



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor,
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION) ORDER
OF FUSION CONNECT, INC., FUSION LLC, AND)
FUSION CLOUD SERVICES, FOR CONSENT TO A)
CHANGE IN CONTROL OF FUSION LLC AND FUSION)
CLOUD SERVICES LLC) DOCKET NO. TM20030204

Parties of Record:

James H. Laskey, Esq., Norris McLaughlin, P.A., on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On March 4, 2020, Fusion Connect, Inc., ("Fusion Connect"), Fusion LLC, ("Fusion LLC") and Fusion Cloud Services, LLC, ("Fusion Cloud"), collectively, the "Petitioners", submitted a Verified Petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 requesting Board approval for a transaction ("the "Transaction") which will result in a material change in the ultimate control of Fusion LLC and Fusion Cloud (together, the "Fusion NJ Licensees"). Following closing of the transaction, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions to customers.

BACKGROUND

Fusion Connect is a privately-held Delaware corporation with headquarters located in Atlanta, Georgia. Fusion Connect is authorized by the Federal Communications Commission ("FCC") to provide interstate and international telecommunications. Fusion Connect, through its subsidiaries, provides communications services, including unified communications, digital voice and data communications services, including Voice over Internet Protocol and Session Initiated Protocol trunking, broadband Internet access service, data networks, cloud-based services, as well as traditional voice solutions, to business customers throughout the United States. The Petition states that the Fusion Companies have a *de minimis* number of non-business (i.e., residential) customers in the United States.

In New Jersey, Fusion LLC, (f/k/a Network Billing Systems, LLC), with principal offices located in Atlanta, Georgia, is authorized to provide competitive local exchange and interexchange services. I/M/O the Petition of Network Billing Systems, LLC for Approval to Provide Local Exchange and

Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE08070466 (order dated September 15, 2008). Fusion LLC holds intrastate telecommunications service authority in 47 states.

Fusion Cloud (f/k/a Birch Communications Inc.), is a Georgia limited liability company, with principal offices located in Atlanta, Georgia. Fusion Cloud was granted authority to provide local exchange and interexchange telecommunications services in New Jersey on July 1, 2009. I/M/O Birch Communications Inc., Petition for Authority to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE09040307 (order dated July 1, 2009).

DISCUSSION

The Petition states the United States Bankruptcy court for the Southern District of New York (the “Bankruptcy Court”) confirmed a final reorganization plan and on January 14, 2020, the Fusion Companies emerged from chapter 11 protection. At emergence, the then existing controlling interests in the Fusion Companies was extinguished and holders of Fusion Connect’s first and second lien secured debt (the “Lenders”) received new common stock in reorganized Fusion Connect. The controlling interests in the Fusion Companies (approximately sixty-five percent) are currently held by an investment holding company named Telecom Holdings, LLC.¹ The remaining interests in Fusion Connect are widely held, with no one party holding ten percent or more equity. The petition states that this allocation of Fusion Connect’s new equity arose, in part from an arrangement among the Lenders designed to expedite the Fusion Companies’ emergence from bankruptcy protection and thus minimize the corrosive effects of a prolonged Chapter 11 case. The Lenders agreed to defer the issuance of some of the shares of Fusion Connect common stock that are representative of their pre-emergence debt, until after both the emergence of the Fusion Companies and the grant of additional regulatory approvals, as would be required for the resulting changes to the ownership of Fusion Connect.

According to the Petition, as contemplated by the Plan, the Transaction proposes the issuance of additional shares of Fusion Connect common stock to certain Lenders once all required regulatory approvals are secured. Upon completion of the Transaction, Telecom Holdings will no longer hold a majority controlling interest in Fusion Connect or in the Fusion NJ Licensees. No individual or entity will hold a controlling interest in the Fusion Companies. Accordingly, Fusion Connect will become a widely held corporation, with all of its common stock held by the Lenders. It is anticipated that one group of affiliated funds will hold approximately thirty-three percent (33%) of the issued and outstanding shares of Fusion Connect and that another group of affiliated funds will hold approximately thirteen percent (13%) of Fusion’s issued and outstanding shares. It is anticipated no other stockholder will hold more than a ten percent (10%) share or more.

Petitioners submit that approval of the proposed Transaction is in the public interest, convenience, and necessity. Petitioners state that the Transaction is the final step of the Plan, which (a) was approved by the Bankruptcy Court, (b) improved the financial condition of the Fusion Companies, (c) returned the Fusion Companies to a positive equity position, and (d) it will help ensure that the Fusion Companies continue to offer services to customers throughout the United States including

¹ The Board reviewed this reorganization transaction in BPU Docket No. TM19070862. See In the Matter of the Verified Joint Petition of Fusion Connect, Inc., Debtor-in-Possession, Fusion LLC, Debtor-in-Possession, Fusion Cloud Services, LLC Debtor-in-Possession, and Telecom Holdings LLC for Consent to a Transaction that will result in a Material Change to the Ownership and Control of Fusion LLC and Fusion Cloud Services, LLC (order dated September 27, 2019)

those in New Jersey. Petitioners further state that the proposed Transaction will have no adverse effects upon the New Jersey telecommunications market as they have a small share of the market. Petitioners state that following consummation of the Transaction, New Jersey customers of the Fusion NJ Licensees will continue to receive the same services as they did previously, pursuant to the same rates, terms and conditions. The petition also states that the proposed Transaction will not materially impact New Jersey employees. The Fusion Companies collectively have approximately 70 employees in New Jersey. The Fusion Companies do not expect any material changes in the headcount as a result of the Transaction. The Petitioner further notes that under the Board Order in footnote 2 noted above (BPU DKT No. TM19070862), the Fusion Companies are under an obligation to report a headcount reduction of more than 15% throughout a 3 year period post-issuance of the Board's Order as a condition of approval after closing. In addition, Petitioners state that the Transaction will have no impact on any pension obligations or other employee commitments of the Fusion NJ Licensees.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated March 27, 2020, stating it does not oppose approval of the proposed Petitioners' requests in this matter provided conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. As a condition of approval, Rate Counsel recommends that the Board require Petitioners to notify the Board and Rate Counsel if effectuating a reduction in New Jersey Jobs that is greater than 15% throughout a three (3) year period following post issuance of the Board's Order.

FINDINGS AND CONCLUSIONS

Pursuant to N.J.S.A. 48:2-51.1(a), the Board shall evaluate the impact of an acquisition of control of a public utility on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1 as set forth above. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

After a careful review of this matter, the Board is satisfied that positive benefits will flow to customers based upon the record, and that the Petitioners would not be able to exercise market power to raise prices above competitive levels or exclude competitors from the marketplace. The Board therefore **FINDS** that the proposed transaction will have little impact on competition. The Board additionally **FINDS** that there will be no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions and the provision of service quality on competitive offerings is in the public interest.

The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. The Fusion Companies currently have approximately 70 employees in New Jersey. In BPU Docket Number TM19070862 that was referenced in footnote 2 above, the Board required Petitioners to report headcount reductions in New Jersey. In that Order, the Board stated that Petitioners must notify the Board, providing a written explanation following a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of its total employee

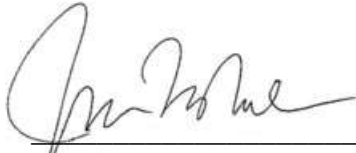
headcount for a 3-year period after the date of closing. The Board **FINDS** that those requirements are still in effect.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with the applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed transaction will have no impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.

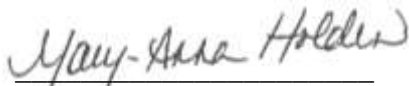
This Order shall be effective April 16, 2020.

DATED: April 6, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



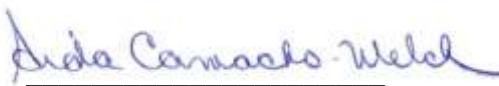
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COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

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FUSSION LLC, AND FUSION CLOUD SERVICES, FOR CONSENT TO A CHANGE IN
CONTROL OF FUSION LLC AND FUSION CLOUD SERVICES. LLC
DOCKET NO. TM20030204**

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