



PUBLIC NOTICE

Federal Communications Commission
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DA 20-806
July 30, 2020

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

PLEADING CYCLE ESTABLISHED

WC Docket No. 20-44

Comments Due: August 13, 2020
Reply Comments Due: August 20, 2020

By this Public Notice, the Wireline Competition Bureau and International Bureau (Bureaus) seek comment from interested parties on applications filed by Fusion Connect, Inc. (Fusion and Applicant), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04, 63.18, and 63.24 of the Commission's rules,¹ requesting consent for the transfer of control of Fusion and its wholly-owned subsidiaries.²

Fusion is a private Delaware corporation. Through the following U.S.-based 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, and Fusion Telecom of Texas Ltd., LLP (collectively, Fusion Licensees).³

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

² Joint Application of Fusion Connect, Inc., 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. 20-44, IB File No. ITC-T/C-20200213-00030 (filed Feb. 13, 2020) (Application). On July 22, 2020, Applicant filed supplemental information and revisions to its Application. Restated Application of Fusion Connect, Inc., 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. 20-44, IB File No. ITC-T/C-20200213-00030 (filed July 22, 2020) (Restated Application).

³ Restated Application at 2-4 and n.4 (listing subsidiaries and stating that effective June 1, 2020, Fusion Telecom of Oklahoma, LLC and Fusion Telecom of Missouri, LLC completed a *pro forma* transaction consolidating their regulated assets into Fusion Cloud Services, LLC, the direct parent of Fusion Telecom of Oklahoma, LLC and Fusion Telecom of Missouri, LLC). On June 3, 2019, Fusion and its subsidiaries filed 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. On December 17, 2019, the Bankruptcy Court approved the reorganization plan. Restated Application at 4 (citing *Fusion Connect, Inc., et al., Debtors*, Case No. 19-11811 (Bankr. S.D.N.Y. June 3, 2019); *Fusion Connect, Inc., et al.*, Order (I) Confirming Third Amended Joint Chapter 11 Plan of Fusion Connect, Inc. and its Subsidiary Debtors and (II) Granting Related Relief, Case No. 19-11811 (SMB) (Bankr. S.D.N.Y. December 17, 2019)).

Telecom Holdings, LLC (Telecom Holdings), a Delaware holding company, currently holds approximately 65% of the common stock and *de jure* and *de facto* control of Fusion.⁴

The proposed transfer of control is the second of two related transactions seeking Commission approval as part of Fusion's bankruptcy reorganization plan.⁵ In the first transaction, all the equity interests in Fusion were cancelled, certain debt extinguished, and first and second lien lenders (Lenders) received shares of Fusion's voting common stock and/or special warrants (Special Warrants).⁶ According to Applicant, the Special Warrants represent a future right to acquire shares of Fusion's common stock and cannot be exercised until Fusion has secured any necessary Commission approvals.⁷

In this current second transaction, Applicant seeks Commission approval for the transfer of control that would occur from the exercise of the Special Warrants and the exchange of those warrants for common stock in Fusion to be held by the holders of the Special Warrants.⁸ As a result of the exercise of Special Warrants and the issuance of new common stock in exchange, the voting and equity interests of Telecom Holdings would decrease to non-controlling levels, resulting in a negative transfer of control.⁹ Applicant states that, following the consummation of the proposed transaction, Fusion will be widely held by numerous stockholders, nearly all of whom will hold non-disclosable interests in Fusion, and that no single person or entity will obtain *de jure* or *de facto* control.¹⁰ Upon their exercise of the Special Warrants, the following institutional investor entities would hold in excess of 10% of Fusion's common stock: entities managed by CBAM CLO Management, LLC (CBAM Entities) (Cayman Islands, Kansas, and Delaware citizenship, approximately 12.63%);¹¹ Invesco Ltd. (the Invesco Entities) (Bermuda, Delaware, Colorado, and United Kingdom citizenship, approximately 11.49%);¹² Morgan Stanley/North Haven Entities (Delaware citizenship, approximately 12.88%)¹³ and Vector Fusion Holdings (Cayman),

⁴ Restated Application at 6.

⁵ *Id.* at 5-6. On January 10, 2020, the Bureaus granted the applications to transfer control of Fusion Connect, debtor-in-possession, to Telecom Holdings, conditioned "upon the filing, no later than 30 days after closing the 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." *Applications Granted for the Transfer of Control of Fusion Connect, Inc., Debtor-in-Possession, and Subsidiaries*, Public Notice, DA 20-43, at 5-6 (WCB/IB, Jan. 10, 2020) (*First Transaction Grant Public Notice*). Fusion emerged from Chapter 11 protection on January 14, 2020. Restated Application at 6. Fusion Cloud surrendered its wireless licenses on January 28, 2020, and Fusion states that it will therefore not file a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Act. Restated Application at 6, n.15.

⁶ *First Transaction Grant Public Notice* at 3. Special Warrants, rather than, or in addition to, shares of common stock of Fusion were issued to certain Lenders insofar as their equity ownership of Fusion required review under the foreign ownership provisions in section 310(b)(4), in addition to the transfer of control provisions in sections 214 and 310(d) of the Act and associated Commission rules. 47 U.S.C. §§ 214, 310(b)(4) and (d). According to Fusion, one purpose of the issuance of Special Warrants was to ensure that, at emergence, no more than 25% of Fusion's equity or voting interests would be held, in the aggregate, by foreign individuals or foreign-organized entities, and no single foreign individual or foreign-organized entity would hold as much as 10% of Fusion's equity or voting interests. *First Transaction Grant Public Notice* at 3.

⁷ Restated Application at 5-6; *First Transaction Grant Public Notice* at 3.

⁸ Restated Application at 6-7.

⁹ *Id.* at 7.

¹⁰ *Id.*

¹¹ *Id.* at Attach. 1 (Ten Percent or Greater Interest Holders/Interlocking Director) at 18-23. Applicant provided detailed ownership information on the Reportable Stockholders in Attach. 1, as well as pre-and post-transaction ownership charts in Attach. 3.

¹² Restated Application at Attach. 1 at 24-26.

¹³ *Id.* at Attach. 1 at 27-29.

LTD (Vector Fusion, together with funds of Vector Capital Management, L.P., Vector Funds) (Cayman Islands and Delaware citizenship, approximately 27.87%)¹⁴ (collectively, the Reportable Stockholders).¹⁵ Applicant states that none of these entities hold an interest in any other telecommunications provider.¹⁶

Applicant asserts that a grant of the applications would serve the public interest, convenience, and necessity, as well as allow Fusion to implement its commitments under its bankruptcy reorganization plan, have no adverse effects upon the operations of Fusion, and result in no anti-competitive concerns.¹⁷

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, these applications are being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy or trade policy concerns related to the foreign ownership of the Applicants.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 August 13, 2020** and reply comments or oppositions to petitions **on or before August 20, 2020**. 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. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.¹⁹ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

¹⁴ *Id.* at Attach. 1 at 29-32.

¹⁵ Applicant states that the Reportable Stockholders are institutional investors and will not have an active role in managing the day-to-day operation of the Fusion Licensees, although the CBAM Entities, the Invesco Entities, and the Vector Funds will have certain rights as to the nomination of members to the Fusion Board of Directors. Restated Application at 7-8. Applicant further states that while the Board will provide high-level oversight over Fusion's executive management, it will not be involved in day-to-day decision-making, and that none of the stockholders, alone or in combination, will have or exercise control over the Board. *Id.* at 7-8. The Vector Funds will have the right to nominate two of the seven Board members, and the CBAM Entities and the Invesco Entities each currently have the right to nominate and to have its nominees elected by the stockholders; however, Applicant states these nomination rights do not confer control over the seven-person Board. *Id.*

¹⁶ *Id.* at n.20 and Attach. 1 at 29, 32.

¹⁷ *Id.* at 8-10.

¹⁸ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000).

- 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.

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) Greg Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov;
- 2) Kimberly Cook, Telecommunications & Analysis Division, International Bureau, kimberly.cook@fcc.gov; and
- 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.²⁰ 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

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¹⁹ In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission’s electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

²⁰ See 47 CFR § 1.45(c).

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 Gregory Kwan, Wireline Competition Bureau, (202) 418-1191; or Kimberly Cook, International Bureau, (202) 418-7532.

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-T/C-20200213-00030	Fusion Connect, Inc.	ITC-214-19971001-00592

B. Domestic

Applicant filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction – WC Docket No. 20-44. 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.²¹

²¹ 47 CFR § 63.03.