



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120

January 10, 2025

Docket No. A-2024-3049630

Christopher Lodge
United Fiber & Data LLC
210 York St.
York, PA 17403

Re: Joint application of United Fiber & Data, LLC and Cablevision Lightpath LLC for authority to transfer indirect control of United Federal Data of Pennsylvania, LLC

Dear Mr. Lodge:

On June 13, 2024, United Fiber & Data, LLC (UFD), as transferor, and Cablevision Lightpath LLC (Lightpath), as transferee, (collectively, the “Joint Applicants”) filed a joint application pursuant to Sections 1102 and 1103 of Chapter 11 of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. §§ 1102 and 1103, the Commission’s Statement of Policy regarding Utility Stock Transfers at 52 Pa. Code § 69.901, and its Abbreviated Procedures for Review of Transfer of Control of Telecommunications Public Utilities at 52 Pa. Code §§ 63.321 – 63.325.¹ The Joint Applicants are seeking approval of the transfer of control of United Federal Data of Pennsylvania, LLC (“United” or “Licensee”) from UFD to Lightpath (the “Transaction”). The Transaction qualifies as a general rule transaction under 52 Pa. Code § 63.324(a)(2) because it involves the transfer of more than 20% of the indirect control of United.

Pursuant to 52 Pa. Code § 5.14, relating to applications requiring notice, the Commission published notice of the proposed general rule transaction in the *Pennsylvania Bulletin* (54 Pa.B. 3862) on July 6, 2024, with a protest period ending July 22, 2024. Additionally, the Joint Applicants served copies of the joint application upon the Office of Small Business Advocate, the Office of Consumer Advocate, the Office of Attorney General, and the Commission’s Bureau of Investigation and Enforcement. No protests or comments have been received.

United, utility code 3115379, is a direct wholly owned subsidiary of UFD. Both UFD and United are Pennsylvania limited liability companies with headquarters located at 210 York Street, York, PA 17403. In Pennsylvania, United is authorized to provide

¹ On June 20, 2024, the Joint Applicants filed additional information to the joint application, including certificates of service, pre and post-Transaction organizational charts, and a copy of United’s original certificate of public convenience.

telecommunications services as a competitive access provider (CAP) statewide pursuant to a certificate of public convenience granted by the Commission at Docket No. A-2013-2340487.

UFD operates a low-latency fiber network consisting of 400 miles of fiber linking major cities from New York to Virginia, with a majority of its business centered around the sale of dark fiber services to large enterprise customers. UFD is collectively controlled by dozens of individual investors, only two of whom hold an interest of greater than ten percent: (1) BKS Capital LLC, a Pennsylvania limited liability company that holds a 19.8 percent stake, and (2) Louis J. Appell Sole & Separate Property Trust DTD 12/30/2009, a Pennsylvania estate planning vehicle that holds a 30.9 percent stake.

Lightpath, a Delaware limited liability company with headquarters located at 1111 Stewart Avenue, Bethpage, NY 11714, supplies enterprise-grade fiber connectivity, bandwidth, and managed services to customers across an extensive network spanning parts of Connecticut, Florida, Massachusetts, New Jersey, and New York. Lightpath is ultimately owned by Altice USA, Inc., who indirectly holds a controlling 50.01 percent voting and equity interest, with the remaining 49.99 percent non-controlling interest being held by Morgan Stanley Infrastructure Partners. Altice USA provides telecommunications services to approximately 4.7 million residential and business customers across 21 states.²

UFD currently has eight Pennsylvania-based employees and one office located in Allentown, PA, while maintaining fiber infrastructure and related facilities across its network in Adams, York, Lancaster, Berks, Montgomery, and Bucks counties. Lightpath does not own any network facilities in Pennsylvania. In Pennsylvania, UFD and Lightpath serve eight and three customers, respectively.³

The Transaction stems from an Asset Purchase Agreement (Agreement) entered into on June 8, 2024 between the Joint Applicants, whereby UFD agrees to sell, and Lightpath agrees to acquire, substantially all of UFD's assets, including all of the issued and outstanding membership interests of United.⁴ The Transaction is a component of the acquisition of the telecommunications business of UFD (the "Business") by Lightpath via Lightpath's purchase of UFD's assets. The Business is currently operated at the UFD level, with United being one of five licensee subsidiaries of UFD that hold sate certificates of public convenience pursuant to which the Business operates.⁵

The Joint Applicants assert that the only Pennsylvania-specific impacts resulting from the Transaction will be positive, with enterprise customers having additional fiber connectivity options as a result of the connection to, and extension of, the UFD facilities

² Joint Application at 2-5.

³ See Response to Staff Inquiries for Review of Transactions, August 23, 2024, Item Nos. 9,11 & 13.

⁴ Joint Application at 6. See Appendix A of the Joint Application for pre- and post-Transaction ownership charts that more clearly illustrate the effects of the Transaction on the organizational structure of the Joint Applicants.

⁵ In addition to United, UFD's four other subsidiaries operate in Maryland, New Jersey, New York, and Virginia.

to the Lightpath network. The Joint Applicants further claim that any synergies arising from the Transaction are marginal because the vast majority of UFD's network does not overlap with Lightpath's; however, Lightpath does currently purchase services from UFD that will result in the elimination of less than \$200,000 in expenses annually.⁶ The Joint Applicants state that the Transaction should be a transparent and seamless process to the customers, all of whom were provided notice of the Transaction.

In addition to Pennsylvania, the Joint Applicants also sought approval of the Transaction in New York, New Jersey, Virginia, and Maryland. The Transaction has been approved in each of these jurisdictions, with New Jersey granting the most recent approval on December 18, 2024. The Joint Applicants state that no conditions have been considered, imposed, or agreed to in any other jurisdiction in which approval of the Transaction has been granted, with the exception of Virginia, where minor conditions were imposed related to a pole attachment issue between UFD and Dominion that has since been resolved.⁷ The Joint Applicants further claim that the Transaction is not expected to have any negative impact on functions, operations, or activity of any nature currently performed in or affecting Pennsylvania, and that the only reductions in Pennsylvania jobs, tax revenues, or facilities would be to three terminated UFD employees in Pennsylvania, who are receiving financial incentives or severance tied to the sale of the business.⁸

The Joint Applicants declare that approval of the Transaction is not required from the Federal Communications Commission, the U.S. Department of Justice, or any other federal agency, nor does it involve any foreign interests.⁹

The Joint Applicants contend that the Transaction serves the public interest by providing additional sources of capital and managerial resources to the Business and by enhancing the services and network footprint available to the Business customers. Additionally, the Joint Applicants plan for a seamless integration of UFD's fiber network with Lightpath's network will result in customers of each network benefiting from significantly reduced latency. The Joint Applicants further contend that the Transaction will have no negative impact on customers, who will continue to receive service at the same rates, terms, and conditions.¹⁰

Additionally, the Joint Applicants aver that the Transaction does not adversely affect competition in any markets within Pennsylvania because Lightpath does not currently operate in Pennsylvania and its entry into the marketplace will provide enterprise customers throughout Pennsylvania with access to additional low-latency fiber services provided over Lightpath's existing Mid-Atlantic and Northeast networks.

⁶ See Response to Staff Inquiries for Review of Transactions, August 23, 2024, Item Nos. 6-7.

⁷ See Response to Staff Inquiries for Review of Transactions, August 23, 2024, Item Nos. 4-5, as updated by Counsel at various times throughout the proceeding.

⁸ See Response to Staff Inquiries for Review of Transactions, August 23, 2024, Item Nos. 8 & 10.

⁹ See Response to Staff Inquiries for Review of Transactions, August 23, 2024, Item Nos. 15-17.

¹⁰ Joint Application at 7.

Ultimately, the Transaction will improve the competitive profile of the Business in Pennsylvania. Further, the Joint Applicants submit that the Pennsylvania market will continue to be robustly served, with numerous unaffiliated providers offering the same or competing services as those of the Joint Applicants in the same geographic locales within Pennsylvania, including but not limited to: Shentel, DQE, Zayo, Comcast Business, Verizon, Firstlight, Crown Castle, Blue Ridge CATV, Lumen Technologies, Everstream, FastBridge Fiber, Frontier Communications, LUMOS Networks, Velocity Fiber, Windstream, and Zito Media.¹¹

The Joint Applicants verify that the Transaction falls into the general rule category under 52 Pa. Code § 63.324(a)(2) because it involves the transfer of more than 20% of the indirect control of the Licensee.¹²

The Joint Applicants claim that the Transaction will have no impact on their affiliated interest agreements or tariffs, nor will it negatively impact their capital structures or require any type of informal or formal investigation, complaint, or proceeding.¹³

The Joint Applicants further submit that they do not have eligible telecommunications carrier status under federal and state law, are not subject to any broadband deployment commitments under federal or state law, and that the Transaction complies with the prohibition against cross-subsidization imposed under federal and state law.¹⁴

The Commission has determined that United is current with its annual Financial Reports, annual Security Planning and Readiness Self-Certification Reports, annual Universal Service Fund payments, and that there are no outstanding Commission fines, fees, or assessments due.

As required by the Code at 66 Pa. C.S. §§ 1102(a) and 1103 and the Commission's regulations at 52 Pa. Code § 63.324(k)(1), we find that the record sufficiently supports the Joint Applicants' claim that the proposed Transaction is in the public interest. The Transaction should allow for additional capital and managerial resources to flow into the Business and enhance the services available to the Business customers, while being seamless and transparent to customers, with telecommunications services continuing at the same rates, terms, and conditions of service. Further, the Joint Applicants have identified and expect no negative impact on Pennsylvania as a result of the Transaction. Therefore, for the reasons advanced by the Joint Applicants, we conclude that the record

¹¹ Joint Application at 8. *See* Response to Staff Inquiries for Review of Transactions, August 23, 2024, Item No. 14.

¹² Joint Application at 8.

¹³ Joint Application at 10.

¹⁴ Joint Application at 11.

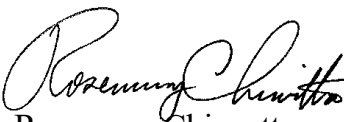
provides substantial evidence of affirmative public benefits sufficient to warrant approval of the proposed transaction.¹⁵

We also find that the Transaction will not harm competition. Rather, we find that the Transaction will benefit competition because it will provide enterprise customers in Pennsylvania with additional fiber connectivity options. Additionally, there are plenty of competitive options available to customers, as a number of other providers continue to offer similar services as the Joint Applicants in the same geographic locales within Pennsylvania. The Commission's approval enhances the Joint Applicants' ability to compete in Pennsylvania without harm to consumers or Pennsylvania markets as required under the Code at 66 Pa. C.S. §§ 1102(a) and 1103 and the Commission's regulations at 52 Pa. Code § 63.324(k)(3).

Therefore, we conclude that the Transaction is necessary or proper for the service, accommodation, convenience, or safety of the public, and the Commission will issue a certificate of public convenience authorizing this Transaction as required by the Code at 66 Pa. C.S. §§ 1102(a) and 1103 and the Commission's regulations at 52 Pa. Code § 63.324(k)(2).

In summary, we find that the joint application should be approved as a general rule transaction under Section 63.324 of the Commission's regulations as requested and that a certificate of public convenience be issued to United Federal Data of Pennsylvania, LLC evidencing our approval of the general rule transfer of control. Therefore, the Commission directs the Joint Applicants to file notice with the Commission within thirty days (30) upon consummation of the transaction. If the Joint Applicants determine that the transaction will not occur, they shall promptly notify this Commission.

BY THE COMMISSION,


Rosemary Chiavetta
Secretary

cc: Christopher Yosy, Cablevision Lightpath LLC
Phillip R. Marchesiello, Wilkinson Barker Knauer LLP
Graham M. Stevenson, Wilkinson Barker Knauer LLP

¹⁵ We believe the record shows that the Transaction satisfies the necessary or proper standard under Section 1103 of the Code and provides affirmative public benefits consistent with *City of York v. Pa. PUC*, 295 A.2d 825 (Pa. 1972) (*City of York*), and *Irwin A. Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*). The Commission retains general authority to impose conditions upon approval of a transaction as codified in the Public Utility Code at 66 Pa. C.S. § 1103. “[E]ven where the [Commission] finds benefit in the first instance, Section 1103(a) also confers discretion upon the agency to impose conditions which it deems to be just and reasonable.” *Popowsky*, 937 A.2d at 1057, n.21. This includes authority to impose conditions upon approval of a general rule or a *pro forma* transaction, in accordance with Sections 63.324(h)(4) and 63.325(h)(4) of our regulations at Title 52 of the Pennsylvania Code.