



PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20554

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DA 22-379
Released: April 7, 2022

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE
TRANSFER OF CONTROL OF
FUSION CONNECT, INC. AND ITS WHOLLY-OWNED SUBSIDIARIES
TO THE NORTH HAVEN ENTITIES**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 22-128

Comments Due: April 21, 2022
Reply Comment Due: April 28, 2022

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an 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,¹ requesting consent to transfer to the North Haven Entities the control of Fusion Connect and its wholly-owned operating subsidiaries (collectively, Fusion Licensees).²

¹ 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) <https://ecfsapi.fcc.gov/file/10317241733338/Fusion%20Connect%20Section%20214%20TOC%20Application%20.pdf>. 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.

² 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

Fusion Connect, a privately-held Delaware corporation, through the other Fusion Licensees, provides competitive telecommunications services and other services to business customers throughout the United States.³ Fusion LLC, Fusion Cloud, Fusion Communications, and Fusion Telecom (all U.S. entities) each hold domestic section 214 authority to provide interstate and intrastate telecommunications services in multiple states.⁴ Currently, no person or entity holds *de jure* or *de facto* control of Fusion Connect.⁵

Applicants state that North Haven II and NH Senior Loan Fund currently hold approximately 11.04% of Fusion Connect's voting stock,⁶ and, in combination with NH III, will post-transaction acquire *de jure* control of the Fusion Licensees.⁷ The securities held or controlled by the North Haven Entities are under the common management of MS Capital Partners Adviser Inc. (MS Capital Partners Advisor), a Delaware corporation, in its capacity as investment manager to the North Haven Entities.⁸ MS Capital Partners Advisor is a wholly-owned direct subsidiary of MS Holdings Incorporated (MS Holdings), a Delaware corporation.⁹ MS Holdings is a wholly-owned direct subsidiary of Morgan Stanley, a Delaware corporation.¹⁰ Mitsubishi UFJ Financial Group, Inc. (MUFG), a Japanese bank and financial services institution, holds a 21.02% interest in Morgan Stanley.¹¹ Applicants state that "MUFG will not have any direct or indirect involvement in the day-to-day operations or activities of the Fusion Licensees or exercise control over the designation or nomination of directors to serve on the Board."¹² Applicants state that no person or entity that is not affiliated with Morgan Stanley or MUFG will "have a direct or indirect ownership or controlling interest in Fusion Connect and the other Fusion Licensees of 10% or more pursuant to the Commission's ownership attribution rules."¹³ Applicants further state that Morgan Stanley is affiliated with Channel 51 License Co. LLC, a wireless license holder, and Cablevision Lightpath LLC, which provides competitive telecommunications services, fiber-based services, and other

hold are commonly managed. Application at n.1. The complete group of affiliated entities that will have shares in Fusion Connect are referred to as the North Haven Funds. *Id.* at n.7.

³ Application at 5.

⁴ *Id.* at 5-6.

⁵ *Id.* at 1-2.

⁶ *Id.* at 3, 8.

⁷ *Id.* at 3 and Attach. 1 (Identification of Ten Percent or Greater Equity and Voting Interest Holders Post-Transaction) at 26-27.

⁸ *Id.* at Attach. 1 at 27.

⁹ *Id.* at 6-7 and Attach. 1 at 26-27.

¹⁰ *Id.* at Attach. 1 at 26-27. MS Holdings wholly-owns and controls MS Credit Partners II GP Inc. and MS Credit Partners III GP Inc., which are the general partners of MS Credit Partners II GP L.P. and MS Credit Partners III GP L.P., respectively, which are themselves the general partners of North Haven II and NH III, respectively, the two North Haven Entities with disclosable direct interests in Fusion Connect. *Id.* at 7.

¹¹ *Id.* at Attach. 1 at 27, 31.

¹² *Id.* at 16.

¹³ *Id.* at Attach. 1 at 28. Applicants provided additional information on the Morgan Stanley Entities that will hold direct ownership interests in Fusion Connect and which are commonly managed by MS Capital Partners Adviser. *Id.* at Attach. 1 at 28-31.

services in New York and in the northeastern United States, including in some of the same geographic areas served by the Fusion Licensees.¹⁴

According to Applicants, “subject to receipt of all required regulatory approvals, the North Haven Entities will obtain control of the Fusion Licensees due to the following simultaneous events: (1) certain of the North Haven Funds will exercise options that they secured from several stockholders of Fusion Connect (the ‘Option Agreements’) to purchase those stockholders’ shares of Fusion Connect’s common stock (the ‘Common Stock’); (2) additional voting rights associated with Fusion Connect’s Series A Preferred Stock (the ‘Series A Preferred Stock’), will activate; (3) Fusion Connect’s non-voting Series B Preferred Stock (the ‘Series B Preferred Stock’) will convert into newly issued shares of Common Stock; and (4) the holders of three tranches of warrants (the ‘Warrants’) issued by Fusion in January 2022 will have the right to exercise those Warrants and purchase additional, newly issued, shares of Common Stock (collectively, with (1), (2) and (3), the ‘Transaction’).”¹⁵

Fusion Connect and its wholly-owned operating subsidiaries will merge with and into the North Haven Entities.¹⁶ The North Haven Entities’ voting interests in Fusion Connect, collectively managed by MS Capital Partners Adviser, will thereby increase from 11.04% to more than 50%.¹⁷ Specifically, Applicants state that “in total, MS Capital Partners Adviser will manage, post-close, approximately 82.65% of Fusion Connect’s voting equity, held directly by the North Haven Funds.¹⁸ The North Haven Funds will delegate to MS Capital Partners Adviser, as investment manager, the full authority to acquire, dispose of, and vote the securities held by the North Haven Funds, including their current and post-transaction shares in Fusion Connect.¹⁹

Applicants contend that the proposed transaction will serve the public interest, convenience and necessity.²⁰ They assert that, post-consummation, the Fusion Licensees will continue to “provide a comprehensive suite of advanced solutions to existing and future customers, without diminishment or interruption.”²¹ They maintain that the proposed transaction will not raise anticompetitive concerns.²²

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application and the associated international application, ITC-T/C-20220317-00038, are being referred to the relevant Executive Branch agencies for their views on

¹⁴ *Id.* at 13-15 (stating that the New York and Boston metropolitan areas served by Cablevision Lightpath and Fusion Connect are served by other competitors, including incumbent providers).

¹⁵ *Id.* at 3-4. According to Applicants, even if the equity holder Warrants are excluded, the North Haven Entities will have *de jure* control of the Fusion Licensees post-transaction. *Id.* at 4 and n.32.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 3, n.11, and Attach. 1 at 30.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 12-17.

²¹ *Id.* at 12.

²² *Id.* at 14.

any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.²³

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 (filed Mar. 17, 2022).

GENERAL INFORMATION

The application identified herein has 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 **on or before April 21, 2022**, and reply comments **on or before April 28, 2022**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- **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 two additional copies 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.²⁴ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - 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 45 L Street, NE, Washington, DC 20554.

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

²³ 47 CFR § 1.40001. 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), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020). See also *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).

²⁴ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

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

- 1) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 2) David Krech or Sumita Mukhoty, Telecommunications and Analysis Division, International Bureau, david.krech@fcc.gov; sumita.mukhoty@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.²⁵ 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 Dennis Johnson at (202) 418-0809.

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²⁵ See 47 CFR § 1.45(c).