

May 22, 2018

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East Suite 350
St. Paul, MN 55101-2147

RE: **Comments of the Minnesota Department of Commerce**
Docket No. P6974/PA-18-325

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce (Department) in the following matter:

In the Matter of the Joint Application of Fusion Connect, Inc. (f/k/a Fusion Telecommunications International, Inc.) and MegaPath Cloud Company, LLC for Consent to the Transfer of Ownership and Control of MegaPath Cloud Company, LLC from MegaPath Holding Corporation to Fusion Connect, Inc.

The initial petition was filed on May 10, 2018 by:

Katherine K. Mudge
Enoch Kever, PLLC
5918 W. Courtyard Dr., Ste. 500
Austin, TX 78730

Sincerely,

/s/ BRUCE L. LINSCHIED
Financial Analyst

BLL/lt
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce

Docket No. P6974/PA-18-325

I. BACKGROUND

On May 18, 2018, the Minnesota Department of Commerce (the Department) received a Joint Application (Application) for the transfer of control of MegaPath Cloud Company, LLC (MegaPath) from MegaPath Holding Corporation (MHC) to Fusion Connect, Inc. (Fusion, and together with MegaPath, the Applicants and the Transaction).

A. THE APPLICANTS

1. *MegaPath Cloud Company, LLC*

MegaPath is a nationwide business communications and network provider that provides fixed interconnected Voice over Internet Protocol (VoIP) and Internet access services or integrated voice and data communications, including VoIP, IP, wireless broadband, and bundled VoIP and data services to small and medium-sized businesses and enterprise customers. MegaPath has no residential customers. In Minnesota, MegaPath provides fixed interconnected VoIP under its authority granted in Docket No. P5962/NA-98-1259 on February 22, 1999. MegaPath Holding Corporation (MHC) is the ultimate parent of MegaPath. MHC does not provide telecommunications services and does not hold any federal or state certificate or license to provide services.

2. *Fusion*

Fusion, through its operating subsidiaries (the Fusion Companies) provides digital voice and data communications services, and other enhanced communications services to businesses in the United States and Canada. Fusion is publicly traded and does not hold authority to provide intrastate telecommunications services within any state.

- Fusion's wholly-owned indirect subsidiary, Network Billing Systems, LLC (NBS), provides hosted voice and data services, broadband Internet access service, interconnected VoIP, data networks and traditional voice services primarily to business customers throughout the United States. In Minnesota, NBS received authority to provide interexchange services in Docket No. P5691/NA-98-1250 on March 9, 1999.

- Fusion also wholly owns Cbeyond Communications, LLC (Cbeyond), which operates in Minnesota. Cbeyond was authorized to provide competitive local exchange carrier and interexchange carrier telecommunications services in Docket No. P6347/NA-03-1915 on January 16, 2004.

B. THE TRANSACTION

On May 4, 2018, Fusion, and a wholly owned subsidiary of Fusion established to facilitate the Transaction, entered an Agreement and Plan of Merger (Merger Agreement), with MHC. The Merger Agreement provides for MHC to become a wholly owned subsidiary of Fusion, and MegaPath will continue to provide its VoIP and other services to its customers as a wholly owned indirect subsidiary of Fusion (see attached pre- and post-close corporate organizational chart for MegaPath and Fusion). The Applicants intend to consummate the Transaction as soon as possible following receipt of approval from the Commission and satisfaction of any closing conditions. The Applicants strongly desire to close the Transaction on or prior to June 15, 2018, and request expedited review and approval by the Commission.

C. PUBLIC INTEREST

The Applicants state that the proposed Transaction is in the public interest because Fusion and MegaPath are well-established communications service providers that have the required financial, technical and managerial qualifications to provide uninterrupted and reliable services. The Transaction is expected to join MegaPath's VoIP services with Fusion, a large, publicly traded cloud service provider in North America. The Transaction is expected to be transparent to customers as MegaPath will continue to provide services under the same rates, terms and conditions.

II. STATEMENT OF ISSUES

- A. Does the transfer of control require Commission approval?
- B. Is the transfer of control in the public interest?
- C. Have the Applicants complied with Minnesota law requiring prior Commission approval of the transfer of control?
- D. Should MegaPath's certificate of authority be cancelled, and are there any additional regulatory requirements?

III. LEGAL REFERENCES

Minn. Stat. § 237.035(a) provides that telecommunications carriers are subject to regulation under this chapter only to the extent required under paragraphs (b) to (e).

Minn. Stat. § 237.74, subd. 12 provides that no telecommunications carrier shall construct or operate any line, plant, or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the commission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition, and a new certificate of territorial authority.

IV. ANALYSIS

A. COMMISSION ACTION IS NEEDED FOR THE TRANSFER OF CONTROL

The Commission has established a consistent precedent for requiring approval for any change of ownership affecting Minnesota telephone companies and telecommunications carriers. Commission approval is required for transactions where the ultimate ownership or control of either a telephone company or telecommunications carrier authorized to operate in Minnesota changes, or a telephone company's or a telecommunications carrier's Minnesota operations are affected by a merger or acquisition transaction. Commission approval is not required for corporate reorganizations in which ultimate ownership or control does not change or the operating company is not impacted by the reorganization.¹ The Commission should review the transfer of control of MegaPath to Fusion to determine if it is in the public interest.

B. THE PROPOSED TRANSFER OF CONTROL IS IN THE PUBLIC INTEREST

The proposed transfer of MegaPath should be transparent to customers and not put them at risk of interruptible or unreliable service. Although corporate ownership changes, customers should be served by the same company following their transfer to Fusion. As a wholly owned indirect subsidiary of Fusion, Fusion's March 31, 2018 financial statements were reviewed to determine its ability to ensure MegaPath's ability to continue delivering reliable services to its customers.

¹ *In the Matter of an Application for Approval of a Corporate Reorganization by Winstar Wireless, Inc.*, Docket No. P5246/PA-00-925, August 25, 2000.

Fusion funds itself through a combination of existing cash on hand, cash generated from operations, proceeds from the issuance of common stock, and borrowings under its senior notes payable, credit facility, and special purposes financing arrangements.²

- In February 2018, Fusion completed an underwritten public offering where by it issued common stock and received net proceeds of \$38.2 million.³
- On November 14, 2016, Fusion entered a credit agreement whereby lenders extended a \$65.0 million term loan and \$5.0 million revolving credit facility. On March 31, 2018, Fusion had nothing outstanding on its revolving credit facility and \$55.1 million was outstanding under its term loan. The maturity date of the term loan is November 12, 2021.⁴

Despite incurring net losses and negative operating cash flow since its inception in September 1997, Fusion had cash and cash equivalents of \$31.0 million on March 31, 2018 and believes it has sufficient cash to fund its operations and meet its operating and debt obligations for the next twelve months.⁵

C. THE PARTIES HAVE COMPLIED WITH THE REQUIREMENT FOR PRIOR COMMISSION APPROVAL FOR THE PROPOSED TRANSFER OF CONTROL

The Application was submitted on May 10, 2018 and states that the Transaction will not be completed prior to the Commission's approval. Although the Applicants strongly desire to close the Transaction on or prior to June 15, 2018, and request expedited review and approval by the Commission, the Applicants intend to consummate the Transaction as soon as possible following receipt of approval from the Commission and satisfaction of any closing conditions. Prior Commission approvals are being sought, and violation of Minn. Stat. § 237.74, subd. 12 is not expected to occur.

D. THE CERTIFICATE OF AUTHORITY FOR MEGAPATH SHOULD NOT BE CANCELLED

The Transaction involves a transfer of control of MegaPath at the holding company level, and MegaPath will continue to operate under its existing certificate of authority.

- There are no current plans for the assumption or transfer of any NXX codes since the Transaction will not impact the operations of MegaPath or any Fusion subsidiary operating in Minnesota.

² US SEC Form 10-Q for the quarterly period ended March 31, 2018, Fusion Connect, Inc., Liquidity and Capital Resources, pp. 29-30.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

- No 911 approvals are required for this Transaction since the Transaction will not impact the operations of MegaPath or any Fusion subsidiary operating in Minnesota.
- No interconnection agreements are impacted by the Transaction.
- MegaPath and Fusion Companies operating in Minnesota will continue to be responsible for its regulatory filings and fees.
- MegaPath will retain its certificate of authority, and the Transaction is expected to be transparent to MegaPath's customers. The Transaction will not involve the transfer of customers, and MegaPath need not notify customers of the Transaction.
- No tariff changes are required for MegaPath as the rates, terms and conditions of service will not change as a result of the Transaction.
- Applicants agrees to file a notice of closing within 20 days of the completion of the Transaction.
- MegaPath does not have customers enrolled in TAP, but does provide local exchange service and is required by Minn. Stat. § 237.70, subd. 7 (d) (3) to file TAP reports.
- Applicants do not anticipate any changes in MegaPath's Minnesota employment or employment structures as a result of the Transaction.
- Competition is not expected to be affected by the Transaction as demand for cloud and IP-based services is expected to bring growth and new competitors in to the market to meet the demand.
- Applicants will continue to provide broadband services as part of their service offerings.

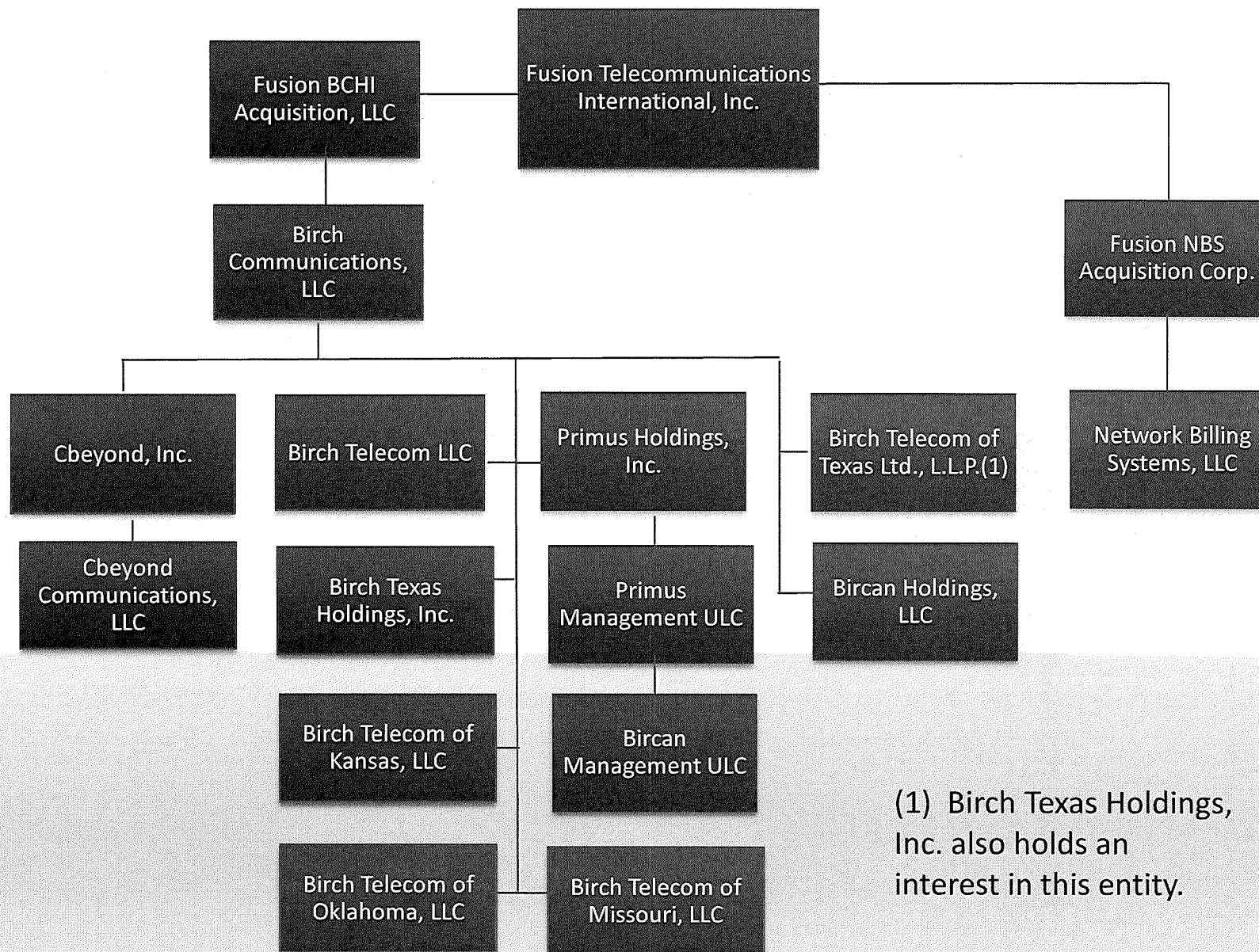
V. COMMISSION ALTERNATIVES

1. Approve the transfer of control of MegaPath Cloud Company, LLC to Fusion Connect, Inc.
 - Applicants shall inform the Commission that the proposed transaction has closed within 20 days of its consummation, and continue to file jurisdictional annual reports and pay regulatory assessments.
 - MegaPath Cloud Company, LLC is required to file TAP reports.
 - MegaPath Cloud Company, LLC will operate under its existing certificates of authority.
2. Approve the transfer of control with modifications.
3. Reject the transfer of control.

VI. RECOMMENDATION

The Department recommends Alternative 1.

PRE-TRANSACTION CORPORATE ORGANIZATIONAL CHART



(1) Birch Texas Holdings, Inc. also holds an interest in this entity.

POST-TRANSACTION CORPORATE ORGANIZATIONAL CHART

