



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 17-1174
December 5, 2017

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF FUSION TELECOMMUNICATIONS INTERNATIONAL, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 17-301

Comments Due: December 19, 2017
Reply Comments Due: December 26, 2017

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by Fusion Telecommunications International, Inc. (Fusion) and Birch Communications, Inc. (BCI) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting approval for the ultimate controlling shareholders of BCI (Birch Shareholders) to acquire control of Fusion and its subsidiaries (the Fusion Companies) through the merger of BCI's current direct parent, Birch Communications Holdings, Inc. (BCHI), with and into Fusion's wholly owned subsidiary, Fusion BCHI Acquisition LLC (Merger Sub).¹

The Fusion Companies provide competitive telecommunications services to businesses in the United States. Fusion's wholly owned indirect subsidiary, Network Billing Systems LLC d/b/a Fusion and Solex (NBS), a New Jersey limited liability company, provides competitive telecommunications services primarily to business customers throughout the United States and holds authority to offer intrastate telecommunications services in 47 states.²

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Applicants also filed an application for the transfer of authorizations associated with international services. On November 21, 2017, Applicants filed a notice of an *ex parte* presentation to Bureau staff. On December 1, 2017, Applicants filed a supplement to their domestic section 214 application. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

² Applicants state that Fusion also wholly owns the following subsidiaries providing in various states, or holding authority to provide, telecommunications or other services that will be consolidated/merged into NBS prior to the closing of the proposed transaction: Fidelity Telecom, LLC, Fidelity Access Networks, LLC, Fidelity Voice Services LLC, Fidelity Connect LLC, and Apptix, Inc. (providing interconnected Voice over Internet Protocol service). Applicants provide in their application charts depicting the pre and post-consummation ownership structure of the entities involved in the proposed transaction.

BCI, a Georgia corporation, and its current wholly owned subsidiaries (together, the Birch Companies) are certified as competitive local exchange carriers in 50 states and the District of Columbia.³ BCHI is a holding company and does not provide telecommunications services. Applicants state that the proposed transaction will not result in any overlap of fiber facilities in the markets where the Fusion Companies and the Birch Companies operate.

Applicants state that, upon the consummation of the proposed transaction, the existing Fusion shareholders will have a 25 percent ownership interest in Fusion as minority investors,⁴ and the Birch Shareholders, through BCHI, will hold the remaining ownership interests in Fusion. As a result, the majority ownership and control of Fusion and its current subsidiaries will be acquired by the Birch Shareholders. BCHI Holdings, LLC (BHoldLLC) is a newly formed Georgia limited liability company organized by the Birch Shareholders to hold shares of Fusion common stock. The remaining 25 percent of Fusion common stock will be owned by stockholders of Fusion on the date that the transaction is completed. To complete the transaction, Applicants further explain that BCHI will merge with and into Merger Sub with Merger Sub surviving the merger. BCI will become a wholly owned subsidiary of Merger Sub, and therefore Fusion will indirectly own 100 percent of the equity interests in BCI and each of its subsidiaries. Because the Birch Shareholders will own more than a majority interest in Fusion (via BHoldLLC) post-close, Applicants state that there will be no change in the ultimate control of BCI or its subsidiaries. The following will own a 10 percent or greater interest in Fusion and NBS: BHoldLLC (75 percent of stock in Fusion and a 100 percent indirect interest in NBS); Holcombe T. Green (U.S. citizen, an approximate 62 percent voting and equity interest in BHoldLLC resulting in an attributed 75 percent indirect interest in Fusion and an attributed 100 percent indirect interest in NBS); and R. Kirby Godsey (U.S. citizen, an approximate 24 percent voting and equity interest in BHoldLLC resulting in an attributed 18 percent indirect interest in Fusion and NBS). Applicants state that no other entity or person will hold at 10 percent or greater interest in BHoldLLC, Fusion, or NBS.⁵

³ Applicants note that prior to consummating the proposed transaction, the Birch Companies will implement a *pro forma* reorganization in which some entities will be converted into limited liability companies, and some entities will be merged into other entities, dissolved, or spun-off to a separate subsidiary. Applicants state that, included as part of this pre-consummation reorganization, certain assets as well as BCI's ownership interests in some of its then existing subsidiaries will be transferred to Lingo Communications, LLC, a newly formed Georgia limited liability. According to the Applicants, this restructuring will facilitate a division of operations in which Fusion and its post-consummation subsidiaries plan to focus on business and cloud services while Lingo Communications, LLC and its newly transferred subsidiaries will focus on serving consumer and smaller business customers.

⁴ Applicants state that no individual Fusion shareholder will hold as much as five percent of the Fusion common stock.

⁵ Applicants further state that neither BHoldLLC nor the Birch Shareholders hold interests in any other telecommunications carrier other than what Applicants identify in their application.

Applicants assert that the proposed transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.⁶

Domestic Section 214 Application Filed for the Transfer of Control of
Fusion Telecommunications International, Inc., WC Docket No. 17-301 (filed Oct. 31, 2017).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before December 19, 2017**, and reply comments **on or before December 26, 2017**. Pursuant to section 63.52 of the Commission's rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

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

In addition, e-mail one copy of each pleading to each of the following:

- 1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
- 2) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov;
- 3) David Krech, International Bureau, david.krech@fcc.gov;
- 4) Sumita Mukhoty, International Bureau, sumita.mukhoty@fcc.gov, and
- 5) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy

⁶ 47 CFR § 63.03(b)(2)(i).

of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

For further information, please contact Myrva Charles at (202) 418-1506 or Gregory Kwan at (202) 418-1191.

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