

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of The United Telephone	:	A-2021-3028668
Company of Pennsylvania LLC	:	A-2021-3028669
d/b/a CenturyLink; CenturyTel Broadband	:	P-2021-3028692
Services, LLC; Connect Holding LLC;	:	S-2022-3031233
and Lumen Technologies, Inc. for	:	S-2022-3031234
All Approvals of a General Rule Transfer	:	
of Control and Registration of Securities	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Decision approves the Joint Petition for Full Settlement filed in the above captioned proceeding in its entirety without modification because it is supported by substantial evidence and is in the public interest. This Decision finds that the Settlement complies with the relevant sections of the Public Utility Code regarding mergers and is consistent with Commission regulations promoting settlements.

**HISTORY OF THE PROCEEDING**

On September 22, 2021, the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink (“United Telephone”); CenturyTel Broadband Services, LLC (“CTBS”); Connect Holding LLC (“Connect Holding”); and Lumen Technologies, Inc. (“Lumen”) (collectively “Joint Applicants”) filed a Joint Application with the Commission for approval of a general rule transaction pursuant to Sections 1102 and 1103 of the Pennsylvania Public Utility Code, 66 Pa.C.S. §§ 1102 and 1103, and the Commission’s Statement of Policy-Utility Stock

Transfers Under 66 Pa.C.S. § 1102(a)(3), 52 Pa. Code § 69.901 and its Abbreviated Procedures for Review and Approval of Transfer of Control for Telecommunications Public Utilities, 52 Pa. Code § 63.324. Concurrently, the Joint Applicants filed with the joint application securities certificates pursuant to Chapter 19 of the Code, 66 Pa.C.S. §§ 1901-1904, requesting registration of the pledge of assets related to the guarantee and/or security interests in certain of their assets to secure the debt financing related to consummation of the proposed transaction.

The Joint Application sought approval for Connect Holding, an entity affiliated with funds managed by Apollo Global Management, Inc. (“Apollo”), to acquire United Telephone, Lumen’s Incumbent Local Exchange Carrier (“ILEC”) in Pennsylvania, and CTBS, which will primarily resell long distance and interexchange services from Lumen to United Telephone customers. The transfer in Pennsylvania is part of a \$7.5 billion transaction in which Connect Holding will acquire Lumen’s ILEC subsidiaries in twenty states.

In connection with the proposed transaction, Connect Holding II LLC (“Connect Holding”) expects to incur \$4.863 billion of new debt comprised of: (1) a \$2.563 billion senior secured term facility; (2) \$750 million in senior secured notes; and (3) \$1.550 billion in senior unsecured notes. Connect Holding will also enter into a new \$600 million revolving credit facility that will be available from time to time after the closing date of the proposed transaction for working capital and general corporate purposes (collectively, the “Acquisition Debt”). In addition, Connect Holding expects Embarq Corporation’s issued and outstanding 7.995% Notes due 2036 issued pursuant to that certain Indenture, dated as of May 17, 2006, among Embarq Corporation and J.P. Morgan Trust Company, National Association, as trustee, to remain outstanding after giving effect to the Transaction. The Joint Applicants note that subject to customary restrictions and necessary regulatory approvals, all wholly owned domestic subsidiaries of Connect Holding, including United Telephone, will serve as guarantors of the Acquisition Debt and, in the case of the senior secured term facility, the senior secured notes and the revolving credit facility, pledge substantially all of their material assets to secure such guarantee.

On October 9, 2021, notice of the Joint Application was published in the *Pennsylvania Bulletin*, 51 Pa.B. 6501. Protests and petitions were due on or before October 25, 2021.

On October 25, 2021, the Office of Consumer Advocate (“OCA”) filed a Protest, and the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Protest.

On November 1, 2021, an Initial Call-In Telephonic Prehearing Conference was scheduled for November 12, 2021, at 10:00 a.m., and the matter was assigned to me. All parties submitted prehearing conference memorandum.

On November 5, 2021, Joint Applicants submitted pre-filed Direct Testimony of Thomas Maguire (Statement No. 1) and Aaron Sobel (Statement No. 2) on behalf of Connect Holding and the pre-filed Direct Testimony of Michael J. Balhoff (Statement No. 3) on behalf of Connect Holding and Lumen.

On November 12, 2021, a prehearing conference was held via-teleconference. On December 14, 2021, I issued Prehearing Order #1 which established a procedural schedule.

On November 23, 2021, the Joint Applicants filed a Motion for Protective Order which I granted by Prehearing Order #2 dated December 22, 2021.

On December 15, 2021, a Telephonic Evidentiary Hearing Notice was issued and the matter was scheduled for hearing on Monday, February 7, 2022, at 10:00 a.m.

On January 5, 2022, pursuant to the established procedural schedule, OCA served Direct Testimony of Dr. Trevor Roycroft. Also on January 5, 2022, OSBA served Direct Testimony of Joseph Gillan.

On January 18, 2022, Joint Applicants served Rebuttal Testimony of Thomas Maguire (Statement No. 1-R), Michael Balhoff (Statement No. 3-R), and Joshua Motzer (Statement No. 4-R).

On January 26, 2022, the parties contacted me via email to indicate that they had reached a settlement in principle in this matter. The parties requested that the procedural schedule be suspended and the hearing cancelled. The parties further advised that they would file settlement documents.

By Prehearing Order dated February 3, 2022, I granted the parties' requests and suspended the procedural schedule and cancelled the February 7, 2022 hearing. I directed the parties to have all settlement documents, including a Joint Petition for Settlement, Statements in Support and a Joint Stipulation for the Admission of Evidence filed by no later than March 1, 2022.

On February 10, 2022, the parties filed the Joint Petition for Settlement as well as the Statements in Support of OCA, Connect Holding and CenturyLink PA.

On February 24, 2022, OSBA filed its Statement in Support.

On March 1, 2022, the parties filed the Joint Stipulation for the Admission of Evidence.

The record in this matter consists of the transcript of the November 12, 2021 prehearing conference and the documents contained in the Joint Stipulation for the Admission of Evidence. The Joint Petition, with its appendices, will be admitted into the record through this Decision.

The Joint Petitioners' position is that the Settlement reasonably resolves competing positions and interests in a way that is lawful and meets and promotes the public interest. I agree. The Settlement terms appear to be a fair and reasonable resolution of the

various issues and balance the interests of the companies involved and their customers. Accordingly, this Decision grants the Settlement in its entirety without modification because it is in the public interest and is supported by substantial evidence.

## DISCUSSION

### 1. Legal Standard

Section 1102(a) of the Public Utility Code, 66 Pa.C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

(3) For any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service....

66 Pa.C.S. § 1102(a)(3). When a certificate of public convenience is required under Section 1102, the Commission may issue the certificate only upon a finding or determination 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).

In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.” *Id.* The Pennsylvania Supreme Court has generally determined that satisfying this standard requires the Commission to find that a proposed transaction would “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972) (*York*); *see also, Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*) (when addressing the issue of affirmative public benefits “the appropriate legal framework requires a reviewing court to

determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way”).

Moreover, pursuant to Section 1103 of the Code, the applicants must show that they are technically, legally, and financially fit to own and operate the assets they will acquire from the Authority. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A. 2d 762 (Pa. Cmwlth. 1985) (*Seaboard*); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240 (Pa. Super. 1958).

In this case, the parties submitted a settlement of all issues. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserves administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*Lancaster*). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Id.* (citing, *Warner v. GTE N., Inc.*, Docket No. C00902815 (Opinion and Order entered April 1, 1996) (*Warner*)); *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

Finally, on appeal, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v.*

*Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 1984).

## 2. Settlement

In the Settlement, the Joint Petitioners agreed to resolve all outstanding issues and to seek Commission approval for the matters settled. The relevant terms of the Settlement are as follows, which maintains the original paragraph numbering as in the Settlement:

11. In consideration of the mutual promises and provisions contained in this Settlement, the Parties desire to conclude litigation at the above-docketed matter and to settle all contested issues. Pursuant to the Settlement, the Parties respectfully request the Commission to issue all approvals required under the Public Utility Code, including the authorizations required under Sections 1102 and 1103 of the Code and registration of securities under Section 1901 of the Code as requested in the Joint Application. Accordingly, United Telephone and CTBS commit to the terms and conditions set forth herein.

### **Fiber Build Commitment**

12. For each year between 2022 and 2027, inclusive, United Telephone will deploy fiber optic cable to pass the number of premises set forth below (“Fiber Passings Commitment”) by December 31 of the designated year. Any passings deployed in excess of the requirement in one year shall count toward satisfaction of subsequent years’ requirements. The annual Fiber Passing Commitment, broken out by residential and business premises passed, is attached as CONFIDENTIAL Attachment 1.<sup>1</sup> The sum of the Fiber Passing Commitments for 2022-2023 is 38,500, for 2024-2025 is 116,700, and for 2026-2027 is 35,500. The fiber commitment applies separately to business and residential premises and any passings deployed in excess for one class of customer shall not count against the commitment for the other customer class.

13. For the purposes of the Fiber Passings Commitment, “premises passed” means a premises to which United Telephone

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<sup>1</sup> The expected expenditures for the buildout, which also are attached as part of CONFIDENTIAL Attachment 1, are illustrative and not an enforceable part of the Settlement.

could, without an extraordinary commitment of resources, provide fiber-based broadband service.

14. The Fiber Passings Commitment is not predicated on public funds, including but not limited to grants through the Department of Economic and Community Development, the Pennsylvania Broadband Development Authority, or other Pennsylvania or federal sources. Premises passed with new fiber funded by public grants will not count towards Connect Holding's Fiber Passings Commitment under this Settlement, unless Connect Holding committed more than 50% of the cost (monetary and in-kind) as a condition of the grant.

15. For each of the years covered by the Fiber Passings Commitment, United Telephone will submit to OSBA and OCA and file with the Commission a report ("Annual Certification"), subject to confidentiality, detailing the number and locations of residential and business premises passed with fiber during that year. The Annual Certification will identify each public grant which supported that year's tally of premises passed. The Annual Certification shall be filed by February 1 (or the next business day), and the final Annual Certification shall be filed on February 1, 2028.

a. If OSBA or OCA believes United Telephone has failed to meet its obligation, OSBA or OCA may notify United Telephone within 30 days of receiving the Annual Certification, at which point United Telephone will have 30 days to cure or dispute the OSBA or OCA notification.

b. If the failure is not cured or the dispute is not resolved within the following 30 days, OSBA or OCA may petition the Commission for any appropriate relief or remedy.

16. The Fiber Passings Commitment is subject to circumstances beyond the control of United Telephone, including but not limited to supply chain disruptions, materials shortages, right of ways issues, access to third-party poles, permitting delays, weather, labor shortages, delays in obtaining all required regulatory approvals for the transaction by August 1, 2022, and terrain or access issues ("Special Circumstances"). If United Telephone reasonably believes that failure to meet a Fiber Passing requirement is the result of Special Circumstances, it shall so attest in a sworn statement as part of its Annual Certification. OSBA or OCA may petition the Commission for

appropriate relief if either wishes to challenge that determination of Special Circumstances.

### **Rate Commitments**

17. United Telephone will not increase standalone R1 and B1 rates for local voice service in its 2022 annual price filing to be made on or before September 1, 2022. United Telephone will not add to its bank the value of any allowed increase in revenues calculated by the 2022 annual price filing. In each of its 2023 and 2024 annual price filings, United Telephone will not increase standalone R1 and B1 monthly voice service rates by more than \$1.00 each. If the annual price filing for any of these years indicates that a decrease in non-competitive service revenues is required, United Telephone shall implement the decrease proportionally among all non-competitive services.

18. United Telephone will adjust the banked revenues under its PSP when United Telephone files its 2022 annual price filing. Mathematically, the total aggregate reduction would be \$7 million in the banked revenues of United Telephone's PSP, calculated as follows:

a. United Telephone, at the time of its 2022 annual PSP filing, will zero out the banked revenues for 2018, 2019, and 2020 to implement the Commission's Opinion and Order entered January 13, 2022 at Docket Nos. R-2018-3004019, C-2018-3005400, R-2019-3012238, and C-2019-3012876. Mathematically this adjustment will reduce its banked revenues by \$1,253,531. This adjustment is not a bargained for term to settle this Application proceeding.

b. United Telephone, at the time of its 2022 annual PSP filing, will propose to reduce further its banked revenues by \$5,746,469 on a one-time basis. This amount will be reduced starting with the year 2006 banked amount and working through sequential years until the reduction specified in this subparagraph is reached.

c. The amount of the bank reduction set forth in subparagraph b. above is predicated on the availability in United Telephone's bank of sums at least equal to that amount of reduction. In the event that the banked sums available are less than the \$5,746,469, the amount of the bank reduction required by subparagraph b. shall be

decreased by the amount of any such deficiency so that this provision does not result in a negative bank balance.

### **Low-Income Services**

19. United Telephone will develop and implement a program to offer its available broadband service to low-income households at a rate below the generally available rate for its lowest tier of service, with rates and on terms to be determined by United Telephone in its sole discretion.

20. United Telephone will participate in the Affordable Connectivity Program created by the Infrastructure and Jobs Act for the benefit of eligible consumers in areas served by United Telephone.

21. To promote the availability of its broadband offering to low-income households and participation in the Affordable Connectivity Program, United Telephone will provide outreach materials to the Commission, the OCA, and other relevant state agencies, such as electronic copies of brochures and applications.

22. CTBS will participate in the Affordable Connectivity Program for the benefit of eligible consumers in the areas served by CTBS where CTBS provides an internet service offering to residential households.

### **Service Quality**

23. Upon request by OCA or OSBA for one or more meetings, United Telephone will schedule and hold the meetings, to occur between 6 months after closing of the transaction and the end of 2025, to address service quality issues, if any. The meetings will provide the Parties an opportunity to discuss any consumer concerns regarding service quality, the transition from Lumen operations to Connect Holding's operations, the transition under any changes to regulations, and the like.

### **Standalone Broadband**

24. United Telephone will provide its available broadband service available on a standalone basis for 3 years from close of the transaction.

### **Marketing Basic Telephone Service**

25. United Telephone will advertise the availability of basic local exchange service, sold on a standalone basis, through its website.

### **Section 3014(h) and United Telephone's Right of First Refusal**

26. United Telephone will provide the OCA and OSBA with notice each time United Telephone accepts or declines a political subdivision's request that United Telephone or an affiliate deploy and offer broadband services at the speeds requested.

### **Agreements in Principle**

27. United Telephone, CTBS, and OCA set forth the following statements to reflect their current intentions ("Goals"). The Goals are not legally binding and failure to meet any Goal, in whole or in part, does not constitute a breach of this Settlement and is not enforceable by the Commission or through any other forum or means.

- a. United Telephone intends to continue a significant level of community involvement, charitable giving, and corporate sponsorship throughout its service territory.
- b. United Telephone intends to seek funds from state and federal broadband deployment and connectivity programs, as appropriate, to expand its network and service offerings.
- c. CTBS acknowledges that OCA encourages it to expand its network and provide broadband service outside of United Telephone's service territory so long as CTBS can do so consistent with its other commitments and obligations.

### **United Telephone's Chapter 30 Plan**

28. The provisions of United Telephone's Amended Chapter 30 Plan, which this Settlement does not alter, remain in force for services covered by Chapter 30.

### **Reservation of Rights/Limitations**

29. The Parties agree nothing in this Settlement conveys Commission jurisdiction over provisioning, rates, or any other aspect of broadband services other than the authority to enforce this Settlement according to its express terms. The location and manner of any buildout required under this Settlement, and any and all buildout after December 31, 2027, is at United Telephone's sole discretion. With respect to any provision of this Settlement without an express termination date, the termination date is December 31, 2027.

30. This Settlement is expressly conditioned upon the entry of a final Commission order approving all specific terms and conditions contained herein without modification as well as approval of the transaction by all other necessary regulatory bodies. The terms and conditions set forth in this Settlement will go into effect only upon transaction close and the Commission's entry of a final order, which is not stayed on appeal, approving this Settlement and all the Settlement terms and conditions without modification.

a. Commission approval of this Settlement shall not be construed or cited as binding precedent on any issue in this proceeding, or in any other Commission proceeding, or in any appeal from a Commission proceeding, except to effectuate the terms and conditions of this Settlement. This paragraph shall be effective regardless of whether the Settlement is accepted and adopted by the Commission. Joint Applicants, OCA, and OSBA have each served testimony making arguments and claims and raising issues in support of their respective positions in this proceeding. The Settlement is made without any admission against, or prejudice to, any position that any Party may adopt in the event of any subsequent litigation of this proceeding, or in any other proceeding. The Settlement cannot and should not be used as precedent or as a statement of a Party's interest in this jurisdiction or elsewhere and does not constitute precedent regarding a position that any Party may have or might make in any other proceeding or matter.

b. If this Settlement is rejected by the Commission or is withdrawn by any of the Parties, then this Settlement and the terms and conditions herein are deemed to be made without any admission against or prejudice to any position that any of the Parties may have advanced or will advance in this

docket or in any other proceeding. If this Settlement is not approved as proposed, no adverse inference shall be drawn and no precedent shall be deemed to exist as a consequence of any term or condition set forth herein.

31. If the Commission should not approve, or should condition its approval on modification of, any of the terms and conditions herein, this Settlement may be withdrawn by a Party upon written notice to the Commission and all other Parties within ten business days of receipt of the Commission's Order. In such withdrawal event, this Settlement shall be of no force and effect, except paragraphs 30 and 31 and Parties reserve their respective rights to conduct cross-examination, briefing and argument, and to take, without prejudice, positions different from the terms of this Settlement. In the event of such withdrawal, this Settlement shall be terminated without admission against or prejudice to any position, which any Party might adopt during any subsequent hearing.

32. Parties agree that this Settlement constitutes a negotiated resolution of all issues raised in Docket Nos. A-2021-3028668 and A-2021-3028669 with the bargained for concessions supporting the terms and conditions contained herein. The Parties acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issue raised in this proceeding.

33. The Parties specifically agree that the Commission's approval of this Settlement without modification resolves, with prejudice, all issues raised in this docketed proceeding and/or specifically addressed herein.

34. This Settlement constitutes the entire Settlement among the Parties. The Parties agree that it supersedes and controls all prior communications, correspondence, Settlements, or prior drafts of Settlements existing among the Parties or their representatives, relative to the matters contained herein. The Settlement is determinative and conclusive of issues addressed herein and, upon the entry of a final Commission order approving the Settlement (which is not stayed on appeal), constitutes a final adjudication as to the Parties.

35. Except as explicitly set forth in this Settlement, there are no representations, warranties, or inducements, whether oral, written or expressed or implied, that in any way affect or

condition the validity of this Settlement or alter its terms and conditions.

36. The existence of this Settlement and the terms and conditions of the same do not require, and shall not be construed as requiring, that any Party extend this Settlement or any provision set forth in this Settlement to any other entity or person.

37. Parties agree to make best efforts to support expeditious Commission approval of this Settlement without modification. If the ALJ adopts the Settlement without modification, the Parties waive their right to file Exceptions.

38. In conjunction with the entry of a final Commission Order approving this Settlement without modification, the Parties request that the Commission shall mark the proceeding closed.

39. This Settlement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the principles of conflicts of law.

40. This Settlement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall constitute one and the same instrument and shall be effective on the latest date signed.

Joint Petition for Settlement, pp. 3-12.

### 3. Public Interest – Analysis of the Settlement<sup>2</sup>

It is the Commission's policy to encourage settlements. The benchmark for determining whether a settlement should be approved is whether the proposed terms and conditions are in the public interest.<sup>3</sup> As discussed below, the Joint Petitioners submitted Statements in Support of the Settlement, articulating their individual arguments and reasons why approving the Settlement without modification is appropriate and in the public interest. As noted by the Joint Applicants, the Settlement amicably and expeditiously resolves a number of

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<sup>2</sup> 52 Pa. Code §§ 5.231, 69.401.

<sup>3</sup> *See, Lancaster, Warner.*

important and potentially contentious issues, which would have been very expensive and time consuming to litigate before this Commission, and likely would have spawned expensive and time-consuming appeals. The Settlement represents a mutually acceptable and reasonable compromise, and it will conserve the time, effort and expense of all parties, the Commission and the Presiding Officers. Joint Petition for Settlement, p. 12-13.

The Joint Petitioners arrived at the Settlement terms after review of the Joint Applicants' responses to discovery by OCA and OSBA, review and analysis of direct testimony and in-depth discussions. The Settlement terms and conditions constitute a carefully crafted package representing reasonably negotiated compromises on the issues raised by the Joint Applicants. Accordingly, the Joint Applicants maintain that the Settlement is consistent with the Commission's rules, practices, and procedures encouraging negotiated settlements.<sup>4</sup> Joint Petition for Settlement, p. 12-13.

a. Statements in Support

Each of the parties joining in the Settlement filed statements in support of the Settlement. While each party generally asserted that the Settlement as a whole lies squarely within the public interest, the parties also addressed individual Settlement paragraphs. Not every issue was of equal concern to every party. Accordingly, each of the Joint Petitioners' Statements in Support did not necessarily address each and every aspect of the Settlement. The Statements in Support of the Settlement, and the arguments of the parties that the Settlement is in the public interest, will be outlined below.

b. Fiber Build Commitment

Connect indicates that the Settlement will help to expand the fiber network. Connect Holding and Apollo's extensive capital resources and experienced management team with United Telephone's existing infrastructure and service capabilities, including its experience with serving customers receiving copper-based services and its deep experience managing fiber

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<sup>4</sup> See 52 Pa. Code §§ 5.231, 69.391, 69.401.

builds. These resources will accelerate the significant expansion of fiber deployment in United Telephone’s rural service area, including in many small towns and rural areas that would not receive fiber-based service absent this Transaction. Connect states that these investments would not occur without the Transaction. Connect Statement in Support at 3.

In addition to advancing extensive fiber deployment in Pennsylvania, CenturyLink indicates that the Transaction will benefit customers in areas not covered by fiber deployment. Connect Holding’s leadership will consist of an experienced management team.<sup>5</sup> The team plans to take steps to improve United Telephone’s existing copper plant, including undertaking targeted repairs; conducting a detailed analysis of the state of the plant and upgrading the plant where necessary; and improving installation and maintenance activities. CenturyLink Statement in Support at 2-3.

OCA submits that the Fiber Passing Commitment provides an important public benefit, as it sets minimum goals for Connect Holding to upgrade portions of United Telephone’s network to fiber. As set forth in the Joint Application, United Telephone’s voice and broadband services are currently provisioned over a network which is largely copper-based.<sup>6</sup> By the end of 2027, the Fiber Passing Commitment should result in roughly 190,700 additional locations, residential and business, being passed by fiber in United Telephone’s service area.<sup>7</sup> For those locations to be connected to the new fiber network, Connect Holdings would need to make a further investment.<sup>8</sup> If Connect Holdings would need to make an extraordinary investment to connect the location, then it does not qualify to count as a “fiber passed” premise. OCA Statement in Support at 6-7.

OCA also states that the terms of the Fiber Passing Commitment recognize the dynamics of the times. Connect Holding may not count premises passed by new fiber if the

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<sup>5</sup> *Id.*, at ¶¶ 17, 33.

<sup>6</sup> Application ¶ 8.

<sup>7</sup> Settlement ¶ 12.

<sup>8</sup> Settlement ¶ 13.

project is supported by public grant money – unless Connect Holding contributes more than 50% of the project cost, in kind or capital.<sup>9</sup> Connect Holding will provide to OCA and OSBA an Annual Certification of the prior year’s progress.<sup>10</sup> OCA and OSBA will have the opportunity to address underperformance reported in an Annual Certification, whether due to a claim of “Special Circumstances” or other grounds.<sup>11</sup> This includes the possibility of an OCA or OSBA petition to the Commission for a remedy.<sup>12</sup> OCA Statement in Support at 7.

The Fiber Passing Commitment terms will benefit the residential and business locations passed by the upgraded network. Connect Holding will have incentive to deploy where there is need and demand, to meet each year’s commitment. By settling, followed by timely review and approval, United Telephone should have more time to commence work on the 2022 Fiber Passing commitment. As a whole, the Fiber Passing Commitment advances the Commonwealth’s policy goals of promoting broadband deployment<sup>13</sup>. OCA Statement in Support at 7.

OSBA asserts that the Settlement proposes a specific fiber deployment commitment for the years 2022 through 2027. Specifically, the Settlement sets forth Fiber Passing Commitments for 2022-2023 as 38,500, for 2024-2025 as 116,700, and for 2026-2027 as 35,500. Furthermore, the Fiber Passing Commitments for residential and commercial customers shall be counted separately, and the “excess for one class of customer shall not count against the commitment for the other customer class.” OSBA Statement in Support at 3-4.

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<sup>9</sup> See Settlement ¶ 14. Further, as a non-binding term, United Telephone states one goal is to “seek funds from state and federal broadband deployment and connectivity programs, as appropriate, to expand its network and service offerings.” Settlement ¶ 27.b.

<sup>10</sup> Settlement ¶ 15.

<sup>11</sup> Settlement ¶ 15 a, b, c.

<sup>12</sup> Settlement ¶ 15 b.

<sup>13</sup> Section 3011 of the Public Utility Code sets forth the Commonwealth’s policy goals regarding preservation of universal telephone service, as well as encouragement of deployment of broadband networks and increased availability of advanced and broadband services. 66 Pa.C.S. § 3011(1)-(8), (12).

In addition, OSBA maintains the Settlement proposes to provide an annual report setting forth premises passed with fiber, and the existence of any public grants provided.<sup>14</sup> This report will assist OSBA, OCA, and the Commission in monitoring the fiber deployment, and thus will identify whether enforcement actions (if any) are required. OSBA Statement in Support at 4.

OSBA argues that the Fiber Passing Commitments and reporting requirements set forth in the Settlement are consistent with the recommendations set forth in the testimony of its witness, Mr. Gillan. Therefore, OSBA submits these commitments are just and reasonable resolutions to the issue of creating an enforceable deployment schedule. OSBA Statement in Support at 4.

c. Rate Commitments

CenturyLink notes that the Settlement forecloses increases to standalone R1 and B1 rates in United Telephone's 2022 annual price filing, i.e., United Telephone's Price Stability Plan ("PSP") which will be submitted to the Commission on or before September 1, 2022 in accordance with United Telephone's Alternative Regulation Plan.<sup>15</sup> As a result, customers of United Telephone with standalone R1 and B1 rates will not see an increase in those rates through mid-December 2023, which is when the September 1, 2023 PSP filing will be reviewed by the Commission. Furthermore, in each of its 2023 and 2024 annual price filings, United Telephone further committed to not increase rates for standalone R1 and B1 monthly voice services by more than \$1.00 each. CenturyLink indicates that these multi-year rate commitments provide a reasonable level of rate stability to customers of United Telephone with standalone R1 and B1 services through mid-December 2025. CenturyLink Statement in Support at 5.

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<sup>14</sup> Settlement ¶ 15.

<sup>15</sup> See, *Petition for Amended Alternative Regulation and Network Modernization Plan of The United Telephone Company of Pennsylvania d/b/a CenturyLink*, Docket No. P-00981410F1000 (Order entered June 23, 2005).

CenturyLink also states that the Settlement requires United Telephone in its upcoming September 1, 2022 PSP filing to implement two banking-related commitments. First, United Telephone agreed to reduce its banked revenues by \$5,746,469 due to the Settlement, for an aggregate of \$7 million reduction to its bank.<sup>16</sup> This commitment effectively means that United Telephone has agreed to forgo approximately \$5.746 million in banked amounts to increase rates of non-competitive services in the future. CenturyLink Statement in Support at 5.

Connect notes that United Telephone will not add to its bank the value of any allowed increase in revenues calculated by the 2022 annual price filing, and in each of its 2023 and 2024 annual price filings, United Telephone will not increase standalone R1 and B1 monthly voice service rates by more than \$1.00 each. If the annual price filing for any of these years indicates that a decrease in non-competitive service revenues is required, United Telephone will implement the decrease proportionally among all non-competitive services. The Settlement also provides that United Telephone will adjust its current banked revenues when it files its 2022 annual price filing. Connect Statement in Support at 6.

OCA states that the Settlement provides important rate protections for United Telephone's residential and business basic local exchange service customers.<sup>17</sup> The Settlement describes United Telephone's upcoming 2022 Price Stability Mechanism filing. Specifically, there will be no increase to "R1 and B1" rates for basic voice service.<sup>18</sup> If the 2022 PSP identifies an increase in revenues is allowed, then United Telephone will not bank that revenue increase.<sup>19</sup> The Settlement also describes the adjustments to United Telephone's existing bank of allowed increases. The first accounts for the mathematical value of the decrease already required by the Commission's January 2022 approval of a different settlement between United

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<sup>16</sup> A portion of the \$7 million reduction (approximately \$1.25 million) to United Telephone's bank is attributable not to the Settlement, but rather arising from implementation of the Commission's Opinion and Order entered January 13, 2022, at Docket Nos. R-2018-3004019, C-2018-3005400, R-2019-3012238, and C-2019-3012876.

<sup>17</sup> Settlement ¶¶ 17, 18.

<sup>18</sup> Settlement ¶ 17.

<sup>19</sup> *Id.*

Telephone, OCA, and OSBA.<sup>20</sup> The second adjustment is a bargained-for term of this Settlement and requires United Telephone to make a reduction to its existing bank by over \$5.7 million.<sup>21</sup> Accordingly, United Telephone residential and business basic local service customers will be protected against rate increases for the 2022 PSP period. Further, United Telephone’s ability to implement future increases to generate banked increases will be diminished by over \$5.7 million.<sup>22</sup> OCA Statement in Support at 7-8.

OCA asserts that the Rate Commitments also limit the annual increase which United Telephone might impose on R1 and B1 standalone voice service customers to \$1.00 per month as part of the 2023 PSM filing and again as part of the 2024 PSM filing.<sup>23</sup> In the event, the 2022, 2023, and/or 2024 PSM filings calculate that a decrease in annual revenues is required, the Settlement requires United Telephone to implement the revenue decrease, through ratable reductions to charges for non-competitive services.<sup>24</sup>

OCA submits that the Rate Commitments provide important protections for all United Telephone residential and business standalone voice service customers.<sup>25</sup> The Rate Commitments limit United Telephone’s ability to increase rates for these voice service customers, regardless of increased costs associated the change of control transaction or United Telephone’s annual progress in meeting the Fiber Passing Commitment. These Rate Commitments are in the public interest and further the Commonwealth’s Section 3011 policy goals. OCA Statement in Support at 8-9.

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<sup>20</sup> Settlement ¶ 18 a. *United Tel. Co. of Pa. LLC d/b/a CenturyLink 2018 Price Stability Index/Service Price Index Filing*, Docket Nos. R-2018-3004019, C-2018-3005400, R-2019-3012238, C-2019-3012876 (Opinion and Order entered Jan. 13, 2022) (approving settlement of complaints against United Telephone’s 2018 and 2019 PSI Filings).

<sup>21</sup> Settlement ¶ 18 b,c.

<sup>22</sup> Settlement ¶¶ 17, 18.

<sup>23</sup> Settlement ¶ 17.

<sup>24</sup> *Id.*

<sup>25</sup> Settlement ¶¶ 17, 18.

OSBA notes that the Joint Petition proposes no increases to R1 and B1 rates and to banked revenue in the 2022 PSI/SPI filing.<sup>26</sup> The Joint Petition also proposes a price cap of \$1.00 on R1 and B1 rates for 2023 and 2024.<sup>27</sup> Finally, the Joint Petition proposes a \$7 million reduction of United Telephone’s banked revenue increases and includes a specific schedule for that reduction.<sup>28</sup> OSBA Statement in Support at 4.

OSBA also states that the Joint Petition’s proposals for a B1 rate freeze in 2022, the B1 rate caps in 2023 and 2024, and the \$7 million reduction in United Telephone’s banked revenue increases are consistent with the recommendations set forth in OSBA witness, Mr. Gillan’s testimony to protect against future increases in telecommunications prices. Therefore, OSBA submits that these commitments, as set forth in the Joint Petition, are just and reasonable resolutions of these issues. Finally, the rate cap and banking reductions set forth in the Joint Petition also meet the affirmative public benefits as these rate protections would not arise but for the Settlement. OSBA Statement in Support at 4-5.

d. Low Income Services

OCA notes that as a condition of settlement, United Telephone commits to offer to low-income households broadband service at a rate below the cost of its lowest tier broadband service offering.<sup>29</sup> United Telephone will develop and design the specifics of this low-income household offering. This proposal will benefit households that fit United Telephone’s eligibility criteria by providing a low-cost option for broadband service. United Telephone also commits to participate in the federal Affordable Connectivity Program.<sup>30</sup> United Telephone will provide the Commission, OCA, and other relevant agencies with information and outreach materials, to

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<sup>26</sup> Settlement ¶ 17.

<sup>27</sup> *Id.*

<sup>28</sup> Settlement ¶ 18.

<sup>29</sup> Settlement ¶ 19.

<sup>30</sup> Settlement ¶ 20.

help broaden customer awareness of these options to help low-income households obtain broadband service on more affordable terms.<sup>31</sup> OCA Statement in Support at 9.

Additionally, CTBS commits to participate in the Affordable Connectivity Program in the areas where it offers residential broadband service.<sup>32</sup> This commitment benefits households who are eligible for the Affordable Connectivity Program and have access to CTBS broadband service. OCA asserts that these provisions are in the public interest. OCA Statement in Support at 9.

e. Additional Provisions

OCA notes that the Settlement includes additional terms and conditions which provide public benefits and certainty as to United Telephone's conduct in several key areas. United Telephone, OCA, and OSBA agree to engage in future discussions of service quality concerns, as the need might arise. The scope of possible future meetings may include matters related to post-transaction changes in operations or other service quality concerns.<sup>33</sup> OCA Statement of Support at 9-10.

Further, United Telephone commits to provide its available broadband service on a standalone basis for three years following the close of the transaction.<sup>34</sup> United Telephone will also advertise through its website the availability of basic local exchange services, sold on a standalone basis.<sup>35</sup> OCA Statement in Support at 10.

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<sup>31</sup> Settlement ¶ 21.

<sup>32</sup> Settlement ¶ 22.

<sup>33</sup> Settlement ¶ 24.

<sup>34</sup> Settlement ¶ 24.

<sup>35</sup> Settlement ¶ 25.

As an ILEC, United Telephone is provided with a right-of-first refusal before a political subdivision might proceed with its own ‘municipal broadband’ project.<sup>36</sup> As a term of the Settlement, United Telephone will provide notice to OCA and OSBA each time United Telephone accepts or declines such a request.<sup>37</sup> These notices, if any, will provide useful information for OCA and OSBA to monitor the role played by the statutory provision in the deployment of broadband networks by United Telephone, an affiliate, or political subdivisions. OCA Statement in Support at 10; CenturyLink Statement in Support at 7.

OCA submits that the Settlement regarding the proposed change of control of United Telephone and CTBS from Lumen to Apollo’s Connect Holding subsidiary will provide affirmative benefits for a variety of residential and business consumers of voice or broadband services over the next several years. The Settlement is in the public interest and should be approved. OCA Statement in Support at 10.

#### 4. Disposition

Having reviewed the various filings, including the Joint Petition for Settlement and Statements in Support of the Settlement, I conclude that the Settlement provides substantial affirmative benefits and is in the public interest. Therefore, the Settlement will be adopted in its entirety without modification. The Commission strongly encourages settlements, and the Joint Petitioners are commended for reaching a settlement in this case.

The Settlement enables the Joint Applicants to move forward with the proposed acquisition. The Joint Petitioners have demonstrated that such acquisition would provide substantial administrative, operational capital and regulatory benefits. The Settlement provides several benefits to the customers that otherwise would not be available in this proceeding, including: fiber expansion in rural areas, rate commitments which protect residential and

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<sup>36</sup> 66 Pa.C.S. § 3014(h).

<sup>37</sup> Settlement ¶ 26.

business customers, low income services for customers and provision of ongoing reports to OCA and OSBA so that they can track progress related to the Settlement provisions.

I also note that the Settlement will be approved as being in the public interest because the Settlement will save the parties from expending substantial time and expense involved with further litigation. Although the parties exchanged discovery and pre-served testimony, additional costs could have included further written testimony, extensive hearings, briefs, exceptions and possible appeals. Avoiding such expenditures minimizes the costs that the Utilities might ultimately pass on to the ratepayers, and conserves the resources of the Commission and all other parties involved in this proceeding.

In addition, I note that the Settlement should be approved as being in the public interest because the Joint Petitioners have engaged in extensive discovery and other litigation related efforts in order to properly investigate and resolve the issues presented. These efforts demonstrate that the initial filings of the Joint Applicants and the responses to the filings have been thoroughly vetted and considered by all concerned parties. The Settlement is also the result of extensive and fruitful negotiations between all the parties and represents what each party believes to be a fair and reasonable compromise. This is of particular note as the parties in this matter have diverse and competing interests but were able to reach a settlement on all issues. These efforts also demonstrate that the parties are satisfied that there are no unresolved evidentiary issues at this point in the proceeding.

The Settlement is in the public interest because it is supported by substantial evidence. Decisions of the Commission must be supported by substantial evidence.<sup>38</sup> As noted above, the Joint Applicants, OCA and OSBA have filed a Joint Stipulation for Admission of Evidence, all written testimony and exhibits that the parties have submitted in this matter and all documents have been admitted into the record. These testimonies and exhibits support the adoption of the Settlement.

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<sup>38</sup> 2 Pa.C.S. § 704.

In conclusion, I approve the Settlement submitted by the Joint Petitioners in its entirety without modification because it complies with the relevant sections of the Public Utility Code regarding acquisitions, is consistent with Commission regulations promoting settlements, and is in the public interest.<sup>39</sup> In accordance with this Settlement, the securities related to these proceedings should be registered at Docket Nos. S-2022-3031234 and S-2022-3031233.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Application. 66 Pa.C.S. § 1102(a)(3); 52 Pa. Code § 69.901(b)(1).
2. The Commission may issue a certificate of convenience only upon a finding or determination 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).
3. The Commission must find that a proposed transaction would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972); *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007).
4. The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*citing*, *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)); *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991).
5. On appeal, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

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<sup>39</sup> 66 Pa.C.S. § 2210; *see Lancaster, Warner*.

6. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth.1984).

7. Parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm'n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

8. It is the Commission's policy to encourage settlements. 52 Pa. Code §§ 5.231, 69.401.

9. The Commission regulates the merger of Pennsylvania utilities. 66 Pa.C.S. § 2210.

10. That this transaction complies the with relevant portions of the Public Utility Code regarding acquisitions, is consistent with the Commission's regulations promoting settlements, and is in the public interest. 66 Pa.C.S. §§ 1102(a)(3), 1103(a); 52 Pa. Code §§ 5.231, 69.401.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Full Settlement (Public and Confidential), including attachments, is admitted into the record of this proceeding.

2. That the Joint Petition for Settlement filed on February 10, 2022, at Docket Numbers A-2021-3028668 and A-2021-3028669 is approved in its entirety and without modification.

3. That the Commission shall grant all authority necessary for the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink and CenturyTel Broadband Services, LLC to complete the general rule indirect transfer of control pursuant to Sections 1102(a) and 1103 of the Public Utility Code, 66 Pa.C.S. §§ 1102(a) and 1103, and Section 63.324 of the Commission's regulations, 52 Pa. Code § 63 subject to the terms and conditions of the Joint Petition for Settlement filed on February 10, 2022.

4. That a certificate of public convenience be issued to the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink and CenturyTel Broadband Services, LLC evidencing our approval of the general rule indirect transfer of control.

5. That the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink and CenturyTel Broadband Services, LLC shall file notice of consummation of the general rule indirect transfer of control within thirty (30) days of the date of the transaction. If it is determined that the transaction will not take place, the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink and CenturyTel Broadband Services, LLC shall promptly so notify this Commission.

6. That this Order is written notice that the securities certificate of the United Telephone Company of Pennsylvania LLC d/b/a CenturyLink and CenturyTel Broadband Services, LLC for the pledge of assets as a guarantee of debt issued in connection with the proposed transaction, is registered.

7. That within sixty (60) days of the issuance of any securities pursuant to the instant registration, United Telephone Company of Pennsylvania LLC d/b/a CenturyLink and CenturyTel Broadband Services, LLC shall file notice with the Commission of such issuance

