

Decision No. C22-0782

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0470T

IN THE MATTER OF JOINT APPLICATION OF FUSION CONNECT, INC., FUSION CLOUD SERVICES, LLC, AND THE NORTH HAVEN ENTITIES TO EXECUTE A TRANSFER OF CONTROL OF AN AUTHORIZED TELECOMMUNICATIONS PROVIDER.

**COMMISSION DECISION
APPROVING JOINT TRANSFER**

Mailed Date: December 8, 2022

Adopted Date: December 1, 2022

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Joint Application filed by Fusion Connect, Inc. (Fusion Connect), Fusion Cloud Services, LLC (Fusion Cloud), and the North Haven Entities (North Haven), collectively the Applicants, on October 27, 2022. The applicants request Commission authorization to allow Applicants to transfer ultimate control of Fusion Cloud to the North Haven Entities (the Transaction).

2. We construe this filing as an application for approval of the transfer of control of the Commission issued telecommunications authorities held by the Licensee pursuant to 4 *Code of Colorado Regulations* 723-2-2110 of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services.

3. Fusion Connect is a privately held Delaware corporation. Fusion Connect is authorized by the Federal Communications Commission (FCC) to provide interstate and

international telecommunications services. Fusion Connect does not directly hold intrastate telecommunications authorizations. Fusion Connect's operating subsidiaries hold domestic Section 214 authority to provide interstate telecommunications services and operate pursuant to Fusion Connect's international Section 214 authority.

4. Fusion Cloud, a wholly-owned subsidiary of Fusion Connect, and is a Georgia limited liability company. The Commission approved the assignment to Fusion Cloud of local exchange and switched access telecommunications authority previously held by Fusion Communications, LLC. This was authorized in Proceeding No. 21A-.0524T, Decision No. C21-0812 on December 23, 2021.

5. Each of the North Haven Entities NH II, NH Senior Loan Fund, and NH III are Delaware limited partnerships. The securities held or controlled by the North Haven Entities are under the common investment management of MS Capital Partners. The primary business of MS Capital Partners Adviser is to manage pooled investment vehicles, including the North Haven Entities. The North Haven Entities have delegated to MS Capital Partners Adviser, as their investment manager, the 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.

6. MS Capital Partners Adviser is a Delaware corporation. MS Capital Partners Adviser is a wholly-owned direct subsidiary of MS Holdings Incorporated (MS Holdings), a Delaware corporation. MS Holdings itself is a wholly-owned direct subsidiary of Morgan Stanley, a Delaware corporation. The Application represents that 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 percent in Fusion Connect.

7. Applicants, therefore, request Commission authorization to complete the transaction of indirect control of Fusion Cloud held to North Haven Entities. Through a series of multi-step transactions, Applicants describe in the filing that North Haven Entities will directly own approximately 67.77 percent of Fusion Connect's voting stock and will indirectly own approximately 13.09 percent of Fusion Connect's voting stock, for a total control of approximately 80.86 percent of the voting equity of Fusion Connect. Post-Transaction, MS Capital Partners Adviser will have under its investment management a total of approximately 82.65 percent of the voting equity of Fusion Connect, which will be held directly by the North Haven Entities and certain affiliated entities.

8. No assignment of licenses, assets, or customers will occur as a consequence of the proposed Transaction. The proposed Transaction also will have no adverse effects on the rates, terms, and conditions under which Fusion Cloud provides service to existing customers.

9. On November 2, 2022, a notice of the Joint Application was provided to all persons, firms, or corporations interested in or affected by the grant or denial of the requested relief. Interventions were due on or before December 2, 2022. No interventions were filed.

B. Discussion

10. The Commission has jurisdiction over this Joint Application pursuant to §§ 40-5-105, 40-15-204, and 40-15-303, C.R.S.

11. The application contains all of the information required by the applicable Commission Rules and is therefore deemed complete.

12. The application is unopposed and therefore may be considered without a formal hearing, pursuant to § 40-6-109(5), C.R.S.

13. Applicants request Commission approval of the transfer of indirect control of Fusion Cloud to North Haven. North Haven does not hold any Commission issued telecommunications authorities.

14. The application represents that the proposed Transaction will have no direct effect on Fusion Cloud, its customers, or operations. Fusion Cloud will continue to provide high-quality services at the same rates and on the same terms and conditions as are currently in effect.

15. Fusion Cloud is a competitive provider with Commission issued authorities. Except for limited circumstances (such as for providers that are recipients of state high-cost support and for the provision of basic emergency services), certifications to provide basic local exchange services are no longer regulated by the Commission. See § 40-15-401(1)(b), C.R.S. Similarly, the provision of any other emerging competitive services such as advanced features, premium services, intraLATA toll, non-optional operator services, and private line services, except switched access services and basic emergency services, are no longer regulated by the Commission. See §§ 40-15-401(1)(e), (k),(n),(o),(s),(t), C.R.S. Consequently, the Commission does not have the authority to approve the transfers of the CPCNs or those parts of the LORs addressing advanced features, premium services, intraLATA toll, non-optional operator services, and private line services.

16. Switched access services and the provision of basic emergency services have not been deregulated. As a result, we have the authority to review and approve/deny the transfers and encumbrances of the part of authorities held by providers that address those services.

17. We remind applicants that public utilities remain subject to Commission oversight that includes but is not limited to, reporting and payment obligations to the Colorado High-Cost Support Mechanism and the Telecommunications Relay Services Program.

18. We find that the proposed transfer of control of the telecommunications authorities held by the Fusion Cloud is not contrary to the public interest and therefore grant the Joint Application for transfer of control to that extent. The Joint Application recognizes the Commission's jurisdiction as it now exists. Entities that hold Commission issued authorities remain obligated to comply with any applicable requirements or regulations as stated in Article 15 of Title 40.

II. ORDER

A. The Commission Orders That:

1. The Joint Application to Transfer filed by Fusion Connect, Inc., Fusion Cloud Services, LLC, and the North Haven Entities is deemed complete. The request to transfer control of Fusion Cloud Services to North Haven Entities is granted.

2. Fusion Connect, Inc., Fusion Cloud Services, LLC, and the North Haven Entities, or their authorized representatives shall jointly notify the Commission if the transfer has been terminated or is not completed within 60 days of the proposed effective date stated in the application or if the proposed transfer terms are changed prior to the consummation date. The

notice shall include the proceeding and decision numbers which granted the authority to execute the transfer.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 7, 2022.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners