

**Before the  
UTAH PUBLIC SERVICE COMMISSION**

Joint Notice of )  
 )  
Fusion Connect, Inc. )  
 )  
and Fusion Cloud Services, LLC )  
 )  
of a Transaction That Will Result in a Material )  
Change to the Indirect Ownership and Control )  
of Fusion Cloud Services, LLC )

**JOINT NOTICE**

Fusion Connect, Inc. (“Fusion Connect”) and Fusion Cloud Services, LLC (“Fusion Cloud”),<sup>1</sup> together, the “Parties,” hereby respectfully notify the Utah Public Service Commission (“Commission”) of a forthcoming transaction which will result in a material change in the ultimate control of Fusion Cloud (the “Transaction”). No assignment of licenses, assets, or customers will occur as a consequence of the proposed Transaction. Following the consummation of the Transaction, Fusion Cloud will continue to provide service to its existing customers pursuant to its existing rates, terms, and conditions. Accordingly, this Transaction will be, for all practical purposes, imperceptible to the customers of the Fusion Cloud. The proposed Transaction will not adversely affect competition in the State of Utah 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.

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<sup>1</sup> Fusion Connect and Fusion Cloud, together with other Fusion operating companies described herein, the “Fusion Companies.”

The Parties believe that pursuant to Utah Code Ann. § 54-8b-3.4, the Transaction is exempt from the prior-approval requirements of Utah Code Ann. §§ 54-4-28, 54-4-29 and 54-4-30. Fusion Cloud is a competitive entrant, pursuant to Section 54-8b-2.1 and does not receive high cost support from the Universal Public Telecommunications Support Fund.<sup>2</sup> The Parties request that the Commission review this filing and acknowledge its sufficiency in whatever manner the Commission may deem most appropriate.<sup>3</sup>

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

**I. The Parties**

**A. The Fusion Companies**

Fusion Connect is a privately-held Delaware corporation, with headquarters located at 210 Interstate North Parkway, Suite 300, Atlanta, GA 30339. Fusion Connect is authorized by the Federal Communications Commission (“FCC”) to provide interstate and international telecommunications services.<sup>4</sup> Fusion Connect, through its subsidiaries, provides a wide range of communications services, including unified communications, digital voice and data

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<sup>2</sup> Utah Code Ann. § 54-8b-3.4 (1)(a)(i), (2). The Parties further submit that the Transaction does not fall within the scope of Utah Code Ann. §§ 54-4-28, 54-4-29 and 54-4-30, which require prior approval for transactions where two public utilities (or the parent companies of two public utilities) “combine, merge, [or] consolidate.” Utah Code Ann. § 54-4-28. The Transaction stands in direct contrast to the arrangements contemplated by these provisions, as the entities that will acquire equity interests in Fusion Connect are institutional investment funds and, to the best of the Parties’ knowledge, none of them operates as a public utility, owns a public utility or controls a public utility. Consequently, the Transaction does not in any respect result in a consolidation, merging or combination of public utility operations or assets in Utah and the requirements for prior approval asserted in the cited provisions do not apply.

<sup>3</sup> In the event the Commission determines that prior approval of the Transaction is required, the Parties respectfully request that the Commission treat this filing as an Application subject to Rule R746-349-7 and adjudicate it informally, without the need for a hearing.

<sup>4</sup> File No. ITC-214-19971001-00592; FCC Filer ID 825160.

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 United States.<sup>5</sup> Fusion Connect does not directly hold intrastate telecommunications authorizations.

Fusion Cloud is a Georgia limited liability company, with a principal address at 210 Interstate North Parkway, Suite 300, Atlanta, GA 30339. In Utah, the Commission has authorized Fusion Cloud to provide local exchange, access and interexchange telecommunications services in Docket No. 17-2600-01 on January 23, 2018. In total, Fusion Cloud holds intrastate telecommunications service authority in 39 states. Fusion Cloud also holds domestic Section 214 authority to provide interstate telecommunications services and operates pursuant to Fusion Connect's international Section 214 authority.

## **II. DESIGNATED CONTACTS**

Questions, correspondence or other communications concerning this filing should be directed to the Parties' counsel as identified below:

Winafred Brantl  
Denise N. Smith  
Kelley Drye & Warren LLP  
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<sup>5</sup> The Fusion Companies have, at most, a *de minimis* number of non-business (*i.e.*, residential) customers in the United States.

***With copies to:***

James P. Prenetta, Jr.  
Executive Vice President and General Counsel  
Fusion Connect, Inc.  
210 Interstate North Parkway, Suite 300  
Atlanta, GA 30339  
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**III. Description of the Transaction**

**A. Background**

As Fusion Cloud previously informed the Commission, on June 3, 2019, 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”).<sup>6</sup> 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. Following extensive 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. Shortly thereafter, on January 14, 2020, the Fusion Companies emerged from chapter 11 protection. As a consequence of the bankruptcy process, the Fusion Companies emerged financially stronger and in a materially better position to compete effectively in the U.S. telecommunications and cloud services markets.

Pursuant to the Plan, at emergence, the then-existing equity interests in Fusion Connect were cancelled, 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

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<sup>6</sup> *In re Fusion Connect, Inc., et al.*, Debtors, Case No. 19-11811 (Bankr. S.D.N.Y. Jun. 3, 2019).

in reorganized Fusion Connect. The controlling interests in the Fusion Companies (approximately sixty-five percent) are currently held by an investment holding company named Telecom Holdings, LLC.<sup>7</sup> The remaining interests in Fusion Connect are widely held, with no party holding ten percent or more equity. This 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 thus minimize the erosive effects of a prolonged chapter 11 case. 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.<sup>8</sup>

**B. The Transaction**

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. Upon completion of the Transaction, Telecom Holdings will no longer hold a majority controlling interest in, Fusion Connect or in Fusion Cloud. Indeed, no individual or entity will

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<sup>7</sup> The Commission reviewed this reorganization transaction in Docket No. 19-2600-02.

<sup>8</sup> The pursuit of a two-transaction approach arose in connection with the FCC's review of the reorganization transaction. As is common within the investment sector, several of the Lender funds are non-U.S. companies. The inclusion of these companies among proposed interest-holders in the pre-emergence FCC applications could have triggered a standard national security review by a multi-agency group, including the Department of Justice, the Department of Treasury and the Department of Homeland Security (commonly referred to as "Team Telecom"). This review could have materially delayed the Fusion Companies' emergence from chapter 11 protection, which would have been devastating to their financial viability. Postponing issuance of certain equity interests to the non-U.S. companies until after the Fusion Companies' emergence and the receipt of additional regulatory approvals helped to reduce that extreme financial injury. In the Transaction, there will be no comparable risk of financial harm should Team Telecom determine that a review is required.

hold a controlling interest in the Fusion Companies. Fusion Connect will become a widely held corporation, with all of its common stock held by the Lenders. It is anticipated that one group of affiliated funds will hold approximately thirty-three percent (33%) of the issued and outstanding shares of Fusion Connect and that another group of affiliated funds will hold approximately thirteen percent (13%) of Fusion's issued and outstanding shares. It is anticipated that all other stockholders of Fusion Connect will hold less than ten percent (10%) of Fusion Connect's common stock. Significantly, the Transaction will not have any impact on the organization and operations of the Fusion Companies, including Fusion Cloud. All that will change is the relative percentage of ownership of the various Lenders in Fusion Connect.

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

#### **IV. Public Interest Considerations**

The Applicants submit that the proposed Transaction will promote the public interest, convenience, and necessity. The Transaction is simply the final step contemplated by the Plan, which Plan 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 Utah.

The proposed Transaction will have no adverse effects upon the Utah or interstate telecommunications market. Fusion Cloud has a small share of the intrastate telecommunications market and, together, the Fusion Companies have a small share of the interstate telecommunications market. Significantly, the Transaction will not eliminate any market participants nor will it, in any respect, reduce the service choices available to consumers.

Moreover, the Transaction holds no adverse effects for Utah customers of Fusion Cloud. The carefully crafted Plan effectively ensured that, following emergence, Fusion Cloud would continue providing services to its customers without any interruption or diminishment of service quality. These customers continue to receive the same services as they did previously, pursuant to the same rates, terms and conditions. Consummation of the Transaction will have no impact on this outcome.

**V. Conclusion**

The Parties respectfully submit that the public interest, convenience and necessity will be furthered by the Transaction. The Parties therefore request that the Commission undertake such review of the Transaction as it considers necessary and subsequently issue an acknowledgement of this filing.

Respectfully submitted,

**/s/ Winafred Brantl**

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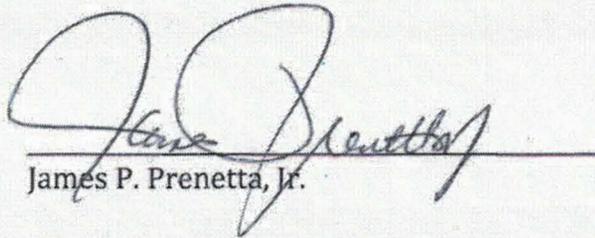
**Counsel for Fusion Connect, Inc.  
and Fusion Cloud Services, LLC**

Dated: March 4, 2020

**VERIFICATION**

**STATE OF GEORGIA**       §  
                                          §  
**COUNTY OF FULTON**     §

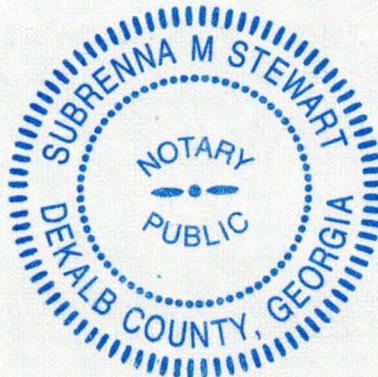
I, James P. Prenetta, Jr., state that I am the Executive Vice President and General Counsel of Fusion Connect, Inc. ("Fusion Connect"); that I am authorized to make this Verification on behalf of Fusion Connect and its wholly-owned subsidiary, Fusion Cloud Services, LLC (together, the "Fusion Companies"); that I have read the foregoing document; and that the statements in the foregoing document with respect to the Fusion Companies, except as otherwise specifically attributed, are true and correct to the best of my knowledge, information and belief.

  
James P. Prenetta, Jr.

Subscribed and sworn to before me this 28<sup>th</sup> day of February, 2020.

Notary Public: Subrenna M. Stewart

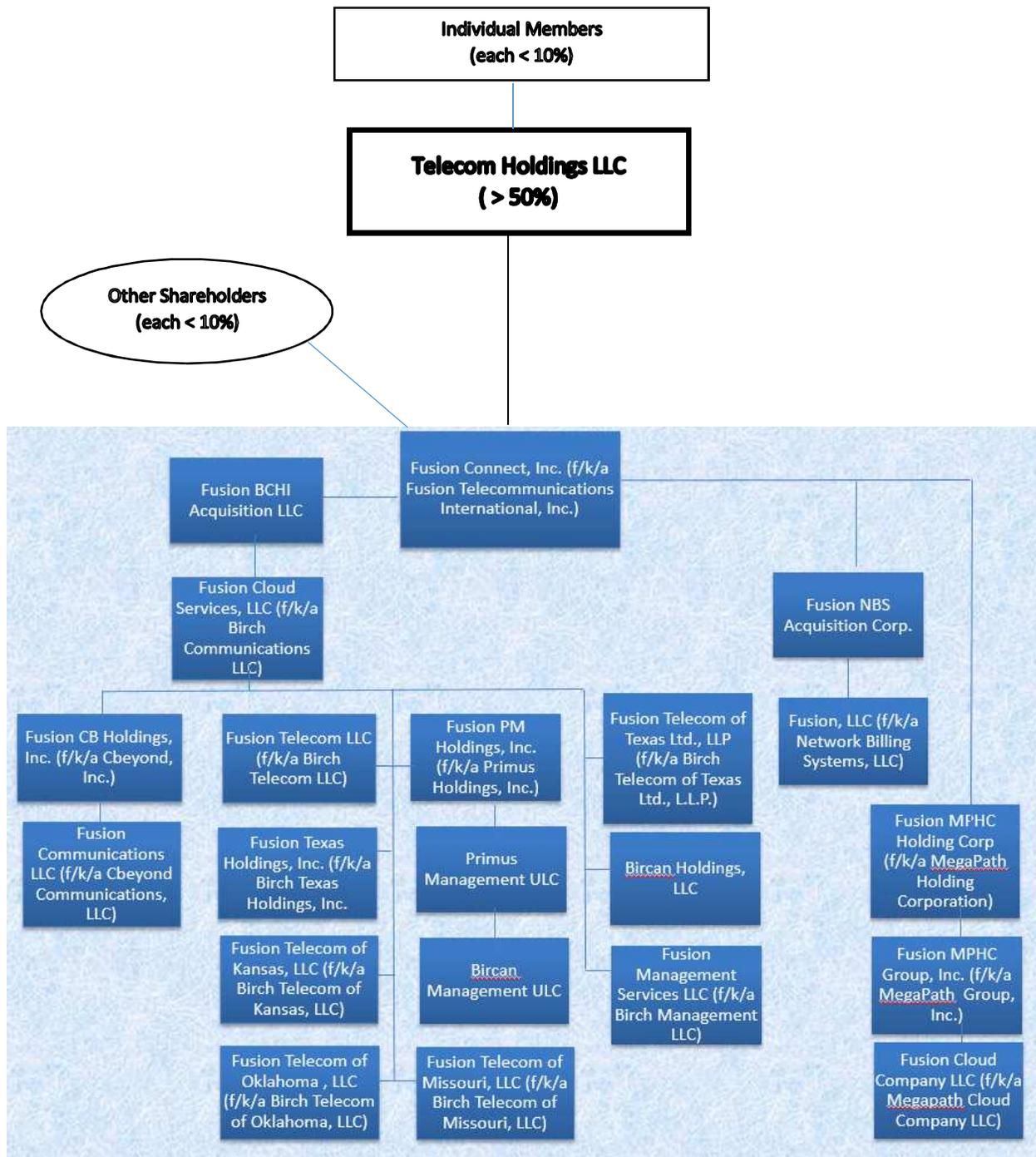
My Commission expires: August 10, 2021



**EXHIBIT 1**

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

Pre-Transaction Organizational Chart for the Fusion Companies



Post-Transaction Organizational Chart for the Fusion Companies

