

October 17, 2019

VIA ELECTRONIC FILING

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 E. Capitol Avenue
Pierre, South Dakota 57501

Re: Joint Notice of Fusion Connect, Inc., Fusion LLC, Birch Communications, LLC n/k/a Fusion Cloud Services, LLC, and Telecom Holdings LLC, Regarding a Transaction That Will Result in a Material Change to the Ownership and Control of Fusion LLC and Birch Communications, LLC

Dear Ms. Van Gerpen:

Fusion Connect, Inc., debtor-in-possession (“Fusion Connect”), Fusion LLC, debtor-in-possession (“Fusion”), Birch Communications, LLC, n/k/a Fusion Cloud Services, LLC, debtor-in-possession (“Birch”)¹ and Telecom Holdings LLC (“Telecom Holdings”), collectively, the “Parties,” by their counsel, respectfully submit this letter to notify the South Dakota Public Utilities Commission (“Commission”) that the Parties intend to consummate the reorganization transaction described below, which will result in Telecom Holdings acquiring a controlling interest in the Fusion SD Licensees through Telecom Holdings’ acquisition of a majority of the common stock of Fusion Connect.

On June 3, 2019, each of the Fusion Companies, including the Fusion SD Licensees, commenced with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) voluntary cases under chapter 11 of title 11 of the United States Code.² The

¹ Birch Communications, LLC is in the process of changing its name to Fusion Cloud Services, LLC and submitted a notice of the name change to the South Dakota Public Utilities Commission on September 11, 2019. Fusion Connect, Fusion and Birch, together with other Fusion operating companies described herein, the “Fusion Companies.” Fusion and Birch, together, the “Fusion SD Licensees.”

² *In re Fusion Connect, Inc., et al.*, Debtors, Case No. 19-11811 (Bankr. S.D.N.Y. Jun. 3, 2019). As a consequence of this filing, the legal status of Fusion Connect and its subsidiaries changed to debtors-in-possession. Accordingly, on June 10, 2019, the Fusion Companies

contemplated transfer of control will result from an agreement by more than eighty percent of the holders of Fusion Connect's first lien debt and holders of Fusion Connect's second-lien debt (collectively, the "Lenders") to exchange specified amounts of their debt for, among other things, common stock of Fusion Connect (the "Transaction").³ As a result of the Transaction, Telecom Holdings will acquire in excess of fifty percent (50%) of the common stock in reorganized Fusion Connect ("Reorganized FCI") and, thus, will acquire indirect majority interests in the Fusion SD Licensees. The Transaction will allow the Fusion Companies to (i) emerge from bankruptcy protection as financially stronger, more competitive participants in the U.S. market for communications and cloud services, and (ii) provide their comprehensive suite of cloud-based and other innovative advanced communications services to current and newly-acquired customers.

No assignment of licenses, assets, or customers will occur as a consequence of the proposed Transaction. Immediately following the consummation of the Transaction, the Fusion SD Licensees will continue to provide service to their existing customers pursuant to the same rates, terms, and conditions. Accordingly, this Transaction will be, for all practical purposes, imperceptible to the customers of the Fusion SD Licensees. The proposed Transaction will not adversely affect competition in the State of South Dakota 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.

It is the Parties' understanding that prior Commission approval is not required to consummate the Transaction. The Parties therefore submit this Joint Notice for the Commission's information.

In support of this filing, the Parties provide the following information:

I. The Companies

filed a notice with the Commission regarding this change of status. A complete copy of the Petitions and related information is available at <https://cases.primeclerk.com/Fusion>.

³ The Transaction is discussed more fully below.

A. The Fusion Companies

Fusion Connect is currently a publicly traded Delaware corporation (OTCMKTS: FSNNQ),⁴ with headquarters located at 210 Interstate North Parkway, Suite 300, Atlanta, GA 30339. Fusion Connect is authorized by the Federal Communications Commission to provide interstate and international telecommunications services.⁵ Fusion Connect, through its subsidiaries, provides a wide range of communications services, including unified communications, digital voice and data 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 United States.⁶

The Fusion SD Licensees each hold domestic Section 214 authority to provide interstate telecommunications services and operate pursuant to Fusion Connect's international Section 214 authority.

Fusion is a New Jersey limited liability company with principal offices located at 210 Interstate North Parkway, Suite 300, Atlanta, GA 30339. In South Dakota, the Commission authorized Fusion to provide interexchange telecommunications services in Docket No. TC98-195 on January 6, 1999. Fusion holds intrastate telecommunications service authority in a total of 47 states.

Birch is a Georgia limited liability company, with principal offices located at 210 Interstate North Parkway, Suite 300, Atlanta, GA 30339. In South Dakota, the Commission has authorized Birch to provide local exchange and interexchange services in Docket No. TC17-067 on February 14, 2018. Birch holds intrastate telecommunications service authority in a total of 35 states.

⁴ In the months prior to the Fusion Companies' filing of Chapter 11 petitions, Fusion Connect was delisted from the NASDAQ Global Market.

⁵ File No. ITC-214-19971001-00592; FCC Filer ID 825160.

⁶ The Fusion Companies have, at most, a *de minimis* number of non-business (*i.e.*, residential) customers in the United States.

B. Telecom Holdings

Telecom Holdings is a Delaware limited liability company with principal offices located at 1 Market Street, Steuart Tower, 23rd Floor San Francisco, CA 94105. As described below, Telecom Holdings is 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 FCI. Telecom Holdings has no other operations than to hold debt interests and, ultimately, common stock in Fusion Connect.

II. DESCRIPTION OF THE TRANSACTION

The Fusion Companies filed their chapter 11 cases on June 3, 2019 in order to effectuate a transaction that would improve their financial structure and position them more securely for future growth, and on October 7, 2019, filed a Second Amended Plan of Reorganization (the “Second Amended Plan”) and associated Amended Disclosure Statement with the Bankruptcy Court.⁷ As a consequence of the Transaction, the Fusion Companies will emerge from bankruptcy with a significantly deleveraged balance sheet, which will enable the Fusion Companies to expand their current investment in enhanced customer experience, product innovation and infrastructure. The Parties 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 market. The Parties believe that the Second Amended Plan is in the best interests of the Fusion Companies and their respective employees, suppliers, vendors, creditors and other key constituencies.

Under the Second Amended 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

⁷ Copies of the Second Amended Plan and Amended Disclosure Statement, as recently filed with the Bankruptcy Court on October 7, 2019, are provided at <https://www.fcc.gov/ecfs/filing/1012018732181>. Applicants will provide Staff with printed copies upon request. Prior to the Fusion Companies’ filing for chapter 11 protection, Fusion Connect entered into a Restructuring Support Agreement (the “RSA”) with lenders holding a majority of the aggregate outstanding principal amount of its first lien loans. As discussed more fully below, the RSA contemplated the restructuring transaction set out in the original version of the plan.

that debt will receive, among other things, common stock in 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 common stock of Reorganized FCI will be held by Lenders. Accordingly, the Transaction will result a substantial change in ownership and control of the Fusion Companies.

At emergence, only one party, Telecom Holdings, will own ten percent (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 Lenders, none of whom will hold common stock representing an equity or voting interest of ten percent (10%) or more of Reorganized FCI at emergence. In addition, Telecom Holdings will hold more than fifty percent (50%) of the common stock of Reorganized FCI at emergence and have *de jure* control of the Fusion Companies. Accordingly, as a result of the Transaction, Telecom Holdings will acquire more than fifty percent (50%) of the indirect equity interests in the Fusion SD Licensees.⁸

For the Commission's convenience, pre- and post-Transaction corporate organizational structure charts for the Fusion Companies and Telecom Holdings are provided as **Exhibit 1**.

Consummation of the Transaction and emergence of the Fusion Companies from chapter 11 as soon as practicable is critical for the success of the reorganization and the continued competitive viability of the Fusion Companies, including the South Dakota operations of the Fusion SD Licensees. Consequently, the Parties propose to complete the Transaction as soon after November 14, 2019 as possible, following receipt of all required federal and state regulatory approvals and satisfaction (or waiver) of various other closing conditions.

⁸ Although the precise percentage of common stock that Telecom Holdings will hold in Reorganized FCI upon emergence has not yet been determined, it will exceed fifty percent (50%).

III. Public Interest Considerations

The proposed Transaction is demonstrably in the public interest. Reflecting months of careful negotiations, the reorganization of the Fusion Companies will allow them to maximize the value of the Fusion Companies and reduce their debt load, emerging from chapter 11 protection as financially stronger competitors, well positioned to continue delivery of their comprehensive portfolio of innovative communications solutions to business customers in South Dakota and across the United States. Consequently, the proposed Transaction will enhance the Fusion Companies' presence in the domestic telecommunications markets to the ultimate benefit of consumers without harming customers or competition in any market sector.

The proposed Transaction ensures continuity of operations for Fusion Connect and the other Fusion Companies, including the Fusion SD Licensees, to the ultimate benefit of consumers. As discussed elsewhere in this Notice, the Fusion Companies filed their cases with the Bankruptcy Court in order to effectively address certain financial challenges. The proposed reorganization of the Fusion Companies will significantly reduce the amount of debt owed by Reorganized FCI while bringing new financial resources as well as the commercial acumen and managerial strengths of the acquiring interest holders. This restructuring and the newly configured financial resources available to the Fusion Companies should ensure that they continue to offer competitive, high-quality communications and cloud service offerings to customers throughout the United States. At the same time, the proposed Transaction will have no adverse impact on the current customers of any of the Fusion Companies.

The proposed Transaction will have no adverse effects upon the South Dakota or interstate telecommunications market. The Fusion Companies have a small share of this market and, significantly, the Transaction will not eliminate any market participants nor will it, in any respect, reduce the service choices available to consumers. To the contrary, by strengthening the competitive capabilities of the Fusion Companies, the Transaction will also strengthen the competitive depths of the U.S. communications market.

Moreover, while conveying all of the previously-noted benefits, the Transaction holds no adverse effects for South Dakota customers of the Fusion SD Licensees. The carefully crafted

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Second Amended Plan will ensure that the Fusion SD Licensees are able to continue providing services to their customers without any interruption or diminishment of service quality. Upon the emergence of the Fusion Companies from chapter 11, these customers will continue to receive the same services as they do today, pursuant to the same rates, terms and conditions.

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The Parties respectfully request that the Commission note the Transaction for its records. Please contact the undersigned counsel for the Parties if there are any questions regarding this filing.

Respectfully submitted,

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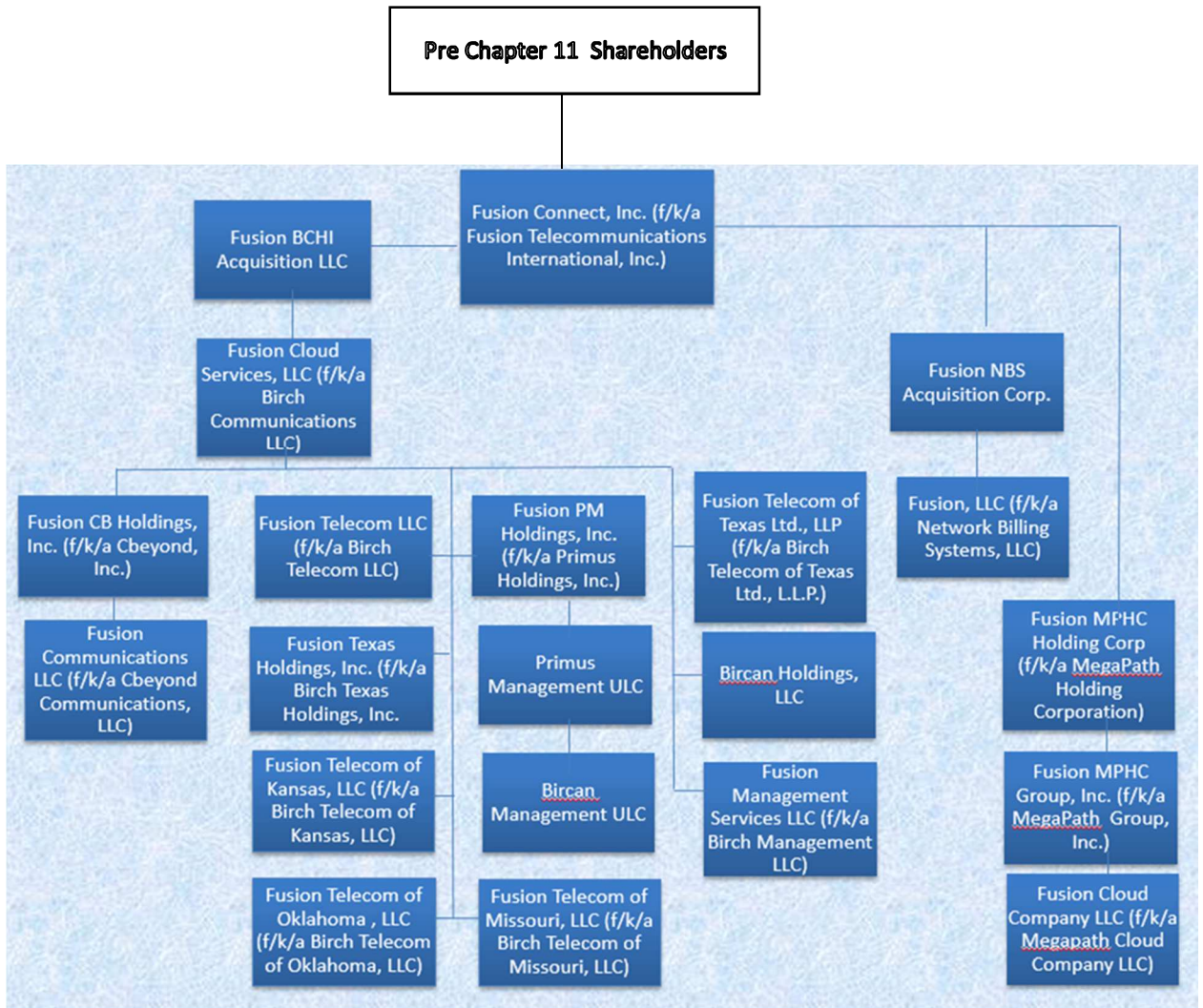
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Counsel for Telecom Holdings LLC

EXHIBIT 1

Pre- and Post-Close Organizational Charts for the Fusion Companies

Pre-Transaction Organizational Chart for the Fusion Companies



Note: All of the companies identified in this chart, except Primus Management ULC and Bircan Management ULC, filed for chapter 11 protection on June 3, 2019 and currently are in debtor-in-possession status.

Post-Transaction Organizational Chart for the Fusion Companies

