

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

*In the Matter of*

TELEFÓNICA, S.A.,  
*Transferor,*

KKR MANAGEMENT LLC  
*Transferee,*

TELEFÓNICA INTERNATIONAL WHOLESALE  
SERVICES AMÉRICA, S.A.  
TELXIUS CABLE USA, INC.  
TELXIUS CABLE PUERTO RICO, INC., AND  
TELXIUS CABLE COLOMBIA, S.A.,  
*Licensees,*

Application for Consent to Transfer Certain  
Negative Control Rights over Cable Landing  
License Interests

File No. SCL-T/C-2017-\_\_\_\_\_

**CONSOLIDATED APPLICATION FOR CONSENT TO TRANSFER CERTAIN  
NEGATIVE CONTROL RIGHTS OVER CABLE LANDING LICENSE INTERESTS—  
STREAMLINED PROCESSING REQUESTED**

Pursuant to 47 U.S.C. § 34, Executive Order No. 10,530, and 47 C.F.R. § 1.767, Telefónica, S.A. (“Telefónica”) and KKR Management LLC (“KKR Management”) apply for Commission consent to transfer certain negative control rights over cable landing license interests held by Telefónica International Wholesale Services América S.A. (“TIWS América”), Telxius Cable USA, Inc. (“Telxius USA”), Telxius Cable Puerto Rico, Inc. (“Telxius Puerto Rico”), and Telxius Cable Colombia, S.A. (“Telxius Colombia,” together with TIWS América, Telxius USA, and Telxius Cable Puerto Rico, the “Telxius Cable Landing Licensees,” together with Telefónica and KKR Management, the “Applicants”). Telefónica and Taurus Bidco S.à.r.l (“KKR Bidco”), over which KKR Management is deemed to have indirect voting control under

47 U.S.C. § 34 and 47 C.F.R. § 1.767, have entered into an agreement pursuant to which KKR Bidco will acquire from Telefónica a 24.8-percent voting-and-equity interest in Telxius Telecom S.A.U. (“Telxius Parent”) and certain negative control rights over the Telxius Cable Landing Licensees (the “Initial Investment Transaction”). Upon the consummation of the Initial Investment Transaction and the exercise of a call option held by KKR Bidco or a put option held by Telefónica, KKR Bidco would acquire from Telefónica an additional 15.2-percent voting-and-equity interest in Telxius Parent (the “Subsequent Investment Transaction,” together with the “Initial Investment Transaction, the “Proposed Investment Transactions”). Upon consummation of either the Initial Investment Transaction or both Proposed Investment Transactions, Telefónica will continue to own at least a 60-percent indirect voting-and-equity interest in the Telxius Cable Landing Licensees and retain *de jure* control of the Telxius Cable Landing Licensees.<sup>1</sup>

Consummation of the Proposed Investment Transactions will serve the public interest, convenience, and necessity by ensuring the continued growth of Telxius Parent and its subsidiaries (collectively, “Telxius”). KKR Bidco will partner with Telefónica to optimize Telxius’s existing assets and to support investment in new infrastructure in Europe and the Americas, including but not limited to the BRUSA and Marea submarine cable systems. Telxius will benefit from KKR’s investment and asset management expertise, and Telefónica will reduce its outstanding indebtedness.

The Proposed Investment Transactions raise no public-interest concerns that would warrant an extended review or transaction-specific conditions for consent. Indeed, this

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<sup>1</sup> Concurrent with this application, the parties have also filed an application to transfer certain negative control rights over international Section 214 authority held by Telxius USA and Telxius Puerto Rico.

consolidated application qualifies for presumptive streamlined processing under 47 C.F.R. § 1.767(k)(3), as the Telxius Cable Landing Licensees will continue to accept dominant-carrier regulation on the U.S.-Argentina, U.S.-Brazil, U.S.-Chile, U.S.-Colombia, and U.S.-Peru routes and continue to abide by the reporting requirements in 47 C.F.R. § 1.767(l). Consummation of the Proposed Investment Transactions would not result in any new foreign-carrier affiliations for the Telxius Cable Landing Licensees. Moreover, the Proposed Investment Transactions would create no new combinations that would adversely affect competition in any geographic market for submarine cable capacity. KKR Management is deemed to have indirect voting control over United Group, which, through its operating subsidiaries, is a foreign carrier providing competitive telecommunications services, including, among other things, fixed and mobile telephony services, in Serbia, Slovenia, Bosnia and Herzegovina, and Montenegro. KKR Management does not currently control, and is not affiliated with any submarine cable operators licensed by the Commission.

## **I. BACKGROUND**

### **A. Parties to the Proposed Investment Transactions**

#### **1. Telefónica, S.A. (“Telefónica”)**

Telefónica is the seller and transferor of certain negative control rights in Telxius Parent in the Proposed Investment Transactions. Upon consummation of either the Initial Investment Transaction or both Proposed Investment Transactions, it will retain at least a 60-percent voting-and-equity interest in, and *de jure* control of, the Telxius Cable Landing Licensees. Telefónica is one of the world’s largest telecommunications providers with 330 million customers in 21 countries. Its subsidiaries also provide services under the Movistar, O<sub>2</sub>, and Vivo brands. It is a

Spanish corporation headquartered in Madrid, Spain. Its shares trade publicly on the Bolsa de Madrid, and it has no 10-percent-or-greater direct or indirect owners.

**2. Telxius Telecom S.A.U. (“Telxius Parent”)**

Telxius Parent is a holding company for Telefónica’s submarine cable and wireless tower infrastructure businesses. It is a Spanish private company headquartered in Madrid, Spain, and it is wholly owned by Telefónica, which owns all of Telxius Parent’s ordinary shares. (Telxius Parent has not issued any other class of shares.) 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. The submarine cable infrastructure business was originally known as Emergia and later Telefónica International Wholesale Services but has now been rebranded as Telxius. None of the wireless tower infrastructure owned by Telxius Parent’s operating subsidiaries is located in the United States or any of its territories.

**3. Telefónica International Wholesale Services América, S.A. (“TIWS América”)**

TIWS América manages Telxius Parent’s submarine cable infrastructure business in the Americas. TIWS América is a Uruguayan corporation headquartered in Montevideo, Uruguay, and is in the process of changing its name to Telxius Cable América, S.A. It is a wholly-owned subsidiary of Telxius Parent. TIWS América is a joint cable landing licensee for the Pacific Caribbean Cable System (“PCCS”), a consortium system jointly owned by TIWS América, Telxius USA, Telxius Puerto Rico, Cable and Wireless (British Virgin Islands) Limited, Cable & Wireless (EWC) Limited, Cable & Wireless Panama S.A., Servicio Di Telecomunicacion Di Aruba N.V. (SETAR), Cable Andino Inc., Cable Andino USA, Inc., Cable Andino S.A.

Corpandino, and Antelecom N.V.<sup>2</sup> The PCCS system connects Jacksonville, Florida; Tortola, British Virgin Islands; San Juan, Puerto Rico; Hudishibana, Aruba; Cartagena, Colombia; Maria Chiquita and Balboa, Panama, and Manta, Ecuador. TIWS América is also a joint applicant for the cable landing licenses for the BRUSA and Marea submarine cable systems.<sup>3</sup>

#### **4. Telxius Cable USA, Inc. (“Telxius USA”)**

Telxius USA is the principal U.S. operating subsidiary of Telxius Parent. It offers wholesale submarine cable capacity to carriers, Internet service providers, and content providers in the United States. It is a Florida corporation headquartered in Miami, Florida. It is a joint cable landing licensee for the South America-1 (“SAM-1”) system, a system wholly owned by subsidiaries of Telxius Parent, including TIWS América, Telxius USA, and Telxius Puerto Rico.<sup>4</sup> The SAM-1 system connects Boca Raton, Florida; Isla Verde, Puerto Rico; Fortaleza, Rio de Janeiro, Salvador, and Santos, Brazil; Las Toninas, Argentina; Valparaiso and Arica, Chile; Lurin, Peru; Puerto San José and Puerto Barrios, Guatemala; and Barranquilla, Colombia. Telxius USA is also a joint licensee for the PCCS system and a joint applicant for cable landing

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<sup>2</sup> *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.

<sup>3</sup> See FCC File Nos. SCL-LIC-20160330-00011 (BRUSA), SCL-LIC-20160525-00012 (Marea).

<sup>4</sup> *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; *Actions Taken Under Cable Landing License Act*, Public Notice, 22 FCC Rcd. 6630 (Int’l Bur. 2007) (granting modification of cable landing license to add Colombia landing point); FCC File No. SCL-MOD-20061207-00012.

licenses for the BRUSA and Marea systems.<sup>5</sup> It also holds international Section 214 authority for global facilities-based and global resale services.<sup>6</sup>

**5. 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 is a Puerto Rico corporation headquartered in Miami, Florida. It is a joint cable landing licensee for the PCCS and SAm-1 systems<sup>7</sup> and a joint applicant for the cable landing license for the BRUSA system.<sup>8</sup> It also holds international Section 214 authority for global facilities-based and global resale services.<sup>9</sup>

**6. Telxius Cable Colombia, S.A. (“Telxius Colombia”)**

Telxius Colombia is the Colombian operating subsidiary of Telxius Parent. It offers wholesale submarine cable capacity to carriers, Internet service providers, and content providers in Colombia. It is a Colombian corporation headquartered in Bogota, Colombia. It is a joint cable landing licensee for the PCCS system.<sup>10</sup>

**7. KKR Management LLC (“KKR Management” and, together with its subsidiaries, “KKR”)**

KKR Management is the ultimate transferee in the Proposed Investment Transactions. It is the general partner of, and controls, KKR & Co. L.P., a leading global investment firm that

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<sup>5</sup> *PCCS Cable Landing License*, 29 FCC Rcd. at 497; FCC File Nos. SCL-LIC-20160330-00011 (BRUSA), SCL-LIC-20160525-00012 (Marea).

<sup>6</sup> FCC File Nos. ITC-214-20080709-00314, ITC-214-20040518-00203.

<sup>7</sup> *PCCS Cable Landing License*, 29 FCC Rcd. at 496; *SAm-1 Cable Landing License*, 15 FCC Rcd. at 14,915.

<sup>8</sup> FCC File No. SCL-LIC-20160330-00011.

<sup>9</sup> FCC File No. ITC-214-20131121-00316.

<sup>10</sup> *PCCS Cable Landing License*, 29 FCC Rcd. at 496.

manages investments across multiple asset classes, including private equity, energy, infrastructure, real estate, growth equity, credit, and hedge funds. KKR Management is a Delaware limited-liability company headquartered in New York, New York. KKR Management is owned by senior KKR employees, and KKR Management holds no economic interest in KKR & Co. L.P. Among other activities, KKR & Co. L.P., through its subsidiaries, manages and sponsors a group of private equity funds and co-investment vehicles that invest capital for long-term appreciation. The Commission has previously authorized investments by KKR-affiliated entities in providers holding international authorizations from the Commission.<sup>11</sup>

#### **8. Taurus Bidco S.à.r.l. (“KKR Bidco”)**

KKR Bidco is the purchaser in the Proposed Investment Transactions. It is a special-purpose investment vehicle created for KKR private equity funds and co-investment vehicles to invest indirectly in Telxius Parent. It is a Luxembourg private limited company headquartered in Luxembourg.

#### **B. The Initial Investment Transaction**

On February 20, 2017, Telefónica and KKR Bidco executed a Sale and Purchase Agreement (“Purchase Agreement”) whereby KKR Bidco will, following the receipt of necessary stockholder and regulatory approvals, acquire 62,000,000 of Telxius Parent’s ordinary shares, representing 24.8 percent of the ordinary shares outstanding (the “Initial Shares”), and certain negative control rights (detailed in part I.D below) over Telxius Parent (the “Initial Closing”). As consideration for the Initial Shares, Telefónica will receive €795,500,000. In

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<sup>11</sup> See, e.g., FCC File Nos. ITC-T/C-20160519-00156 (Call Catchers, Inc. d/b/a Freedom Voice Systems). ITC-ASG-20130815-00212 (RigNet SatCom, Inc.), ITC-T/C-20080609-00258 (US South Communications, Inc. d/b/a US South & d/b/a INCOMM), ITC-ASG-20070326-00122 (Florida Digital Network, Inc. d/b/a FDN Communications); *International Authorizations Granted*, Public Notice, 19 FCC Rcd. 15,424 (Int’l Bur. 2004).

Exhibits A and B respectively, the Applicants provide diagrams showing the pre- and post-consummation economic and voting interests in the Telxius Cable Landing Licensees.

### **C. The Subsequent Investment Transaction**

Under the Purchase Agreement's terms, and subject to the effective transfer of the Initial Shares and satisfaction of other closing conditions, Telefónica has also irrevocably granted to KKR Bidco a call option to acquire 38,000,000 of Telxius Parent's ordinary shares, representing 15.2 percent of the ordinary shares outstanding (the "Additional Shares"), at a purchase price of €484,500,000 (the "Call Option"). To exercise the Call Option, KKR Bidco must serve a notice upon Telefónica within five days of November 12, 2017, or if the Initial Closing is delayed, within five days of the Initial Closing (either period a "Call Option Notice Period"). If KKR Bidco does not serve a notice upon Telefónica exercising the Call Option within the Call Option Notice Period, the Call Option expires.

Under the Purchase Agreement's terms, KKR Bidco has also irrevocably granted to Telefónica a put option to for the transfer of 38,000,000 of Telxius Parent's ordinary shares, representing 15.2 percent of the ordinary shares outstanding at a purchase price to be negotiated between Telefónica and KKR Bidco (the "Put Option"). To exercise the Put Option, Telefónica must serve a notice upon KKR Bidco within five days of the expiration of the Call Option Notice Period (the "Put Option Notice Period"). If Telefónica does not serve a notice upon KKR Bidco exercising the Put Option within the Put Option Notice Period, the Put Option expires. In Exhibit B (post-consummation economic and voting interests in the Telxius Cable Landing Licensees), the voting-interest percentage reflecting consummation of the Subsequent Investment Transaction is noted in brackets.



#### **D. The Shareholders' Agreement**

On February 20, 2017, Telxius Parent, Telefónica, and KKR Bidco also executed a Shareholders' Agreement governing the respective rights of Telefónica and KKR Bidco with respect to (1) the operations of Telxius Parent that depend directly or indirectly on the decisions of Telxius Parent's shareholders or board of directors and (2) the direct or indirect transfer of Telxius Parent's ordinary shares. With limited exceptions, the provisions of the Shareholders' Agreement become effective upon the consummation of the Initial Investment Transaction.

Section 2.1(c) of the Shareholders' Agreement provides that:

Telefónica will continue to have control of the Telxius Group in accordance with the terms and conditions of this Agreement and the Board will be responsible for the management of the Telxius Group provided that the carrying out and overseeing of certain management activities will be delegated to the Management Team under the supervision of the Board pursuant to the terms and conditions of this Agreement.

Notwithstanding this provision, the Shareholders' Agreement gives KKR Bidco certain rights—beyond standard minority shareholder protections—that KKR, as the manager of its private equity funds and co-investment vehicles, with an effective veto over certain 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 KKR Bidco,<sup>12</sup> the Applicants have sought Commission consent to consummate the Proposed Investment Transactions.

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<sup>12</sup> *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

## **1. Corporate Governance Limitations, Shareholder Protections, and Board-Level Investor Protections**

The Shareholders' Agreement provides that Telxius Parent will have a board of five directors, with three directors nominated by Telefónica and two by KKR Bidco. So long as KKR Bidco's stake remains equal to or above 25 percent of Telxius Parent's share capital, KKR Bidco will retain the right to nominate two directors; if its stake falls below that level, KKR Bidco will have the right to nominate directors in accordance with Spanish law. The board chairman is appointed, replaced, and dismissed by the board at the proposal of Telefónica.

The Shareholders' Agreement contains standard minority shareholder protections, requiring the voting of a supermajority of more than 75 percent of Telxius Parent's ordinary shares in order to: amend Telxius Parent's Bylaws; modify the structure of the board of directors or the number of that board's directors; make material changes to Telxius Parent's business; authorize Telxius Parent to repurchase, sell, or redeem its own shares or grant options over its shares; issue or modify shares with different voting or economic rights; issue shares or securities convertible into shares; eliminate or limit preemptive rights in the issuance of shares or securities convertible into shares; reduce Telxius Parent's share capital (with limited exceptions); enter into a merger, demerger, global assignment of assets and liabilities, or similar transactions; initiate a public offering for sale or subscription of Telxius Parent shares; dissolve, liquidate, or petition for an insolvency order with respect to Telxius Parent; or acquire, dispose of, charge, or contribute essential assets to another company (collectively, the "Shareholder Supermajority Matters").

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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).

The Shareholders' Agreement also requires the voting of a supermajority of Telxius Parent's directors (defined to mean a majority of the directors, including at least one director nominated by Telefónica and one nominated by KKR Bidco) for certain matters (the "Board Supermajority Matters"), including adoption of board resolutions to:

- Approve a new business plan (with certain limited exceptions)
- Approve the annual budget when there is a 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;
- Propose to a shareholders meeting the adoption of a Shareholders' Supermajority Matter;
- Acquire, sell, charge, dispose of, or transfer any business or asset operating in Telxius Parent's submarine cable business for a value in excess of €25,000,000 in a transaction or group of related transactions during a financial year (with limited exceptions);
- Enter into, amend, or supplement any commercial contract involving Telxius Parent's submarine cable business 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);
- Enter into any joint venture or partnership (by Telxius Parent or any subsidiary) with any third party;

- Incur capital expenditures (including capitalized leases) involving Telxius Parent's submarine cable business in excess of €5,000,000 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 (with limited exclusions, including expenditures for the BRUSA and Marea projects), provided that Telefónica retains the right to build submarine cable infrastructure by itself in the event that the board does not approve the capital expenditure as a Board Supermajority Matter;
- Accomplish 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 Parent and its subsidiaries for the prior 12 months or an increase in the level of consolidated net financial debt to more than three times the consolidated EBITDA of Telxius Parent's submarine cable business for the prior 12 months;
- Petition for bankruptcy or similar insolvency proceedings, except where mandated by law;
- Approve any acquisition or disposal of companies or assets from or to Telefónica or its non-Telxius subsidiaries;
- Approve or amend material related-party transactions with Telefónica (including adoption of new terms and conditions for existing material related-party transactions with Telefónica);
- Make any decision to concede claims made by the tax authorities exceeding an amount of €5,000,000;

- Make any loan or advance or provide any credit to any person other than to any Telxius Parent subsidiary or employee of Telxius Parent 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.

In the event of a deadlock, where the necessary supermajority for a Shareholder Supermajority Matter or Board Supermajority Matter cannot be reached twice or more within a period of less than six months, the status quo prior to the deadlock will prevail, and the disputed matter giving rise to the deadlock will not be implemented.

## **2. Management Limitations**

Pursuant to the Shareholders' Agreement, the 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 KKR Bidco. 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 Telxius Parent and its subsidiaries is below the consolidated EBITDA envisaged in the business plan for such financial year, KKR Bidco 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 KKR Bidco 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 KKR Bidco, Telefónica will have the right to nominate the CEO, and KKR Bidco 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.

### **3. Limitations on Related-Party Transactions**

With certain exceptions for existing transactions, the Shareholders' Agreement requires the voting of a supermajority of Telxius Parent's directors (defined to mean a majority of the directors, including at least one director nominated by Telefónica and one nominated by KKR Bidco) for the approval or amendment of material related-party transactions between Telxius Parent 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 Telxius Parent CEO and CFO. In the event of a disagreement between the CEO and CFO, the CEO may take a decision only if Telxius Parent obtains a report from an independent expert selected by KKR Bidco confirming that the terms and conditions of the transaction are in line with prevailing market practice.

## **II. THE PROPOSED INVESTMENT TRANSACTIONS WOULD SERVE THE PUBLIC INTEREST AND WOULD NOT HARM COMPETITION**

### **A. Standard of Review**

Although the Cable Landing License Act does not contain a public-interest standard, the Commission has asserted that it determines whether a proposed transfer of control of a cable

landing license is consistent with the public interest, convenience, and necessity.<sup>13</sup> In making such a determination, the Commission first assesses “whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission’s rules.”<sup>14</sup> 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 proposed transaction “could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the [Communications] Act or related statutes.”<sup>15</sup> Third, the Commission employs a balancing test “weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.”<sup>16</sup> The applicants bear the burden of

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<sup>13</sup> See, e.g., *Applications Filed by Global Crossing Limited and Level 3 Communications, Inc. for Consent to Transfer Control*, Memorandum Opinion and Order and Declaratory Ruling, 26 FCC Rcd. 14,056, 14,061 ¶ 10 (Wireline Comp. and Int’l Burs. 2011). See also *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, DA 16-1281, WC Docket No. 16-70 ¶ 7 (Wireline, Int’l, and Wireless Tel. Burs., rel. Nov. 16, 2016) (“*Verizon-XO Order*”).

<sup>14</sup> See *AT&T-DIRECTV Order*, 30 FCC Rcd. at 9139-40 ¶ 18 (citations omitted); *Verizon-XO Order*, ¶ 7; *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 (2013) (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 (2011) (citation omitted) (“*Qwest-CenturyLink Order*”); *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, 5672 ¶ 19 (2007) (“*AT&T-BellSouth Order*”).

<sup>15</sup> See *AT&T-DIRECTV Order*, 30 FCC Rcd. at 9140 ¶ 18 (citation omitted); *Verizon-XO Order*, 31 FCC Rcd. at 12,505 ¶ 7; *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd. at 9651 ¶ 23 (citation omitted); *Qwest-CenturyLink Order*, 26 FCC Rcd. at 4199 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd. at 5672 ¶ 19.

<sup>16</sup> See *AT&T-DIRECTV Order*, 30 FCC Rcd. at 9140 ¶ 18 (citation omitted); *Verizon-XO Order*, ¶ 7 (citation omitted); *SoftBank-Sprint-Clearwire Order*, 28 FCC Rcd. at 9651 ¶ 23 (citation omitted); *Qwest-CenturyLink Order*, 26 FCC Rcd. at 4199 ¶ 7 (citation omitted); *AT&T-BellSouth Order*, 22 FCC Rcd. at 5672 ¶ 19 (citation omitted).

proving, by a preponderance of the evidence, that on balance a proposed transaction serves the public interest.<sup>17</sup> If the Commission is unable to find that a proposed transaction would serve the public interest or presents a substantial and material question of fact, it will designate the applications for hearing pursuant to 47 U.S.C. § 309(e).<sup>18</sup>

The Proposed Transaction would not violate any provision of the Cable Landing License Act or any Commission rule, nor would it substantially frustrate or impair the Commission's implementation or enforcement of the Cable Landing License Act or interfere with the objectives of the Cable Landing License Act or other statutes. To the contrary, as detailed below, the Proposed Transaction will offer substantial public interest benefits without any material countervailing harms.

#### **B. The Proposed Investment Transactions Will Serve the Public Interest**

The Proposed Investment Transactions will serve the public interest, convenience, and necessity by ensuring the continuing growth of Telxius. KKR Bidco will partner with Telefónica to optimize Telxius's existing assets and to support investment in new infrastructure in Europe and the Americas, including but not limited to the BRUSA and Marea submarine cable systems. Telxius is expected to benefit from KKR's extensive investment and asset management expertise, and Telefónica plans to reduce its outstanding indebtedness.

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<sup>17</sup> See *AT&T-DIRECTV Order*, 30 FCC Rcd. at 9140 ¶ 18; *Verizon-XO Order*, 31 FCC Rcd. at 12,505-06 ¶ 7; *General Motors Corp. and Hughes Electronics Corp., Transferors, and The News Corp. Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd. 473, 483 ¶ 15 (2004).

<sup>18</sup> See *AT&T-DIRECTV Order*, 30 FCC Rcd. at 9140 ¶ 18; *Verizon-XO Order*, ¶ 7; *Comcast-NBCU Order*, 26 FCC Rcd. at 4248 ¶ 22; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. (Transferors) and EchoStar Communications Corp. (Transferee)*, Hearing Designation Order, 17 FCC Rcd. 20,559, 20,574 ¶ 25 (2002).



Consummation of the Proposed Investment Transactions is expected to result in a more independent Telxius. The resulting governance and management structures and limitations on related-party transactions with Telefónica subsidiaries is expected to strengthen Telxius's ability to compete more vigorously as a provider of wholesale international transport services and submarine cable and wireless tower infrastructure to a range of customers, not just the Telefónica subsidiaries.

**C. The Proposed Investment Transactions Would Not Create Any Anti-Competitive Effects**

The Proposed Investment Transactions would create no new combinations that would adversely affect competition in any geographic market for submarine cable capacity. KKR Management does not currently control, and is not affiliated with, any submarine cable operators licensed by the Commission.

The Telxius Cable Landing Licensees will continue to accept dominant-carrier regulation on the U.S.-Argentina, U.S.-Brazil, U.S.-Chile, U.S.-Colombia, and U.S.-Peru routes and continue to abide by the reporting requirements in 47 C.F.R. § 1.767(l). Consummation of the Proposed Investment Transactions would not result in any new foreign-carrier affiliations for the Telxius Cable Landing Licensees.

**III. INFORMATION REQUIRED BY 47 C.F.R. § 1.767(A)(11)(I)**

Pursuant to 47 C.F.R. § 1.767(a)(11)(i), the Applicants provide the following information in support of their request for Commission consent for the Proposed Investment Transactions:

**A. Applicant Identification Information<sup>19</sup>**

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

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<sup>19</sup> See 47 C.F.R. § 1.767(a)(1), (2).

**TABLE 1: Applicant Identification Information**

<b>Name, Address, and Telephone #</b>	<b>Place of Organization</b>	<b>FRN</b>	<b>Transaction Role</b>
Telefónica, S.A. Distrito T, Edificio Central Calle Ronda de la Comunicación, s/n 28050 Madrid, Spain +34 900 111 004	Spain	0026357814	Transferor
KKR Management LLC 9 West 57th Street, Suite 4200 New York, New York 10019 +1 212 750 8300	Delaware	0022969463	Transferee
Telefónica International Wholesale Services América S.A. Av. Luis Alberto de Herrera 1248, piso 4 11300 Montevideo, Uruguay +598 2 628 00 20	Uruguay	0022340871	Joint licensee for the PCCS system
Telxius Cable USA, Inc. 1111 Brickell Avenue, Suite 1800 Miami, Florida 33131-3122 +1 305 925 5256	Florida	0006650618	Joint licensee for PCCS and SAM-1 systems
Telxius Cable Puerto Rico, Inc. 1111 Brickell Avenue, Suite 1800 Miami, Florida 33131-3122 +1 305 925 5256	Puerto Rico	0022340921	Joint licensee for PCCS and SAM-1 systems
Telxius Cable Colombia S.A. Tranversal 60 (Av. Suba) No. 114 A - 55 Cubo Sur, Bogota D.C. Colombia	Colombia	0022340954	Joint licensee for the PCCS system

**B. Contact Information<sup>20</sup>**

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

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<sup>20</sup> See *id.* § 1.767(a)(3).

**TABLE 2: Applicant Contact Information**

<b>Party</b>	<b>Company Contact</b>	<b>Counsel Contact</b>
Telefónica	Juan Montero Rodil Head of Competition, Regulatory Law and Privacy Distrito T, Edificio Central – Planta 3 <sup>a</sup> Telefónica, S.A. Calle Ronda de la Comunicación, s/n 28050 Madrid, Spain +34 914 82 33 86 juan.monterorodil@telefonica.com	Phillip Spector Milbank, Tweed, Hadley & McCloy LLP 1850 K Street, N.W., Suite 1100 Washington, D.C. 20006 +1 202 835 7540 pspector@milbank.com
KKR Management	David Sorkin General Counsel KKR & Co. L.P. 9 West 57th Street, Suite 4200 New York, New York 10019 +1 212 750 8300	Peter C. Thomas Simpson Thacher & Bartlett LLP 900 G Street, N.W. Washington, D.C. 20001 +1 202 636 5500 pthomas@stblaw.com
Telxius Cable Landing Licensees	Andrés J. Fígoli Pacheco Secretaría General Telefónica International Wholesale Services 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. Certification Regarding Ownership, Place of Organization, Principal Business, and Interlocking Directorates<sup>21</sup>**

By its signature below, KKR Management certifies that the Telxius Cable Landing Licensees will have the following 10-percent-or-greater interest holders following the consummation of either the Initial Investment Transaction or both of the Proposed Investment Transactions:

<sup>21</sup> See *id.* §§ 1.767(a)(8)(i), 63.18(h).

**Telefónica International Wholesale Services América S.A. (“TIWS América”)**

*Address:* Avenida Luis Alberto de Herrera 1248, piso 4, 11300 Montevideo, Uruguay

*Place of Organization:* Uruguay

*Principal Business:* telecommunications

*Relationship:* TIWS América holds a 100-percent voting-and-equity interest in each of Telxius USA and Telxius Puerto Rico and a 94.985846-percent voting-and-equity interest in Telxius Colombia. The remaining voting and equity interests in Telxius Colombia are held by other subsidiaries of Telxius Parent.

**Telxius Telecom, S.A.U. (“Telxius Parent”)**

*Address:* Distrito C, Calle Ronda de la Comunicación s/n, Edificio Central, 28050

Madrid, Spain

*Place of Organization:* Spain

*Principal Business:* telecommunications

*Relationship:* Telxius holds a 100-percent voting-and-equity interest in TIWS 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 Investment Transactions, Telefónica Parent will continue to hold at least a 60-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, Telefónica can ascertain its significant shareholders only on the basis of its records and may not know of possibly related or affiliated shareholders that are not disclosed to it. Recognizing these limitations, as of the most recent measurable date, February 23, 2017, no Telefónica shareholder holds an interest sufficient to give it a 10-percent-or-greater direct or indirect interest in any of the Telxius Cable Landing Licensees at consummation.

**Taurus Bidco S.à r.l. (“KKR Bidco”)**

*Address:* 61, rue de Rollingergrung, L-2440 Luxembourg

*Place of Organization:* Luxembourg

*Principal Business:* investments

*Relationship:* Upon consummation of the Initial Investment Transaction, KKR Bidco will hold a 24.8-percent voting-and-equity interest in Telxius Parent, as well as certain negative control rights described in part I.D above. Upon consummation of the Subsequent Investment Transaction, if such consummation occurs, KKR Bidco will hold an additional 15.2-percent voting-and-equity interest in Telxius Parent, giving it an aggregate voting-and-equity interest of 40 percent.

**Taurus Topco S.à r.l. (“KKR Topco”)**

*Address:* 61, rue de Rollingergrung, L-2440 Luxembourg

*Place of Organization:* Luxembourg

*Principal Business:* investments

*Relationship:* KKR Topco holds a 100-percent voting-and-equity interest in KKR Bidco.

**KKR Taurus Aggregator L.P.**

*Address:* 4100-1155 Boulevard René-Lévesque Oeust, Montréal, Québec H3B3V2,  
Canada

*Place of Organization:* Quebec, Canada

*Principal Business:* investments

*Relationship:* KKR Taurus Aggregator L.P. holds a 100-percent voting-and-equity interest in KKR Topco.

The principal direct and indirect voting interests in KKR Taurus Aggregator L.P. are held by or through the following entities:

**KKR Taurus Aggregator GP Limited**

*Address:* c/o Maples Corporate Services Limited, PO Box 309, Ugland House, Grand  
Cayman, KY1-1104, Cayman Islands

*Place of Organization:* Cayman Islands

*Principal Business:* investments

*Relationship:* KKR Taurus Aggregator GP Limited is the general partner of KKR Taurus Aggregator L.P. and holds a 100-percent voting and a less-than-1-percent economic interest in KKR Taurus Aggregator L.P.

**KKR Global Infrastructure Investors II L.P.**

*Address:* c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, New  
York 10019

*Place of Organization:* Cayman Islands

*Principal Business:* investments

*Relationship:* KKR Global Infrastructure Investors II L.P. is the sole member of KKR Taurus Aggregator GP Limited and holds a 100-percent voting-and- economic interest in KKR Taurus Aggregator GP Limited. KKR Global Infrastructure Investors II L.P. will also be a limited partner of KKR Taurus Aggregator L.P., with no voting interest and a precise economic interest that will be determined closer to the consummation date for the Initial Investment Transaction.

**KKR Associates Infrastructure II L.P.**

*Address:* c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, New York 10019

*Place of Organization:* Cayman Islands

*Principal Business:* investments

*Relationship:* KKR Associates Infrastructure II L.P. is the general partner of KKR Global Infrastructure Investors II L.P. and holds a 100-percent voting and a 5-percent economic interest in KKR Global Infrastructure Investors II L.P.

**KKR Infrastructure II Limited**

*Address:* c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, New York 10019

*Place of Organization:* Cayman Islands

*Principal Business:* investments

*Relationship:* KKR Infrastructure II Limited is the general partner of KKR Associates Infrastructure II L.P. and holds a 100-percent voting and a 99-percent economic interest in KKR Associates Infrastructure II L.P.

**KKR Fund Holdings L.P.**

*Address:* c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, New York 10019

*Place of Organization:* Cayman Islands

*Principal Business:* holding company

*Relationship:* KKR Fund Holdings L.P. is the sole member of KKR Infrastructure II Limited and therefore holds a 100-percent voting-and-economic interest in KKR Infrastructure II Limited.

**KKR Fund Holdings GP Limited**

*Address:* c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, New York 10019

*Place of Organization:* Cayman Islands

*Principal Business:* general partner

*Relationship:* KKR Fund Holdings GP Limited is a general partner of KKR Fund Holdings L.P. and holds a 100-percent voting interest and no economic interest in KKR Fund Holdings L.P.

**KKR Group Holdings L.P.**

*Address:* c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, New York 10019

*Place of Organization:* Cayman Islands

*Principal Business:* general partner

*Relationship:* KKR Group Holdings L.P. is the sole member of KKR Fund Holdings GP Limited and therefore holds a 100-percent voting-and-economic interest in KKR Fund Holdings GP Limited. KKR Group Holdings L.P. is also a limited partner of KKR Fund Holdings L.P., in which it holds no voting interest and an approximate 56.1-percent economic interest.

**KKR Group Limited**

*Address:* c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, New York 10019

*Place of Organization:* Cayman Islands

*Principal Business:* holding company

*Relationship:* KKR Group Limited is the general partner of KKR Group Holdings L.P. and holds a 100-percent voting and no economic interest in KKR Group Holdings L.P.

**KKR & Co. L.P.**

*Address:* 9 West 57th Street, New York, New York 10019

*Place of Organization:* Delaware

*Principal Business:* holding company

*Relationship:* KKR & Co. L.P. is the sole member of KKR Group Limited and therefore holds a 100-percent voting-and-economic interest in KKR Group Limited. KKR & Co. L.P. is the sole limited partner of KKR Group Holdings L.P. and therefore holds a 0-percent direct voting interest and a 100-percent economic interest in KKR Group Holdings L.P.

**KKR Management LLC (“KKR Management”)**

*Address:* 9 West 57th Street, New York, New York 10019

*Place of Organization:* Delaware

*Principal Business:* general partner

*Relationship:* KKR Management is the general partner of KKR & Co. L.P. and holds a 100-percent voting interest and no economic interest in KKR & Co. L.P.

No entity will hold a 10-percent-or-greater direct or indirect economic interest in the Telxius Cable Landing Licensees as a consequence of consummation of the Initial Investment Transaction, by itself, or of both Proposed Investment Transactions. The economic interests are or will be held predominantly by investment funds, all of which are limited partnerships organized under the laws of Canada, the Cayman Islands, and England and Wales, all of which are member countries of the World Trade Organization (“WTO”).<sup>22</sup> In Exhibits A and B

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<sup>22</sup> 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](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm). England and Wales are constituent countries of the United Kingdom, which is a WTO member country. The U.S. Government treats all British overseas territories, including the Cayman Islands, as subject to U.K. WTO commitments. See *Cable & Wireless USA, Inc.*, Order, Authorization & Certificate, 15 FCC Rcd. 3050, 3052 n.14 (Int’l Bur. 2000) (finding that Bermuda is subject

respectively, the Applicants provide diagrams showing the pre- and post-consummation economic and voting interests in the Telxius Cable Landing Licensees. By its signature below, KKR Management certifies that it has no interlocking directorates with foreign carriers.

**D. Certification Regarding the Anti-Drug Abuse Act of 1988<sup>23</sup>**

By its signature below, KKR Management 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.<sup>24</sup>

**E. Certification Regarding Foreign Carrier Status and Foreign Affiliations<sup>25</sup>**

By its signature below, KKR Management certifies that upon consummation of the Initial Investment Transaction or both Proposed Investment Transactions: (1) it will not be a foreign carrier in any foreign country and (2) it will be affiliated with foreign carriers (including foreign carriers that control cable landing stations in foreign countries) listed in Table 3 below. With the exception of foreign carriers affiliated with United Group, all of the foreign carriers previously

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to U.K. WTO commitments), *citing* Letter from Robert E. Dalton, Assistant Legal Adviser for Treaty Affairs, U.S. Department of State, to Rebecca Arbogast, Chief, Telecommunications Division, FCC International Bureau, File No. ITC-214-19990709-00412 (Feb. 16., 2000) (stating that “it remains the Department’s position that, consistent with the Vienna Convention on the Law of Treaties and actions taken by the United Kingdom in accepting the WTO Agreement, the WTO Agreement applies to all British territories, including Bermuda and Gibraltar. The Office of the U.S. Trade Representative concurs in this view.”).

<sup>23</sup> See 47 C.F.R. §§ 1.767(a)(8)(i), 63.18(o).

<sup>24</sup> 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.

<sup>25</sup> See 47 C.F.R. § 1.767(a)(8)(ii).



affiliated with Telxius and Telefónica have already been disclosed by the Telxius Cable Landing Licensees to the Commission.

**TABLE 3: POST-CONSUMMATION AFFILIATED FOREIGN CARRIERS AND CABLE LANDING STATION INTERESTS OF KKR MANAGEMENT**

<b>Country</b>	<b>Entity</b>	<b>Owns/Controls Cable Landing Station? Y/N</b>
Argentina	Telxius Cable Argentina S.A.	Y
Bosnia and Herzegovina	Telemach d.o.o.	N
Brazil	Telxius Cable Brasil Limitada	Y
Chile	Telefónica International Wholesale Services Chile, S.A.	Y
Colombia	Telxius Cable Colombia S.A.	Y
Ecuador	Telefónica International Wholesale Services Ecuador, S.A.	Y
Guatemala	Telxius Cable Guatemala, S.A.	Y
Montenegro	Telemach A.D. Podgorica	N
Panama	Telxius Cable Panamá S.A.	Y
Peru	Telxius Cable Perú, S.A.C.	Y
Serbia	Serbia Broadband – Srpske kablovske mreže d.o.o.	N
Slovenia	Telemach d.o.o.	N
	Tušmobil d.o.o.	
Spain	Telxius Cable España S.L.	N

By its signature below, Telefónica certifies that upon consummation of the Initial Investment Transaction or both Proposed Investment Transactions: (1) it will not be a foreign carrier in any country and (2) it will remain affiliated with foreign carriers, including foreign carriers that control cable landing stations in foreign countries, as summarized in Table 4 below, all of which have previously been disclosed by the Telxius Cable Landing Licensees to the Commission.

**TABLE 4: POST-CONSUMMATION AFFILIATED FOREIGN CARRIERS AND CABLE LANDING STATION INTERESTS OF TELEFÓNICA**

<b>Country</b>	<b>Entity</b>	<b>Owns/Controls Cable Landing Station? Y/N</b>
Argentina	TIWS Argentina II S.A.	N
	Telxius Cable Argentina S.A.	Y
	Telefónica Móviles Argentina, S.A.	N
	Telefónica de Argentina, S.A.	Y
Austria	Telefónica International Wholesale Services II, S.L.U. (Austria branch)	N
Belgium	Telefónica International Wholesale Services II, S.L.U. (Belgium branch)	N
Brazil	Media Networks Brasil Ltda.	N
	Telefónica Brasil, S.A.	N
	Telxius Cable Brasil Limitada	Y
Bulgaria	Telefónica International Wholesale Services II, S.L. (Bulgaria branch)	N
Chile	Telefónica Chile, S.A.	Y
	Telefónica International Wholesale Services Chile, S.A.	Y
	Telefónica Móviles Chile, S.A.	N
	TIWS Chile II, S.p.A.	N
Colombia	Colombia Telecomunicaciones, S.A. ESP	Y
	Telxius Cable Colombia S.A.	N
Costa Rica	Telefónica de Costa Rica TC, S.A.	N
Cyprus	Telefónica International Wholesale Services II, S.L.U. (Cyprus branch)	N
Denmark	Telefónica International Wholesale Services II, S.L.U. (Denmark branch)	N
Ecuador	Otecel, S.A.	N
	Telefónica International Wholesale Services Ecuador S.A.	Y
	TIWS Ecuador II, S.A.	N
El Salvador	Telefónica Móviles El Salvador, S.A. de C.V.	N
Estonia	Telefónica International Wholesale Services II, S.L.U. (Estonia branch)	N
Finland	Telefónica International Wholesale Services II, S.L.U. (Finland branch)	N
France	Telefónica International Wholesale Services France SAS	N
Germany	E-Plus Mobilfunk GmbH	N
	Telefónica Germany GmbH & Co. OHG	N
Greece	TIWS Greece Telecommunications Services Company Limited Liability	N
Guatemala	Telxius Cable Guatemala, S.A.	Y
	Telefónica Móviles Guatemala, S.A.	N

<b>Country</b>	<b>Entity</b>	<b>Owns/Controls Cable Landing Station? Y/N</b>
Hong Kong	Telefónica International Wholesale Services , S.L.	N
Hungary	Telefónica International Wholesale Services Hungary Korlátolt Felelősségű Társaság	N
Italy	Telefónica International Wholesale Services II, S.L.U. (Italy branch)	N
Latvia	Telefónica International Wholesale Services, Latvia Sabiedriba ar ierobežotu atbildību	N
Luxembourg	Telefónica International Wholesale Services II, S.L.U. (Luxembourg branch)	N
Malta	Telefónica International Wholesale Services II, S.L.U. (Malta branch)	N
Mexico	Grupo de Telecomunicaciones Mexicanas, S.A. de C.V.	N
Netherlands	Telefónica International Wholesale Services II, S.L.U. (Netherlands branch)	N
Nicaragua	Telefónica Celular de Nicaragua, S.A.	N
Norway	Telefónica International Wholesale Services II, S.L.U. (Norway branch)	N
Panama	Telxius Cable Panamá S.A.	Y
	Telefónica Móviles Panamá, S.A	N
Peru	Telefónica del Perú, S.A.C.	Y
	Telxius Cable Perú, S.A.C.	Y
	Telefónica Servicios TIWS SAC	N
Poland	Telefónica International Wholesale Services II, S.L.U., (Poland branch)	N
Portugal	Telefónica International Wholesale Services II, S.L.U. (Portugal branch)	N
Romania	Telefónica International Wholesale Services II, S.L.U. (Romania branch)	N
Slovakia	Telefónica International Wholesale Services II, S.L.U. (Slovakia branch)	N
Slovenia	Telefónica International Wholesale Services II, S.L.U. (Slovenia branch)	N
Singapore	Telefónica Global Solutions, Singapore Pte. Ltd	N
Spain	Iberbanda, S.A.	N
	Telefónica de España S.A.U.	Y
	Telefónica International Wholesale Services II, S.L.U.	N
	Telefónica Móviles España S.A.U.	N
	Telxius Cable España S.L.	N
	Tuenti Technologies, S.L.	N
Sweden	Telefónica International Wholesale Services Sweden AB	N
Switzerland	Telefónica International Wholesale Services II, S.L.U., (Switzerland branch)	N

<b>Country</b>	<b>Entity</b>	<b>Owns/Controls Cable Landing Station? Y/N</b>
United Kingdom	Telefónica UK, Ltd.	N
Uruguay	Telefónica Móviles del Uruguay, S.A.	N
Venezuela	Telefónica Venezolana, C.A.	N

**F. Certification Regarding Destination Countries<sup>26</sup>**

By its signature below, KKR Management certifies that upon consummation of the Initial Investment Transaction or both Proposed Investment Transactions: (1) it will not be a foreign carrier in any of the countries where the PCCS or SAM-1 systems land; (2) it will hold certain negative control rights over foreign carriers in Colombia (where both PCCS and SAM-1 land), in Ecuador and Panama (where PCCS lands), and in Argentina, Brazil, Chile, Guatemala, and Peru (where SAM-1 lands); and (3) no entity that owns more than 25 percent of KKR Management, or that controls KKR Management, controls a foreign carrier in any foreign country.

By its signature below, Telefónica certifies that upon consummation of the Initial Investment Transaction or both Proposed Investment Transactions: (1) it will not be a foreign carrier in any of the countries where the PCCS or SAM-1 systems land; (2) it will continue to exercise *de jure* control over foreign carriers in Colombia (where both PCCS and SAM-1 land), in Ecuador and Panama (where PCCS lands), and in Argentina, Brazil, Chile, Guatemala, and Peru (where SAM-1 lands); (3) no entity that owns more than 25 percent of Telefónica, controls a foreign carrier in any foreign country where the PCCS or SAM-1 systems land;

By its signature below, KKR Management certifies that no grouping of two or more foreign carriers (or parties that control foreign carriers in any of the countries where the PCCS or SAM-1 systems land) own, in aggregate, more than 25 percent of it and are parties to, or

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<sup>26</sup> See *id.* § 1.767(a)(8)(iii).

beneficiaries of, a contractual relation affecting the provision or marketing of arrangements for the terms of acquisition, sale, lease, transfer, and use of capacity on the PCCS or SAM-1 systems in the United States.

By its signature below, Telefónica certifies that no grouping of two or more foreign carriers (or parties that control foreign carriers) in any of the countries where the PCCS or SAM-1 systems land) own, in aggregate, more than 25 percent of it and are parties to, or beneficiaries of, a contractual relation affecting the provision or marketing of arrangements for the terms of acquisition, sale, lease, transfer, and use of capacity on the PCCS or SAM-1 systems in the United States.

**G. Certifications Regarding WTO Status and Affiliations with Foreign Carriers Having Market Power in Foreign Destination Markets<sup>27</sup>**

No response is required, as KKR Management did not identify any non-WTO markets in response to 47 C.F.R. § 1.767(a)(8)(iii).

**H. Certification Regarding Routine Conditions<sup>28</sup>**

By the signature below, KKR Management certifies that it accepts and will abide by the routine conditions specified in 47 C.F.R. § 1.767(g).

**I. Streamlining<sup>29</sup>**

The Applicants request streamlined processing pursuant to 47 C.F.R. § 1.767(k)(3). KKR Management has certified above that upon consummation of the Proposed Investment Transactions, it will be affiliated with foreign carriers with market power in the following countries where either the PCCS or SAM-1 systems land: Argentina, Brazil, Chile, Colombia,

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<sup>27</sup> See *id.* § 1.767(a)(8)(iv).

<sup>28</sup> See *id.* § 1.767(a)(9).

<sup>29</sup> See *id.* § 1.767(j), (k).

and Peru. The Telxius Cable Landing Licensees are presently affiliated with those dominant foreign carriers—Telefónica de Argentina, S.A., Telefónica Brasil, S.A., Telefónica Chile, S.A. Colombia Telecomunicaciones, S.A. ESP, and Telefónica del Perú, S.A.C.—meaning that consummation of the Proposed Investment Transactions would not result in any new foreign carrier affiliations in the destination markets for the PCCS and SAm-1 systems. By its signature below, KKR Management certifies that Argentina, Brazil, Chile, Colombia, and Peru are all WTO members<sup>30</sup> and that the Telxius Cable Landing Licensees accept and will continue to abide by the reporting requirements set out in 47 C.F.R. § 1.767(l). By its signature below, Telefónica certifies that Argentina, Brazil, Chile, Colombia, and Peru are all WTO members<sup>31</sup> and that the Telxius Cable Landing Licensees accept and will continue to abide by the reporting requirements set out in 47 C.F.R. § 1.767(l). As this application does not seek authority for any new or modified submarine cable construction, no certification is required with respect to the Coastal Zone Management Act.<sup>32</sup>

**J. Certification Regarding Service to Executive Branch Agencies<sup>33</sup>**

The Applicants have served a complete copy of this application to the U.S. Departments of State, Commerce, and Defense, and certified such service in the attached certificate of service.

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<sup>30</sup> 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](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm).

<sup>31</sup> 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](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm).

<sup>32</sup> See 47 C.F.R. § 1.767(k)(4).

<sup>33</sup> See *id.* § 1.767(j).

## CONCLUSION

For the reasons stated above, the Applicants request that the Commission grant consent expeditiously for the transfer to KKR Management of certain negative control rights over the Telxius Cable Landing Licensees.

Respectfully submitted,

**Telefónica, S.A.**

/s/ Ramiro Sánchez de Lerín García-Ovies

Phillip Spector  
Lafayette Greenfield  
Milbank, Tweed, Hadley & McCloy LLP  
1850 K Street, N.W., Suite 1100  
Washington, D.C. 20006  
+1 202 835 7540  
pspector@milbank.com

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Ramiro Sánchez de Lerín García-Ovies  
General Counsel and Secretary of the Board  
Distrito T, Edificio Central  
Telefónica, S.A.  
Calle Ronda de la Comunicación, s/n  
Telefónica, S.A.  
Calle Ronda de la Comunicación, s/n  
28050 Madrid, Spain

**KKR Management LLC**

/s/ David Sorkin

Peter C. Thomas  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
+1 202 636 5500  
pthomas@stblaw.com

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David Sorkin  
General Counsel and Secretary  
KKR Management LLC  
9 West 57th Street, Suite 4200  
New York, New York 10019

**Telefónica International Wholesale Services  
América S.A.**

/s/ Andrés J. Fígoli Pacheco

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Andrés J. Fígoli Pacheco  
Secretaría General  
Telefónica International Wholesale Services  
América S.A.  
Avenida Luis Alberto de Herrera 1248, piso 4  
11300 Montevideo  
Uruguay

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

/s/ Guillermo Cañete

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

**Telxius Cable Colombia, S.A.**

/s/ César Parra

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César Parra  
Network Director  
Telxius Cable Colombia, S.A.  
Tranversal 60 (Av. Suba) No. 114 A - 55  
Cubo Sur, Bogota D.C.  
Colombia

Kent Bressie  
Susannah Larson  
Harris, Wiltshire & Grannis LLP  
1919 M Street, N.W., Suite 800  
Washington, D.C. 20036-3537  
+1 202 730 1337  
kbressie@hwglaw.com

*Counsel for Telefónica International  
Wholesale Services América S.A., Telxius  
Cable USA, Inc., Telxius Cable Puerto Rico,  
Inc., and Telxius Cable Colombia, S.A.*

28 March 2017



## CERTIFICATE OF SERVICE

I, Kent Bressie, hereby certify that consistent with 47 C.F.R. § 1.767(j), I have served copies of the foregoing application for consent to the Proposed Investment Transactions, by hand delivery or electronic mail this 28th day of March, 2017, to the following:

Julie Zoller  
U.S. Coordinator and Deputy Assistant  
Secretary of State (Acting)  
Int'l Communications & Information Policy  
Bureau of Economic and Business Affairs  
U.S. DEPARTMENT OF STATE  
EB/CIP : Room 4634  
2201 C Street, N.W.  
Washington, D.C. 20520-4634

Kathy Smith  
Chief Counsel  
U.S. DEPARTMENT OF COMMERCE/NTIA  
14th Street and Constitution Avenue, N.W.  
Room 4713  
Washington, D.C. 20230

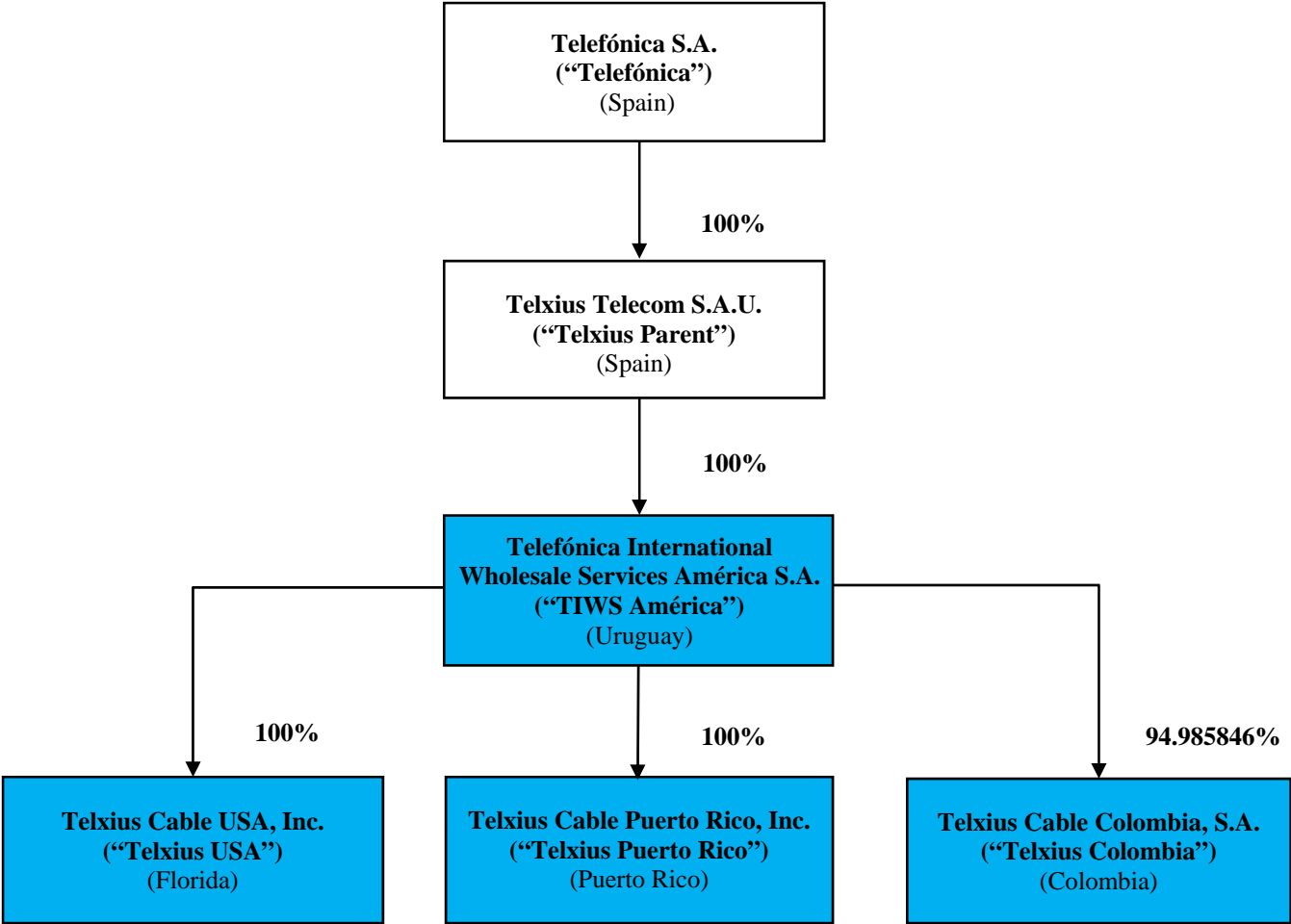
William E. Brazis, II  
General Counsel  
DEFENSE INFORMATION SYSTEMS AGENCY  
6910 Cooper Avenue  
Fort Meade, Maryland 20755




Kent Bressie

**EXHIBIT A:**

**Pre-Consummation Ownership of Telxius Cable Landing Licensees**



 Denotes Telxius Cable Landing Licensee

*Note: percentages represent voting and economic interests unless otherwise noted*

## EXHIBIT B:

### Post-Consummation Ownership of Telxius Cable Landing Licensees

