



PUBLIC NOTICE

Federal Communications Commission
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DA 19-1037
October 11, 2019

APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF FUSION CONNECT, INC. AND SUBSIDIARIES

PLEADING CYCLE ESTABLISHED

WC Docket No. 19-262

Comments Due: October 25, 2019

Reply Comments Due: November 1, 2019

By this Public Notice, the Wireline Competition Bureau and International Bureau seek comment from interested parties on applications filed by Fusion Connect, Inc., debtor-in-possession (Fusion Connect), and Telecom Holdings LLC (Telecom Holdings, together with Fusion Connect, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03-04, 63.18, and 63.24 of the Commission's rules¹ requesting consent for the transfer of control of Fusion Connect and its subsidiaries to Telecom Holdings.² Applicants also filed a petition requesting a temporary and limited waiver³ of sections 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the rules.⁴

Fusion Connect is a publicly traded Delaware corporation. Through the following subsidiaries, it provides competitive telecommunications services primarily to business customers located throughout the United States: Fusion LLC, Fusion Cloud Services, LLC, Fusion Communications, LLC, Fusion Telecom of Kansas, LLC, Fusion Telecom of Missouri, LLC, Fusion Telecom of Oklahoma, LLC, and Fusion Telecom of Texas Ltd., LLP (collectively, Fusion Companies).⁵

¹ 47 U.S.C. §§ 214; 47 CFR §§ 63.03-04, 63.18, 63.24.

² Joint Application of Fusion Connect, Inc., Debtor-in-Possession, and Telecom Holdings, LLC for Consent to a Transaction that Will Result in a Change of Control of Companies Holding Domestic and International Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 19-262, IB File No. ITC-ASG-20190724-00136 (filed July 24, 2019) (Application). Applicants have also filed applications for the transfer of control of wireless licenses. See ULS File No. 0008738034. Any action on the section 214 applications is without prejudice to Commission action on other related pending applications.

³ Petition for Temporary and Limited Waiver of Sections 1.5000(a)(1), 63.04, and 63.18 of the Commission's Rules; WC Docket No. 19-262, ITC-ASG-20190724-00136, WTB File No. 0008738034, ISP-WAV-20191009-00007, ITC-WAV-20191009-00165, at 3-4 (dated Oct. 8, 2019) (Waiver Request).

⁴ 47 CFR §§ 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, 63.24.

⁵ Application at 4-5. On June 3, 2019, the Fusion Companies commenced with the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court) a voluntary case under chapter 11 of the United States Code. *Id.* at 1-2 (citing *Fusion Connect, Inc., et al., Debtors*, Case No. 19-11811 (Bankr. S.D.N.Y. June 3, 2019)). On August 29, September 5, September 17, and September 20, 2019, Applicants filed with the Commission supplements to the Application explaining that the proposed transaction, as described in the Application, is under

(continued....)

Telecom Holdings, a Delaware limited liability company, is a holding company that does not provide telecommunication services, and upon emergence from bankruptcy, will hold more than 50% of the new common stock of reorganized Fusion Connect (Reorganized FCI) and equivalent indirect interests in each of the Fusion Companies.⁶ Telecom Holdings is owned on a pro rata basis by 12 U.S. citizens, none of whom will hold a direct or indirect interest in Reorganized FCI of 10% or more.⁷ None of the members of Telecom Holdings hold interests in any telecommunications provider.⁸

The proposed transfer of control would result from an agreement by an ad hoc group consisting of the majority of the holders of Fusion Connect's first lien debt (the Lenders) to exchange a portion of their debt for, among other things, the common stock of the Reorganized FCI that is issued at emergence.⁹ Under the Fusion Companies' Chapter 11 Plan of Reorganization, all current equity interests in Fusion Connect will be cancelled, certain debt will be extinguished, and the Lenders will receive new common stock or special warrants (Special Warrants) in Reorganized FCI.¹⁰ Upon emergence from bankruptcy, Telecom Holdings will hold more than 50% of the new common stock and have control of the Fusion Companies.¹¹

According to Applicants, the Special Warrants that will be issued to certain Lenders represent a future right to acquire shares of new common stock of Reorganized FCI.¹² Applicants state that the exercise of the Special Warrants may result in a change in ownership that will require subsequent filings with the Commission, but they are not seeking approval of any such ownership changes at this time.¹³ Applicants explain that they have filed the Waiver Request, if and to the extent it is deemed necessary, in order to enable the Fusion Companies to emerge from bankruptcy in a timely fashion as set forth in the Applications.¹⁴ According to the Waiver Request, grant of the waiver will allow the Fusion Companies "to emerge from bankruptcy protection *before* filing any applications for approval that will be required in connection with the exercise of the special warrants: specifically, a petition for declaratory ruling that will

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review by the Bankruptcy Court, and also submitted an Amended Chapter 11 Plan of Reorganization and Disclosure Statement. Letter from Edward A. Yorkgitis, Jr. and Winafred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnson, Counsel for Telecom Holdings LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262 (filed Aug. 29, 2019); Letter from Edward A. Yorkgitis, Jr. and Winafred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnson, Counsel for Telecom Holdings LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262 (filed Sept. 5, 2019); Letter from Edward A. Yorkgitis, Jr. and Winafred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnson, Counsel for Telecom Holdings LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262 (filed Sept. 17, 2019); Letter from Edward A. Yorkgitis, Jr. and Winafred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnson, Counsel for Telecom Holdings LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262 (filed Sept. 20, 2019).

⁶ Application 2, 6-7.

⁷ *Id.* at 7.

⁸ *Id.* at 12.

⁹ *Id.* at 2.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 6. The remaining common stock in Reorganized FCI will be held in varying amounts by the Lenders, none of which, according to the Applicants, will hold common stock representing an equity or voting interest of 10% or more of Reorganized FCI when it emerges from bankruptcy. *Id.* at 2, 6-7.

¹² *Id.*

¹³ *Id.* at 8.

¹⁴ Waiver Request at 3-4 (stating that the Applicants are submitting the Waiver Request out of an abundance of caution should it be necessary depending on how the Special Warrants are treated by the Commission).

be required with respect to foreign ownership exceeding the 25% level set forth in section 310(b)(4) of the Communications Act and transfer of control applications pursuant to Section 214 and Section 310 that will be required for approval of the ownership of the Fusion Companies once special warrants have been exercised.”¹⁵ Applicants state that they intend to file applications for a transfer of control of the Fusion Companies and a petition to seek approval to exceed the foreign ownership benchmark in section 310(b)(4) within 30 days of emergence from bankruptcy protection.¹⁶ Applicants request—to the extent the waivers of sections 1.2112, 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 are necessary—that grant of the Waiver Request include a requirement that they file a petition for declaratory ruling and the transfer of control applications within 30 days following emergence from chapter 11 protection to reflect the exercise of the Special Warrants.¹⁷

Applicants assert that the proposed transaction would allow the Fusion Companies to emerge from bankruptcy protection as financially stronger and more competitive participants for telecommunications services.¹⁸

GENERAL INFORMATION

The applications identified herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission’s rules and policies.

Interested parties may file comments and petitions **on or before October 25, 2019**, and reply comments or oppositions to petitions **on or before November 1, 2019**. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC, 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD, 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC, 20554.

¹⁵ Waiver Request at 4 (emphasis in original). It is expected that there will be no controlling interest holder in Fusion Connect at that point. *Id.* at 4, n.6.

¹⁶ *Id.* at 4, n.7. *See also* Application at 8, n.15.

¹⁷ Waiver Request at 12.

¹⁸ Application at 2, 6, 9-10.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

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

- 1) Jodie May, Competition Policy Division, Wireline Competition Bureau, jodie.may@fcc.gov;
- 2) David Krech and Sumita Mukhoty, International Bureau; david.krech@fcc.gov;
Sumita.mukhoty@fcc.gov;
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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 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.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹⁹ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Jodie May, Wireline Competition Bureau, (202) 418-0913, David Krech, International Bureau, (202) 418-7443; or Sumita Mukhoty, International Bureau, (202) 418-7165.

¹⁹ See 47 CFR § 1.45(c).

ATTACHMENT A

SECTION 214 AUTHORIZATIONS

A. International

The application for consent to the transfer of control of certain international section 214 authorizations has been assigned the file number listed below.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-ASG-20190724-00136	Fusion Connect, Inc., Debtor-in-Possession	ITC-214-19971001-00592

B. Domestic

Applicants filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction – WC Docket No. 19-262. In light of the multiple applications pending before the Commission with respect to this transaction and the public interest review associated with them, the domestic transfer of control application is not subject to streamlined treatment.²⁰

WAIVER REQUEST

The Petition for Temporary and Limited Waiver of Sections 1.5000(a)(1), 63.04, and 63.18 of the Commission’s Rules, WC Docket No. 19-262, has been assigned the file numbers listed below.

ISP-WAV-20191009-00007 (waiver of 47 CFR § 1.5000(a)(1))

ITC-WAV-20191009-00165 (waiver of 47 CFR § 63.18)

²⁰ 47 CFR § 63.03.