

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Joint) Application No. C-4957
Application of BCHI Holdings, LLC,)
Birch Communications, Inc., Fusior)
Telecommunications International,)
Inc., and Network Billing Systems,)
LLC, Atlanta, Georgia, for Consent)
to a Transaction that will result) GRANTED
in a Material Change to the)
Ownership and Control of Network)
Billing Systems, LLC, and for)
Approval to Participate in New)
Financing Arrangements.)
) Entered: January 17, 2018

BY THE COMMISSION:

On November 15, 2017, a joint application was filed by BCHI Holdings, LLC (BCHI Holdings), Birch Communications, Inc. (BCI), Fusion Telecommunications International, Inc. (FTI), and Network Billing Systems, LLC (NBS), of Atlanta Georgia, for Consent to a Transaction that will result in a change to the ownership and control of NBS and seeking approval to participate in financing arrangements. Notice of the application was published in The Daily Record, Omaha, Nebraska, on November 22, 2017. No protests were filed; therefore, this application is processed pursuant to the Commission's rule of modified procedure.

O P I N I O N A N D F I N D I N G S

The Parties and Transaction

The Birch Companies provide competitive local exchange, intrastate toll, intrastate interexchange, interstate interexchange and international services to residential and business customers in all 50 states and the District of Columbia.

BCHI is a Georgia limited liability company, with a principal office in Atlanta, Georgia. BCHI was recently formed by the shareholders of Birch Communications Holdings, Inc., to hold the shares of FTI to be issued in connection with the Merger. Birch Holdings is the current parent of BCI.

BCI is a Georgia corporation with its principal office located in Atlanta, Georgia. BCI has an application on file to provide competitive local exchange and interexchange service in Nebraska. Upon the closing of the transaction, BCI will become an indirect wholly-owned subsidiary of FTI.

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The Fusion Companies provide digital voice and data communications services including hosted Voice over Internet Protocol (VoIP) and Session Initiated Protocol (SIP) trunking and other enhanced communications services and features to businesses primarily in the United States. Fusion also provides VoIP services to carriers worldwide.

FTI is a publicly traded Delaware corporation with its headquarters located in New York, New York. FTI holds Section 214 authority from the Federal Communications Commission (FCC) to provide interstate and international communications services. FTI does not hold authority to provide intrastate telecommunications services within any state.

FTI's wholly-owned indirect subsidiary NBS d/b/a Fusion is a New Jersey limited liability company with corporate headquarters located in Fairfield, New Jersey. NBS provides UC and hosted voice and data services, broadband Internet access service, interconnected VoIP, data networks, and traditional voice solutions primarily to business customers throughout the United States. In Nebraska, the Commission authorized NBS to operate as an interexchange carrier in Docket C-1930 on January 5, 1999. Additionally, NBS holds authority to offer intrastate telecommunications services in 46 other states. NBS also holds Section 214 authority from the FCC to provide interstate and international telecommunications services.

The Financing Arrangements

On August 26, 2017, FTI, Fusion BCHI Acquisition LLC, a direct wholly-owned subsidiary of FTI formed by FTI solely for the purpose of completing the Transaction ("Fusion Merger Sub"), and Birch Holdings, the current holding company for Birch Companies, entered into an Agreement and Plan of Merger ("Merger Agreement"). Under the terms of the Merger Agreement, the existing shareholders of Birch will acquire approximately 75 percent of FTI's issued and outstanding common stock. As a result, the majority ownership and control of FTI will be acquired by the existing shareholders of Birch. The remaining 25 percent of FTI issued and outstanding shares of common stock will be held by the current stockholders of FTI at the time of the closing ("FTI Stockholders"). The result is that approximately 75 percent of the indirect equity interests in NBS also will be acquired by BCHI Holdings and ultimately held by Birch Shareholders.

In anticipation of the Transaction, Birch will implement an intra-corporate restructuring that segregates its Cloud Business

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Services business from its consumer and single-line business customers. Post-restructuring the Birch entities providing the Cloud and Business Services, including BCI, will continue as wholly-owned subsidiaries of Birch Holdings. This reorganization is entirely pro forma both prior to and following the restructuring. The reorganization will also be transparent to customers. At the closings of the Transaction, Birch Holdings will merge with and into Fusion Merger Sub and Fusion Merger Sub will be the surviving entity in the merger. As a result the subsidiaries of Birch Holdings, including BCI, will become indirect wholly-owned subsidiaries of FTI.

In order to fund the cost of the Transaction, including repayment of existing debt, facilitate operational consolidations, and provide for future working capital, FTI proposes that the new Fusion-Birch companies be able to borrow up to \$775 million through one or more new financing arrangements with banks, other financial institutions, and/or other types of funding sources. FTI is currently negotiating terms for the New Financing which may be issued in multiple tranches, which may contain a revolver facility and which also may include an accordion facility to fund future acquisitions by FTI. It is expected that, in all cases, the non-borrower entities within New Fusion-Birch, including NBS and BCI, will act as guarantors and some or all of the New Financing may be secured by the assets of FTI and of the guarantor subsidiaries, including NBS and/or BCI.

Applicants submit that approval of the proposed Transaction will promote the public interest. The combined entities will have a nationwide IP-based network serving over 150,000 business customers. Applicants further predict the combined entities expect to be able to take advantage of projected cost-saving synergies to offer service with lower cost structures to the benefit of consumers. Finally, Applicants state the Transaction presents no risks to Nebraska consumers. The financing arrangement will enable Applicants to implement the proposed Transaction and will provide the New Fusion-Birch with greater ability to grow and expand their business.

Applicants seek approval from the Commission pursuant to Neb. Rev. Stat. § 75-148, which states in pertinent part,

A common carrier may issue stock, bonds, notes, or other evidence of indebtedness, payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities, the

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improvement or maintenance of its service, or the discharge or lawful refunding of its obligations if the common carrier first secures from the Commission an order authorizing such issue and the amount thereof and stating that in the opinion of the Commission the use of the capital to be secured by the issue of such stock, bonds, notes, or other evidence of indebtedness is reasonably required for the purposes of the carrier [. . .] The provisions of this section shall not apply to the security issuances of common carriers who are under the control of a federal regulatory agency.

Upon review of the evidence, the Commission finds that the application filed herein is in compliance with the applicable Nebraska Statutes and that the debt financing agreement and transfer of control is reasonably required for the aforementioned purpose. The application is fair, reasonable and in the public interest and should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-4957 be, and is hereby granted.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 17th day of January, 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram
Crystal L. L. L.
Red L. L.

Mary Reddel
Chair

ATTEST:

Thi O. L.
Executive Director