



# PUBLIC NOTICE

Federal Communications Commission  
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DA 21-235

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## DOMESTIC 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF FUSION CONNECT, INC. AND SUBSIDIARIES

### WC Docket No. 20-44

By this Public Notice, the Wireline Competition Bureau (Bureau) grants the application filed by Fusion Connect, Inc. (Fusion and Applicant), pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03-04 of the Commission's rules, requesting consent for the transfer of control of Fusion and its wholly-owned subsidiaries.<sup>1</sup>

On July 30, 2020, the Bureau released a public notice seeking comment on the Restated Application.<sup>2</sup> We did not receive comments or petitions in opposition to the Restated Application.

Fusion is a private Delaware corporation.<sup>3</sup> 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).<sup>4</sup> Telecom Holdings, LLC (Telecom Holdings), a Delaware holding company, currently holds

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<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. 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). 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). The Restated Application replaces, in its entirety, Fusion's application filed on February 13, 2020. Letter from Edward A. Yorkgitis, Jr. and Denise N. Smith, Counsel for Fusion, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-44 (filed July 22, 2020) (on file in WC Docket No. 20-44). A grant of the domestic section 214 Restated Application is without prejudice to Commission action on other related, pending applications.

<sup>2</sup> *Applications Filed for the Transfer of Control of Fusion Connect, Inc. and Subsidiaries*, WC Docket No. 20-44, Public Notice, DA 20-806 (WCB 2020).

<sup>3</sup> Restated Application at 2.

<sup>4</sup> 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)).

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approximately 65% of the common stock and *de jure* and *de facto* control of Fusion.<sup>5</sup>

The proposed transfer of control is the second of two related transactions seeking Commission approval as part of Fusion’s bankruptcy reorganization plan.<sup>6</sup> In the first transaction, all the equity interests in Fusion were cancelled, certain debt extinguished, and first and second lien lenders received shares of Fusion’s voting common stock and/or special warrants (Special Warrants).<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

On August 3, 2020, the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) notified the Commission that it was reviewing the Restated Application.<sup>11</sup> We deferred action in response to this request from the Committee. On October 20, 2020, the Committee notified the Commission that the Applicant had provided complete responses to initial questions posed by the Committee and that the Committee was conducting an initial

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<sup>5</sup> Restated Application at 6.

<sup>6</sup> On January 10, 2020, the Bureau, along with the International Bureau, 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, WC Docket No. 19-262, Public Notice, DA 20-43 (WCB/IB, Jan. 10, 2020) (*First Transaction Grant Public Notice*). Fusion consummated the first transaction on January 14, 2020, resulting in the substantive transfer of control of Fusion and its subsidiaries to Telecom Holdings. Letter from Denise N. Smith, Counsel to Fusion, and Wayne D. Johnsen, Counsel to Telecom Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-262; IB File Nos ITC-ASG-20190724-00136, ISP-WAV20191009-00007, and ITC-WAV-20191009-00165 (filed Jan. 23, 2020) (on file in WC Docket No. 19-262).

<sup>7</sup> *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). 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. Restated Application at 5-6; *First Transaction Grant Public Notice* at 3.

<sup>8</sup> Restated Application at 6-7.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* According to Applicant, 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 (Cayman Islands, Kansas, and Delaware citizenship, approximately 12.63%); Invesco Ltd. (Bermuda, Delaware, Colorado, and United Kingdom citizenship, approximately 11.49%), Morgan Stanley/North Haven Entities (Delaware citizenship, approximately 12.88%) and Vector Fusion Holdings (Cayman), LTD (Cayman Islands and Delaware citizenship, approximately 27.87%). *Id.* at Attach. 1 at 18-32. Applicant states that none of these entities hold an interest in any other telecommunications provider. *Id.* at n. 20 and Attach. 1 at 29, 32. Applicant provided detailed ownership information in Attach. 1, as well as pre-and post-transaction ownership charts in Attach. 3.

<sup>11</sup> Letter from Alice Suh Jou, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-44; IB File No. ITC-T/C-20200213-00030 (Aug. 3, 2020) (on file in WC Docket No. 20-44).

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review to assess whether granting the Restated Application would pose a risk to the national security or law enforcement interests of the United States.<sup>12</sup>

On February 22, 2021, the National Telecommunications and Information Administration informed the Commission that “the Committee has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it” and that the Committee “reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests.”<sup>13</sup>

We find, upon consideration of the record, that the proposed transaction will serve the public interest, convenience, and necessity.<sup>14</sup> Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the grant is effective upon 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 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Gregory Kwan, Wireline Competition Bureau, Competition Policy Division, (202) 418-0809.

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<sup>12</sup> Letter from Alice Suh Jou, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-44; IB File No. ITC-T/C-20200213-00030 (filed Oct. 20, 2020) (on file in WC Docket No. 20-44).

<sup>13</sup> Letter from Kathy Smith, Chief Counsel, National Telecommunications and Information Administration, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-44; IB File No. ITC-T/C-20200213-00030 (filed Feb. 22, 2021) (on file in WC Docket No. 20-44).

<sup>14</sup> See 47 U.S.C. § 214(a); 47 CFR § 63.03.