



Agenda Date: 8/17/22  
Agenda Item: IVA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CABLE TELEVISION AND  
TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT ) ORDER  
PETITION OF FUSION CONNECT, INC., )  
FUSION LLC, FUSION CLOUD SERVICES, )  
LLC AND THE NORTH HAVEN ENTITIES FOR )  
CONSENT TO A CHANGE IN CONTROL OF )  
FUSION LLC AND FUSION CLOUD )  
SERVICES, LLC ) DOCKET NO. TM22040291

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**Laura M. Miller, Esq., Norris McLaughlin, P.A.**, on behalf of Petitioners

BY THE BOARD:<sup>1</sup>

On April 26, 2022, Fusion Connect, Inc. (“Fusion Connect”), Fusion LLC (“Fusion”), Fusion Cloud Services, LLC (“Fusion Cloud” and together with Fusion, “Fusion NJ Licensees”) and the North Haven Entities<sup>2</sup>, (collectively with Fusion NJ Licensees and Fusion Connect, “Joint Petitioners”) submitted a Verified Joint Petition (“Petition”) with 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 that the Board grant authority for a proposed transaction (“Transaction”) which would result in the North Haven Entities acquiring a controlling interest in Fusion Connect and, indirectly, in the Fusion NJ Licensees. Following consummation of the Transaction, Joint Petitioners represent that there will be no change to the services, rates, terms and conditions currently being offered to customers in New Jersey.

**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

<sup>1</sup> Commissioner Zenon Christodoulou abstained from voting on this matter.

<sup>2</sup> The “North Haven Entities” are composed of North Haven Credit Partners II L.P. (“NH II”), North Haven Senior Loan Fund L.P. (“NH Senior Loan Fund”), and North Haven Credit Partners III Holdings L.P. (“NH III”).

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.<sup>3</sup>

In New Jersey, Fusion, formerly known as Network Billing Systems, LLC, with principal offices located in Atlanta, Georgia, is authorized to provide competitive local exchange and interexchange services.<sup>4</sup> Fusion 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.<sup>5</sup>

The North Haven Entities (NH II, NH Senior Loan, and NH III) are Delaware limited partnerships with headquarters located in New York, New York. According to the Petition, each of the North Haven Entities has a principal business of investment activities and, as interest holders in Fusion Connect, will act as institutional investors. The securities held or controlled by the North Haven Entities are under the common investment management of MS Capital Partners Adviser, Inc. ("MS Capital") a Securities and Exchange Commission-registered investment adviser, in its capacity as investment manager to the North Haven Entities. The North Haven Entities have delegated to MS Capital, as their investment manager, full authority to acquire, dispose of, and vote the securities held by the North Haven Entities, including their current and post-Transaction equity interests in Fusion Connect. MS Capital is a Delaware corporation with its headquarters located in New York, New York. MS Capital is a wholly-owned direct subsidiary of MS Holdings Incorporated ("MS Holdings"), a Delaware corporation. MS Holdings is, itself, a wholly-owned direct subsidiary of Morgan Stanley, a Delaware corporation. 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 NH II and NH III, two of the North Haven Entities which together, post-Transaction, will hold direct and indirect interests totaling approximately 77.7% in Fusion Connect.

The Petition notes that Morgan Stanley, through its affiliates and subsidiaries, advises and originates trades, and manages and distributes capital for institutions, governments, and individuals. Morgan Stanley operates in three (3) business segments: institutional securities, wealth management, and investment management. None of the Morgan Stanley Entities

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<sup>3</sup> Unified Communications ("UC") is a business and marketing concept. In its broadest sense, UC can encompass all forms of communications that are exchanged via a network. UC is not necessarily a single product, but a set of products that provides a consistent unified user interface and user experience across multiple platforms.

<sup>4</sup> See 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).

<sup>5</sup> See 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).

operates in the telecommunications industry.<sup>6</sup> The Petition also notes that none of the Morgan Stanley Entities will have any active role in the day-to-day activities of the Fusion Companies.

The Petition states that currently there is no entity or individual that holds a majority or controlling interest in Fusion Connect. Three (3) groups of investment funds under the respective control or management of (i) Vector Capital Management, L.P., and Mr. Alex Slusky (the “Vector Funds”), (ii) Invesco Limited and (iii) CBAM CLO Management, LLC, or CBAM Partners, LLC ( “CBAM Entities”) as well as certain Morgan Stanley/North Haven Entities [consisting of NH II, NH Senior Loan Fund, and Morgan Stanley Senior Funding, Inc. (“MS Senior Funding”)] hold, respectively, approximately 25.12%, 10.35%, 11.38%, and 12.81% of the shares of Fusion Connect's voting stock. The remaining interests in Fusion Connect are widely held by a number of investors in amounts below ten percent (10%).

As proposed in the Petition, following receipt of all required regulatory approvals and the implementation of certain steps, the North Haven Entities will directly own approximately 67.77% of Fusion Connect's voting stock and will indirectly own approximately 13.09% of Fusion Connect's voting stock, for a total of control of approximately 80.86% of the voting equity of Fusion Connect.<sup>7</sup> The voting shares of Fusion Connect owned or controlled by the North Haven Entities will be under the common investment management of MS Capital. Post-Transaction, MS Capital will have under its investment management a total of approximately 82.65% of the voting equity of Fusion Connect, which will be held directly by the North Haven Entities and certain affiliated entities.<sup>8</sup> Specifically, the North Haven Entities propose to obtain indirect control of the Fusion NJ Licensees through the following simultaneous events: (1) certain of the North Haven Funds will exercise options that they

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<sup>6</sup> “Morgan Stanley Entities” include the North Haven Entities, MS Credit Partners II GP Inc., MS Credit Partners III GP Inc., MS Credit Partners II GP L.P., MS Credit Partners III GP L.P., the other North Haven Funds (as defined below in note 7), MS Capital Partners Adviser, MS Holdings, and Morgan Stanley.

<sup>7</sup> As detailed below, post-Transaction, NH III will directly and indirectly own approximately 33.43% and 13.09%, respectively, of Fusion Connect's voting equity, and NH II will directly own approximately 31.20 % of Fusion Connect's voting equity. The NH Senior Loan Fund will directly own approximately 3.14% of Fusion Connect's voting equity. NH III is the sole member of the following seven limited liability companies (collectively, the “NHCP III LLCs”) each of which will hold, after the proposed Transaction, approximately 1.87% direct interest in the voting equity of Fusion Connect (for a total of approximately 13.09%): NHCP III Holdings 1 LLC, NHCP III Holdings 2 LLC, NHCP III Holdings 3 LLC, NHCP III Holdings 4 LLC, NHCP III Holdings 5 LLC, NHCP III Holdings 6 LLC, and NHCP III Holdings 7 LLC. The projected post-Transaction interests in the Fusion Companies may vary slightly (in non-material amounts) based upon the extent to which certain of the transactional steps are fully executed.

<sup>8</sup> The complete group of affiliated entities – together, the “North Haven Funds” – whose shares in Fusion Connect will be under MS Capital Partners Adviser common management are as follows:

The North Haven Entities

The NHCP III LLCs

North Haven Senior Loan Fund (Alma) Designated Activity Company

North Haven Senior Loan Fund Offshore L.P.

North Haven Senior Loan Fund Unleveraged Offshore L.P.

North Haven Unleveraged Senior Loan Fund (Yen) L.P.

The North Haven Funds, which operate as institutional investors, each have delegated the authority to acquire, dispose of, and vote the securities held by the North Haven Funds to MS Capital Partners Adviser as investment manager.

secured from several current stockholders of Fusion Connect to purchase those stockholders' shares of Fusion Connect common stock ("Common Stock"); (2) additional voting rights associated with Fusion Connect's Series A preferred stock will activate; (3) Fusion Connect's non-voting 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 Connect in January 2022 will have the right to exercise those Warrants and purchase additional, newly issued, shares of Common Stock.<sup>9</sup>

Joint Petitioners stated that approval of the proposed Transaction will promote the public interest, convenience and necessity. Following consummation of the proposed Transaction, the Fusion NJ Licensees will continue to provide their services without interruption or diminished service quality and at the same rates, terms and conditions. With regard to anti-competitive concerns, Joint Petitioners stated that the proposed Transaction will not eliminate any market participants, nor will it reduce the service choices available to consumers in New Jersey. The Petition stated that the Fusion Companies do not expect any material changes to New Jersey employee headcount as a result of the proposed Transaction and will have no impact on any pension obligations or other employee commitments.

By letter dated June 3, 2022, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments stating that it does not oppose Board approval of the Joint Petitioners' requests under the Verified Petition.

## **DISCUSSION AND FINDINGS**

In considering a request for transfer of control, the Board shall evaluate the impact of the acquisition 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. N.J.S.A. 48:2-51.1(a). 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 and 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 **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** Joint Petitioners to complete the proposed Transaction as described in its Petition.

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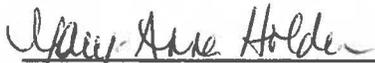
<sup>9</sup> The North Haven Funds with the option to buy the Common Stock held by the Vector Funds are NH II and NH III, two of the North Haven Entities. The North Haven Funds with the option to buy the Common Stock held by the CBAM Entities include each of the North Haven Entities and North Haven Senior Loan Fund (Alma) Designated Activities Company; North Haven Senior Loan Fund Offshore L.P.; North Haven Unleveraged Senior Loan Fund (Yen) L.P.; and North Haven Senior Loan Fund Unleveraged Offshore L.P.

This Order shall be effective August 24, 2022.

DATED: August 17, 2022

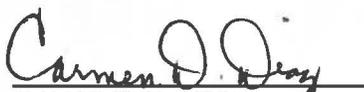
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COMMISSIONER

  
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ATTEST:   
CARMEN D. DIAZ  
ACTING SECRETARY

  
I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities.

IN THE MATTER OF THE VERIFIED JOINT PETITION OF FUSION CONNECT, INC., FUSION LLC, FUSION CLOUD SERVICES, LLC AND THE NORTH HAVEN ENTITIES FOR CONSENT TO A CHANGE IN CONTROL OF FUSION LLC AND FUSION CLOUD SERVICES, LLC

DOCKET NO. TM22040291

SERVICE LIST

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