

Decision No. C20-0234

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0085T

IN THE MATTER OF THE JOINT APPLICATION OF FUSION CONNECT, INC. AND
FUSION COMMUNICATIONS LLC TO EXECUTE A TRANSFER.

**COMMISSION DECISION
APPROVING JOINT TRANSFER**

Mailed Date: April 13, 2020
Adopted Date: April 8, 2020

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) and Fusion Communications, LLC (Fusion Communications). The applicants request Commission authorization for a change of control that involves Fusion Connect and Fusion Communications whereby Telecom Holdings, LLC (Telecom Holdings), the majority equity owner of Fusion Connect, will relinquish its ownership interest in Fusion Connect to new equity interest holders that individually will not have a majority ownership interest in Fusion Connect. Fusion Communications, formerly known as Cbeyond Communications, LLC, is an entity that holds Commission issued telecommunications authority and is also a subsidiary of Fusion Connect.

2. We will construe this filing as an application for approval of the transfer of control of the Commission issued telecommunications authority held by Fusion Communications 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 Communications acquired Certificates of Public Convenience and Necessity (CPCNs) for the provision of local exchange and emerging competitive services in Decision No. C00-1021 in Proceeding No. 00A-433T on September 19, 2000.

4. Fusion Connect is a publicly traded company that through its operating subsidiaries, offers a range of communications services predominantly to business customers. Fusion companies, including Fusion Communications along with its affiliated subsidiaries (together, Fusion Companies) made a voluntary Chapter 11 Bankruptcy filing on June 3, 2019. Fusion Connect does not hold any Commission issued telecommunications authority.

5. The Commission granted the joint application of Fusion Connect and Telecom Holdings for a transfer of control in Decision No. C19-0746, Proceeding No. 19A-0427T on September 17, 2019.

6. On January 14, 2020, the Fusion Companies emerged from chapter 11 protection. As a consequence of the bankruptcy process, the application states that the Fusion Companies emerged financially stronger and newly reorganized.

7. The controlling interest in Fusion Connect and affiliated Fusion Companies (approximately 65 percent) are currently held by Telecom Holdings. Remaining equity interests in Fusion Connect are widely held, with no party holding 10 percent or more equity ownership.

8. Upon completion of the change in ownership transactions, Telecom Holdings will no longer hold any ownership interest in Fusion Connect or in Fusion Communications. No individual or entity will hold a controlling interest in the Fusion Companies. Fusion Connect will become a widely held corporation, with all of its common stock held by entities, some of which were lenders to the pre-Chapter 11 Fusion Companies.

9. On March 4, 2020, 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 April 3, 2020. 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. Following the transaction, Fusion Connect will become a widely held corporation, with all of its common stock held by entities with minority ownership interests. The Joint Application states that Fusion Communications will continue to offer competitive, high-quality communications and cloud services to customers. All that will change is the relative percentage of ownership of various shareholders of Fusion Connect.

14. Fusion Communications is a competitive local exchange 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 Letters of Registration addressing advanced features, premium services, intraLATA toll, non-optional operator services, and private line services.

15. 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 the authorities held by providers that address those services.

16. 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.

17. We find that the proposed transfer of control of the telecommunications authorities held by Fusion Communications 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 Connect) and Fusion Communications LLC (Fusion Communications) is deemed complete. The request to transfer control of the Commission issued authorities held by Fusion Communications is granted.

2. Fusion Connect and Fusion Communications 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
April 8, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners