

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

October 25, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Joint Application of The United Telephone
Company of Pennsylvania LLC d/b/a
CenturyLink; CenturyTel Broadband Services,
LLC; Connect Holding LLC; and Lumen
Technologies, Inc. for All Approvals of a
General Rule Transfer of Control and
Registration of Securities
Docket Nos. A-2021-3028668
A-2021-3028669

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest and Public Statement in the above-referenced proceedings. The OCA has attached the verification of Barrett C. Sheridan, Assistant Consumer Advocate, pursuant to the requirements of 52 Pa. Code § 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Barrett C. Sheridan
Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Enclosures:

cc: Office of Administrative Law Judge (**email only**)
Bureau of Technical Utility Services (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*319062

CERTIFICATE OF SERVICE

Re: Joint Application of The United Telephone :
Company of Pennsylvania LLC d/b/a :
CenturyLink; CenturyTel Broadband Services, : Docket Nos. A-2021-3028668
LLC; Connect Holding LLC; and Lumen : A-2021-3028669
Technologies, Inc. for All Approvals of a :
General Rule Transfer of Control and Registration :
of Securities :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Protest and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 25th day of October 2021.

SERVICE BY E-MAIL ONLY

Richard A. Kanaskie, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
rkanaskie@pa.gov

Steven C. Gray, Esquire
Teresa Wagner
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
sgray@pa.gov
tereswagne@pa.gov

Sarah C. Stoner, Esquire
Eckert Seamans Cherin & Mellott
213 Market Street
8th Floor
Harrisburg, PA 17101
sstoner@eckertseamans.com

Sue Benedek, Esquire
Associate General Counsel
240 N. Third Street
Suite 300
Harrisburg, PA 17101
sue.benedek@lumen.com

Howard J. Symons
John L. Flynn
Jenner & Block LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
hsymons@jenner.com
jflynn@jenner.com

Nicholas G. Alexander
Brian W. Murray
Wilkinson Barker Knauer, LLP
1800 M Street, NW
Suite 800N
Washington, DC 20036
nalexander@wbklaw.com
bmurray@wbklaw.com

/s/ Barrett C. Sheridan
Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: October 25, 2021
*319066

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of The United Telephone	:	
Company of Pennsylvania LLC, CenturyTel	:	
Broadband Services, LLC, Connect Holding	:	Docket Nos. A-2021-3028668,
LLC, and Lumen Technologies, Inc. for All	:	A-2021-3028669
Approvals of a General Rule Transfer of Control	:	
and Registration of Securities	:	

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Joint Application proceeding pursuant to the regulations of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.51-5.53, and Chapters 11, 13, 15, 19, and 30 of the Public Utility Code. The parties to the Joint Application include: The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (United Telephone); CenturyTel Broadband Services, LLC (CTBS) (collectively the “Acquired Companies”); Connect Holding LLC (Connect Holding), an affiliate of Apollo Global Management, Inc. and its subsidiaries (Apollo); and Lumen Technologies, Inc. (Lumen) (all collectively “Joint Applicants”). The Joint Applicants request that the Commission grant authority, approvals, and any necessary certificates of public convenience pursuant to Sections 1102 and 1103 of the Public Utility Code and related Commission regulations and statement of policy to allow the Joint Applicants to undertake the proposed transfer of control of the telecommunications public utilities. Additionally, the Joint

Petitioners request Commission registration of securities to the extent as may be necessary, pursuant to Section 1102(a)(3) of the Public Utility Code.

I. Overview of the Proposed Transaction

United Telephone is certificated as a local exchange carrier (LEC) and interexchange telecommunications carrier (IXC). The Application states that United Telephone has approximately 73,000 jurisdictional telecommunications service customers. App. ¶ 6. United Telephone's network is primarily copper-based DSL plant. Only 1.4% of residences and 5.5% of business locations receive fiber-to-the-premises broadband. App. ¶¶ 8, 27. United Telephone is designated by the Commission as an Eligible Telecommunications Carrier (ETC). CTBS is a newly certificated competitive LEC (CLEC) and IXC.¹ The Application describes plans for CTBS to obtain ETC designation from the Commission, to then takeover the Rural Digital Opportunity Fund (RDOF) award from its affiliate Level 3.² App. ¶¶ 13, 49. Lumen is the ultimate parent of United Telephone, CTBS, and Level 3 (non-party to the Application).

The Purchase Agreement between Lumen and Apollo would result in the acquisition by Apollo of all equity interest in Lumen's ILEC subsidiaries in 20 states, including United Telephone in Pennsylvania, as well as ownership of CTBS in Pennsylvania. Apollo would also acquire the Pennsylvania ETC designations. Lumen would continue to provide telecommunications services in Pennsylvania through Level 3 and other certificated affiliates.

¹ On October 7, 2021, the Commission granted CTBS' Applications to provide detariffed IXC Reseller service, detariffed Facilities-based IXC service, and CLEC service (residential and business) in the Commonwealth, in Docket Nos. A-2021-3028246, A-2021-3028251, and A-2021-3028254, respectively.

² On October 22, 2021, Level 3 Communications, LLC and CenturyTel Broadband Services, LLC filed an Amendment to the Petition of Level 3 for Designation as an Eligible Telecommunications Carrier in Docket No. P-2021-3024219. The Amendment requests that the Commission designate CTBS, rather than Level 3, "in the 126 Incremental Census Blocks" addressed by the Level 3 Petition. See further discussion of the Level 3 ETC Petition in fn. 4, *infra*.

Apollo Global Management, Inc. is a publicly traded U.S. company and a large asset manager for endowments, educational institutions, and pension funds, with headquarters in New York City. Apollo claims experience in investing in communications companies. Principals of Apollo and various subsidiaries manage various funds, taking a “long-term investor” approach. App. ¶ 15.

To bring about the transfer of control of United Telephone and CTBS into the Apollo investment portfolio, Apollo has created a number of special purpose entities. App. ¶¶ 2, 5, 17-19. At the top is Apollo Investment Fund IX, L.P. which will control each of the holding companies lower in the corporate chain. Connect Holding II LLC is the Apollo entity which will receive 100% of Lumen’s equity interests in the Acquired Companies. Connect Holding LLC will then wholly own and control Connect Holding II LLC. There will other holding companies between Apollo Investment Fund IX, L.P. and Connect Holding LLC. The result of this multi-layered transaction will be the transfer of 100% of control (equity and voting rights) of United Telephone and newly certificated CTBS to Apollo. App. Exh. A.

To finance the acquisition, Connect Holding II expects to incur \$4.863 million in new debt and also enter into a new \$600 million revolving credit facility for post-transaction working capital and general corporate purposes, collectively “Acquisition Debt.” Additional financing may include cash on hand and an equity contribution from Apollo-controlled investment funds or affiliates of such funds or of Apollo. App. ¶ 65. United Telephone and all of its material assets would be pledged to guarantee the Acquisition Debt.

II. The OCA’s Protest

The OCA files this Protest in order to ensure that the Application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to United

Telephone's and CTBS's respective customers; and (3) it is in accordance with the Public Utility Code.

Specifically, the OCA avers as follows:

1. The Protestant is Christine Maloni Hoover, Interim Acting Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorneys for receiving service of all documents in this proceeding are Barrett C. Sheridan, Assistant Consumer Advocate.

2. The OCA is authorized by law to represent the interests of utility consumers in all proceedings before the Commission. 71 P.S. §§ 309-1, *et seq.* The OCA files this Protest to ensure the interests of United Telephone's consumers are protected in the proposed transactions. Further, the OCA has an interest in assuring that federal universal service funds, such as the RDOF grant to Level 3 which may be taken over by CBTS, are properly spent for the benefit of the intended Pennsylvania consumers. Pennsylvania consumers of telecommunications services pay to support the federal universal service fund.

3. The Application must be examined pursuant to Chapters 11, 13, 15, 19, and 30 of the Public Utility Code.

4. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa.C.S. § 1102(a)(1)-(3). Section 1102(a)(3) specifically requires a Certificate to be issued for a public utility to transfer its stock, by way of merger, sale or otherwise, to any person or corporation, when such merger or sale results in the transfer of the title, possession or use of property used in public utility service. The Commission has amplified the meaning of this statutory provision through its

Policy Statement at 52 Pa. Code §69.901³, which provides that a transaction or series of transactions is jurisdictional under Section 1102(a)(3) when the transaction or transactions result in a different entity becoming the beneficial holder of the largest voting interest in the utility or parent.

5. The Code requires that a certificate shall only be granted upon findings that the granting of such certificate is “necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa.C.S. § 1103(a). The Supreme Court has construed this section of the Code as requiring a finding that a proposed merger will affirmatively benefit the public and specifically will “affirmatively promote the ‘service, accommodation, convenience or safety of the public’ in some substantial way.” City of York v. Pa.PUC, 295 A.2d 825, 828 (Pa. 1973); Popowsky v. Pa.PUC, 937 A.2d 1040 (Pa. 2007).

6. Additionally, Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa.C.S. § 1103(a). Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

7. Further, Section 3019(b) reserves the Commission’s power “[t]o condition the sale, merger, acquisition or other transaction required to be approved under section 1102(a)(3) ... of a local exchange telecommunications company or any facilities used to provide telecommunications services to ensure there is no reduction in the advanced service or broadband deployment obligations for the affected property or facilities.” 66 Pa.C.S. § 3019(b)(4). Section 3014(b)(2)

³ Utility Stock Transfer Under 66 PA.C.S. §1102(a)(3) – Statement of Policy

describes United Telephone's Chapter 30 plan obligation to make broadband service, meeting at least the Section 3012 minimum definition, universally available to 100% of its retail access lines in its distribution network. 66 Pa.C.S. § 3012, 3014(b)(2).

8. Section 3011 describes the Commonwealth's policy goals which include preservation of affordable, universally available local telephone service and encouragement of deployment of broadband networks and increased availability of advanced and broadband services, to improve the quality of life for all Commonwealth residents. 66 Pa.C.S. § 3011(1)-(8), (12).

9. Based upon the OCA's preliminary review of the Application, the Application raises a number of important issues that must be resolved by the Commission before granting approval of this merger and issuing Certificates of Public Convenience in this matter. The OCA submits that the Application and proposals of the Applicants as filed may not support a conclusion that the merger will provide substantial, affirmative benefits to the public and will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

10. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this merger.

a. Summary of Claimed Substantial Affirmative Ratepayer and Consumer Benefits. The Application does not necessarily demonstrate that this merger will provide substantial, affirmative ratepayer and consumer benefits in accordance with Pennsylvania law. The request for merger approval should not be approved unless and until the Applicants can demonstrate that affirmative, substantial ratepayer and consumer benefits will be achieved as a result the merger.

The Application lists a number of “Benefits of the Transaction.” App. ¶¶ 26-40. However, it is not clear that the listed benefits meet the legal standard. The Application cites the following:

- (1) Connect Holding’s plans to steps to evaluate, improve, and make targeted repairs to United Telephone’s copper network or to substitute other technology, in those areas not covered by Apollo’s plans for fiber deployment (App. ¶ 31);
- (2) “steps to eventually upgrade significant portions of United Telephone’s network to fiber....” (App. ¶¶ 26, 28);
- (3) a “significant” improvement in “the percentage of fiber-enabled locations” from the current 1.4% residential and 5.5% business location levels (App. ¶ 27);
- (4) the combined benefit of Apollo’s capital resources and Connect Holding’s management team to address copper network and fiber network matters in the footprint of the Lumen’s 20 state ILEC operations, including United Telephone (App. ¶¶ 27, 33);
- (5) the possible extension of broadband and provision of resold voice service in CTBS’s service area (App. ¶ 28);
- (6) the enhancement of Connect Holding’s growth profile and cash flow (App. ¶ 30);
- (7) the retention of United Telephone’s workforce (App. ¶¶ 32, 33);
- (8) the continued provision of quality services (App. ¶¶ 32, 34);
- (9) no adverse impact on United Telephone’s jurisdictional telephone service and rates (App. ¶¶ 34, 35);
- (10) the enhancement of competition in the provision of “enhanced high speed broadband” by United Telephone and CTBS (App. ¶¶ 26, 29, 36, 37); and

- (11) the fulfillment by Connect Holding of all United Telephone and CTBS regulatory obligations, including RDOF obligations (App. ¶ 38).

The claimed benefits are stated so broadly, as to be speculative and fall short of the substantial, affirmative benefit standard.

b. Status Quo in United Telephone’s Service Area. As presented in the Joint Application, many of the benefits to United Telephone consumers are cast largely in terms of maintaining the status quo, such as retention of workforce and service quality. United Telephone has an existing obligation to provide reasonable service and maintain its network, to meet its Chapter 15 and Chapter 30 obligations. The Joint Application’s proposed targeted repairs to United Telephone’s copper network lacks details as to the location, scope, timeline, and magnitude of investment in such proposed network maintenance and improvements. These post-transaction activities – as described in the Joint Application – do not arise to the level of substantial, affirmative benefits to consumers in United Telephone’s service area.

c. Network Upgrades to Support Voice and Broadband. The Joint Application has proposed deployment of fiber-to-the-premises in portions of United Telephone’s service territory, to make available “enhanced high-speed broadband” connectivity. The Joint Application also projects enhancement of competition in the provision of broadband in United Telephone’s service territory, as well parts of CTBS’s Commonwealth-wide service area. The Joint Petition states that the acquiring holding company Connect Holding will honor the RDOF obligations to provide voice and high speed broadband services.

The Joint Application does not identify what proportion of these network upgrade benefits will be funded with Apollo capital and what proportion of these “benefits” will result from United

Telephone's and Lumen's winning bid for publicly funded RDOF support.⁴ Nor does the Joint Application provide any timeline for the proposed fiber-build out and upgrades.

Further, the Joint Application does not provide guidance as to how Connect Holding will determine which areas of Pennsylvania will benefit from "enhanced competition" and which areas will not experience "enhanced competition." United Telephone consumers who are not provided access to upgraded fiber connections may continue to lack competitive alternatives for voice and higher speed broadband, post-transaction, if the only service is that made available by United Telephone to meet its Chapter 30 universal broadband obligation.

As noted above, the Commonwealth's Chapter 30 policy goals include encouragement of deployment of broadband networks and increased availability of advanced and broadband services to improve the quality of life for all Pennsylvanians. A review of whether the change of control transaction will provide substantial, affirmative benefits should include consideration of the impact on all consumers in United Telephone's service area.

d. Allocation of Resources between United Telephone and CTBS. The Joint Application does not provide sufficient information to assess what proportion of the proposed Apollo investment and other investments will accrue to the benefit of consumers in United Telephone's service area, compared to CTBS's future CLEC and competitive IXC customers throughout the Commonwealth. CTBS is a newly certificated public utility, authorized to provide CLEC and competitive IXC services throughout the Commonwealth. Without a track record, it is

⁴ According to Level 3's Petition for Designation as an ETC and replies to the Bureau of Consumer Services' (BCS) data requests, United Telephone/CenturyLink and Lumen collectively won bids for RDOF Phase I support (Auction 904) of approximately \$21.48 million, over ten years, to bring voice and upgraded broadband connectivity (1 Gigabit per second down) to 5,614 locations in 852 census blocks. Of the 852 census blocks, 726 are entirely within United Telephone's service territory. The other 126 are within the Level 3's certificated service area. See, Petition of Level 3 Communications, LLC for Designation as an Eligible Telecommunications Carrier, Docket No. P-2021-3024219 (filed Feb. 19, 2021), available at <https://www.puc.pa.gov/pdocs/1693843.pdf>; see, also, Level 3 Replies to BCS Data Requests I-27, I-28 (filed Mar. 31, 2021), available at <https://www.puc.pa.gov/pdocs/1698235.pdf>.

difficult to compare CTBS's services and operations pre-transaction with the post-transaction operations and network as proposed by the Joint Application.

e. Access to Capital. Access to capital, Apollo's strategic and financing guidance, and Connect Holding's expected post-transaction cash flow are presented as benefits. These statements require more detailed investigation and assessment, before a determination of substantial, affirmative benefits can be made.

f. Managerial Fitness. The Application describes the new team of managers as having telecom experience developed as former Verizon executives. App. ¶ 33. This management team will operate Connect Holding and manage the former Lumen operations in 20 states held by Connect Holding II. Prior to this proposed transaction, Apollo identifies only two "communications" holdings, neither of which provide retail voice telecommunications services and retail broadband internet access services over the same networks. A closer look is necessary to evaluate managerial fitness at each level of the proposed new organization.

g. Impact on Rates. The Application states that the proposed merger will have no adverse impact on the rates and service of United Telephone, at the retail or wholesale level. Nonetheless, the OCA submits that the Commission must examine the impact the proposed merger on United Telephone's basic local service rates. United Telephone's Chapter 30 Plan Price Stability Mechanism includes a bank of increases allowed, but not implemented, in excess of several million dollars.⁵ Clarification as to how the proposed United Telephone network improvements will be paid for is needed.

⁵ See, The United Telephone Company of Pennsylvania, d/b/a CenturyLink 2021 Annual Price Stability Index/Service Price Index Report Filing, Docket Nos. R-2021-3027905, P-00981410, Order at 3-4 (Oct. 4, 2021); available at <https://www.puc.pa.gov/pdocs/1721771.docx>.

11. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Joint Applicants.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission investigate and hold full hearings regarding the above-captioned Application. The OCA further requests that the Commission not approve this Application unless it finds that: (1) the Application is in the public interest; (2) it provides substantial, affirmative benefits to consumers served by United Telephone or CTBS; (3) it is in accordance with the Public Utility Code. Additionally, the OCA requests that the Commission impose such terms and conditions upon the proposed merger as are necessary to ensure that the Application meets the requirements set forth above.

Respectfully Submitted,

/s/ Barrett C. Sheridan

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Counsel for:
Christine Maloni Hoover
Interim Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

October 25, 2021

PUBLIC STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. Section 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (PUC or Commission). In accordance with Act 161, and for the following reasons, the Interim Acting Consumer Advocate determined to file a Protest to participate in proceedings before the Commission involving the Joint Application of The United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (United Telephone); CenturyTel Broadband Services, LLC (CTBS); Connect Holding LLC; and Lumen Technologies, Inc (Lumen). to transfer control of United Telephone and CTBS from Lumen to Connect Holding LLC. Lumen Technologies is the current parent company of United Telephone, a Pennsylvania public utility and incumbent local exchange service provider. Connect Holding, the acquiring entity, is a newly created subsidiary of an investment fund managed by Apollo Global Management, Inc. (Apollo).

On September 22, 2021 United Telephone, CTBS, Lumen and Connect Holding filed the Application seeking authorization for the transfer of ultimate control of United Telephone and CTBS to the Apollo-affiliated entity Connect Holding.

The Consumer Advocate has filed this Protest with the Commission to ensure that the Petition is approved only if (1) it is found to be in the public interest; (2) it provides substantial affirmative benefits to the consumers served by United Telephone and prospective customers of the newly certificated CTBS; and (3) it is in accordance with the Public Utility Code. Among the areas to be addressed by the OCA are: affirmative ratepayer and consumer benefits, the managerial fitness, the impact on rates of United Telephone, and improved availability of quality voice and higher speed broadband services. The OCA will seek to ensure that affirmative benefits from the Application are provided to Pennsylvania consumers and that Pennsylvania ratepayers are properly protected.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Joint Application of The United Telephone :
Company of Pennsylvania LLC d/b/a :
CenturyLink; CenturyTel Broadband Services, : Docket Nos. A-2021-3028668
LLC; Connect Holding LLC; and Lumen : A-2021-3028669
Technologies, Inc. for All Approvals of a :
General Rule Transfer of Control and Registration :
of Securities :

VERIFICATION

I, Barrett C. Sheridan, Assistant Consumer Advocate of the Office of Consumer Advocate, hereby state that the facts above set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: October 25, 2021
*319085

Signature: /s/ Barrett C. Sheridan
Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101