

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, NW, SUITE 800
WASHINGTON, DC 20005**

ORDER

March 16, 2020

**FORMAL CASE NO. TA 2013-01, IN THE MATTER OF THE JOINT
APPLICATION OF FUSION CONNECT, INC. AND FUSION
COMMUNICATIONS, LLC FOR CONSENT TO A CHANGE IN CONTROL OF
FUSION COMMUNICATIONS SERVICES, LLC, Order No. 20309**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) approves the Joint Application of Fusion Connect, Inc. (“Fusion Connect”) and Fusion Communications, LLC (“Fusion Communications” f/k/a Cbeyond Communications, LLC) (jointly, the “Applicants”) for authority to enter into a reorganization transaction resulting in a material change in the ultimate control of Fusion Communications (the “Transaction”).¹ Commission approval of this Transaction shall become effective upon the issue date of this Order.

II. BACKGROUND

2. On March 4, 2020, the Applicants filed their Joint Application.² No comments on the Joint Application were filed or received. In the Joint Application, the Applicants seek the Commission’s approval of a corporate reorganization that will result in a material change in the ultimate control of Fusion Communications. The Applicants represent that no assignment of licenses, assets, or customers will occur as a consequence of the proposed Transaction. Following the consummation of the Transaction, the Applicants assert that Fusion Communications will continue to provide service to its existing customers pursuant to its existing rates, terms, and conditions. The Applicants claim that the Transaction will be, for all practical purposes, imperceptible to the customers of Fusion Communications.³ The Applicants also assert that the proposed Transaction will

¹ *Formal Case No. TA 2013-01, In the Matter of the Joint Application of Fusion Connect, Inc. and Fusion Communications, LLC for Consent to a Change in Control of Fusion Communications Services, LLC (“Formal Case No. TA 2013-01”),* filed March 4, 2020 (“Joint Application”). The Applicants state that Fusion Connect and Fusion Communications, together with other Fusion operating companies described in the Joint Application are referred to collectively as the “Fusion Companies.”

² *Formal Case No. TA 2013-01, Joint Application,* filed March 4, 2020.

³ Joint Application at 1.

not adversely affect competition in the District of Columbia (“District”) because it will not result in a reduction of competitors, and customers will continue to have access to the same competitive alternatives they have today.⁴ The Applicants also submit that Commission approval of this Application is in the public interest.⁵

A. Description of the Applicants

(1) The Fusion Companies

3. The Applicants describe Fusion Connect as a privately-held Delaware corporation with headquarters in Atlanta, Georgia. The Applicants state that Fusion Connect, through its subsidiaries, provides a wide range of communications services, including unified communications, digital voice and data communications services, including hosted Voice over Internet Protocol and Session Initiated Protocol trunking, broadband Internet access service, data networks, cloud-based services, and other enhanced communications services and features, as well as traditional voice solutions, to business customers throughout the U.S.⁶ The Applicants describe Fusion Communications as a Delaware limited liability company with its principal place of business in Atlanta, Georgia. In the District, the Commission granted certification to Fusion Communications to operate as a competitive local exchange carrier in Order No. 11890, on January 24, 2001.⁷ The Applicants add that Fusion Communications holds intrastate telecommunications service authority in a total of 13 states.⁸

B. Description of the Transaction

4. As described in the Joint Application, Fusion Communications previously informed the Commission, on June 3, 2019, that each of the Fusion Companies commenced voluntary cases under chapter 11 of Title 11 of the United States Code with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).⁹ According to the Applicants, the Fusion Companies undertook this course of action in order to effectuate a reorganization that would improve their financial structure and position them more securely for future growth.¹⁰ The Applicants represent that following extensive

⁴ Joint Application at 1.

⁵ Joint Application at 1-2.

⁶ The Applicants maintain that Fusion Companies have, at most, a *de minimis* number of non-business (*i.e.*, residential) customers in the United States. Joint Application at 2, n.3.

⁷ *Formal Case No. 892, In the Matter of the Approval of Cbeyond Communications, LLC to Provide Telecommunications Services in the District of Columbia*, Order No. 11890, rel. January 24, 2001.

⁸ Joint Application at 3-4.

⁹ *In re Fusion Connect, Inc., et al.*, Debtors, Case No. 19-11811 (Bankr. S.D.N.Y. June 3, 2019). Joint Application at 3.

¹⁰ Joint Application at 3.

negotiations with affected parties, including creditors and lenders, and under the close observation of the Bankruptcy Court, a final reorganization plan (the “Plan”) was confirmed on December 17, 2019.¹¹ The Applicants state that on January 14, 2020, the Fusion Companies emerged from chapter 11 protection. As a consequence of the bankruptcy process, the Applicants claim that the Fusion Companies emerged financially stronger and in a materially better position to compete effectively in the telecommunications and cloud services markets.¹²

5. According to the Plan described in the Joint Application, at emergence, the then-existing equity interests in Fusion Connect were canceled, certain existing debt of 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.¹³ The Applicants describe the controlling interests in the Fusion Companies (at approximately 65%) as being currently held by an investment holding company named Telecom Holdings, LLC.¹⁴ According to the Applicants, the remaining interests in Fusion Connect are widely held, with no party holding 10% or more equity. The Applicants maintain that the 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 minimize the erosive effects of a prolonged chapter 11 case.¹⁵ The Applicants explain that under this arrangement, 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.¹⁶

6. According to the Applicants, 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.¹⁷ Upon completion of the Transaction, the Applicants explain that Telecom Holdings will no longer hold a majority controlling interest in Fusion Connect or in Fusion Communications, adding that no individual or entity will hold a controlling interest in the Fusion Companies. The Applicants assert that Fusion Connect will become a widely held corporation, with all of its common stock held by the Lenders. The Applicants anticipate that one group of affiliated funds will hold approximately 33% of the issued and outstanding shares of Fusion

¹¹ Joint Application at 4.

¹² Joint Application at 4.

¹³ Joint Application at 4.

¹⁴ The Commission previously reviewed the reorganization transaction in *Formal Case No. TA 2013-01*, granting approval in Order No. 20211 on August 27, 2019. Joint Application at 4.

¹⁵ Joint Application at 4.

¹⁶ Joint Application at 4.

¹⁷ Joint Application at 5.

Connect and that another group of affiliated funds will hold approximately 13% of Fusion's issued and outstanding shares. The Applicants also anticipate that all other stockholders of Fusion Connect will hold less than 10% of Fusion Connect's common stock.¹⁸ It is significant to the Applicants that the transaction will not have any impact on the organization and operations of the Fusion Companies, including Fusion Communications. The Applicants claim that all that will change is the relative percentage of ownership of the various Lenders in Fusion Connect.¹⁹

C. Public Interest Considerations

7. The Applicants submit that the proposed Transaction is in the public interest, asserting that the Transaction is simply the final step contemplated by the Plan, which improved the financial condition of the Fusion Companies, thus ensuring that they continue to offer competitive, high-quality communications and cloud services offerings to customers throughout the United States, including those in the District.²⁰ The Applicants assert that the proposed Transaction will have no adverse effects on the District or interstate telecommunications market. The Applicants add that Fusion Communications has a small share of the intrastate telecommunications market and, together, the Fusion Companies have a small share of the interstate telecommunications market. The Applicants maintain that the Transaction will not eliminate any market participants nor will it reduce the service choices available to consumers. The Applicants add that the Transaction will create no adverse effects of Fusion Communications' customers in the District. The Applicants believe that the Plan effectively ensures that, following emergence, Fusion Communications will continue providing services to their customers without any interruption or diminishment of service quality and that these customers continue to receive the same services as they did previously, pursuant to the same rates, terms and conditions.²¹ The Applicants conclude that the Transaction satisfies the five factors required by Title 15 of the District of Columbia Municipal Regulations ("DCMR") § 2511.2 for Commission approval of proposed transfers:

(1) The Transaction will have no adverse effects upon telecommunications competition in the District. Fusion Communications will continue to provide the same quality of services post-close as it did previously, without any interruption or change to its current rates, terms and conditions; (2) the Transaction will have no effect, adverse or otherwise, upon the universal service trust fund, as it will not result in any change to Fusion Communications' services; (3) the Commission will continue to regulate Fusion Communications post-close as it does today and consequently there

¹⁸ Joint Application at 5.

¹⁹ Joint Application at 5; the Applicants attach pre- and post-Transaction corporate organizational structure charts for the Fusion Companies as Exhibit 1.

²⁰ Joint Application at 5-6.

²¹ Joint Application at 6.

will be no adverse effect upon the public safety and welfare; (4) the Commission will continue to regulate Fusion Communications' quality of service, which will in no respect be diminished by the Transaction; and (5) the Transaction will have no effect upon consumer rights, which will continue to be monitored and sustained by the Commission's oversight.²²

III. COMMISSION DECISION

A. Transfer of Control

8. D.C. Code § 34-1001 sets forth the Commission's authority to review the transaction filed for Commission consideration and approval. In addition, 15 DCMR § 2511.2 provides the application requirements for entities seeking Commission approval for a corporate restructuring.²³ The first step in this process, however, is for the Commission to determine whether it has authority to review and approve an application for transfer of control or a corporate restructuring, in accordance with D.C. Code § 34-1001. If the Commission determines that it has authority to review the transaction in accordance with D.C. Code § 34-1001, then the Commission will conduct an analysis of the application based on the requirements provided in 15 DCMR § 2511.2.²⁴ The relevant portion of D.C. Code § 34-1001 reads:

No franchise nor any right to or under any franchise to own or operate any public utility as defined in this subtitle . . . shall be assigned [or] transferred . . . nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer . . . or agreement shall have been approved by the Commission in writing.²⁵

²² Joint Application at 6-7.

²³ See 15 DCMR § 2511.2 (2015). Specifically, 15 DCMR § 2511.2 states: For any change of ownership or control involving a certificated local exchange carrier that must be approved by the Commission pursuant to D.C. Code § 34-1001 (2001), all of the entities involved in the transaction must file an application with the Commission at least sixty (60) days before the proposed closing date of the transaction.

²⁴ See 15 DCMR § 2511.2(d) (2015) stating the five standards an application for transfer of control or other type of corporate reorganization must meet in order to receive Commission approval. The five standards are: (1) how the proposed transaction will affect competition in the District of Columbia; (2) how the proposed transaction will affect universal service; (3) how the proposed transaction will affect public safety and welfare; (4) whether the proposed transaction will affect the quality of local telecommunications services; and (5) how the proposed transaction will affect consumer rights.

²⁵ D.C. Code § 34-1001 (2001).

9. A “public utility” is defined under D.C. Code § 34-214 as, *inter alia*, a “telephone corporation” or a “telephone line.”²⁶ D.C. Code § 34-220 provides that a “telephone corporation” includes:

every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers . . . owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communications for hire, or which licenses, lets, or permits telephonic communication for hire.²⁷

10. D.C. Code § 34-221 states that a “telephone line” includes:

conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication.²⁸

11. The Commission has interpreted these provisions to mean that if a Competitive Local Exchange Carrier (“CLEC”) has facilities in the District, then it can be classified as a public utility under the D.C. Code and therefore certain transactions, such as assignments or transfers, require prior Commission approval.²⁹ In this instance, the Commission must determine whether Fusion Communications qualifies as a public utility

²⁶ D.C. Code § 34-214 (2001).

²⁷ D.C. Code § 34-220 (2001).

²⁸ D.C. Code § 34-221 (2001).

²⁹ See *Formal Case No. 990, In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 13139, ¶ 22, rel. March 25, 2004; See also *Formal Case No. 892, In the Matter of the Joint Application of CTC Communications Corp., Conversant Communications Resale, L.L.C., and Choice One Communications Resale, L.L.C. for Approval of Pro Forma Intra-Company Changes*, Order No. 16933, rel. October 12, 2012, citing *Formal Case No. 968, Joint Application of AT&T Corporation and Teleport Communications Group, Inc., for Approval of a Transfer of a Franchise*, Order No. 11532 at 5, rel. November 5, 1999, which provided the context for the Commission’s authority to review certain transactions.

for this transaction and thus, whether the transaction is subject to Commission review and approval. The Applicants have previously confirmed in an earlier filing that Fusion Communications owns, operates, manages or controls telecommunications facilities in the District to be considered a public utility under District law.³⁰ Accordingly, the instant reorganization transaction is subject to Commission review under 15 DCMR § 2511.2.

12. Under the requirements of 15 DCMR § 2511.2, an application must contain a description of how the transaction satisfies the following five standards set out in 15 DCMR § 2511.2 (d): (1) how the proposed transaction will affect competition in the District; (2) how the proposed transaction will affect universal service; (3) how the proposed transaction will affect public safety and welfare; (4) whether the proposed transaction will affect the quality of local telecommunications services; and (5) how the proposed transaction will affect consumer rights. The Commission reviews the Joint Application to determine whether each of the five standards has been met.

13. In response to the first standard, the Applicants state that the Transaction will have no adverse effects upon telecommunications competition in the District. The Applicants assert that Fusion Communications will continue to provide the same quality of services post-close as it did previously, without any interruption or change to its current rates, terms and conditions.³¹ Inasmuch as the Applicants maintain that the same quality of services will be provided post-close as it did previously, the Commission finds that the Applicants have provided an adequate response to the competition standard.

14. Regarding the second standard, the Applicants assert that the Transaction will have no effect, adverse or otherwise, upon the universal service trust fund, as it will not result in any change to Fusion Communications' services.³² We are satisfied that the Applicants have sufficiently responded to the universal service issue.

15. Turning to the third standard, the Applicants state that the Commission will continue to regulate Fusion Communications post-close as it does today and consequently there will be no adverse effect upon the public safety and welfare.³³ The Applicants have provided a response that adequately addresses the public safety and welfare standard.

16. With regard to the fourth standard, the Applicants state that the Transaction will not affect the quality of local telecommunications services inasmuch as the Commission will continue to regulate Fusion Communications' quality of service, which will in no respect be diminished by the Transaction.³⁴ The Applicants have provided a

³⁰ *Formal Case No. TA 2013-01*, Applicants' Supplemental Filing, filed August 12, 2019.

³¹ Joint Application at 6.

³² Joint Application at 6.

³³ Joint Application at 7.

³⁴ Joint Application at 7.

response that adequately addresses the quality of local telecommunications services standard.

17. Concerning the fifth standard, the Applicants state that the Transaction will have no effect upon consumer rights, which will continue to be monitored and sustained by the Commission's oversight.³⁵ The Commission finds that the Applicants' response has satisfied the consumer rights standard.

IV. CONCLUSION

18. The Commission finds that the Joint Application satisfies the five requirements of 15 DCMR § 2511.2 (d). Therefore, for the reasons set forth in this Order, the corporate reorganization plan outlined in the Joint Application is approved.

THEREFORE, IT IS ORDERED THAT:

19. The Joint Application of Fusion Connect, Inc., and Fusion Communications, LLC, for approval of a reorganization Transaction that will result in a material change in the ultimate control of Fusion Communications, is **GRANTED**, effective upon the issue date of this Order.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

³⁵

Joint Application at 7.