

Docket Number: TC17-067
Subject Matter: Staff's Data Request 1
Request to: Birch Communications, Inc. (Birch)
Request from: South Dakota Public Utilities Commission Staff
Date of Request: 12/20/17
Responses Due: 1/10/18

EXHIBIT 3
Birch-Fusion Notice Letter

November 30, 2017

VIA ELECTRONIC FILING

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
Capitol Building, 1st Fl.
500 E. Capitol Avenue
Pierre, SD 57501-5070

Re: Joint Notice of BCHI Holdings, LLC, Birch Communications, Inc., Fusion Telecommunications International, Inc. and Network Billing Systems, LLC Regarding a Transaction That Will Result in a Material Change to the Ownership and Control of Network Billing Systems, LLC

Dear Ms. Van Gerpen:

BCHI Holdings, LLC (“BCHI Holdings”), Birch Communications, Inc. (“BCI”),¹ Fusion Telecommunications International, Inc. (“FTI”), and Network Billing Systems, LLC (“NBS”),² collectively, the “Parties,” respectfully submit this letter to notify the South Dakota Public Utilities Commission (“Commission”) that the Parties intend to consummate the merger transaction described below (the “Merger”) that will transfer a controlling interest in NBS to BCHI Holdings (the “Transaction”).

Through the Transaction, the Birch Companies and the Fusion Companies (as such terms are defined in footnotes 1 and 2 hereof) intend to combine their business services and cloud services operations. The Transaction is expected to create a major national cloud and business

¹ BCHI Holdings and BCI, together with their affiliated operating companies described in **Exhibit 1** hereto (the “Birch Companies” or “Birch”).

² Fusion and NBS, together with other Fusion operating companies described in **Exhibit 2** hereto (the “Fusion Companies” or “Fusion”).

services provider bringing significant benefits to customers of the combined companies and to the communications marketplace in South Dakota. As a result of the Transaction, BCHI Holdings will acquire majority interests in, and control of, the Fusion Companies, including NBS. In connection with the Transaction, Birch also will restructure its operations to enable a spin-off of its consumer and single-line business customers to the existing shareholders of Birch (“Birch Shareholders”).

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

I. THE COMPANIES

A. The Birch Companies

The Birch Companies operate as a leading nationwide provider of communications, network, cloud, and IT services. They serve a full range of small, mid-sized, enterprise and wholesale businesses and residential customers, providing integrated technology solutions including metro-fiber, metro-Ethernet, unified communications (“UC”), hosted phone systems, hosted data centers and hosted file storage services. The Birch Companies hold Federal and State authority, as required, to provide competitive local exchange, intrastate toll, intrastate interexchange, interstate interexchange, and international services to residential and business customers in all 50 states and the District of Columbia.³

BCHI Holdings is a Georgia limited liability company, with a principal office at 3060 Peachtree Road, NW, Suite 1065, Atlanta, GA 30305. BCHI Holdings was recently formed by

³ Tempo Telecom, LLC (“Tempo”), one of the Birch Companies, is a reseller of prepaid wireless voice and Internet access services. Birch also has a subsidiary operating as a competitive local exchange carrier in Canada.

the shareholders of Birch Communications Holdings, Inc. (“Birch Holdings”) to hold the shares of FTI to be issued in connection with the Merger. Birch Holdings is the current parent of BCI.

BCI is a Georgia corporation, with principal offices at 320 Interstate North Parkway SE, Atlanta, GA 30339. BCI filed an application with the Commission on November 29, 2017 in Docket No. TC17-067, seeking authority to provide competitive local exchange and interexchange services. Upon closing of the Transaction, BCI will become an indirect, wholly-owned subsidiary of FTI.⁴

A diagram of the current corporate structure of Birch Holdings is provided in **Exhibit 3**.

B. The Fusion Companies

The Fusion Companies provide digital voice and data communications services, including hosted Voice over Internet Protocol (“VoIP”) and Session Initiated Protocol (“SIP”) trunking and other enhanced communications services and features to businesses primarily in the United States. Fusion also provides VoIP services to carriers worldwide.

FTI is a publicly traded Delaware corporation (NASDAQ: FSNN), with its headquarters located at 420 Lexington Avenue, Suite 1718, New York, New York 10170. FTI holds Section 214 authority from the Federal Communications Commission (the “FCC”) to provide interstate and international telecommunications services. FTI does not hold authority to provide intrastate telecommunications services within any state.

⁴ Tempo registered with the Commission for the provision of wireless services in South Dakota on September 11, 2013. Ionex Communications North, Inc. (“Ionex”), an affiliate of Tempo, was authorized by the Commission to provide local exchange and interexchange telecommunications services in South Dakota in Docket Nos. TC96-083, TC00-171. As explained below in the discussion of the Transaction, however, neither Tempo nor Ionex will become a subsidiary of FTI following the closing of the Merger. Prior to that closing, Birch Holdings intends to convert both BCI and Ionex into limited liability companies. Separate filings will be made with the Commission to implement these changes in corporate form.

FTI's wholly-owned indirect subsidiary, NBS d/b/a Fusion,⁵ is a New Jersey limited liability company with corporate headquarters located at 695 U.S. Route 46 West, Fairfield, New Jersey 07004. NBS provides UC and hosted voice and data services, broadband Internet access service, interconnected VoIP, data networks, and traditional voice solutions primarily to business customers throughout the United States. In South Dakota, the Commission authorized NBS to provide interexchange telecommunications services in Docket No. TC98-195 on January 6, 1999. Additionally, NBS holds authority to offer intrastate telecommunications services in 46 other states. NBS also holds Section 214 authority from the FCC to provide interstate and international telecommunications services.⁶

A diagram of the current corporate structure of FTI is provided in **Exhibit 3**.

II. DESIGNATED CONTACTS

Correspondence or other materials concerning this Joint Notice should be directed to the Parties' counsel as identified below:

For FTI and NBS:

Edward A. Yorkgitis, Jr.
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For BCHI Holdings and BCI:

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⁵ NBS also operates under the d/b/a Solex in a limited number of states.

⁶ At this time, FTI also has operating subsidiaries providing telecommunications services in Ohio. In a series of corporate steps, these entities will be consolidated into NBS prior to closing of the Transaction.

With copies to:

James P. Prenetta, Jr.
Executive Vice President and General Counsel
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Gordon P. Williams, Jr.
Senior Vice President & General Counsel
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III. DESCRIPTION OF THE TRANSACTION

Overview

On August 26, 2017, FTI, Fusion BCHI Acquisition LLC, a direct wholly-owned subsidiary of FTI formed by FTI solely for the purpose of completing the Transaction (“Fusion Merger Sub”), and Birch Holdings, the current holding company for the Birch Companies, entered into an Agreement and Plan of Merger (the “Merger Agreement”) to combine the cloud services business of Fusion and the non-consumer, cloud and/or multi-line business services business of Birch (the “Cloud and Business Services Business”) into one of the largest publicly-traded North American cloud services providers with projected annual revenue of over \$570 million (“New Fusion Birch”). New Fusion Birch intends to utilize its 100% Internet protocol (“IP”)-based network to provide fully-integrated, enterprise-level cloud services to over 150,000 business customers.

Under the terms of the Merger Agreement, the existing shareholders of Birch (through BCHI Holdings) will acquire approximately 75% of FTI’s issued and outstanding common stock. As a result, the majority ownership and control of FTI will be acquired by the existing shareholders of Birch. The remaining approximately twenty-five percent (25%) of FTI issued and outstanding shares of common stock will be held by the current stockholders of FTI at the time of the closing (“FTI Stockholders”). The result is that approximately seventy-five percent (75%) of the indirect equity interests in NBS also will be acquired by BCHI Holdings and

ultimately held by the Birch Shareholders.⁷ The FTI Stockholders will hold the remaining approximately twenty-five percent (25%) indirect equity interest in NBS.⁸

Creating New Fusion Birch (the Restructuring)

In anticipation of the Transaction, Birch will implement an intracorporate restructuring that segregates its Cloud and Business Services Business from its consumer and single-line business customers (the “Consumer Business”). Post-restructuring (and pre-close), the Birch entities providing the Cloud and Business Services Business, including BCI, will continue as wholly-owned subsidiaries of Birch Holdings. The Birch entities dedicated to supporting the Consumer Business, including Tempo and Ionex, together with their newly formed holding company, Lingo Communications, LLC (“Lingo”), will be spun-off to the Birch Shareholders on or prior to the closing of the Transaction. This spin-off is expected to be achieved primarily through a reorganization of existing Birch operating subsidiaries but also may include intracorporate asset transfers, as necessary to meet the objectives of segregating the Cloud and Business Services Business from the Consumer Business. The specific details of the spin-off will depend upon logistical considerations and each State’s regulatory requirements. This reorganization will be entirely *pro forma* – both prior to and following the restructuring, as the

⁷ The Transaction will not involve a change of service provider for any NBS customer. The merger is expected to be transparent to these customers. Consequently, notice of the proposed change to the ownership of NBS is not required.

⁸ Additionally, as BCI will become a wholly-owned subsidiary of FTI as a result of the Merger, the FTI Stockholders collectively will acquire a minority twenty-five percent (25%) ownership interest in BCI. The Birch Shareholders, however, will continue to hold a majority controlling interest in BCI through their ownership of FTI through Birch Holdings.

same Birch Shareholders will, at all times, hold a controlling interest in each of the Birch Companies.⁹ The reorganization also will be transparent to customers.

At closing of the Transaction, Birch Holdings will merge with and into Fusion Merger Sub and Fusion Merger Sub will be the surviving entity in the merger. As a result, the subsidiaries of Birch Holdings that are engaged in the Cloud and Business Services Business (subsequent to the reorganization described in the previous paragraph), including BCI, will, by operation of law, become indirect wholly-owned subsidiaries of FTI.¹⁰

For the Commission's convenience, pre- and post-Transaction corporate organizational charts for FTI and BCHI Holdings are attached hereto as **Exhibit 3**.

The Parties intend to consummate the Transaction as soon as possible following receipt of all necessary federal and state regulatory approvals and satisfaction (or waiver) of various other closing conditions.

IV. PUBLIC INTEREST CONSIDERATIONS

The proposed Transaction will promote the public interest, convenience, and necessity. The Transaction will result in the creation of one of the largest, publicly-traded cloud service providers in North America and a leader in the \$200 billion cloud services market. The combined entities will have an extensive nationwide IP-based network serving over 150,000 business customers. The Parties project annual revenues of over \$570 million a year and project that the combination will result in cost-saving synergies in excess of \$20 million. The Merger will allow New Fusion Birch to increase the breadth and innovative caliber of their service

⁹ To the extent necessary, additional regulatory filings may be made to address these reorganizational changes. The Parties' understanding is that Commission approval is not required for these *pro forma* changes.

¹⁰ The operating entities engaged in the Consumer Business will be unaffected by the merger of Birch Holdings with Fusion Merger Sub.

offerings and to provide the nationwide coverage that will be of particular interest to business customers with multiple locations. Moreover, the combined entities expect to be able to take advantage of projected cost-saving synergies to offer service with lower cost structures to the benefit of consumers across the United States.

In addition, while the focus of the Transaction is the creation of the New Fusion Birch business-cloud services enterprise, the Consumer Business customers of Birch also will benefit from the corporate reorganization in anticipation of the Transaction. The Transaction will enable BCHI Holdings to more effectively concentrate resources towards serving these customers.

The Transaction presents no risks to South Dakota consumers. Fusion and Birch are each well-established communications service providers with decades of experience operating in the U.S. communications market. The financial, technical and managerial qualifications of NBS and the Birch Companies are a matter of record with the Commission.

Moreover, Fusion and Birch customers will not be harmed in any manner by the Transaction and the associated reorganization. Subscribers to the business and cloud services offered today by NBS and the Birch Companies will continue to receive those services under New Fusion Birch. Customers of Birch's Consumer Business services will continue to receive their services without interruption. As a result, neither Fusion customers nor Birch customers should experience any disruption of, or diminishment to, their existing services. To the contrary, the operational and financial efficiencies expected to result from the Transaction should lead to significant improvements in the quality of those services.

The Transaction also will not adversely impact competition in the South Dakota and national telecommunications markets. The demand for state-of-the-art cloud and Internet protocol-based services continues to grow steadily and new competitors enter the market

regularly to meet that demand. Similarly, the markets remain competitive for the traditional intrastate and interstate telecommunications services offered by NBS and BCI.

* * * * *

The Parties respectfully request that the Commission note the Transaction for its records.

Please contact the undersigned if there are any questions regarding this filing.

Respectfully submitted,

For FTI and NBS

/s/ Winafred Brantl.

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For BCHI Holdings and BCI

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LIST OF EXHIBITS

EXHIBIT 1	The Birch Operating Companies
EXHIBIT 2	The Fusion Operating Companies
EXHIBIT 3	Pre-and Post-Close Organizational Charts for Fusion and Birch

Exhibit 1

The Birch Operating Companies

1. Birch Communications, Inc.
2. Birch Communications of Kentucky, LLC (dba Birch Communications)
3. Birch Communications of the Northeast, Inc. (dba Birch Communications)
4. Birch Communications of Virginia, Inc. (dba Birch Communications)
5. Birch Telecom of Kansas, Inc. (dba Birch Communications)
6. Birch Telecom of Missouri, Inc. (dba Birch Communications)
7. Birch Telecom of Oklahoma, Inc. (dba Birch Communications)
8. Birch Telecom of Texas LTD, LLP (dba Birch Communications)
9. Birch Telecom of the Great Lakes, Inc. (dba Birch Communications)
10. Birch Telecom of the South, Inc. (dba Birch Communications)
11. Birch Telecom of the West, Inc. (dba Birch Communications)
12. Cbeyond Communications, LLC (dba Birch Communications)
13. Ionex Communications North, Inc. (dba Birch Communications)
14. Ionex Communications South, Inc. (dba Birch Communications)
15. Ionex Communications, Inc. (dba Birch Communications)
16. Primus Management ULC (Foreign Carrier)
17. Tempo Telecom, LLC

Exhibit 2

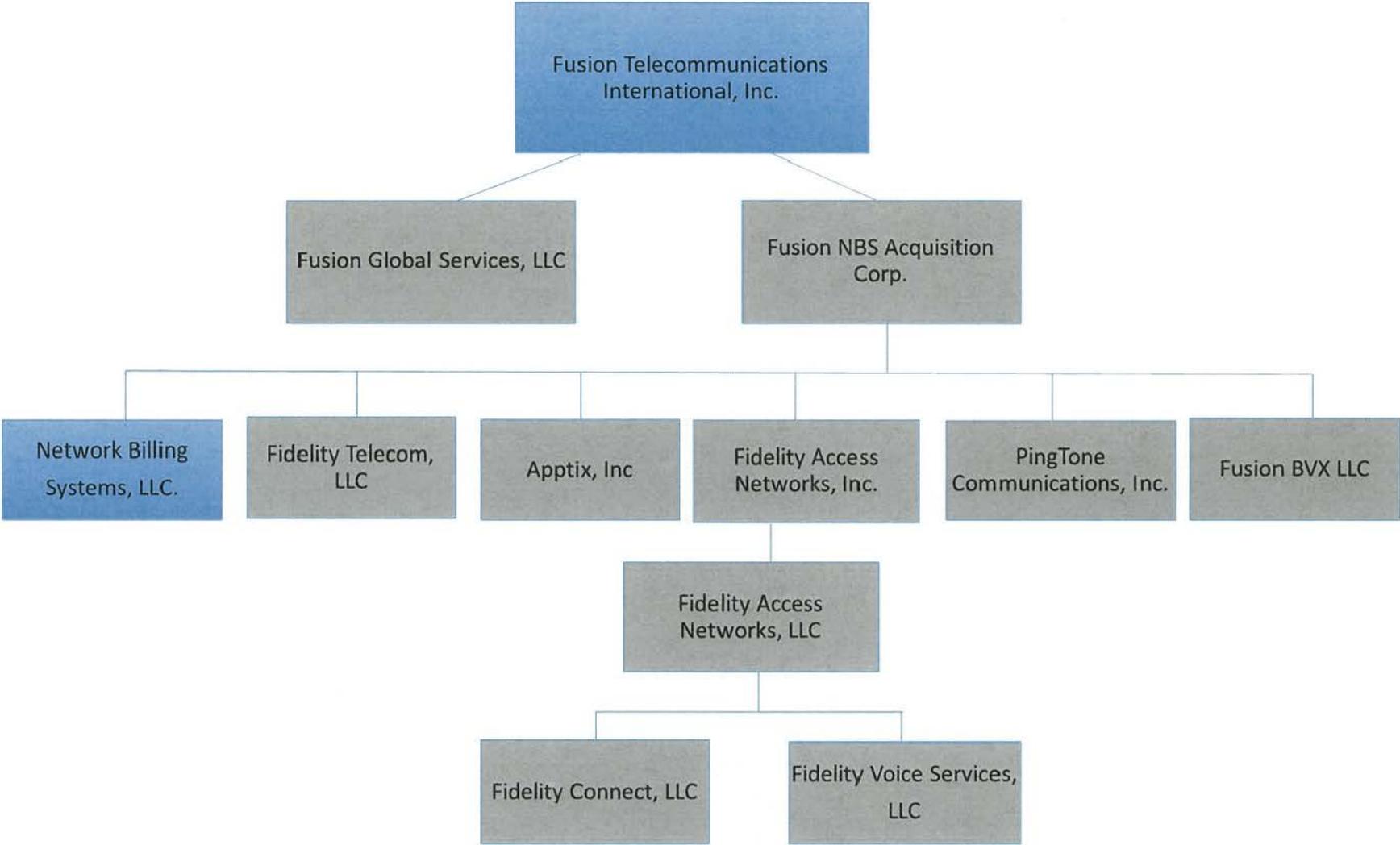
The Fusion Operating Companies

1. Fusion Telecommunications International, Inc.
2. Apptix, Inc.
3. Fidelity Access Networks, LLC
4. Fidelity Connect, LLC
5. Fidelity Telecom, LLC
6. Fidelity Voice Services, LLC
7. Fusion Global Services, LLC
8. Network Billing Systems, LLC
9. PingTone Communications, Inc.

Exhibit 3

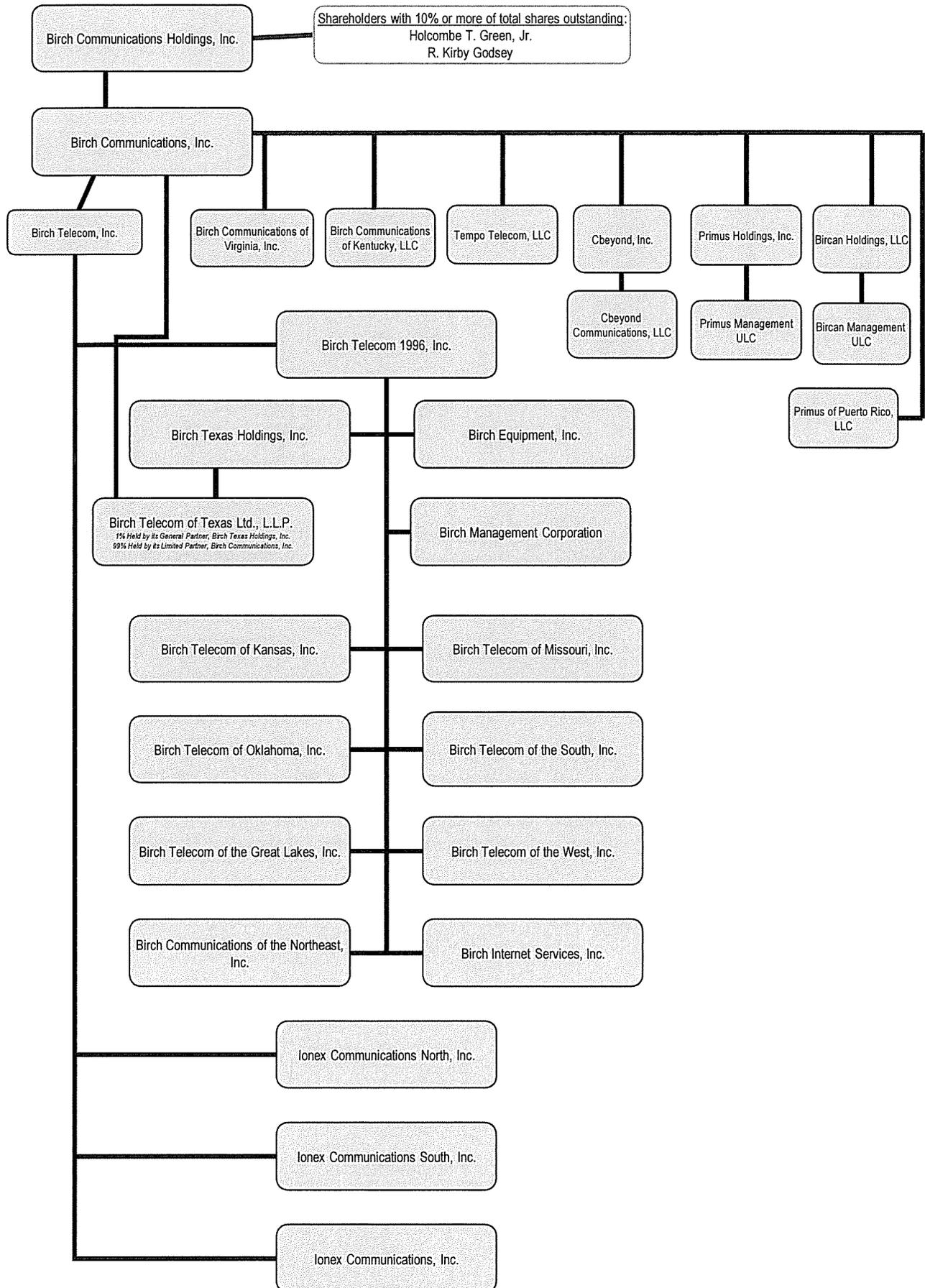
Pre-and Post-Close Organizational Charts for Fusion and Birch

Fusion Companies (Pre-Close)

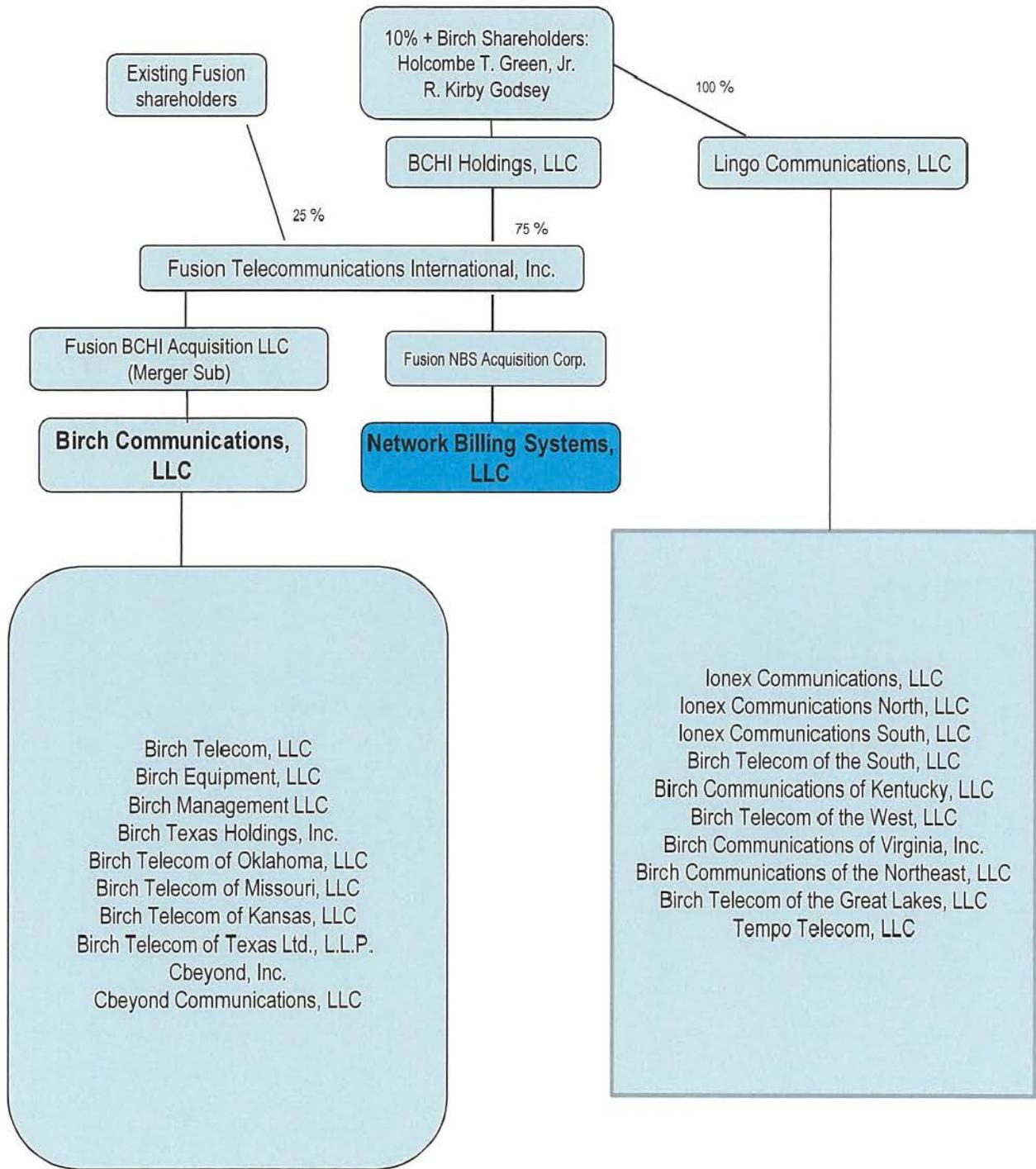


Entities shaded in grey are expected to be sold off or consolidated into Network Billing Systems, LLC prior to closing of the Transaction.

Birch Companies Pre-Close Organizational Chart



Post-close organizational chart for Fusion and Birch



This chart may not include certain Fusion or Birch subsidiaries that are not operating companies or that are foreign carrier affiliates.

CERTIFICATE OF SERVICE

I, Angela F. Collins, CERTIFY that on the 10th day of January 2018, a true and correct copy of the foregoing was served upon the following as indicated below:

By E-File:

Ms. Patricia Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
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Pierre, SD 57501



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