



# PUBLIC NOTICE

Federal Communications Commission  
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DA 22-1362  
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## DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF FUSION CONNECT, INC. AND ITS WHOLLY-OWNED SUBSIDIARIES TO THE NORTH HAVEN ENTITIES

### WC Docket No. 22-128

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, as conditioned, the application filed by Fusion Connect, Inc. (Fusion Connect) and the North Haven Entities (together, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,<sup>1</sup> requesting consent to transfer to the North Haven Entities the control of Fusion Connect and its wholly-owned operating subsidiaries (collectively, Fusion Licensees).<sup>2</sup>

On April 7, 2022, the Bureau released a public notice seeking comment in this proceeding and did not receive comments or petitions in opposition to the Application.<sup>3</sup>

On December 14, 2022, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), submitted a Petition to Adopt Conditions to

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<sup>1</sup> See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Application for Consent to a Transfer of Control of Fusion Connect, Inc. to the North Haven Entities, WC Docket No. 22-128 (filed Mar. 17, 2022) (Application). Applicants filed a supplement to their application on March 29, 2022. Letter from Edward A. Yorkgitis, Jr. and Winifred R. Brantl, Counsel for Fusion Connect, Inc., James P. Prenetta, Jr., Executive Vice President and General Counsel, Fusion Connect, Inc., and Debra Abramovitz, Executive Director, North Haven Credit Partners II L.P., *et al*, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-128 (filed Mar. 28, 2022). Applicants also filed applications for the transfer of authorizations associated with international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

<sup>2</sup> The Fusion Licensees collectively refer to Fusion Connect; Fusion LLC (Fusion LLC); Fusion Cloud Services, LLC (Fusion Cloud); Fusion Communications, LLC (Fusion Communications); and Fusion Telecom of Texas Ltd., L.L.P. (Fusion Telecom). Fusion Connect was a party to a prior domestic section 214 application that the Bureau granted on February 25, 2021, as a part of its bankruptcy reorganization plan. *Domestic 214 Application Granted for the Transfer of Control of Fusion Connect, Inc. and Subsidiaries*, WC Docket No. 20-44, Public Notice, DA 21-235 (WCB 2021). The North Haven Entities, each a Delaware limited partnership, are, collectively, North Haven Credit Partners II L.P. (North Haven II), North Haven Senior Loan Fund L.P. (NH Senior Loan Fund), and North Haven Credit Partners III Holdings L.P. (NH III). The North Haven Entities are commonly-controlled and the shares they, and other commonly-controlled limited partnership funds (together with the North Haven Entities, referred to as the North Haven Funds), will hold are commonly managed. Application at n.1.

<sup>3</sup> *Domestic Section 214 Application Filed for the Transfer of Control of Fusion Connect, Inc. and its Wholly-Owned Subsidiaries to the North Haven Entities*, WC Docket No. 22-128, Public Notice, DA 22-379 (WCB 2022) (2022 Public Notice).

Authorization and License (Committee Petition).<sup>4</sup> We grant the Committee Petition and condition the grant of the Application on compliance by the Applicants with the commitments and undertakings set out in the Letter of Agreement (LOA) filed with the Committee Petition.

When analyzing a transfer of control or assignment application that includes foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.<sup>5</sup> As part of our public interest analysis, the Commission coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.<sup>6</sup> The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.<sup>7</sup> The Commission, however, ultimately makes an independent decision on the application based on the record in the proceedings.<sup>8</sup>

Pursuant to Commission practice, the Application and the associated international application, ITC-T/C-20220317-00038, were referred to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.<sup>9</sup> On April 11, 2022, the U.S. Department of Justice (DOJ) on behalf of the Committee informed the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application.<sup>10</sup>

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<sup>4</sup> National Telecommunications and Information Administration, Petition to Adopt Conditions to Authorization and License, WC Docket No. 22-128, ITC-T/C-20220317-00038 (filed Dec. 14, 2022).

<sup>5</sup> See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Order*); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of application for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act). See also *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

<sup>6</sup> See *Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

<sup>7</sup> *Id.* at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179, 182 (1997)). See also *T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *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*, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *Pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

<sup>8</sup> 47 CFR § 1.40001(b) (“The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) . . . that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.”).

<sup>9</sup> See *2022 Public Notice* at 3-4.

<sup>10</sup> Letter from Makenzie D. Briglia, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-128; ITC-T/C-20220317-00038, and Attach. (filed Apr. 11, 2022).

We deferred action in response to this request from the Committee. Then, on August 29, 2022, DOJ notified the Commission that the Committee was “conducting [a 120-day] initial review to assess whether granting the Applications will pose a risk to national security or law enforcement interests of the United States.”<sup>11</sup>

In the Committee Petition, the Committee advises that it “has no objection to the Commission approving the above-captioned application, provided that the Commission conditions its approval on the assurance of Fusion Connect, Inc. (‘Fusion Connect’) to abide by the commitments and undertakings set forth in the December 1, 2022, Letter of Agreement (LOA)” which NTIA filed with the Committee Petition.<sup>12</sup>

In accordance with the request of the Committee, and in the absence of any objection from the Applicants, we grant the Committee Petition, and, accordingly, we condition the grant of the transfer of the domestic section 214 authority on compliance by the Applicants with the commitments and undertakings set forth in the LOA that applies to the Application.<sup>13</sup> A failure to comply with and/or remain in compliance with any of the provisions of the LOA shall constitute a failure to meet a condition of this grant and the underlying authorizations and licenses and thus grounds for declaring the underlying authorizations and licenses terminated without further action on the part of the Commission. A failure to meet a condition of this grant and the underlying authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission.

#### **Grant of Application, Subject to Condition**

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.<sup>14</sup> This grant of the Application is conditioned as set out in this Public Notice.

Pursuant to sections 214 of the Act, 47 U.S.C. §§ 214 and sections 0.91, 0.291, 63.03, and 63.04 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 63.03-63.04, we grant the Application with the condition described above. 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.

Pursuant to sections 4(i)-(j) and 214(a), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j) and 214(a), and sections 63.03-63.04, of the Commission’s rules, 47 C.F.R. §§ 63.03-63.04, we grant the Committee Petition to Adopt Conditions to Authorization and License filed by the NTIA. Grant of the Application is conditioned upon compliance by the Applicants with the Letter of Agreement, dated December 1, 2022, from James P. Prenetta, Jr., EVP and General Counsel, Fusion Connect and the Fusion Licensees, Debra Abramovitz, COO/Executive Director, North Haven Credit Partners II L.P. and North Haven Senior Loan Fund L.P., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, FIRS, on Behalf of the Assistant Attorney General for National Security, National Security Division, United States Department of Justice. Any

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<sup>11</sup> Letter from Makenzie Briglia Skopowski, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-128; ITC-T/C-20220317-00038, and Attach. (filed Aug. 29, 2022).

<sup>12</sup> Committee Petition at 1-2.

<sup>13</sup> *T-Mobile/Sprint Order*, 34 FCC Rcd at 10732-33, para. 349; *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66.

<sup>14</sup> See 47 U.S.C. § 214(a); 47 CFR § 63.03. See, e.g., *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9594, 9605, paras. 26 and 52 (2017) (finding no harm to competition areas where both applicants operate as competitive LECs, and further finding that the transaction “will expand the on-net reach of the newly combined firm resulting in a more effective and stronger competitor against larger cable and incumbent LEC competitors, among others, particularly outside of Century Link’s incumbent LEC region, where it, like Level 3, operates as a competitive LEC.”).

failure to comply and/or remain in compliance with any of the conditions set out in the Public Notice shall constitute a failure to meet a condition of the grant and the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without any further action on the part of the Commission. Failure to meet a condition of the grant and the underlying authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission.

For further information, please contact Dennis Johnson, Wireline Competition Bureau, (202) 418-0809.

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