in support of their request for Commission consent for the Proposed Transaction.

A. Applicant Identification Information[14]

In Table 1 below, the Applicants provide their names, addresses, telephone numbers, places of organization, and FCC Registration Numbers.

TABLE 1: Applicant Identification Information

Name, Address, and Telephone #	Place of Organization	FRN	Transaction Role
KKR Management LLP 30 Hudson Yards New York, New York 100101 +1 212 750 8300	Delaware	0029178852	Transferor

[14] *See* 47 C.F.R. § 63.18(a), (b).

Name, Address, and Telephone #	Place of Organization	FRN	Transaction Role
Pontegadea Inversiones, S.L. Cantón Grande, 4 15003, A Coruña Spain + 34 98 118 53 44	Spain	0031955495	Transferee
Telxius Cable USA, Inc. 1111 Brickell Avenue, Suite 1800 Miami, Florida 33131-3122 +1 305 925 5256	Florida	0006650618	Authority Holder
Telxius Cable Puerto Rico, Inc. 1111 Brickell Avenue, Suite 1800 Miami, Florida 33131-3122 +1 305 925 5256	Puerto Rico	0022340921	Authority Holder

B. Contact Information[15]

The Commission should address correspondence regarding this application to the persons identified in Table 2 below.

TABLE 2: Applicant Contact Information

Party	Company Contact	Counsel Contact
KKR Management LLP	Tara Davies Authorized Person KKR Management LLP 30 Hudson Yards New York, New York 10001 +1 212 750 8300	Wayne Johnsen Wiley Rein LLP 2050 M Street, N.W. Washington, D.C. 20036 +1 202 719 7303 wjohnsen@wiley.law
Pontegadea Inversiones, S.L.	Andrés Moreno Fernández Pontegadea Inversiones, S.L. Cantón Grande, 4 15003, A Coruña Spain + 34 98 118 53 44	Kent Bressie Harris, Wiltshire & Grannis LLP 1919 M Street, N.W., Suite 800 Washington, D.C. 20036-3537 +1 202 730 1337 kbressie@hwglaw.com

15 *See id.* § 63.18(c).

Party	Company Contact	Counsel Contact
Telxius 214 Holders	Andrés J. Fígoli Pacheco Secretaría General Telxius Cable América S.A. Avenida Luis Alberto de Herrera 1248, piso 4 11300 Montevideo Uruguay +598 2 628 00 20 ext. 1156 andres.figoli@telxius.com	Kent Bressie Harris, Wiltshire & Grannis LLP 1919 M Street, N.W., Suite 800 Washington, D.C. 20036-3537 +1 202 730 1337 kbressie@hwglaw.com

C. Prior International Section 214 Authority[16]

Telxius USA and Telxius Puerto Rico each currently hold international Section 214 authority for global facilities-based and global resale services.[17] Pontegadea has never held international Section 214 authority.

D. Certification Regarding Ownership, Place of Organization, Principal Business, and Interlocking Directorates[18]

By its signature below, Pontegadea certifies that the Telxius 214 Holders will have the following 10-percent-or-greater interest holders following the consummation of the Proposed Transaction:

Telxius Cable América S.A. ("Telxius Cable América")
Address: Avenida Luis Alberto de Herrera 1248, piso 4, 11300 Montevideo, Uruguay
Place of Organization: Uruguay
Principal Business: telecommunications
Relationship: Telxius Cable América holds a 100-percent voting-and-equity interest in each of Telxius USA and Telxius Puerto Rico.

Telxius Telecom, S.A. ("Telxius Parent")
Address: Distrito C, Calle Ronda de la Comunicación s/n, Edificio Central, 28050 Madrid, Spain
Place of Organization: Spain

[16] *See id.* § 63.18(d).

[17] FCC File Nos. ITC-214-20080709-00314 (Telxius USA), ITC-214-20040518-00203 (Telxius USA), ITC-214-20131121-00316 (Telxius Puerto Rico).

[18] *See* 47 C.F.R. § 63.18(h).

Principal Business: telecommunications
Relationship: Telxius holds a 100-percent voting-and-equity interest in Telxius Cable América.

Telefónica S.A. ("Telefónica")
Address: Distrito C, Calle Ronda de la Comunicación s/n, Edificio Central, 28050 Madrid, Spain
Place of Organization: Spain
Principal Business: telecommunications
Relationship: Upon consummation of the Proposed Transaction, Telefónica will hold a 70-percent voting-and-equity interest in Telxius Parent. Telefónica's shares trade publicly on the Bolsa de Madrid (the Madrid Stock Exchange). As there is an active market in Telefónica's shares, Telefónica's share ownership is always fluid. Moreover, the Telxius Cable Landing Licensees can ascertain its significant shareholders only on the basis of Telefónica's records and may not know of possibly related or affiliated shareholders that are not disclosed to Telefónica. Recognizing these limitations, as of the most recent measurable date, February 1, 2022, no Telefónica shareholder holds an interest sufficient to give it a 10-percent-or-greater direct or indirect interest in any of the Telxius 214 Holders at consummation.

Pontegadea Inversiones, S.L.
Address: Cantón Grande, 4, 15003 A Coruña, Spain
Place of Organization: Spain
Principal Business: investment holding company
Relationship: Upon consummation of the Proposed Transaction, Pontegadea will hold a 30-percent voting-and-equity interest in Telxius Parent and certain negative control rights, as described in part I.C above.

Mr. Amancio Ortega Gaona
Address: Cantón Grande, 4, 15003 A Coruña, Spain
Citizenship: Spain
Principal Business: investments
Relationship: Mr. Ortega holds a 99.99-percent voting and equity interest in Pontegadea.

Other than the entities and persons noted above, no entity will hold a 10-percent-or-greater direct or indirect economic interest in the Telxius 214 Holders as a consequence of consummation of the Proposed Transaction.

By its signature below, Pontegadea certifies that it has no interlocking directorates with foreign carriers.

E. Certification Regarding Foreign Carrier Status and Foreign Affiliations[19]

By its signature below, Pontegadea certifies that upon consummation of the Proposed Transaction, it will not be a foreign carrier and that it will, only as a consequence of the Proposed Transaction, be affiliated with the foreign carriers listed in Table 3 below. All of these foreign carrier affiliate entities are operating subsidiaries of Telxius Parent, as Pontegadea has no pre-close affiliations with any foreign carriers.

TABLE 3: POST-CONSUMMATION AFFILIATED FOREIGN CARRIERS OF PONTEGADEA

Country	Entity
Argentina	Telxius Cable Argentina S.A.
Brazil	Telxius Cable Brasil Limitada
Chile	Telxius Cable Chile S.A.
Colombia	Telxius Cable Colombia S.A.
Ecuador	Telxius Cable Ecuador S.A. (fka Telefónica International Wholesale Services Ecuador S.A.)
Guatemala	Telxius Cable Guatemala, S.A.
Panama	Telxius Cable Panamá S.A.
Peru	Telxius Cable Perú, S.A.C.
Spain	Telxius Cable España S.L.

By their respective signatures below, each of the Telxius 214 Holders certify that before and after the consummation of the Proposed Transaction: (1) it is not, and will not be, a foreign carrier in any country and (2) it is, and will remain, affiliated with foreign carriers, including foreign carriers that control cable landing stations in foreign countries, as summarized in Table 4 below.

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[19] *See id.* § 63.18(i).

TABLE 4: AFFILIATED FOREIGN CARRIERS OF TELEFÓNICA

Country	Entity
Argentina	Telefónica Global Solutions Argentina, S.A.
	Telxius Cable Argentina S.A.
	Telefónica Móviles Argentina, S.A.
	Telefónica de Argentina, S.A.*
Austria	Telefónica Global Solutions S.L. Unipersonal, Austrian Branch
Belgium	Telefónica Global Solutions, S.L.
Brazil	Telefónica Global Solutions Brasil Ltda.
	Telefónica Brasil, S.A.*
	Telxius Cable Brasil Limitada
Chile	Telefónica Chile, S.A.*
	Telxius Cable Chile S.A.
	Telefónica Móviles Chile, S.A.
	Telefónica Global Solutions Chile S.p.A.
Colombia	Colombia Telecomunicaciones, S.A. ESP*
	Telxius Cable Colombia S.A.
	Telefónica Global Solutions Colombia, S.A.S. (fka TIWS Colombia II S.A.S.)
Denmark	Telefónica Global Solutions Denmark, Branch of Telefónica Global Solutions, S.L.U. Spain
Ecuador	Otecel, S.A.
	Telxius Cable Ecuador S.A. (fka Telefónica International Wholesale Services Ecuador S.A.)
	Telefónica Global Solutions Ecuador TGSE, S.A.
Finland	Telefónica Global Solutions, S.L. Suomen Sivuliike.
France	Telefónica Global Solutions France II, S.A.S.
	Telefónica Global Solutions France, S.A.S.
Germany	E-Plus Mobilfunk GmbH
	Telefónica Germany GmbH & Co. OHG
	Telefónica Global Solutions Germany GmbH
Greece	Telefónica Global Solutions Greece Ltd.
Guatemala	Telxius Cable Guatemala, S.A.
Hong Kong	Telefónica Global Solutions, S.L.
Italy	Telefónica Global Solutions, S.L.
Mexico	Pegaso PCS, S.A. de C.V.
	Telefónica Global Solutions México, S.A. de C.V.
Netherlands	Telefónica Global Solutions Netherlands
Panama	Telxius Cable Panamá S.A.
Peru	Telefónica del Perú, S.A.C.*
	Telxius Cable Perú, S.A.C.
	Telefónica Global Solutions Perú, S.A.C.

Country	Entity
Poland	Telefónica Global Solutions, S.L. Jednoosobowa (Spółka z ograniczoną odpowiedzialnością) Oddział w Polsce
Portugal	Telefónica Global Solutions, S.L.U. Sucursal em Portugal
Singapore	Telefónica Global Solutions, Singapore Pte. Ltd.
Spain	Telefónica de España S.A.U.*
	Telefónica Global Solutions, S.L.U.
	Telefónica Móviles España S.A.U.
	Telxius Cable España S.L.
	Telefónica IoT, Big Data Tech SAU
Sweden	Telefónica Global Solutions Sweden AB
Switzerland	Telefónica International Wholesale Services II, S.L.U, Madrid, Swiss Branch Zurich
United Kingdom	Telefónica UK, Ltd.
Uruguay	Telefónica Móviles del Uruguay, S.A.
Venezuela	Telefónica Venezolana, C.A.

F. Certification Regarding Destination Countries[20]

By its signature below, Pontegadea certifies that upon consummation of the Proposed Transaction: (1) it will not be a foreign carrier in any foreign country; (2) other than as a result of consummation of the Proposed Transaction, which will result in indirect control of foreign carriers in Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Panama, Peru, and Spain, Pontegadea will not control any foreign carrier in any foreign country; and (3) no entity that owns more than 25 percent of Pontegadea, or that controls Pontegadea, controls a foreign carrier in any foreign country.

By their respective signatures below, each of the Telxius 214 Holders certifies that upon consummation of the Proposed Transaction: (1) it will not be a foreign carrier in any foreign country; (2) it will control the foreign carriers identified in Table 4 above; and (3) no entity that

20 *See id.* § 63.18(j).

owns more than 25 percent of Telefónica, or that controls Telefónica, controls a foreign carrier in any foreign country.

G. Certifications Regarding WTO Status[21]

No response is required, as Pontegadea did not identify any non-WTO markets in response to 47 C.F.R. § 63.18(j).

H. Non-Dominant Status[22]

The foreign carrier affiliates identified in Tables 3 and 4 above—other than those in Table 4 marked with an asterisk (*)—each satisfy the requirement of 47 C.F.R. § 63.10(a)(3).[23] These foreign-carrier affiliates (other than those in Table 4 marked with an asterisk (*)) each hold significantly less than a 50-percent market share in the international transport and local access markets in its respective country. Moreover, none of these foreign-carrier affiliates (other than those in Table 4 marked with an asterisk (*)) has any ability to discriminate against unaffiliated U.S. international carriers through the control of bottleneck services or facilities in its respective international market, or appears on the Commission's list of foreign telecommunications carriers presumed to possess market power in foreign telecommunications markets.[24] Accordingly, these foreign-carrier affiliates (other than those in Table 4 marked with an asterisk (*)) are each presumed to lack sufficient market power on the international end of the route to affect competition adversely in the U.S. market. The Applicants agree that the Telxius Carrier Licensees should remain regulated as dominant on the U.S.-Argentina, U.S.-Brazil, U.S.-

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21 *See id.* § 63.18(k).

22 *See id.* § 63.18(m).

23 *See id.* § 63.10(a)(3).

24 *See International Bureau Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, Public Notice, 22 FCC Rcd. 945 (Int'l Bur. 2007).

Chile, U.S.-Colombia, U.S.-Peru, and U.S.-Spain routes, but reserve the right to petition for reclassification in the future.

I. Special Concessions[25]

By its signature below, Pontegadea certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

J. Certification Regarding the Anti-Drug Abuse Act of 1988[26]

By its signature below, Pontegadea certifies that no party to this application is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.[27]

K. Streamlining[28]

The Applicants request streamlined processing pursuant to 47 C.F.R. § 63.12(a), as Pontegadea is not affiliated with any foreign carrier, much less with one with market power in a foreign destination market. Pontegadea will acquire affiliations with the foreign carriers listed in Table 3 above solely as a consequence of the proposed transaction. As noted in part III.H above, the Telxius 214 Holders will remain classified as dominant carriers on the U.S.-Argentina, U.S.-Brazil, U.S.-Chile, U.S.-Colombia, U.S.-Peru, and U.S.-Spain routes due to affiliations (through

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[25] *See* 47 C.F.R. § 63.18(n).

[26] *See id.* § 63.18(o).

[27] 21 U.S.C. § 862(a); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 5301, 102 Stat. 4181, 4310-12 (1988), which related to denial of Federal benefits to drug traffickers and possessors—previously codified at 21 U.S.C. § 853(a)—was renumbered Section 421 of the Controlled Substances Act of 1990, Pub. L. No. 101-647, § 1002(d)(1), 104 Stat. 4789, 4827 (1990), and has been recodified as 21 U.S.C. § 862(a). 47 C.F.R. § 63.18(o) does not reflect this recodification.

[28] *See* 47 C.F.R. § 63.18(p).

Telefónica) with dominant foreign carriers in those markets: Telefónica de Argentina, S.A., Telefónica Brasil, S.A., Telefónica Chile, S.A. Colombia Telecomunicaciones, S.A. ESP, Telefónica del Perú, S.A.C., and Telefónica de España S.L. Argentina, Brazil, Chile, Colombia, Peru, and Spain are all WTO members.[29]

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[29] *See* World Trade Organization*, Members and Observers* (as of July 29, 2016), https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

CONCLUSION

For the reasons stated above, the Applicants request that the Commission grant consent expeditiously for the transfer to Pontegadea of certain negative control rights over the Telxius 214 Holders.

Respectfully submitted,

KKR Management LLP

/s/ Tara Davies

Tara Davies
Authorized Person
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New York, New York 10001

Pontegadea Inversiones, S.L.

s/ Jaime Francisco Carro Merchán

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Counsel for Pontegadea Inversiones, S.L., Telefónica, S.A., Telxius Cable USA, Inc., and Telxius Cable Puerto Rico, Inc.,

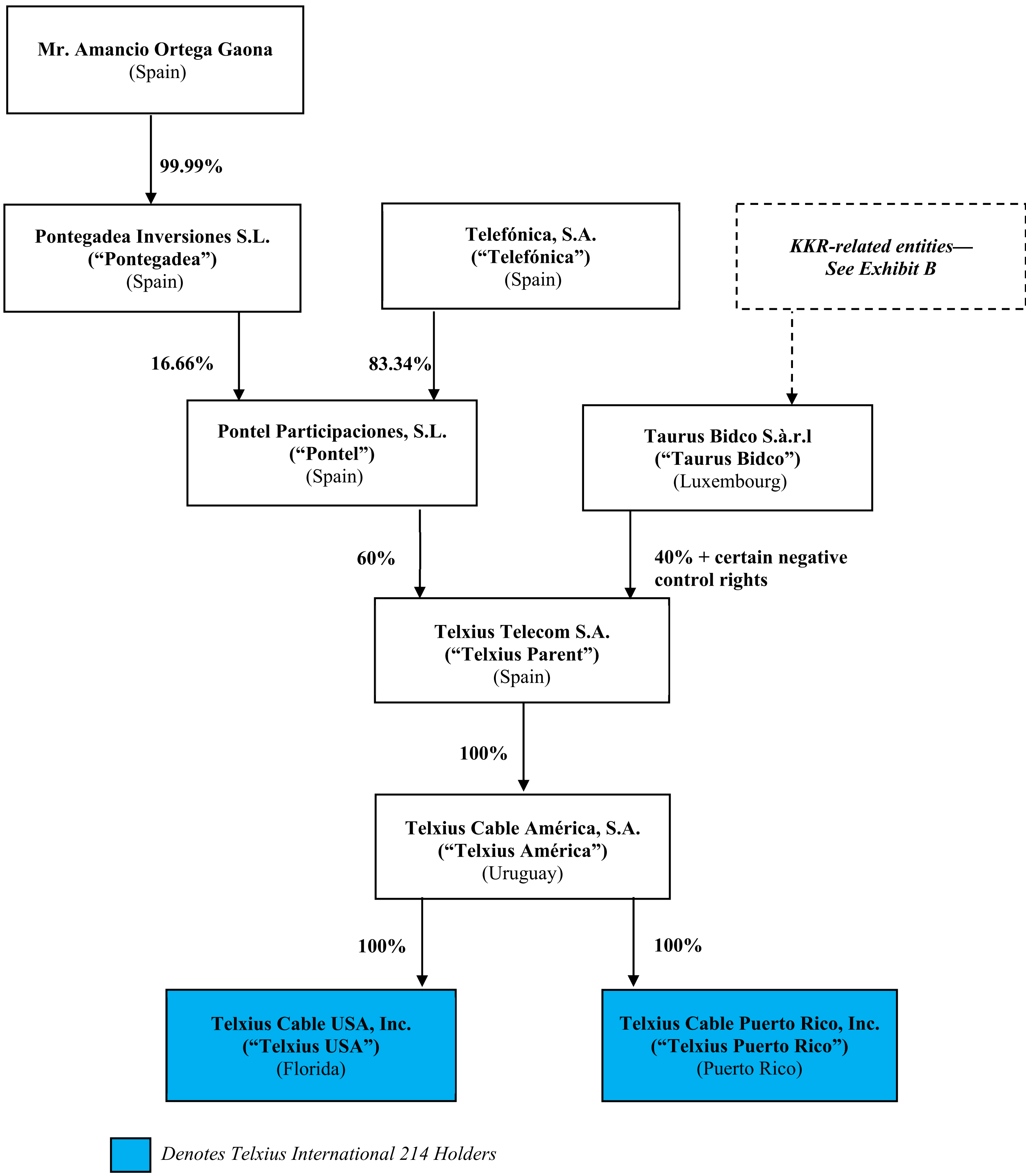
Telxius Cable USA, Inc.
Telxius Cable Puerto Rico, Inc.

/s/ Guillermo Cañete

Guillermo Cañete
President, Telxius Cable USA, Inc.
President, Telxius Cable Puerto Rico, Inc.
1111 Brickell Avenue, Suite 1800
Miami, Florida 33131-3122

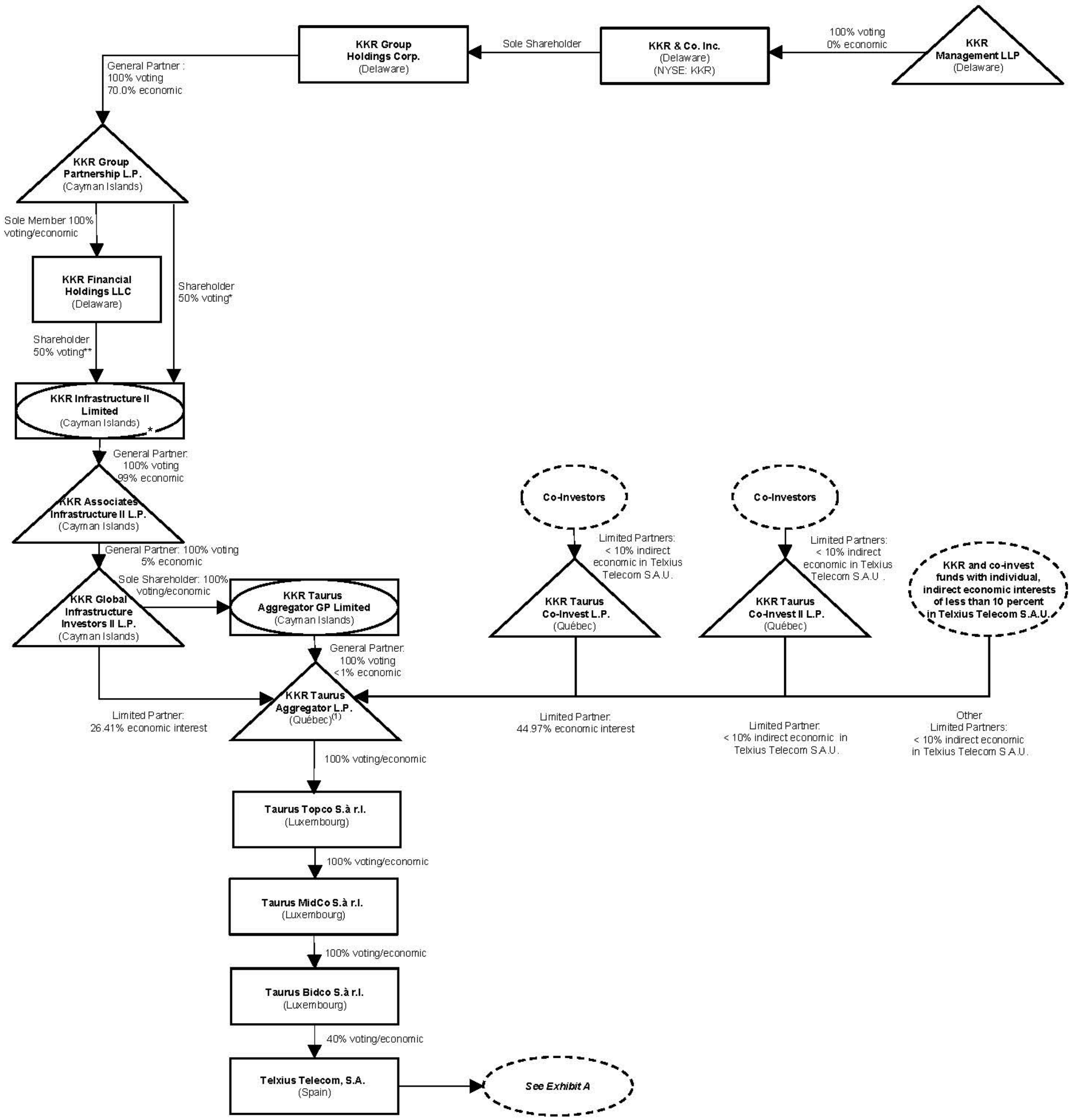
February 22, 2022

Exhibit A:
Current Ownership Structure of Telxius International 214 Holders



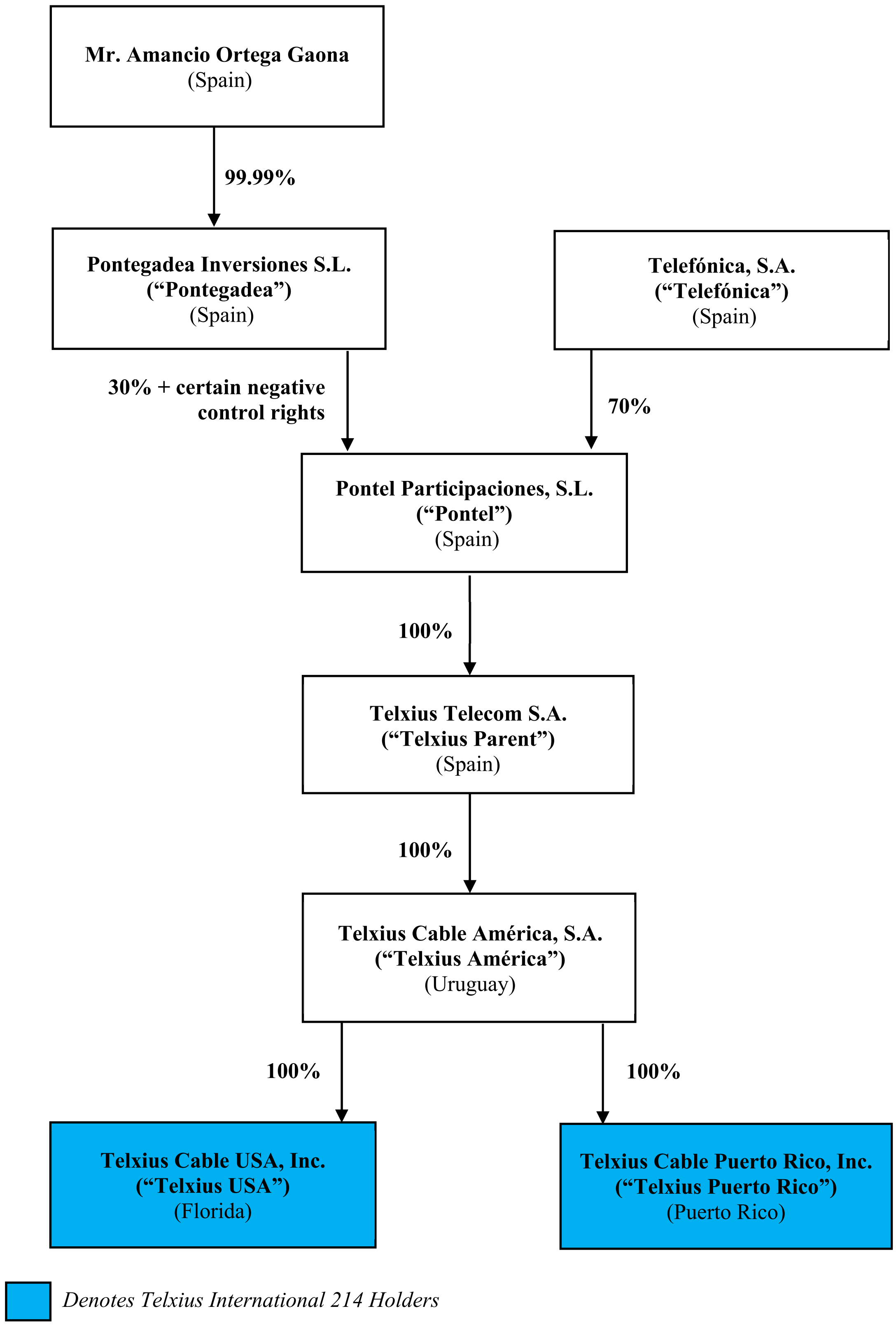
Note: percentages represent both voting and economic interests

Exhibit B: Existing KKR-Related Interests in Telxius Telecom S.A.



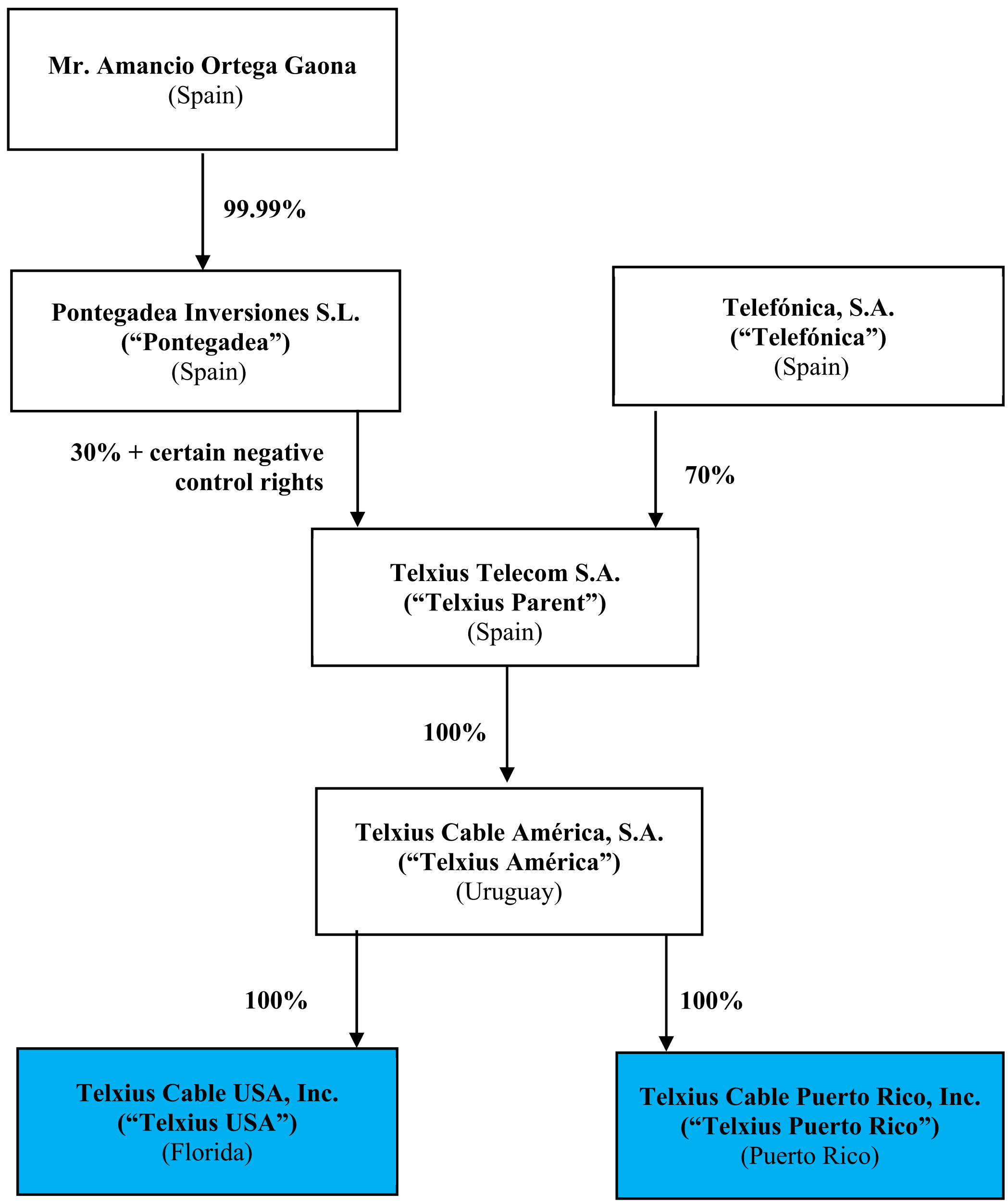
* The economic interests of KKR Group Partnership L.P. and KKR Financial Holdings LLC in KKR Infrastructure II Limited may vary based on the investment returns allocable to KKR Associates Infrastructure II L.P., as the general partner of KKR Global Infrastructure Investors II L.P

Exhibit C:
Post-Consummation Ownership Structure of Telxius International 214 Holders



Note: percentages represent both voting and economic interests

Exhibit D:
Post-Restructuring Ownership Structure of Telxius International 214 Holders



Denotes Telxius International 214 Holders

Note: percentages represent both voting and economic interests