



# PUBLIC NOTICE

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## APPLICATIONS GRANTED FOR THE TRANSFER OF CONTROL OF FUSION CONNECT, INC., DEBTOR-IN-POSSESSION, AND SUBSIDIARIES

### WC Docket No. 19-262

By this Public Notice, the Wireline Competition Bureau and the International Bureau (Bureaus) grant applications filed by Fusion Connect, Inc., debtor-in-possession (Fusion Connect), and Telecom Holdings LLC (Telecom Holdings, together with Fusion Connect, Applicants), subject to the conditions discussed herein, 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 Federal Communications Commission's (Commission) rules, to transfer control of Fusion Connect and its subsidiaries to Telecom Holdings.<sup>1</sup> In addition, the Bureaus grant Applicants' requests for a temporary and limited waiver<sup>2</sup> of sections 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules.<sup>3</sup>

#### The Applicants

Through the following wholly-owned subsidiaries, Fusion Connect 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).<sup>4</sup> Telecom Holdings, a Delaware limited liability

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<sup>1</sup> 47 U.S.C. § 214; 47 CFR §§ 63.03-04, 63.18, 63.24. 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 an application for the transfer of control of wireless licenses pursuant to section 310(d) of the Act, 47 U.S.C. § 310(d), which the Wireless Telecommunications Bureau will act on separately. See ULS File No. 0008738034.

<sup>2</sup> Petition for Temporary and Limited Waiver of Sections 1.948, 1.5000(a)(1), 1.2112, 63.04, and 63.18 of the Commission's Rules, WC Docket No. 19-262, ITC-ASG-20190724-00136, ULS File No. 0008738034, ISP-WAV-20191009-00007, ITC-WAV-20191009-00165, at 3-4 (Oct. 8, 2019) (Waiver Request). Applicants' request for a temporary and limited waiver of sections 1.948 and 1.2112 of the Commission's rules, 47 CFR §§ 1.948, 1.2112, will be acted on separately with the application for the transfer of control of wireless licenses in ULS File No. 0008738034.

<sup>3</sup> 47 CFR §§ 1.5000(a)(1), 63.03, 63.04, 63.18, 63.24.

<sup>4</sup> 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, September 20, October 11, December 23, 2019, January 6, and January 9, 2020, Applicants filed with the Commission supplements to the Application explaining that the proposed

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company, is a holding company that does not provide telecommunication services.<sup>5</sup> Upon the Fusion Companies' emergence from bankruptcy, Telecom Holdings 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.<sup>6</sup> 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.<sup>7</sup>

#### Description of Transaction and Waiver Request

The proposed transfer of control results from an agreement by an *ad hoc* group consisting of the majority of the holders of Fusion Connect's first lien debt to exchange a portion of their debt for, among other things, the common stock of the Reorganized FCI that is issued at emergence from bankruptcy (referred to by Applicants as New Equity Interests).<sup>8</sup> Under the Fusion Companies' Chapter 11 Plan of Reorganization (Plan), all current equity interests in Fusion Connect will be cancelled, certain debt will be extinguished, and first and second lien lenders (Lenders) will receive shares of Reorganized FCI's voting common stock<sup>9</sup> and/or special pre-paid warrants (Special Warrants) to acquire New Equity Interests.<sup>10</sup> Upon emergence from bankruptcy, Telecom Holdings would hold more than 50% of the New Equity Interests and have *de facto* and *de jure* control of Reorganized FCI and the other Fusion Companies.<sup>11</sup>

Applicants state that, because certain Lenders have material foreign ownership, immediate distribution of common stock to these Lenders would trigger a more extended regulatory review process under sections 214, 310(b)(4), and 310(d) of the Act and associated rules than is feasible given the urgency for the Fusion Companies to emerge.<sup>12</sup> The Plan therefore proposes a review process that consists of two transactions. In the first transaction, which is the subject of the instant applications and requests for waiver, Special Warrants, rather than, or in addition to, shares of common stock of Reorganized FCI would be issued to certain Lenders<sup>13</sup> insofar as their equity ownership of Reorganized

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transaction, as described in the Application, was under review and ultimately approved by the Bankruptcy Court, and also submitted an Amended Chapter 11 Plan of Reorganization and Disclosure Statement. Letter from Edward A. Yorkgitis, Jr. and Winifred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnsen, 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 Winifred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnsen, 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 Winifred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnsen, 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 Winifred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnsen, Counsel for Telecom Holdings LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262 (filed Sept. 20, 2019); Letter from Edward A. Yorkgitis, Jr. and Winifred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnsen, Counsel for Telecom Holdings LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262 (filed Oct. 11, 2019); Letter from Edward A. Yorkgitis, Jr. and Winifred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnsen, Counsel for Telecom Holdings LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262 (filed Dec. 23, 2019) (December 23 *Ex Parte* Letter); Letter from Edward A. Yorkgitis, Jr. and Winifred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnsen, Counsel for Telecom Holdings LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262 (filed Jan. 6, 2020); Letter from Edward A. Yorkgitis, Jr. and Winifred R. Brantl, Counsel for Fusion Connect, Inc., and Wayne D. Johnsen, Counsel for Telecom Holdings LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262 (filed Jan. 9, 2020).

<sup>5</sup> Application at 6, 12.

<sup>6</sup> *Id.* at 2, 6-7. Telecom Holdings has "no other operations than to hold debt interests and, ultimately, common stock" in Reorganized FCI. *Id.* at 7.

<sup>7</sup> *Id.* at 7.

FCI would require review under the foreign ownership provisions in section 310(b)(4),<sup>14</sup> in addition to the transfer of control provisions in sections 214 and 310(d) of the Act and associated Commission rules.<sup>15</sup>

According to Applicants, the Special Warrants represent a future right to acquire shares of Reorganized FCI's common stock.<sup>16</sup> The Special Warrants carry no voting rights and cannot be exercised until Reorganized FCI has secured any necessary Commission approvals.<sup>17</sup> The issuance of Special Warrants to certain Lenders, they state, would ensure that, at emergence, no more than 25% of Reorganized FCI's equity or voting interests would be held, in the aggregate, by foreign individuals or foreign-organized entities,<sup>18</sup> and no single foreign individual or foreign-organized entity would hold as much as 10% of Reorganized FCI's equity or voting interests.<sup>19</sup>

In the second transaction, which would occur post emergence and after Applicants obtain any required Commission approvals, parties would exchange the Special Warrants for common stock of Reorganized FCI, triggering a transfer of control event because it is expected that Telecom Holdings would cease to hold more than 50% of the Reorganized FCI's common stock.<sup>20</sup> The Applicants anticipate that no individual or entity would hold a controlling interest in Reorganized FCI at that point.<sup>21</sup>

With the instant applications and waiver requests, Applicants seek "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 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(d) that will be required for approval of the ownership of the Fusion Companies once special warrants have been exercised."<sup>22</sup> Applicants state that they intend to file such a petition and the related subsequent applications no later

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<sup>8</sup> *Id.* at 2. Section 1.103 of the Fusion Companies' Chapter 11 Plan of Reorganization (Plan) defines the term "New Equity Interests" more broadly to include the new common stock that would subsequently be issued by Reorganized FCI upon the exercise of the "Special Warrants" that would be issued to certain Lenders upon emergence, as discussed elsewhere. December 23 *Ex Parte* Letter at Attach. 1 (Approved Plan of Reorganization).

<sup>9</sup> At emergence, Fusion Connect will have only one class of voting common stock. Waiver Request at 5, n.8.

<sup>10</sup> Application at 7.

<sup>11</sup> *Id.* at 2, 7. 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.

<sup>12</sup> Waiver Request at 5.

<sup>13</sup> Applicants explain that the second lien lenders will only receive special warrants at emergence for reasons unrelated to the waiver request. *Id.* at 5, n.9.

<sup>14</sup> *Id.* at 5. It is currently expected that the exercise, in full, of the Special Warrants would result in aggregate foreign equity interests and aggregate foreign voting interests in Reorganized FCI that exceed the 25% foreign ownership benchmark in section 310(b)(4) of the Act and that requires prior Commission review and approval because one of the Fusion Companies, Fusion Cloud Services, LLC, holds common carrier wireless authorizations. *Id.* at 6-7.

<sup>15</sup> 47 U.S.C. §§ 214, 310(b)(4) and (d).

<sup>16</sup> Application at 8.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Id.*

than 30 days following the date that all conditions precedent contained in the Plan of Reorganization are satisfied and after grant of the instant Applications by the Commission.<sup>23</sup>

As noted, the Applicants state that they believe the ownership structure proposed in the instant applications, including the distribution of common stock and Special Warrants, fully complies with the Act and the Commission's rules, including the limitations on foreign ownership.<sup>24</sup> At the same time, Applicants "understand that there is some possibility that, in an unexercised state, warrants would be deemed to constitute equity and be included in the Commission's reviews" of Reorganized FCI's proposed, post-emergence ownership under sections 214, 310(b), and 310(d) of the Act.<sup>25</sup> The Applicants therefore seek, out of an abundance of caution, a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules on foreign ownership as well as filing requirements for transfers of control or assignment under sections 63.03, 63.04, 63.18, and 63.24.<sup>26</sup>

The Bureaus did not receive comments or petitions in opposition to the Application or the Waiver Request.

### Grant of the Waiver Request

The Commission's rules may be waived for good cause shown.<sup>27</sup> Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the rule, and such deviation will serve the public interest.<sup>28</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>29</sup> It may also take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>30</sup>

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<sup>19</sup> Applicants anticipate that exercise of the Special Warrants, in full, would result in additional entities holding interests in Reorganized FCI of 10% or more, which would require disclosure in applications for consent to transfer control of the Fusion Companies in the second transaction contemplated by the Plan of Reorganization. These ownership disclosure requirements are set forth in sections 1.2112, 1.5001, 63.03, 63.04, 63.18, and 63.24 of the Commission's rules. These rules generally require, *inter alia*, that applications to assign or transfer control of a wireless license, or of a domestic or international section 214 authorization, and petitions for declaratory ruling under section 310(b)(4) of the Act, shall disclose the name, address, and citizenship of any party holding 10% or more of the applicant's capital stock, whether voting or non-voting, common or preferred, including the specific amount of the interest or percentage held. 47 CFR §§ 1.2112, 1.5001, 63.03, 63.04, 63.18, 63.24.

<sup>20</sup> Application at 8, n.15; Waiver Request at 4, n.6.

<sup>21</sup> Application at 8, n.15; Waiver Request at 2-4. The Applicants state that they are not seeking approval of the second transaction at this time. Application at 8; Waiver Request at 5-6.

<sup>22</sup> Waiver Request at 4 (emphasis in original).

<sup>23</sup> *Id.* at 4, n.7. *See also* Application at 8, n.15. Applicants request that, to the extent waivers of the Commission's rules are necessary, grant of the Waiver Request include a requirement that they make the necessary filings within 30 days following emergence from chapter 11 protection to reflect the exercise of the Special Warrants. Waiver Request at 11-12.

<sup>24</sup> Waiver Request at 3, 6.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> 47 CFR §§ 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24. Applicants' request for waiver of sections 1.948 and 1.2112 of the Commission's rules, 47 CFR §§ 1.948, 1.2112, will be acted on separately with the application for the transfer of control of wireless licenses in ULS File No. 0008738034. *See supra* note 2.

<sup>27</sup> 47 CFR § 1.3.

We grant the Applicants' request to waive sections 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules in the circumstances of the proposed transaction. We find that the request to waive these rules is well supported and consistent with existing policy and practice, *e.g.*, the Media Bureau's decision in the *Liberman Order*.<sup>31</sup>

Grant of the Waiver Request would facilitate the Fusion Companies' prompt emergence from the bankruptcy process consistent with the Commission's longstanding practice to accommodate federal bankruptcy law when doing so will not unduly interfere with the Commission's public interest obligations under the Act.<sup>32</sup> We agree with the Applicants that facilitating successful and timely emergence from bankruptcy "advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors."<sup>33</sup> Moreover, waiver of section 1.5000(a)(1) effectively provides interim section 310(b)(4) authority only, in order to enable Fusion Connect's prompt emergence from bankruptcy while preserving the Commission's ability to review and rule on its proposed foreign ownership upon emergence from bankruptcy.<sup>34</sup> Accordingly, in consideration of the specific circumstances before us, we grant the request to waive sections 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission's rules.

#### Grant of Applications and Waiver Request, Subject to Conditions

We find, upon consideration of the record, that the proposed transfers of control under section 214 of the Act will serve the public interest, convenience, and necessity, and therefore grant the applications and requests for waiver, conditioned upon the filing, no later than 30 days after closing the

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<sup>28</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*); *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008).

<sup>29</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>30</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>31</sup> *Liberman Television of Dallas License LLC, Debtor-in-Possession*, Order, DA 19-1012 (MB 2019) (*Liberman Order*) (reviewing the assignment of broadcast licenses in several markets held by indirect, wholly-owned subsidiaries of Liberman Broadcasting, Inc., Debtor-in-Possession (LBI, and, together with affiliated entities, the LBI Debtors), from the licensees, as debtors-in-possession, to the same licensees, as non-debtors in possession, following the emergence of the LBI Debtors from bankruptcy, granting a temporary and limited waiver of section 1.5000(a)(1) of the Commission's rules to permit the LBI Debtors to emerge from bankruptcy before filing any petition for declaratory ruling that may be required to allow aggregate foreign ownership in excess of the 25% benchmark set forth in section 310(b)(4) of the Act, and conditionally granting the applications on the filing of a petition for declaratory ruling concerning foreign ownership within 30 days of the closing of the transaction).

<sup>32</sup> See *Maritime Communications/Land Mobile, LLC*, 31 FCC Rcd 13729, 13737-38 (2016); *LaRose v. FCC*, 494 F.2d 1145, 1146-48 & n.2 (D.C. Cir. 1974) (*LaRose v. FCC*); *Liberman Order* at para. 14.

<sup>33</sup> Waiver Request at 8 (citing *WorldCom, Inc.*, 18 FCC Rcd 26484, 26503, para. 29 (2003)). See also *LaRose v. FCC*, 494 F.2d at 1146, n.2 (stating that in applying its policies where an application arises from bankruptcy, the Commission should consider "the public interest in the protection of innocent creditors").

<sup>34</sup> *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act, as Amended*, Order and Declaratory Ruling, 23 FCC Rcd 4436, 4444, para. 18 (2008) (granting the petitioners authority to hold on an interim basis up to a non-controlling 49.99% equity and voting interest in SkyTerra Communications subject to and without prejudice to any action the Commission may take on the associated request for permanent authority). We note that the Commission staff frequently works with applicants and licensees to address and resolve impediments to identifying ownership interests. See *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, 31 FCC Rcd 11272, 11312, para. 88, n.224 (2016); cf. 47 CFR § 1.5004(f)(1) (providing that a licensee that learns of an investment that renders the licensee non-compliant with its foreign ownership ruling or the Commission's rules relating to foreign ownership

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transaction authorized by such grant, of a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Act and necessary transfer applications.

Therefore, pursuant to sections 4(i) and (j), 214(a), and 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 214(a), 214(c), and sections 1.3, 63.03, 63.04, 63.18, and 63.24 of the Commission's rules, 47 C.F.R. §§ 1.3, 63.03, 63.04, 63.18, 63.24, and pursuant to the authority delegated under sections 0.51, 0.91, 0.261, and 0.291, of the Commission's rules, 47 CFR §§ 0.51, 0.91, 0.261, and 0.291, we grant the applications and requests for waiver listed in Attachment A to this Public Notice subject to the conditions herein.<sup>35</sup>

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Jodie May, Wireline Competition Bureau, (202) 418-0913, or Kimberly Cook, International Bureau, (202) 418-7532.

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must file a petition for declaratory ruling or take other remedial action within 30 days of the date it learned of the non-compliant foreign interest(s)). As is the case with petitions for declaratory ruling filed pursuant to 1.5004(f)(1), the Commission ultimately may require Reorganized FCI to divest certain foreign investments. 47 CFR § 1.5004(f)(1).

<sup>35</sup> This authorization is without prejudice to the Commission's action in any other related pending proceedings.

**ATTACHMENT A**

**SECTION 214 AUTHORIZATIONS**

**A. International**

The International Bureau grants the application for consent to the transfer of control of the international section 214 authorization held by Fusion Connect, Inc., Debtor-in-Possession.

<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**

The Wireline Competition Bureau grants the application to transfer control of domestic section 214 authority in connection with the proposed transaction – WC Docket No. 19-262.<sup>36</sup>

**WAIVER REQUESTS**

The International Bureau and Wireline Competition Bureau grant the waiver of sections 1.5000(a)(1), 63.03, 63.04, 63.18, and 63.24 of the Commission’s Rules as requested in the Petition for Temporary and Limited Waiver of Sections 1.5000(a)(1), 1.948, 1.2112, 63.03, 63.04, 63.18, and 63.24 of the Commission’s Rules, WC Docket No. 19-262, ITC-ASG-20190724-00136.<sup>37</sup>

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<sup>36</sup> 47 CFR § 63.03.

<sup>37</sup> The request for waiver of sections 1.948 and 1.2112 of the Commission’s rules will be acted on separately with the application for the transfer of control of wireless licenses in ULS File No. 0008738034.