

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

\_\_\_\_\_ )  
In the Matter of the Joint Application of )  
 )  
**Fusion NBS Acquisition Corp.,** )  
 )  
and )  
 )  
**Fidelity Telecom, LLC,** )  
 )  
 )  
For Grant of Authority Pursuant to )  
Section 214 of the Communications Act of 1934, )  
as amended, and Sections 63.04 and 63.24 of the )  
Commission’s Rules to Complete a Transfer of )  
Ownership and Control of Fidelity Telecom, LLC )  
to Fusion NBS Acquisition Corp. )  
\_\_\_\_\_ )

WC Docket No. 16-\_\_\_\_\_  
IB File No. ITC-T/C-2016\_\_\_\_\_

**JOINT APPLICATION**

Fusion NBS Acquisition Corp. (“FNAC” or “Purchaser”) and Fidelity Telecom, LLC (“Fidelity”) (together with Purchaser, the “Applicants”), pursuant to Section 214 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 214, and Sections 63.04 and 63.24 of the Commission’s Rules, 47 C.F.R. §§ 63.04 & 63.24, respectfully request Commission approval to complete the transfer of direct ownership and control of Fidelity to Purchaser (the “Transaction”).

In support of this Application, Applicants provide the following information:

**II. DESCRIPTION OF THE APPLICANTS**

**A. Fusion NBS Acquisition Corp.**

Purchaser is a Delaware corporation and a direct, wholly-owned subsidiary of Fusion Telecommunications International, Inc. (“Fusion” and together with each of Fusion’s subsidiaries collectively, the “Company”), a publicly held Delaware corporation (NASDAQ: FSNN).

Purchaser and Fusion have their principal office located at 420 Lexington Avenue, Suite 1718, New York, New York 10170. The Company provides digital voice and data communications services to businesses primarily in the United States and also digital voice services to carriers worldwide. Its business service offerings include hosted Voice over Internet Protocol (“VoIP”) and Session Initiated Protocol (“SIP”) Trunking, and other enhanced communications services and features.

**B. Fidelity Telecom, LLC**

Fidelity is an Ohio limited liability company with its principal office at 23250 Chagrin Boulevard, Suite 250, Beachwood, OH 44122. Fidelity is equally owned by the following three individuals, each of which is a U.S. citizen and can be reached through Fidelity’s principal office: Mitch Marks, Ron Kohn and Robert Marks. Fidelity provides resale switched long distance, PRI’s and POTS lines primarily in Ohio.

**III. DESCRIPTION OF THE TRANSACTION**

Pursuant to a Stock Purchase and Sale Agreement, Purchaser will acquire all of the equity interests of Fidelity from Mitch Marks, Ron Kohn and Robert Marks. As a result, Fidelity will become a direct, wholly-owned subsidiary of Purchaser and indirect subsidiary of Fusion.

**IV. INFORMATION REQUIRED BY SECTION 63.24(e)**

Pursuant to Section 63.24(e)(2) of the Commission’s Rules, the Applicants submit the following information requested in Section 63.18 (a)-(d) and (h)-(p) in support of this Application:

**(a) Name, address and telephone number of each Applicant:**

Licensee:

**Fidelity Telecom, LLC**                      **FRN: 0019409630**  
23250 Chagrin Boulevard, Suite 250  
Beachwood, OH 44122  
Tel. 216-245-1495

Transferee:

**Fusion NBS Acquisition Corp.**      **FRN: 0025141813**  
420 Lexington Avenue, Suite 1718  
New York, NY 10170  
Tel: 212-201-2400

**(b) Jurisdiction of Organizations:**

Licensee:      Fidelity Telecom, LLC is a limited liability company formed under the laws of Ohio.

Transferee:      Fusion NBS Acquisition Corp. is a Delaware corporation.

**(c) (Answer to Question 10) Correspondence concerning this Application should be**

sent to:

For Transferee:

Catherine Wang  
Brett P. Ferenchak  
Morgan, Lewis & Bockius LLP  
2020 K Street, N.W., Suite 1100  
Washington, DC 20006-1806  
202-373-6000 (tel)  
catherine.wang@morganlewis.com  
brett.ferenchak@morganlewis.com

For Fidelity:

Larry Dubin  
Fidelity Voice and Data  
23250 Chagrin Blvd., Suite 250  
Beachwood, Ohio 44122  
216-245-1495 (tel)  
larry.dubin@fidelityvoice.com

with copies to:

Gordon Hutchins, Jr.  
President and Chief Operating Officer  
Fusion Telecommunications  
International, Inc.  
420 Lexington Avenue, Suite 1718  
New York, NY 10170  
212-201-2424 (tel)  
dhutchins@fusionconnect.com

**(d) Section 214 Authorizations**

Licensee: Fidelity holds blanket domestic Section 214 authority pursuant to 47 C.F.R. §63.01. Fidelity also holds international Section 214 authority to provide global or limited global facilities-based and resale services as granted in IB File No. ITC-214-20091217-00545.

Transferee: FNAC does not hold domestic or international Section 214 authority but the following affiliates of FNAC hold domestic or international Section 214 authority:

Transferee's direct parent, Fusion, holds blanket domestic Section 214 authority pursuant to 47 C.F.R. §63.01. Fusion also holds international Section 214 authority to provide global facilities-based and resale services as granted in IB File No. ITC-214-19971001-00592 (Old File No. ITC-97-668).

Transferee's subsidiary, Network Billing Systems, LLC ("NBS"), holds blanket domestic Section 214 authority pursuant to 47 C.F.R. §63.01. NBS also holds international Section 214 authority to provide global or limited global facilities-based and resale services as granted in IB File No. ITC-214-19990127-00044.

**(h) (Answer to Questions 11 & 12)** The following entities will hold, directly or indirectly, a 10% or greater interest<sup>1</sup> in Applicants upon completion of the Transaction, as calculated pursuant to the Commission's ownership attribution rules for wireline and international telecommunications carriers:

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<sup>1</sup> Unless otherwise indicated, the ownership interests provided herein represent both equity and voting interests.

Post-Transaction Ownership of Licensee:

The following entity will hold a ten percent (10%) or greater direct interest in **Fidelity Telecom, LLC:**

Name: Fusion NBS Acquisition Corp.  
Address: 420 Lexington Avenue, Suite 1718  
New York, NY 10170  
Citizenship: U.S.  
Principal Business: Holding Company  
% Interest: 100%

Current and Post-Transaction Ownership of Transferee:

The following entity holds a ten percent (10%) or greater direct interest in **Fusion NBS Acquisition Corp.:**

Name: Fusion Telecommunications International, Inc.  
Address: 420 Lexington Avenue, Suite 1718  
New York, NY 10170  
Citizenship: U.S.  
Principal Business: Telecommunications  
% Interest: 100% (directly in Transferee)

As a publicly held corporation, the percentage of Fusion's shares held by an entity or individual at any given time may fluctuate. To Transferee's knowledge, the following individuals and entities hold or control a 10 percent or greater, direct or indirect ownership interest in **Fusion Telecommunications International, Inc.**<sup>2</sup>:

Name: Unterberg Technology Partners LP ("Unterberg")  
Address: c/o Diker Management  
730 5th Ave  
15th Floor  
New York, NY 10019  
Citizenship: U.S. (Delaware)  
Principal Business: Investment  
% Interest: 14.2% (directly in Fusion)

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<sup>2</sup> The following ownership information is based on the SEC Schedule 13G filed on December 17, 2015 by Diker Management LLC.

Name: Diker GP, LLC  
Address: 730 5th Ave  
15th Floor  
New York, NY 10019  
Citizenship: U.S. (Delaware)  
Principal Business: Investment  
% Interest: 18.7% (indirectly in Fusion as the general partner of (i) Unterberg and (ii) certain other affiliated funds (collectively with Unterberg the “Diker Funds”),<sup>3</sup> that have direct ownership interests in Fusion)

Name: Diker Management, LLC  
Address: 730 5th Ave  
15th Floor  
New York, NY 10019  
Citizenship: U.S. (Delaware)  
Principal Business: Investment  
% Interest: 18.7% (indirectly in Fusion as the investment manager of the Diker Funds)

Name: Mark N. Diker  
Address: 730 5th Ave  
15th Floor  
New York, NY 10019  
Citizenship: U.S.  
Principal Business: Investment  
% Interest: 18.7% (indirectly in Fusion as one of two managing managers and one of two members of Diker GP, LLC and Diker Management, LLC)

Name: Charles M. Diker  
Address: 730 5th Ave  
15th Floor  
New York, NY 10019  
Citizenship: U.S.  
Principal Business: Investment  
% Interest: 18.7% (indirectly in Fusion as one of two managing managers and one of two members of Diker GP, LLC and Diker Management, LLC)

To Transferee’s knowledge, no other person or entities owns or controls a 10 percent or greater, direct or indirect ownership interest in Fusion.

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<sup>3</sup> Except for Unterberg, none of the Diker Funds individually currently owns or controls a 10% or greater ownership interest in Fusion.

FNAC does not have any interlocking directorates with a foreign carrier and will not have any interlocking directorates with a foreign carrier upon completion of the transaction.

(i) **(Answer to Question 14)** Transferee certifies that following consummation of the Transaction, (i) it will not be a foreign carrier within the meaning of 63.09(d) of the Commission's Rules, 47 C.F.R. §63.09(d); and (ii) it will not be affiliated, within the meaning of the Commission's Rules, with a foreign carrier.

(j) **(Answer to Question 15)** Transferee certifies that it does not seek to provide international services to any destination country for which any of the statements set forth in Section 63.18(j)(1) through (4) is true.

(k) Not applicable.

(l) Not applicable.

(m) Not applicable.

(n) Applicants certify that they have not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

(o) Applicants certify that they are not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998. *See* 21 U.S.C. § 853a; *see also* 47 C.F.R. §§ 1.2001-1.2003.

(p) With respect to international authority, this Application is eligible for streamlined processing pursuant to Section 63.12 of the Commission's Rules, 47, C.F.R. § 63.12, because (1) Applicants are not affiliated with a foreign carrier on any route for which authority is sought; (2) Applicants are not affiliated with any dominant U.S. carrier whose international switched or private

line services it seeks to resell; and (3) Applicants are not requesting authority to provide switched service over private lines to countries not previously authorized for service by the Commission.

**V. INFORMATION REQUIRED BY SECTION 63.04**

Pursuant to Commission Rule 63.04(b), 47 C.F.R. § 63.04(b), Applicants submit the following information in support of their request for domestic Section 214 authority to transfer ownership and control of Fidelity to FNAC in order to address the requirements set forth in Commission Rule 63.04(a)(6)-(12):

(a)(6) A description of the proposed Transaction is set forth in **Section III** above.

(a)(7) (i) Fidelity provides resale switched long distance, PRI's and POTS lines primarily in Ohio, where it is authorized to provide intrastate services. Fidelity also provides limited telecommunications services to satellite locations of its Ohio customers in the following states: Alabama, California, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, New York, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Wisconsin, and West Virginia.

(ii) Transferee does not provide telecommunications services. Transferee's parent company, Fusion, provides interstate and international telecommunications services throughout the United States but does not provide intrastate telecommunications services. Transferee's subsidiary, NBS, is authorized to provide local exchange and intrastate interexchange telecommunications services in California, Connecticut, Florida, Georgia, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Texas and Virginia and intrastate interexchange telecommunications services in all states except Alaska and Hawaii. NBS provides telecommunications services in every state where it holds authorization to provide intrastate telecommunications services except for Mississippi.



(iii) To Transferee's knowledge, Transferee is not affiliated with any other telecommunications carriers.

**(a)(8)** Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 of the Commission's Rules, 47 C.F.R. §63.03. In particular, with respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the Transaction, Transferee (and its Affiliates (as defined in the Act)) will have a market share in the interstate, interexchange market of less than 10 percent, and Transferee (and its Affiliates) will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the Transaction, and none of the Applicants (or their Affiliates) are dominant with respect to any service.

**(a)(9)** No other applications are being filed with the Commission with respect to this Transaction.

**(a)(10)** While no party is requesting special consideration because it is facing imminent business failure, Applicants seek approval as expeditiously as possible so that Applicants can complete the Transaction by January 31, 2016, so that Transferee will satisfy certain conditions of its financing arrangements. Further, doing so will enable Applicants to minimize their financial exposure and uncertainty inherent in a pending transaction. For these reasons, Applicants request that the Commission issue its public notices as promptly as possible and establishing a streamlined pleading cycle.

**(a)(11)** Applicants are not filing a request for waiver.

**(a)(12)** Applicants submit that the Transaction described herein will serve the public interest. The financial, technical, and managerial resources that the Company will bring to

Fidelity are expected to enhance the ability of Fidelity to compete in the Ohio telecommunications marketplace. The Company expects that the Transaction will create opportunities for existing and potential customers of both companies to receive a broader base of high quality services. Immediately following consummation of the Transaction, Fidelity will continue to provide service to customers pursuant to its existing authorizations with no immediate change in their rates or terms and conditions of service. The Transaction, therefore, will be transparent and seamless to the customers of Fidelity in terms of the services they currently receive.

**VI. CONCLUSION**

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application for the direct transfer of ownership and control of Fidelity to Purchaser.

Respectfully submitted,

/s/ Robert Marks  
Robert Marks  
President  
Fidelity Telecom, LLC  
23250 Chagrin Blvd., Suite 250  
Beachwood, Ohio 44122  
216-245-1495 (tel)  
robert.marks@fidelityvoice.com

/s/ Brett P. Ferenchak  
Catherine Wang  
Brett P. Ferenchak  
**MORGAN, LEWIS & BOCKIUS LLP**  
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Washington, DC 20006  
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catherine.wang@morganlewis.com  
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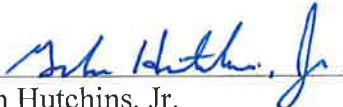
Counsel for Transferee

Dated: January 6, 2016

## VERIFICATION

I, Gordon Hutchins, Jr., am President and Chief Operating Officer of Fusion Telecommunications International, Inc. and a corporate officer of its subsidiaries (collectively, the "Company"), including Fusion NBS Acquisition Corp.; that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21<sup>st</sup> day of December 2015.

  
\_\_\_\_\_  
Gordon Hutchins, Jr.  
President and Chief Operating Officer  
Fusion Telecommunications International, Inc.

## VERIFICATION

I, Robert Marks, am President of Fidelity Telecom, LLC (the "Company"); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21<sup>st</sup> day of December 2015.

  
Robert Marks  
President  
Fidelity Telecom, LLC