



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION	)	ORDER
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	)	DOCKET NO. TM19070862

**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 July 29, 2019, Fusion Connect, Inc., debtor-in-possession ("Fusion Connect"), Fusion LLC, debtor-in-possession ("Fusion LLC"), Fusion Cloud Services, LLC, debtor-in-possession, operating in New Jersey as Birch Communications, LLC d/b/a BirchComm, LLC ("Birch"),<sup>1</sup> and Telecom Holdings LLC ("Telecom Holdings"), (collectively, "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 reorganization transaction which will result in Telecom Holdings acquiring a controlling interest in Fusion Connect's operating subsidiaries in New Jersey, specifically the Fusion NJ Licensees, through Telecom Holdings' acquisition of a majority of the common stock of Fusion Connect. This transaction arises out of voluntary case filed under Chapter 11 of title 11 of the United States Code with the Bankruptcy Court for the Southern District of New York. 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.

<sup>1</sup> Fusion Connect, Fusion LLC and Birch, together with other Fusion operating companies described herein (the "Fusion Companies" or "Fusion"). Fusion LLC and Birch, together, the "Fusion NJ Licensees."

## **BACKGROUND**

Fusion Connect is a publicly traded 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. In New Jersey, Fusion LLC, under its former name Network Billing Systems, LLC, 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.

Birch is a Georgia limited liability company, with principal offices located in Atlanta, Georgia. Birch 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).

Telecom Holdings is a limited liability company, formed under the laws of the State of Delaware, with its principal address at 1 Market Street, Steuart Tower, 23rd Floor, San Francisco, California. The petition states that Telecom Holdings is solely an investment holding company. When the Fusion Companies emerge from chapter 11 bankruptcy protection, Telecom Holdings will hold more than fifty percent (50%) of the common stock of reorganized Fusion Connect Reorganized FCI ("Reorganized FCI"). Telecom Holdings has no other operations than to hold debt interests and, ultimately, common stock in Fusion Connect.

## **DISCUSSION**

Petitioners state that on June 3, 2019, the Fusion Companies filed their chapter 11 cases in order to effectuate a transaction that would improve their financial structure and position them more securely for future growth, and subsequently, on July 1, 2019, filed a plan of reorganization (the "Plan") and associated disclosure statement with the Bankruptcy Court. The Petitioners expect that the Fusion Companies will emerge from bankruptcy protection financially stronger and materially better positioned to compete effectively in the U.S. telecommunications and cloud services markets. The Parties believe that the Plan is in the best interests of the Fusion Companies and their respective employees, suppliers, vendors, creditors and other key constituencies. Under the Plan, all current equity interests in Fusion Connect will be cancelled, certain existing debt of the Fusion Companies will be extinguished, and the holders of that debt will receive, among other things, new common stock of Reorganized FCI. Consequently upon emergence from bankruptcy, BCHI Holdings LLC and Holcombe T. Green, Jr., parties that currently hold intermediate and ultimate control of the Fusion Companies, will no longer hold a controlling interest in the Fusion Companies, and all of the new common stock of Reorganized FCI will be held by the majority of the holders of Fusion Connect's first lien debt (the "Lenders"). Accordingly, the Transaction will result in a substantial change in ownership and control of the Fusion Companies. Telecom Holdings will own more than 10% or more of the common stock of Reorganized FCI.

Telecom Holdings is owned on a pro rata basis by twelve U.S. citizens, none of whom will hold a direct or indirect economic interest in Reorganized FCI of ten percent (10%) or more. The remaining common stock in Reorganized FCI (and, indirectly, in the other Fusion Companies) will be held in varying amounts by other Lenders, none of whom will hold common stock representing an equity or voting interest of ten percent (10%) or more of the common stock of Reorganized FCI at emergence. In addition, Telecom Holdings will hold more than fifty percent (50%) of the new common stock of Reorganized FCI at emergence and have *de jure* control of the Fusion Companies. Accordingly, the Petition seeks authority for Telecom Holdings to acquire more than fifty percent (50%) of the indirect equity interests in the Fusion NJ Licensees.

Petitioners submit that the transaction is in the public interest in that the reorganization of the Fusion Companies will allow them to reduce debt load, and enable them to continue providing service to business customers in New Jersey and across the United States. Further, the proposed Transaction ensures continuity of operations for Fusion Connect and the other Fusion Companies, including the Fusion NJ Licensees, to the ultimate benefit of consumers. In addition, Petitioners assert that the proposed Transaction will have no adverse effects upon the New Jersey or interstate telecommunications market. The Fusion Companies have a small share of the market and, significantly, the Transaction will not eliminate any market participants nor will it, in any respect, reduce the service choices available to consumers. Petitioners also state that the proposed Transaction will not materially impact New Jersey employees. The Fusion Companies collectively have fewer than 70 employees. The petition states that the Fusion Companies do not expect any material changes in the New Jersey employee headcount as a result of the Transaction. In addition, 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 August 27, 2019, 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 urges that the Board require Petitioners to notify the Board and Rate Counsel and to provide an appropriate explanation in writing within a minimum of thirty days prior to effectuating an elimination of greater than 15% of the New Jersey employees' positions throughout a three (3) year period following approval of the transaction.

### **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.

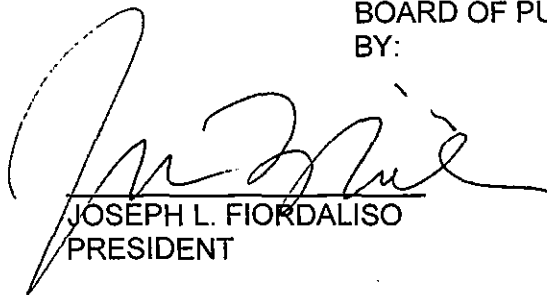
The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. The Fusion Companies currently have approximately 70 employees in New Jersey. Board precedent requires companies to report headcount reductions in New Jersey greater than 15% for a 3-year period after the date of closing. See I/M/O the Verified Joint Petition of Broadview Network Holdings, Inc. et al., Docket No. TM10404333 (order dated June 30, 2017). There is no reason to disturb Board precedent based on these facts. The Board, therefore, **FINDS** 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.

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 October 7, 2019.

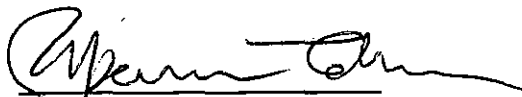
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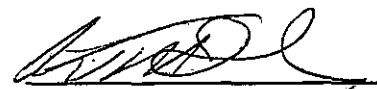
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BY:

  
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PRESIDENT

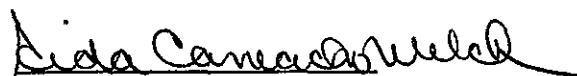
  
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ATTEST:

  
AIDA CAMACHO-WELCH  
SECRETARY

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