



Agenda Date: 6/29/22
Agenda Item: 4A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

IN THE MATTER OF THE CERTIFIED PETITION OF)
CONNECT HOLDING LLC; LUMEN)
TECHNOLOGIES, INC.; AND UNITED TELEPHONE)
COMPANY OF NEW JERSEY, INC. D/B/A)
CENTURYLINK FOR APPROVAL OF TRANSFER OF)
CONTROL AND CERTAIN FINANCING)
ARRANGEMENTS)
DECISION AND ORDER)
APPROVING SETTLEMENT)
DOCKET NO. TM21091142

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Colleen Foley, Esq., Saul Ewing Arnstein & Lehr LLP, on behalf of Petitioners

BY THE BOARD:

BACKGROUND

On September 23, 2021, Connect Holding, LLC (“Connect Holding”), a Delaware limited liability company and affiliate of Apollo Global Management, Inc. and its subsidiaries (“Apollo”), Lumen Technologies, Inc. (“Lumen”), a Louisiana corporation, and Lumen’s operating subsidiary, United Telephone Company of New Jersey, Inc. (“United NJ”) (collectively, “Petitioners”), filed a Petition (“Petition”) with the New Jersey Board of Public Utilities (“Board”), pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14, requesting approval to complete the proposed transfer of control of United NJ to Connect Holding (“Transaction”).

In addition, pursuant to N.J.S.A. 48:3-7(a), 48:3-9(a)(1), and N.J.A.C. 14:1-5.9 and 14:1-5.7, the Petition sought Board approval for United NJ and CenturyTel Broadband Services, LLC (“CTBS”) to participate in the financing arrangements in connection with the proposed Transaction (“Financing Arrangements”).¹ On May 19, 2022, the Petitioners filed a letter amending the Petition by withdrawing their requests for Board approval of a change in CTBS’s ownership or control and

¹ CTBS is a Louisiana limited liability company and a wholly owned subsidiary of Lumen. CTBS was formed in 1999 as CenturyTel Internet Services, LLC. CTBS is not presently a public utility of the State of New Jersey and does not provide service in New Jersey.

CTBS's participation in any Financing Arrangements described in the Petition.²

PETITIONERS

According to the Petition, on August 3, 2021, Apollo and Lumen entered into a Purchase Agreement ("Purchase Agreement") under which Apollo will acquire, among other assets, United NJ and its associated assets. Under the Purchase Agreement, Apollo, a publicly traded U.S. company and one of the largest alternative asset managers in the world, with over 1,000 employees, will acquire all of the issued and outstanding equity interest in Lumen's Incumbent Local Exchange Carrier ("ILEC") subsidiaries in 20 states including United Telephone NJ, as well as ownership of CTBS.³ Apollo's current communications holdings include Intrado Corporation and its various operating subsidiaries ("Intrado"), a provider of Competitive Local Exchange Carrier ("CLEC")-based tandem, Voice over Internet Protocol ("VoIP"), E911 and related solutions, and international telecommunications services in 47 states, including New Jersey. Apollo's holdings also include Cox Media Group, which owns and operates television and radio stations in 20 markets across the United States.

Connect Holding, the transferee and an Apollo affiliate, is a Delaware limited liability company with its headquarters located in Purchase, New York. Connect Holding and Connect Holding II, LLC ("Connect II") were created by Apollo to facilitate the Transaction. Connect Holding is a subsidiary of Connect Midco LLC, which is a subsidiary of Connect Intermediate LLC, which in turn is a subsidiary of Connect Parent Corporation, a Delaware corporation. Connect Parent Corporation is controlled by AP IX Connect Holdings, L.P., a Delaware limited partnership. AP IX Connect Holdings has a single limited partner, AIF IX (Connect Equity AIV), L.P. ("AIF IX"), which holds 100% of AP IX Connect Holdings' equity. AIF IX has one general partner, VoteCo, and any limited partners are insulated and individually hold less than a 10% interest in AIF IX. VoteCo is wholly owned and controlled by three members, Scott Kleinman, John Suydam and David Sambur, each of whom will vote a one-third interest in VoteCo. The three (3) members of VoteCo are also officers of Apollo.

Lumen, the transferor and ultimate parent of United NJ, is a publicly traded Louisiana corporation with its headquarters located in Monroe, Louisiana. Lumen is an international facilities-based technology and communications company providing business and residential customers with a broad array of integrated services.⁴ Lumen operates as a CLEC in all 50 states and as an ILEC in thirty-seven (37) states. Lumen currently provides broadband and other communications

² The request to approve CTBS' participation in the financial arrangements was predicated on the anticipated Board approval of a separate pending petition filed by CTBS. Specifically, on September 10, 2021, CTBS filed a petition seeking authority to operate as a competitive local exchange carrier and interexchange carrier in NJ. *See CenturyTel Broadband Services, LLC Approval to Provide Local Exchange Service and Interexchange Service in the State of New Jersey*, BPU Docket No. TE21091130. Subsequently, by letter dated May 18, 2022, CTBS withdrew the petition to operate as a competitive local exchange carrier and interexchange carrier in New Jersey. As a result, the request for the Board to approve CTBS' participation in the financing arrangement was rendered moot as it pertains to this proceeding.

³ The other 19 states are Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and Wisconsin.

⁴ Through its various operating subsidiaries, Lumen provides broadband, voice and other services including IP and Data Services (VPN, Ethernet, IP and Content Delivery Networks), Transport and Infrastructure (Wavelength, Dark Fiber, Private Line, Colocation and Data Center Services, and Professional Services), Voice and Collaboration Services (Voice, VoIP), and IT and Managed Services.

services to residential and enterprise customers, including ILEC services, through its operating subsidiaries in 37 states. Lumen's operating subsidiaries in New Jersey collectively employ more than 300 employees. Once the proposed Transaction is completed, Lumen will retain its ILEC assets in the 17 states that remain in its footprint, as well as its national fiber routes and CLEC networks. Following the Transaction, Lumen will also continue to provide interexchange and CLEC service in New Jersey.⁵

United NJ is a direct, wholly owned subsidiary of Embarq Corporation, which is in turn a direct, wholly owned subsidiary of Lumen. United NJ is an ILEC doing business as CenturyLink in New Jersey and has been certified by the Board as an Eligible Telecommunications Carrier ("ETC"). United NJ provides services to approximately 26,000 consumers and business customers mainly in the northwest portion of the State and makes broadband service available to about 160,000 households and businesses in its service area footprint. United NJ uses primarily copper-based DSL technology to deliver broadband services to its customers.

THE TRANSACTION

Apollo's proposed acquisition of Lumen's ILEC subsidiaries includes the assets, operations, and customers, including: local fiber and copper networks (including connectivity to enabled buildings), broadband and voice customers (consumer, enterprise, and wholesale), connectivity to tower sites, central offices, and the operations and back-office support to meet the accelerating demand for high-bandwidth connectivity and fiber technology. Under the terms of the Transaction, Lumen will convey its equity interests in the 20 states to Connect II, which will be wholly owned and controlled by Connect Holding. The Petitioners represent that Connect II will not itself provide telecommunications services.

Petitioners asserted that the Transaction will not have any adverse impact on United NJ's ability to continue to provide safe, adequate, and proper service at just and reasonable rates, as required under New Jersey law. The Petition further states that the Transaction will result in substantial positive benefits for New Jersey. According to the Petitioners, under new ownership, United NJ will have better access to capital, enhance offerings of advanced services and technologies, and be better positioned to compete for broadband services. Petitioners also contended that the Transaction will significantly improve the percentage of fiber-enabled locations in United NJ's network by coupling Apollo's extensive capital resources, experienced management team, and emphasis on fiber-to-the-premises ("FTTP") investment with United NJ's existing infrastructure and service capabilities, including its experience with serving customers receiving copper-based services and its knowledge of infrastructure needs in New Jersey. According to the Petition, Apollo also intends to invest significant capital over the next five years to accelerate the expansion of FTTP deployment in United NJ's service territory, including in areas that would not receive FTTP in the near term absent the Transaction, giving residences and businesses in United NJ's footprint more choice for high-speed service.

In addition, Apollo represented that it will take steps to improve the existing copper plant and honor its ILEC obligations and contractual commitments. To manage the operations of United NJ, Apollo has recruited an experienced management team that includes former senior Verizon executives with extensive telecommunications experience.

⁵ Lumen will continue to offer service in New Jersey through the following subsidiaries: Broadwing Communications, LLC; CenturyLink Communications, LLC; Global Crossing Local Services, Inc.; Global Crossing Telecommunications, Inc.; Level 3 Communications, LLC; Level 3 Telecom of New Jersey, LP; TelCove Operations, LLC; and WilTel Communications, LLC.

FINANCING ARRANGEMENTS

Connect also requested approval for United NJ to participate in certain Financing Arrangements anticipated in connection with the consummation of the Transaction. Connect II expects to incur \$4.863 billion of new debt to finance the Transaction and pay related fees and expenses. Subject to customary restrictions and necessary regulatory approvals, all of the ILEC subsidiaries involved in the Transaction, including United NJ, will serve as guarantors of this 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.

The \$4.863 billion of new debt will be 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 II 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 (together with the \$4.863 billion of new debt, the "Acquisition Debt"). In addition, Connect II 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 ("Rollover Notes"). The Petitioners note that subject to customary restrictions and necessary regulatory approvals, all wholly owned domestic subsidiaries of Connect II, including United NJ, 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. The Financing Arrangements include the Acquisition Debt as well as the Rollover Notes.

SETTLEMENT DISCUSSIONS AND NEGOTIATED AGREEMENT

Over the course of the proceeding, the Petitioners, the New Jersey Division of Rate Counsel ("Rate Counsel") and Board Staff ("Staff") (collectively, "Parties") engaged in comprehensive discovery. Board Staff and Rate Counsel conducted extensive discovery, to which the Petitioners provided detailed responses. Thereafter, the Parties engaged in settlement negotiations over a period of months, during which discussions were held regarding the benefits to consumers and the State from the proposed Transaction.

On June 6, 2022, the Petitioners filed a Stipulation of Settlement ("Settlement") executed by the Parties.⁶ The Settlement includes a number of significant commitments agreed to by the Petitioners, which will ensure that the Transaction will provide positive benefits to the State and consumers. The Settlement will become effective upon the issuance of a Board Order approving the Settlement and final approval by the Federal Communications Commission ("FCC"). Chief among the Petitioners' commitments is an agreement by United NJ to, over a five-year period, deploy fiber-optic facilities to over 72,000 premises, which is approximately half of the premises served in the service territory.

⁶ Although summarized in this Order, should there be any conflict between this summary and the Settlement, the terms of the Settlement control, subject to the findings and conclusions in this Order. Paragraphs are lettered and/or numbered to coincide with the Settlement.

The Petitioners' commitments are summarized to include the following:

1. The statutory and regulatory criteria for approval of petitions involving acquisitions of control of a New Jersey ILEC, as set forth in N.J.S.A. 48:2-51.1, and N.J.A.C. 14:1-5.14, governing BPU Docket No. TM21091142, have been satisfied. Joint Petitioners assert that the record in BPU Docket No. TM21091142, coupled with the conditions set forth in the Settlement, support findings and conclusions by the Board that the Transaction will not have an adverse impact on competition, on the rates of affected ratepayers, on the employees of United NJ, or on the provision of safe and adequate service at just and reasonable rates. The Parties further agree that consummation of the Transaction is consistent with the conditions set forth in the Settlement, is in the public interest, and will result in positive benefits to customers and the State of New Jersey.
2. Based on the foregoing and upon the Joint Petitioners' agreement to comply with the conditions set forth in the Settlement, the Parties request that the Board make the findings set forth in Paragraph 1 of the Settlement and authorize the Petitioners to take all actions necessary, as described more fully in the Purchase Agreement, in order for the Transaction to be lawfully consummated.

Fiber Passings

3. For each year between 2022 and 2026, inclusive, United NJ will deploy fiber optic cable to pass the number of premises set forth below by December 31 of the designated year, for a total of 72,100 premises by the end of 2026 ("Fiber Passings Commitment").⁷ Any premises passed in any given year in excess of the Fiber Passings Commitment for that year shall carry over and count toward the subsequent years' commitment.

	2022	2023	2024	2025	2026
Premises Passed with Fiber	3,400	11,900	20,900	23,200	12,700

Low-Income Services

4. United NJ will develop and implement a program to offer its available broadband service to households that qualify for the Affordable Connectivity Program ("ACP") at a rate that is below the generally available rate for its lowest tier of service. Rates and terms shall be determined by United NJ in its sole discretion, except that United NJ will not assess any nonrecurring charges, charge any equipment rental fees or other fees beyond the monthly rate for the service other than government-mandated fees and taxes, impose any data caps other than those described in the applicable acceptable use policy ("AUP"), or require any term or multi-year commitments.

⁷ The Fiber Passings Commitment is not predicated on the receipt of public funds including but not limited to grants from New Jersey or federal sources. Nevertheless, United NJ shall seek funds, at its reasonable discretion and as appropriate.

Service Quality

5. United NJ will work with its New Jersey employees to assess the condition of its existing network and make repairs and improvements that United NJ determines to be reasonably warranted. United NJ will routinely schedule and meet with Staff and Rate Counsel to discuss service quality issues, if any. The Parties will discuss and agree on appropriate data regarding such issues, to include at least the following information, which United NJ will provide for the meetings:
 - a. Customer trouble reports per 100 access lines—reported at a statewide level and select wire center level as agreed upon;
 - b. Percent of repeat trouble reports—reported at the statewide level and select wire center level as agreed upon; and
 - c. Results of plant and equipment inspection and associated maintenance.

Employment

6. United NJ will notify Staff and Rate Counsel in the event there is a net loss of customer-facing jobs in New Jersey greater than 15% or if one of its executive officers announces an intention to terminate his or her employment relationship with United NJ or Connect Holding. In either instance, United NJ shall provide periodic reports to Staff and Rate counsel setting out efforts made to ensure an orderly transition. This provision sunsets 3 years from the date of closing of the Transaction.

Pension and Access to 401(k) Plans

7. Thirty-five (35) employees currently participate in a Lumen pension plan related to their employment with United NJ (“United NJ Pension Employees”). The pension assets and liabilities attributable to the United NJ Pension Employees will be transferred to a separate pension plan, which will be transferred to Connect Holding once the Transaction has closed and will be administered by Connect Holding thereafter. The proposed Transaction with Connect Holding will not affect this benefit, which is subject to legal protections applicable to pension plans. Section 401(a) of the Internal Revenue Code (the “Code”), and in particular requirements under Code Section 411 and the accompanying regulations, prohibit a participant’s pension benefit from being reduced or forfeited once earned and vested, and the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) provides similar protections.

Following the closing of the Transaction, any employee transferring to Connect Holding shall have the option to either keep their Lumen 401(k) account with Lumen or roll it over to a new 401(k) plan sponsored by Connect Holding. Any vested funds in an employee’s 401(k) account are protected and nonforfeitable under Code Sections 401(a) and 411, and the accompanying regulations, and under ERISA.

Standalone Broadband

8. United NJ will offer available broadband service on a standalone basis for 3 years from close of the Transaction.

Standalone Voice

9. United NJ will offer basic voice service on a standalone basis for 3 years from the close of the Transaction.

Reporting

10. United NJ will contemporaneously provide Staff and Rate Counsel any and all reports that it submits to the Board pertaining to service quality that may be required by N.J.A.C. 14:10-1A.8 and 14:10-1A.9. United NJ will also continue to provide the reports regarding participation in the Lifeline program that it currently provides to Staff and Rate Counsel, as well as any other reports on participation in low-income subsidy programs that the Board generally requires from all incumbent local exchange carriers.

Notice

12. Within five (5) business days of the date of the closing of the proposed Transaction, Joint Petitioners shall notify the Board Secretary, with a copy to all parties in this docket, of close of the Transaction.

DISCUSSION AND FINDINGS

In considering a request for Board approval of a sale of a public utility, the Board shall evaluate the impact of such an acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. N.J.S.A. 48:2-51.1.

The Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the four criteria delineated in N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c). In addition, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

Here, a major consideration that needs to be addressed is how the sale of a telecommunications public utility to an investment firm such as Apollo, as opposed to another public utility or telecommunications services provider, will impact the continued operation of United NJ. In their Petition and throughout the negotiations, the Petitioners have demonstrated that Apollo has hired experienced telecommunications professionals with technical expertise who will be responsible for managing the operations of United NJ and executing Apollo's strategy for United NJ.

Regarding the impact on rates, based upon the Settlement and the Board's independent review of the record in this matter, the Board **FINDS** that there will be no negative impact on rates or service quality as a result of the Transaction. The stipulated benefits include, but are not limited to; agreed upon fiber deployment, low-income broadband services to those that qualify, and service quality improvements.

Regarding employees/employment, United NJ will notify Staff and Rate Counsel in the event there is a net loss of customer-facing jobs in New Jersey greater than 15% or if one of its executive officers announces an intention to terminate his or her employment relationship with United NJ or Connect Holding. In either instance, United NJ shall provide periodic reports to Staff and Rate

Counsel setting out efforts made to ensure an orderly transition. The Settlement also includes the protection of pension plans and access to 401(k) plans.

As to the impact on competition, the benefits include the creation of a financially sound competitor in the market for broadband and other telecommunications services in New Jersey. Accordingly, United NJ will be better positioned to compete with other similarly situated providers in its service territory.

In addition to the positive benefits articulated in the Settlement, Petitioners have committed to develop and implement a program to offer its available broadband service to households that qualify for the ACP at a rate that is below the generally available rate for its lowest tier of service.

Accordingly, after careful review of this matter, the Board **HEREBY FINDS** that the proposed Transaction is consistent with applicable law, is not contrary to the public interest, has a likelihood of creating positive benefits, and will have no material impact on the rates of current customers. The Board also **FINDS** the Transaction will have no material adverse impact on the provision of safe, adequate and proper service, and is likely to provide benefits to customers given the terms of the Settlement. The Board also **FINDS** the Transaction will have no material impact on the Petitioners' employees, or their pensions. The Board further **FINDS** that the Transaction will have no material adverse impact on competition.

Regarding the Financing Arrangements, based upon the Settlement and the Board's independent review of the record in this matter, the Board **CONCLUDES** that the Financing Arrangements and the use of the proceeds associated therewith are appropriate. While there is no guarantee in this regard, especially given the competitive environment in which the Petitioners operate, the Board **FINDS** that the Financing Arrangements will not have an adverse impact on United NJ's operations in New Jersey. The Board further **FINDS** that the proposed Financing Arrangements are consistent with the applicable law and are in the public interest. The Board, therefore, approves the purposes thereof.

The Board **HEREBY AUTHORIZES** United NJ to participate in the Financing Arrangements of the Petitioners, as detailed in the Petition.

This Order is issued subject to the following provisions.

1. This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
3. This order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by Petitioners.
4. Petitioners shall notify the Board, within five business days, of any material changes in the proposed financing, and shall provide complete details of such transactions including any anticipated effects upon service in New Jersey.

5. Petitioners shall notify the Board of any material default on the terms of the notes within five business days of such occurrence.

Based upon the Settlement and the Board's independent review of the record in this matter, as well as consideration of the applicable statutes and regulations, cited above, the Board **HEREBY ACCEPTS** the Settlement as filed with the Board.

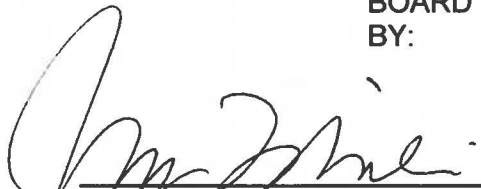
Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY ORDERS** that the Petitioners are authorized to proceed with the proposed Transaction.

Therefore, the Board **ADOPTS** the Settlement, attached hereto, including all attachments and schedules, in its entirety, incorporating by reference the terms and conditions of the Settlement as if fully set forth herein. In view of the foregoing, the Board **HEREBY ORDERS** that Petitioners be and are **HEREBY AUTHORIZED** to transfer the equity interests of Lumen in United NJ to Connect II, and to execute all documents related thereto.

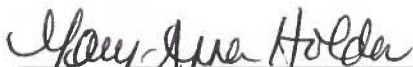
The effective date of this order is July 6, 2022.

DATED: June 29, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



CARMEN D. DIAZ
ACTING SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF THE CERTIFIED PETITION OF CONNECT HOLDING LLC; LUMEN TECHNOLOGIES, INC.; AND UNITED TELEPHONE COMPANY OF NEW JERSEY, INC. D/B/A CENTURYLINK FOR APPROVAL OF TRANSFER OF CONTROL AND CERTAIN FINANCING ARRANGEMENTS

DOCKET NO. TM21091142

SERVICE LIST

<p>For Petitioners</p> <p>Colleen Foley Saul Ewing Arnstein & Lehr LLP One Riverfront Plaza 1037 Raymond Blvd., Suite 1520 Newark, NJ 07102-5426 colleen.foley@saull.com</p> <p>Pamela Sherwood Assistant General Counsel Public Policy 4625 W. 86th Street, Suite 500 Indianapolis, IN 46268 pamala.sherwood@lumen.com</p> <p>Howard J. Symons John L. Flynn Jenner & Block LLP 1099 New York Avenue, NW, Suite 900 Washington, D.C. 20001-4412 hsymons@jenner.com jflynn@jenner.com</p> <p>Division of Rate Counsel 140 Front Street, 4th Floor Post Office Box 003 Trenton, NJ 08625-0350</p> <p>Brian O. Lipman, Director blipman@rpa.nj.gov</p> <p>Maria Novas-Ruiz, Esq. mnovas-ruiz@rpa.nj.gov</p>	<p>Division of Law NJ Department of Law and Public Safety Richard J. Hughes Justice Complex Public Utilities Section 25 Market Street, P.O. Box 112 Trenton, NJ 08625</p> <p>Pamela Owen, DAG, Assistant Section Chief pamela.owen@law.njoag.gov</p> <p>Terel Klein, DAG terel.klein@law.njoag.gov</p> <p>Board of Public Utilities 44 South Clinton Avenue, 1st Floor Post Office Box 350 Trenton, New Jersey 08625-0350</p> <p>Carmen Diaz, Acting Secretary board.secretary@bpu.nj.gov</p> <p><u>Office of Cable Television and Telecommunications</u></p> <p>Lawanda R. Gilbert, Director lawanda.gilbert@bpu.nj.gov</p> <p><u>Harold Bond, Deputy Director</u> harold.bond@bpu.nj.gov</p> <p>Rocco Della Serra rocco.della-serra@bpu.nj.gov</p> <p><u>Counsel's Office</u></p> <p>Lanhi Saldana, Esq., Legal Specialist lanhi.saldana@bpu.nj.gov</p> <p>Carol Artale, Esq., Deputy General Counsel carol.artale@bpu.nj.gov</p>
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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

I/M/O The Certified Petition of Connect Holding LLC; Lumen Technologies, Inc.; BPU Docket No. TM21091142 and United Telephone Company of New Jersey, Inc. d/b/a CenturyLink for Approval of a Transfer of Control and Certain Financing Arrangements

STIPULATION OF SETTLEMENT

APPEARANCES:

Tom Dailey, Senior Vice President of Government Affairs, Public Policy & Regulatory, and Chief Compliance Officer; and Howard J. Symons and John L. Flynn, Jenner & Block LLP, on behalf of Connect Holding LLC

Pamela Sherwood, Assistant General Counsel, on behalf of Lumen Technologies, Inc. and United Telephone Company of New Jersey, Inc.

Colleen Foley, Saul Ewing Arnstein & Lehr LLP, on behalf of Connect Holding LLC, Lumen Technologies, Inc., and United Telephone Company of New Jersey, Inc.

Steven Chaplar, Deputy Attorney General (Matthew J. Platkin, Acting Attorney General of New Jersey), on behalf of the Staff of the Board of Public Utilities

Brian O. Lipman, Director, New Jersey Division of Rate Counsel; and Maria Novas-Ruiz, Esq., Assistant Deputy Rate Counsel, on behalf of the Division of Rate Counsel

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

The parties to this proceeding are Connect Holding LLC (“Connect Holding”), Lumen Technologies, Inc. (“Lumen”), and United Telephone Company of New Jersey, Inc. (“United NJ”) (collectively, the “Joint Petitioners”); the Division of Rate Counsel (“Rate Counsel”); and the Staff of the New Jersey Board of Public Utilities (“Board Staff” or “Staff”). The New Jersey Board of Public Utilities shall be referred to in this Stipulation of Settlement (“Stipulation”) as the “Board” or the “BPU.”

PROCEDURAL HISTORY

On August 3, 2021, Apollo Global Management, Inc. (“Apollo”) and Lumen entered into a Purchase Agreement under which Apollo will acquire, among other assets, United NJ and its associated assets. To accomplish the acquisition, Lumen will convey its equity interests in United NJ (as well as Incumbent Local Exchange Carrier (“ILEC”) subsidiaries in nineteen other states) to Connect Holding II LLC, a newly created entity which will be wholly owned and controlled by Connect Holding. Lumen will retain its Competitive Local Exchange Carrier (“CLEC”) operations in New Jersey, as well as its ILEC assets in the 17 other states in its footprint. Lumen will continue to provide interexchange and CLEC service in New Jersey.

On September 24, 2021, Joint Petitioners initiated this proceeding with the filing of a Certified Joint Petition, BPU Docket No. TM21091142, to obtain approval of the Board pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14 to complete the proposed transfer of control of United NJ from Lumen to Connect Holding (the “Transaction”).

Connect Holding II LLC expects to incur \$4,863 million of new debt to finance the Transaction and pay related fees and expenses.¹ Subject to customary restrictions and necessary regulatory approvals, all of the ILEC subsidiaries involved in the Transaction, including United NJ, will serve as guarantors of this debt and, in the case of the senior secured term facility, the senior secured notes and the revolving credit facility (collectively, the “Secured Acquisition Debt”), pledge substantially all of their material assets to secure such guarantee.²

Following the filing of the Certified Joint Petition, Board Staff and Rate Counsel promulgated extensive discovery and Joint Petitioners provided extensive responses. Thereafter, the Joint Petitioners, Board Staff, and Rate Counsel engaged in settlement negotiations and discussed the benefits provided by the Joint Petitioners as a result of the proposed Transaction. The Joint Petitioners, Rate Counsel, and Board Staff (collectively, the “Signatory Parties”) have come to an agreement on all factual and legal issues arising in this matter.

¹ In addition, Connect Holding II expects Embarq Corporation’s issued and outstanding 7.995% Notes due 2036 (the “Rollover Notes”) 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.

² In addition, Embarq Corporation and certain other subsidiaries of the Borrower may guarantee and/or grant security interests in certain of their assets to secure the Rollover Notes along with the Secured Acquisition Debt. Joint Petitioners therefore requested the Board’s approval for United NJ to participate in the Financing Arrangements. Joint Petitioners also initially sought to obtain approval of the Board pursuant to N.J.S.A. 48:3-7(a), 48:3-9(a)(1), and N.J.A.C. 14:1-5.9 and 14:1-5.7, for CenturyTel Broadband Services, LLC (“CTBS”) to participate in certain financing arrangements related to the Transaction in light of CTBS’s request to operate as a CLEC in New Jersey. *See CenturyTel Broadband Services, LLC Approval to Provide Local Exchange Service and Interexchange Service in the State of New Jersey*, BPU Docket No. TE21091130. However, CTBS has since withdrawn this request, and Joint Petitioners have therefore withdrawn their request for CTBS to participate in financing arrangements related to the Transaction.

AGREEMENT

THEREFORE, the Signatory Parties, intending to be bound by this agreement, hereto agree and stipulate as follows:

1. The statutory and regulatory criteria for approval of petitions involving acquisitions of control of a New Jersey ILEC, as set forth in N.J.S.A. 48:2-51.1, and N.J.A.C. 14:1-5.14, governing BPU Docket No. TM21091142, have been satisfied. Joint Petitioners assert that the record in BPU Docket No. TM21091142, coupled with the conditions set forth herein, support findings and conclusions by the Board that the Transaction will not have an adverse impact on competition, on the rates of affected ratepayers, on the employees of United NJ, or on the provision of safe and adequate service at just and reasonable rates. The Signatory Parties further agree that consummation of the Transaction is consistent with the conditions set forth in this Stipulation of Settlement (“Stipulation”), is in the public interest, and will result in positive benefits to customers and the State of New Jersey.

2. Based on the foregoing and upon the Joint Petitioners’ agreement to comply with the conditions set forth herein, the Signatory Parties request that the Board make the findings set forth in Paragraph 1 above and authorize the Joint Petitioners to take all actions necessary, as described more fully in the Purchase Agreement, in order for the Transaction to be lawfully consummated.

3. **Fiber Passings.** For each year between 2022 and 2026, inclusive, United NJ will deploy fiber optic cable to pass the number of premises set forth below by December 31 of the designated year—for a total of 72,100 premises by the end of 2026 (“Fiber Passings Commitment”). Any premises passed in any given year in excess of the Fiber Passings Commitment for that year shall carry over and count toward satisfaction of the subsequent years’ requirements.

	2022	2023	2024	2025	2026
Premises Passed with Fiber	3,400	11,900	20,900	23,200	12,700

For the purposes of determining whether a premises qualifies to satisfy the Fiber Passings Commitment, “premises passed” as used in this document is defined as premises to which, as a result of United NJ’s deployment of fiber, United NJ could provide fiber-based broadband service by extending a drop wire and associated facilities to a premises without an extraordinary commitment of additional resources (e.g., the installation of additional feeder or distribution cable).

The Fiber Passings Commitment is not predicated on the receipt of public funds, including but not limited to grants from the State of New Jersey or federal sources. Nevertheless, United NJ shall seek funds, at its reasonable discretion and as appropriate, from available state and federal broadband deployment and connectivity programs to extend its broadband services beyond the Fiber Passings Commitment as set forth above.

For each year of the duration of the term of the Fiber Passings Commitment, United NJ will file with the Board, and submit to Staff and Rate Counsel, a report, subject to confidential treatment, detailing the number and locations of premises passed during that applicable year (“Annual Certification”). The Annual Certification shall be filed by May 1 or the next business day if May 1 is a Saturday or Sunday of each applicable year of the Fiber Passings Commitment.

United NJ will also submit to the Staff and Rate Counsel, within 60 days from the closing of the Transaction and contemporaneously with the Annual Certification thereafter, a report that describes, for informational purposes only, the projected fiber deployment in the coming year at a wire-center level.

Additionally, United NJ will contemporaneously file a report with Staff and Rate Counsel, for informational purposes only, that describes any and all grants received by United NJ that covered United NJ’s service area for the applicable period and the number of premises passed, if any, in excess of the Fiber Passings Commitment that were supported by such grants. These reports shall be in addition to any other deployment reports required by law.

If, after receiving the Annual Certification, either Staff or Rate Counsel determines that United NJ has failed to meet its obligations under the Fiber Passings Commitment, Staff or Rate Counsel, as appropriate, shall notify United NJ of such claimed deficiency within 30 days of receipt of such Annual Certification. United NJ shall then have 30 days from the date of notice to either cure or dispute Staff’s or Rate Counsel’s determination.

In the event United NJ fails to cure or dispute Staff’s or Rate Counsel’s determination within the 30-day period set out above, Staff or Rate Counsel, as appropriate, may seek from the Board any and all relief and remedy available to it.

In the event a condition or circumstance arises that is beyond the reasonable control of United NJ, and such condition or circumstance is reasonably likely to prevent United NJ from fulfilling its obligations under the Fiber Passings Commitment, United NJ shall provide prompt notice to the Board of said condition or circumstance and submit adequate proof to the Board for its review. Staff and Rate Counsel reserve the right to request additional information and provide comments if warranted.

4. **Low-Income Services.** United NJ will develop and implement a program to offer its available broadband service to households that qualify for the Affordable Connectivity Program (“ACP”) at a rate that is below the generally available rate for its lowest tier of service. Rates and terms shall be determined by United NJ in its sole discretion, except that United NJ will not assess any nonrecurring charges, charge any equipment rental fees or other fees beyond the monthly rate for the service other than government-mandated fees and taxes, impose any data caps other than those described in the applicable acceptable use policy (“AUP”), or require any term or multi-year commitments. Speeds will be no lower than 100 Mbps symmetrical for fiber-enabled customers, and DSL customers will receive the fastest upstream and downstream DSL speeds offered at their location. United NJ will participate in the ACP created by the Infrastructure Investment and Jobs Act for the benefit of eligible consumers in areas served by United NJ. United NJ will continue to participate in the Lifeline program.

5. Service Quality. United NJ will work with its NJ employees to assess the condition of its existing network and make repairs and improvements that United NJ determines to be reasonably warranted. United NJ will routinely schedule and meet with Staff and Rate Counsel to discuss service quality issues, if any. The Signatory Parties will discuss and agree on appropriate data regarding such issues, to include at least the following information, which United NJ will provide for the meetings:

- a. Customer trouble reports per 100 access lines—reported at a statewide level and select wire center level as agreed upon;
- b. Percent of repeat trouble reports—reported at the statewide level and select wire center level as agreed upon; and
- c. Results of plant and equipment inspection and associated maintenance.

United NJ anticipates the first meeting to occur within 6 months after the closing of the Transaction. Staff and Rate Counsel reserve the right to request additional meetings should either deem them necessary in situations such as an increase in complaints about the service provided by United NJ, and United NJ shall make reasonable efforts to comply with said request.

6. Employment. United NJ will notify Staff and Rate Counsel in the event there is a net loss of customer-facing jobs in New Jersey greater than 15% or if one of its executive officers announces an intention to terminate his or her employment relationship with United NJ or Connect Holding. In either instance, United NJ shall provide periodic reports to Staff and Rate counsel setting out efforts made to ensure an orderly transition. This provision sunsets 3 years from the date of closing of the Transaction.

7. Pensions and Access to 401(k) Plans. Thirty-five employees currently participate in a Lumen pension plan related to their employment with United NJ (“United NJ Pension Employees”). The pension assets and liabilities attributable to the United NJ Pension Employees will be transferred to a separate pension plan, which will be transferred to Connect Holding once the Transaction has closed and will be administered by Connect Holding thereafter. The proposed Transaction with Connect Holding will not affect this benefit, which is subject to legal protections applicable to pension plans. Section 401(a) of the Internal Revenue Code (the “Code”), and in particular requirements under Code Section 411 and the accompanying regulations, prohibit a participant’s pension benefit from being reduced or forfeited once earned and vested, and the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) provides similar protections.

Following the closing of the Transaction, any employee transferring to Connect Holding shall have the option to either keep their Lumen 401(k) account with Lumen or roll it over to a new 401(k) plan sponsored by Connect Holding. Any vested funds in an employee’s 401(k) account are protected and nonforfeitable under Code Sections 401(a) and 411, and the accompanying regulations, and under ERISA.

8. Standalone Broadband. United NJ will offer available broadband service on a standalone basis for 3 years from close of the Transaction.

9. **Standalone Voice.** United NJ will offer basic voice service on a standalone basis for 3 years from the close of the Transaction.

10. **Reporting.** United NJ will contemporaneously provide Staff and Rate Counsel any and all reports that it submits to the Board pertaining to service quality that may be required by N.J.A.C. 14:10-1A.8 and 14:10-1A.9. United NJ will also continue to provide the reports regarding participation in the Lifeline program that it currently provides to Staff and Rate Counsel, as well as any other reports on participation in low-income subsidy programs that the Board generally requires from all incumbent local exchange carriers.

11. **Reservation of Rights/Limitations.** This Stipulation represents a compromise for the purposes of settlement in this case only and shall not be regarded as precedent with respect to any other principle in any future matters before the Board. The Signatory Parties agree nothing in this Stipulation alters the Board's legal authority. The location and manner of any deployment required under this Stipulation is at United NJ's sole discretion. This Stipulation is conditioned on, among other things, approval of the Board and all other regulatory bodies and the closing of the Transaction. With respect to any provision in this Stipulation without an express termination date, the provision shall terminate as of December 31, 2026.

12. **Notice.** Within five (5) business days of the date of the closing of the proposed Transaction, Joint Petitioners shall notify the Board Secretary, with a copy to all parties in this docket, of close of the Transaction.

13. Each Signatory Party agrees to use its best efforts to ensure that this Stipulation of Settlement is presented to the Board for approval at the Board's June 29, 2022 public agenda meeting. Each Signatory Party understands that a Board Order adopting this Stipulation will become effective in accordance with N.J.S.A. 48:2-40.

14. The Signatory Parties agree that this Stipulation represents the entirety of the agreement among the Signatory Parties. This Stipulation includes proposals and conditions above and beyond the terms contained in the Certified Joint Petition. Notwithstanding statements made in the Certified Joint Petition, discovery, materials, or any information provided by the Joint Petitioners, only those commitments stated in this Stipulation shall apply.

15. The Signatory Parties agree to support approval of the Transaction upon the terms set forth in this Stipulation in any proceedings before the Board regarding approval of the proposed Transaction. The Signatory Parties further agree to defend this Stipulation in the event of opposition to approval of the proposed Transaction from non-signatory parties before the Board. Such support or defense shall not bind the Signatory Parties with respect to any future transaction.

16. Notwithstanding anything to the contrary set forth herein, upon the occurrence of any of the following events this Stipulation shall terminate, and shall be deemed null and void and of no force or effect:

- a. if the Board fails to issue a Final Order approving the Transaction and this Stipulation or issues a decision modifying or disapproving this Stipulation; or

- b. if for any reason the Transaction is not consummated; or
- c. if the Board issues a written order approving this Stipulation subject to any additional condition or modification of the terms set forth herein which an adversely affected Signatory Party, in its discretion, finds unacceptable. Such Signatory Party shall serve notice of unacceptability on the Parties within three (3) business days following receipt of such Board order. Absent such notification, the Signatory Parties shall be deemed to have waived their respective rights to object to the acceptability of such conditions or modifications contained in the Board order, which shall thereupon become binding on all Signatory Parties.

17. This Stipulation shall be binding on the Signatory Parties upon approval by the Board, without any change of its terms, or in the event of change, upon acceptance of such change (whether affirmatively accepted or by the passage of time). Each of the terms and conditions set forth above is interdependent with the others and essential in its own right to the signing of this Stipulation. Each term is vital to the agreement as a whole, since the Signatory Parties expressly and jointly state that they would not have signed the Stipulation had any term been modified in any way.


18. This Stipulation is a negotiated result. Neither the Stipulation as a whole nor any particular provision shall constitute as binding precedent. Moreover, no provision contained in this Stipulation shall be construed as a limit of—or as a waiver of—any legal or policy argument or any position that a Signatory Party may assert, claim, or submit in defense in any future proceeding before the Board or any other forum. None of the Signatory Parties shall be prohibited from or prejudiced in arguing different legal or policy positions before the Board in any other proceeding or in any other jurisdictions, as this agreement pertains only to these matters and to no other matter.

19. This Stipulation represents the full scope of the agreement between the Signatory Parties. This Stipulation may only be modified by a further written agreement executed by all the Signatory Parties to this Stipulation.

20. The Signatory Parties agree to accept service by electronic mail, and such delivery shall also constitute sufficient service for purposes of an Order issued by the Board regarding this matter.

WHEREFORE, the undersigned Signatory Parties hereto respectfully submit this Stipulation to the Board for its review and request the issuance of an Order approving this Settlement in its entirety in accordance with the terms contained herein.

**CONNECT HOLDING LLC
LUMEN TECHNOLOGIES, INC.
UNITED TELEPHONE COMPANY OF NEW JERSEY, INC.
JOINT PETITIONERS**

By: 
COLLEEN FOLEY
SAUL EWING ARNSTEIN & LEHR LLP

**DIVISION OF RATE COUNSEL
BRIAN O. LIPMAN
DIRECTOR**

By: 
MARIA NOVAS-RUIZ
ASSISTANT DEPUTY RATE COUNSEL

**MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY**
Attorney for Staff of the Board of Public Utilities

By: 
STEVEN CHAPLAR
DEPUTY ATTORNEY GENERAL