

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
Fusion Connect, Inc.,)	WC Docket No. 19-262
Debtor-in-Possession)	ITC-ASG-20190724-00136
(FRN: 0028555027))	
)	
and)	
)	
Telecom Holdings LLC)	
(FRN: 0028667939))	
)	
For Consent to a Transaction That Will Result in a)	
Change of Control of Companies Holding Domestic)	
and International Authority Pursuant to Sections 214)	
of the Communications Act of 1934, as Amended)	
)	
and)	
)	
Fusion Cloud Services, LLC)	WTB File No. 0008738034
Debtor-in-Possession)	
(FRN: 0028560290))	
)	
FCC Application for Assignments of Authorizations)	
and Transfers of Control (Form 603))	
)	
Petition for Temporary and Limited Waiver of)	File Nos. ISP-WAV-2019____-____
Sections 1.5000(a)(1), 1.2112, 63.04 and 63.18)	ISP-WAV-2019____-____
Of the Commission's Rules)	

PETITION FOR TEMPORARY AND LIMITED WAIVER

Fusion Connect, Inc., debtor-in-possession ("Fusion Connect"), for itself and its U.S. operating subsidiaries, each of which is currently operating as debtors-in-possession of various license(s) issued by the Federal Communications Commission ("Commission") (collectively, the "Fusion Licensees") under the supervision of the United States Bankruptcy Court for the

Southern District of New York (the “Bankruptcy Court”),¹ and Telecom Holdings LLC (“Telecom Holdings”), have filed the above-referenced applications pursuant to section 214 of the Communications Act of 1934, as amended (the “Communications Act”) seeking consent for a transaction integral to the Fusion Licensees’ emergence from chapter 11 protection which will result in a transfer of control of the Fusion Licensees.² Fusion Cloud Services, LLC, debtor-in-possession (“Fusion Cloud Services” and, together with Fusion Connect and Telecom Holdings, the “Applicants”), a subsidiary of Fusion Connect, has filed a similar application (referenced above) with respect to the wireless licenses that it holds (this application, together with the Section 214 Applications, the “Applications”). As described further in the Applications and below, it is proposed that, following the emergence of the Fusion Licensees from chapter 11 protection, Fusion Connect and its subsidiaries will be controlled by Telecom Holdings. The Applicants contemplate that, in addition to the common stock in Fusion Connect (“New Equity Interests”) that is issued at emergence, special warrants will be issued to certain parties currently

¹ Each of the Fusion Licensees commenced a voluntary case under chapter 11 of title 11 of the United States Code with the Bankruptcy Court. In re Fusion Connect, Inc., et al., Debtors, Case No. 19-11811 (Bankr. S.D.N.Y. Jun. 3, 2019). A list of the Fusion Licensees is provided in Appendix I. The Fusion Licensees notified the Commission of their June 3, 2019, chapter 11 filings on June 7, 2019 (Intl. Bureau, Wireline Competition Bureau) and June 10, 2019 (Wireless Telecommunications Bureau).

² In the Commission’s IBFS and ULS systems, the Fusion Licensees’ initial filings upon the commencement of the bankruptcy proceeding took the form of a notice of the *pro forma* assignment of the authorizations from the pre-entry license-holder to the debtor-in-possession license-holder. Subsequently, the Applicants filed the above captioned requests under Section 214 of the Communications Act for consent to a substantive transfer of control on July 24, 2019 (the “Section 214 Applications”). As with the pro forma notices, in the IBFS and ULS systems, the emergence of the Fusion Licensees will involve a technical re-assignment of the authorizations; however, the central component of the request for Commission approval (and the basis for the prior approval requirement) is the substantive change to the control of the Fusion Licensees. For this reason, the discussion in the Applications and herein refers to a transfer of control.

holding Fusion Connect debt, as set forth in the Applications.³ Post-emergence, and only after additional, subsequent regulatory approvals have been obtained, including a declaratory ruling under Section 310(b)(4) of the Communications Act regarding foreign ownership of the common carrier wireless licenses held by Fusion Cloud Services, the special warrants will be exchanged for common stock of Fusion Connect, resulting in a transfer of control of the Fusion Licensees from Telecom Holdings. The Applicants believe that the treatment of the unexercised special warrants reflected in the Applications in describing the ownership of the post-emergence Fusion Licensees is consistent with the Communications Act and the Commission's Rules. Following discussion with Commission Staff and out of an abundance of caution, the Applicants submit this request for temporary and limited waiver should it be necessary depending on how the special warrants are treated by the Commission.⁴

Specifically, pursuant to Section 1.3 of the Commission's Rules, the Applicants respectfully seek a temporary and limited waiver of Section 1.5000(a)(1) as well as Sections 1.2112, 63.03, 63.04, 63.18 and 63.24 of the Commission's Rules, if and to the extent necessary, in order to enable Fusion Connect and its operating subsidiaries to emerge from bankruptcy in a timely fashion as set forth in the Applications, including the proposed distribution of New Equity

³ All of the special warrants will be issued at emergence.

⁴ The Applicants note that the Commission has just granted a similar request for waiver submitted by Liberman Broadcasting, Inc., Debtor-in-Possession and its affiliated entities (the "LBI Debtors"). See *Liberman Television of Dallas License LLC, Debtor-in-Possession et al*, Order (Oct. 4, 2019) ("*Liberman Waiver Order*"). As here, the LBI Debtors structured their transaction to allow them to emerge from bankruptcy more expeditiously, using an initial strategic distribution of equity and warrants. They requested a temporary and limited waiver of Section 1.5000(a)(1) to ensure that, if the warrants were treated by the Commission as capital stock, the LBI Debtors would not have to delay their emergence in order to file a petition for declaratory ruling and to complete the associated review of proposed foreign ownership in excess of the foreign ownership limitations of Section 310(b)(4) of the Communications Act.

Interests and special warrants. Grant of this waiver request, should it be necessary, will permit the Fusion Licensees to emerge from bankruptcy *before* filing any applications for approval that will be required in connection with exercise of the special warrants: specifically, a petition for declaratory ruling that will be required with respect to foreign ownership exceeding the 25% level set forth in section 310(b)(4) of the Communications Act⁵ and transfer of control applications pursuant to Section 214 and Section 310 that will be required for approval of the ownership of the Fusion Licensees once special warrants have been exercised.⁶ The Applicants intend to file such a petition and the related subsequent applications no later than 30 days following the date that all conditions precedent contained in Fusion Connect’s plan of reorganization (the “Plan”) are satisfied and after grant of the Applications by the Commission.⁷

BACKGROUND

As set forth more fully in the Applications, the Applicants request Commission consent to a transaction to expedite the Fusion Licensees’ emergence from chapter 11 protection. This transaction will result in a material change to the control of the Fusion Licensees as well as the “assignment” of their licenses and authorizations from the Fusion Licensees, as debtors-in-possession, to those same licensees, following their emergence from bankruptcy protection.

⁵ 47 U.S.C. § 310(b)(4).

⁶ Upon exercise of the special warrants, none of which may be exercised until the subsequent approvals described herein are obtained, Telecom Holdings will no longer hold at least fifty percent (50%) of the common stock of Fusion Connect, resulting in a transfer of control of the company. It is expected that there will be no controlling interest holder in Fusion Connect at that point.

⁷ The Applicants intend that within 30 days of the Fusion Licensees’ emergence from bankruptcy protection, they will file a petition for declaratory ruling seeking authority to exceed the section 310(b)(4) cap on foreign ownership and applications pursuant to Sections 214 and 310 of the Communications Act for the transfer of control of the Fusion Licensees that will result from an exchange of the majority of the special warrants that are to be issued at emergence.

Upon the Fusion Licensees' emergence from chapter 11, they will be controlled by Telecom Holdings, which will hold more than fifty percent (50%) of the common stock in Fusion Connect.⁸ The remaining New Equity Interests at emergence will be distributed to various other first lien lenders, none of which will hold New Equity Interests that would constitute a disclosable interest in Fusion Connect based upon the distributed common stock.

The Plan proposes to exchange Fusion Connect debt currently held by first and second lien lenders (the "Lenders") for New Equity Interests and/or prepaid special warrants. Because, certain Lenders have material foreign ownership, immediate distribution of New Equity Interests to these Lenders would trigger a more extended regulatory review process than is feasible given the urgency for the Fusion Licensees to emerge. The Plan therefore proposes, as it were, a "two-transaction" regulatory approval process. In the first transaction, prepaid special warrants, rather than, or in addition to New Equity Interests, will be issued to certain Lenders insofar as their material equity ownership of Fusion Connect would require the extended review.⁹ These special warrants carry no voting rights and cannot be exercised until Fusion Connect has secured any necessary Commission approvals.¹⁰ The above-captioned Applications have been filed and are pending regarding this first transaction.

The Plan and related documents establish a second transaction through which, following emergence and prior to any exercise of the special warrants, the Applicants will file the appropriate applications with the Commission for approval of the ownership of the Fusion

⁸ At emergence, Fusion Connect will have only one class of voting common stock.

⁹ For reasons unrelated to this waiver request, the second lien lenders will only receive special warrants at emergence.

¹⁰ As primary creditors of Fusion Connect, these lenders will vote on whether to approve or reject the Plan.

Licensees that will result following such exercise, which will involve a material change to the ownership of the Fusion Licensees and foreign ownership above the threshold limits prescribed in Section 310 of the Communications Act. Only after approval of these subsequent applications (including approval for such level of foreign ownership as may be granted), will any of the special warrants be exercised and, then, only insofar as consistent with the approvals obtained.

REQUEST FOR WAIVER

The Applicants believe that the structure described in the Applications fully complies with the Commission's Rules, including its limitations on foreign ownership. The special warrants to be issued upon emergence of the Fusion licensees allow the holders to purchase New Equity Interests in Fusion Connect at a later date subject to prescribed requirements, including Fusion Connect securing all necessary regulatory approvals. Applicants understand that this approach has been accepted by the Commission in a number of past transactional proceedings. Nevertheless, pursuant to discussions with Commission Staff, the Applicants understand that there is some possibility that, in an unexercised state, warrants would be deemed to constitute equity and be included in the Commission's reviews of proposed post-transaction ownership.

Were the Commission to treat pre-paid warrants as equity (albeit non-voting) in the context of ownership reviews (foreign and/or domestic), the decision could place the Fusion Licensees in the position of having foreign ownership in excess of the relevant foreign ownership limits specified in 47 U.S.C. § 310(b)(4), without grant of required specific approvals, and of having disclosable equity ownership inconsistent with the structure identified in the Applications.¹¹ Moreover, a Commission ruling to this effect *prior* to the emergence of the

¹¹ Were the unexercised special warrants treated as convertible, non-voting equity, Telecom Holdings, while still having *de jure* voting control following emergence, would not have a

Fusion Licensees would impose a different and substantial burden upon the Applicants. A petition for declaratory ruling under 47 C.F.R. § 1.5000(a)(1) would be required because the ownership of the Fusion Licensees, as analyzed pursuant to such a ruling, would include the Lenders with foreign ownership that will receive special warrants. They would instead be considered as holding a current equity interest in the Fusion Licensees and, as a result, the proposed foreign ownership of the Fusion Licensees would exceed the limits set in Section 310(b)(4).¹² Revised applications pursuant to Sections 214 and 310 would also be required to reflect the ownership of the Fusion Licensees including the proposed special warrant holders, some of which would exceed ten percent (10%) interests and be foreign-owned or controlled. Submitting these filings concurrently with the Applications would delay the Fusion Licensees' emergence from bankruptcy for months at a minimum—and possibly for considerably longer – as the reviews associated with such proposed ownership are conducted.

Accordingly, out of an abundance of caution, the Applicants seek a temporary and limited waiver that would permit them to complete the emergence process for the Fusion Licensees relying upon the current Applications, including the proposed equity and special warrant structure described therein, on the condition that they file a petition for declaratory

majority of the equity of Fusion Connect at such time. In addition, the entities that will hold the special warrants that would be treated as having 10% or more of the equity of Fusion Connect have not been identified in the Applications as disclosable interest holders.

¹² 47 C.F.R. § 1.5000(a)(1) (“A broadcast, common carrier, aeronautical en route or aeronautical fixed radio station licensee or common carrier spectrum lessee shall file a petition for declaratory ruling to obtain Commission approval under section 310(b)(4) of the Act, and obtain such approval, before the aggregate foreign ownership of any controlling, U.S.-organized parent company exceeds, directly and/or indirectly, 25 percent of the U.S. parent's equity interests and/or 25 percent of its voting interests. An applicant for a broadcast, common carrier, aeronautical en route or aeronautical fixed radio station license or common carrier spectrum leasing arrangement shall file the petition for declaratory ruling required by this paragraph at the same time that it files its application.”).

ruling and the transfer of control applications required in connection with the exercise and/or exchange of the special warrants within thirty (30) days of the date that the Fusion Licensees' emergence from bankruptcy protection.

The Commission may waive its rules for good cause shown.¹³ Here, the good cause consists of “facilitating the successful resolution of a bankruptcy proceeding,”¹⁴ which raises very different public interest considerations than an ordinary-course license transfer or assignment. The Fusion Connect Licensees will emerge from the bankruptcy proceeding pursuant to a process supervised and administered by the Bankruptcy Court, and in accordance with applicable federal bankruptcy laws. The Bankruptcy Court's equitable powers and role in overseeing the process and approving the Plan represents a significant and substantive difference from the situation in which warrants are issued in the context of a privately-negotiated license acquisition.

¹³ 47 C.F.R. § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion . . . if good cause therefor is shown”); *Liberian Waiver Order* at ¶ 13 (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”)); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

¹⁴ *Stanford Springel As Chapter 11 Tr. for the Bankr. Estate of Innovative Commc'n Corp., Transferor & Assignor, & Nat'l Rural Utilities Coop. Fin. Corp. & Its Subsidiaries, Transferees & Assignees*, 24 FCC Rcd. 14360, 14369 ¶ 19 (2009) (“*Innovative Order*”); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Commc'ns Corp., (& Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Commc'ns Corp., (& Subsidiaries, Debtors-in-Possession), Assignors & Transferors, to Comcast Corp. (Subsidiaries), Assignees & Transferees; Comcast Corp., Transferor, to Time Warner Inc., Transferee; Time Warner Inc., Transferor, to Comcast Corp., Transferee*, Memorandum Opinion & Order, 21 FCC Rcd. 8203, 8323 ¶ 282 (2006) (“*Adelphia Order*”) (citing *WorldCom, Inc. & its Subsidiaries (Debtors-in-Possession), Transferor, & MCI, Inc., Transferee*, Memorandum Opinion & Order, 18 FCC Rcd. 26484, 26503 ¶ 29 (2003) (“*WorldCom Order*”)).

- Bankruptcy law and the rules of the bankruptcy process constrain the flexibility that a company and its various stakeholders would otherwise have in the privately-negotiated context to implement changes to the company's capital structure. Here, the Bankruptcy Court is closely supervising the reorganization process.
- Unlike a privately-negotiated transaction, the bankruptcy process is open to diverse participants in a court-supervised setting, including secured and unsecured debt holders, trade creditors, vendors, stockholders, government entities, and any other parties with claims of interest. For example, in addition to parties with direct claims or interests in the Applicants, the Office of the United States Trustee (the "U.S. Trustee") and the Official Committee of Unsecured Creditors, appointed by the U.S. Trustee in the Applicants' chapter 11 cases, both played active roles in the Applicants' chapter 11 cases, including with respect to formulation of and approval of the Plan under the supervision of the Bankruptcy Court. The Commission, too, as a claimholder, has been a participant in the proceedings.
- Bankruptcy restructurings utilize open dockets where the public has access to the pleadings and filings in real time. For example, all pleadings and filings made in connection with the Fusion Connect chapter 11 cases are made accessible to the public by the Federal Judiciary at www.pacer.gov. In addition, in connection with their chapter 11 cases, the Applicants' maintain a website where all pleadings and filings are made accessible to the public at no cost. See <https://cases.primeclerk.com/Fusion/>.
- In a bankruptcy restructuring, warrants and other securities or debt instruments are typically issued to stakeholders who had a pre-existing debt or equity interest in the predecessor-in-bankruptcy entity in conversion of that debt or equity. In this case, the

Plan contemplates issuance of special warrants, debt instruments, and/or New Equity Interests to holders of certain of Fusion Connect's pre-existing debt.

Grant of this request would be in the public interest because it would expedite the Fusion Licensees' emergence from the bankruptcy process consistent with the Commission's stated practice to accommodate federal bankruptcy law when doing so will not unduly interfere with its public interest obligations under the Communications Act.¹⁵ "It is the Commission's policy to support the bankruptcy laws, and where possible to accommodate them in a manner that is consistent with the Act."¹⁶ Facilitating successful and timely emergence from bankruptcy "advances the public interest by providing economic and social benefits, especially the compensation of innocent creditors."¹⁷ In this case, grant of the requested waiver will permit Fusion Connect and its subsidiaries to emerge from bankruptcy more quickly, which in turn will

¹⁵ *Liberian Waiver Order* at ¶ 14 (citing *Maritime Communications/Land Mobile, LLC*, 31 FCC Rcd 13729, 13737-38 (2016); *LaRose v. FCC*, 494 F.2d 1145, 1146-48 & n.2 (D.C. Cir. 1974)).

¹⁶ *Innovative Order* at 14369 ¶ 19. *See also WorldCom Order* at 26503 ¶ 29 (citing *Mobilemedia Corp., et al.*, Memorandum Opinion & Order, 14 FCC Rcd. 8017, 8018 ¶ 4 (1999); *Space Station Sys. Licensee, Inc.*, Memorandum Opinion & Order, Order & Authorization, 17 FCC Rcd. 2271, 2286-87 ¶ 34 (Int'l Bur. 2002) ("Because this transaction permits the Iridium system to emerge from bankruptcy and continue operations, the competitive impact is likely to be beneficial."); *Orbital Commc'ns Corp.*, Order & Authorization, 17 FCC Rcd. 4496, 4504 ¶15 (Int'l Bur. 2002) ("Because this transaction permits the [licensee] to emerge from bankruptcy and continue operations, the competitive impact will be beneficial. . . . Successful emergence from bankruptcy is critical to the continued operation and expansion of the ORBCOMM system.").

¹⁷ *Innovative Order* at 14369 ¶ 19.

enable the Fusion Licensees to devote their entire focus on improving service to their customers, current and prospective.¹⁸

At the same time, grant of this request will not interfere with the Commission's public interest obligations because: (1) exercise of the special warrants will not occur without Commission scrutiny – the Applicants will file a petition for declaratory ruling and the required transfer of control applications to address the exercise of the special warrants within 30 days after emergence and will accept the making of those filings as a condition of grant of the Applications;¹⁹ (2) regardless of how the Commission may ultimately determine that warrants should be evaluated, the Lenders holding special warrants cannot exercise their special warrants until after all additional Commission approvals discussed herein – the declaratory ruling and approvals of Sections 214 and 310 transfer of control applications – are obtained and then only within the limits of those approvals;²⁰ and (3) the use of pre-paid special warrants in this context has no strategic purpose other than to facilitate the Fusion Licensees' emergence from bankruptcy in an expeditious fashion.

* * *

For the reasons set forth above, the Applicants respectfully submit that, to the extent necessary, the Commission should grant a limited and temporary waiver, pursuant 47 C.F.R §

¹⁸ See, e.g., *Liberian Waiver Order* ¶ 15 (“[P]rompt grant of the Applications, subject to waiver, will expedite LBI Debtors’ emergence from bankruptcy and facilitate operational improvements made possible by new ownership.”).

¹⁹ The timing of the filing is analogous to that set out in the process for filing remedial petitions for declaratory ruling in 47 C.F.R. § 1.5004(f)(3).

²⁰ *Liberian Waiver Order* ¶ 15 (“[G]rant of the waiver request would not permit the applicants to ‘sidestep’ foreign ownership disclosure obligations. . . . it would merely enable LBI Debtors to emerge from bankruptcy before filing a petition for declaratory ruling , and, by filing such a petition as required by the terms of the waiver, the LBI Debtors will remain in compliance with the Commission’s rules[] as required by the Bankruptcy Court.[]”).

1.3, of (i) any requirement that may apply under 47 C.F.R. §1.5001(a)(1) to file a petition for declaratory ruling to obtain Commission approval for, and to obtain such approval prior to, exceeding the cap on foreign investment specified 47 U.S.C. § 310(b)(4), and (ii) the requirements within 47 C.F.R. §§ 1.948, 63.03, 63.04, 63.18 and 63.24 to obtain prior approval for a material change to control or ownership of licensees and to disclose reportable interest holders in the associated filings. As a condition of the waivers requested, the Applicants request that they be required, to file a petition for declaratory ruling and the transfer of control applications within thirty (30) days following the emergence of the Fusion Licensees from chapter 11 protection to reflect the exercise of the special warrants.

Respectfully submitted,

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TELECOM HOLDINGS LLC

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Appendix 1

Fusion Licensees and Associated Applications

Application of Fusion Connect, Inc., Debtor-in-Possession (FRN: 0028555027) and Telecom Holdings LLC (FRN: 0028667939) For Consent to a Transaction That Will Result in a Change of Control of Companies Holding Domestic and International Authority Pursuant to Section 214 of the Communications Act of 1934, as amended

**WC Docket No. 19-262
ITC-ASG-20190724-00136**

Fusion Connect, Inc., debtor-in-possession (“Fusion Connect”) holds blanket domestic Section 214 authority to provide domestic interstate telecommunications services and was granted a Section 214 license to provide international telecommunications services in File No. ITC-214-19971001-00592.

The following wholly-owned subsidiaries of Fusion Connect hold blanket domestic Section 214 authority to provide domestic interstate services and provide international telecommunications services pursuant to Fusion Connect’s authorization:

Fusion LLC, debtor-in-possession
Fusion Cloud Services, LLC, debtor-in-possession
Fusion Communications, LLC, debtor-in-possession
Fusion Telecom of Kansas, LLC, debtor-in-possession
Fusion Telecom of Missouri, LLC, debtor-in-possession
Fusion Telecom of Oklahoma, LLC, debtor-in-possession
Fusion Telecom of Texas Ltd., LLP, debtor-in-possession

Fusion Cloud Services, LLC, Debtor-in-Possession, (FRN: 0028560290) FCC Application for Assignments of Authorizations And Transfers of Control (Form 603)

WTB File No. 0008738034

Fusion Cloud Services, LLC, debtor-in-possession, in addition to its section 214 authority, holds five common carrier point-to-point microwave licenses (call signs: WPSJ472, WPSK348 , WPSK349 , WPSK350 and WPSK351) and one private license for operations in the 3650-3700 MHz band (call sign WQLW960).