

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lumen Technologies, Inc., Transferor)	WC Docket No. 21-350
)	
and)	
)	
Connect Holdings, LLC, Transferee)	
)	
Application for Consent to Transfer Control)	
of Domestic and International Section 214)	
Authorizations)	

REPLY COMMENTS OF PUBLIC KNOWLEDGE

Nicholas P. Garcia
Policy Counsel

Public Knowledge
1818 N Street, NW
Suite 410
Washington, DC 20036

February 2, 2022

I. Introduction and Summary

Public Knowledge (“PK”) respectfully submits these reply comments in response to the Federal Communication Commission’s public notice regarding the applications filed to transfer control of domestic and international section 214 authorizations and wireless licenses from Lumen Technologies, Inc. (“Lumen”) to Connect Holding II LLC (“Connect Holding” or “Brightspeed”¹), an affiliate of Apollo Global Management, Inc. (“Apollo”).²

PK writes to express agreement with the concerns of the Communications Workers of America (“CWA”) regarding the potential public interest harms of the proposed transfer. Pursuant to Sections 214(a) and 310(d) of the Communications Act, applicants must demonstrate that the proposed reorganization will benefit the public interest, convenience, and necessity.³ Based on the record before the Commission, the applicants have not satisfied these requirements and therefore the Commission should not approve the proposed transfer of control of domestic and international section 214 authorizations and wireless licenses from Lumen to Connect Holding.

CWA has identified several areas where the applicants need to provide the Commission more information and it advances a number of proposed conditions that may address some of the

¹ Lumen and Apollo announced on November 17, 2021 that the new company will be called Brightspeed. *Brightspeed Announces Brand and Affirms Intention to Bring High-Speed Internet to Rural and Suburban Communities Throughout the United States*, PRNewswire.com (Nov. 17, 2021), <https://www.prnewswire.com/news-releases/brightspeed-announces-brand-and-affirms-intention-to-bring-high-speed-internet-to-rural-and-suburban-communities-throughout-the-united-states-301426808.html>.

² Lumen Technologies, Inc. and Connect Holding, LLC Application for Consent to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 21-350 (filed Sept. 1, 2021) (“Application”).

³ 47 U.S.C. §§ 214(a), 310(d).

serious public interest harms that would accrue from this transaction.⁴ Additional detailed information about Connect Holding’s long-term plans, as well as mandatory and enforceable transfer conditions that address fiber investment, legacy service maintenance, employment and plant retirement, and are all necessary to ameliorate potential public interest harms. Without addressing the foregoing issues, the proposed transfer stands to harm the public interest, and must be rejected. It is the burden of the applicants to show that the proposed transfer is not merely harmless, but that the public stands to benefit from the transaction.

II. Apollo’s Short-Term Investment Strategy Conflicts with the Public Interest

The transferee is an affiliate of Apollo, a private equity firm. CWA notes that Apollo’s disclosure documentation states that it “anticipates that the average holding period for its private equity investments will be three to five years.”⁵ This short-term investment strategy stands in stark contrast with the need for service providers that intend to revitalize and maintain existing legacy services while investing in the deployment of new fiber infrastructure over the long-term. PK has serious reservations about the intentions and expertise in Connect Holding and Apollo in seeking this transfer based on their stated investment timeline.

CWA presents, as a cautionary example, Apollo’s conduct in the 2016 takeover of Warrior Met Coal, a deal spearheaded by Apollo and other private equity funds with similar investment motives.⁶ During that takeover, Apollo devastated the company’s workforce by cutting pay, benefits, and terminating collective bargaining and pension agreements. At the same

⁴ *Comments of Communications Workers of America*, WC Docket No. 21-350, at 1 (filed January 18, 2022) (“CWA Comments”).

⁵ CWA Comments at 2-3 (quoting Apollo Management International LLP, Walker Guidelines for Disclosure and Transparency in Private Equity [Nov. 30, 2020], <https://www.apollo.com/~media/Files/A/Apollo-V3/documents/disclosure/2020-ami-walker-disclosure-document>).

⁶ CWA Comments at 3.

time, the company took on massive debt while distributing huge dividends to investors, then Apollo sold its shares by 2019. Warrior Met Coal remains embroiled in labor disputes today.⁷

This extractive, short-term approach is entirely incompatible with public interest standards and raises serious questions concerning Apollo's true intentions for Brightspeed. The applicants' stated goal of fiber deployment—a decidedly long-term investment—is inconsistent with its previous behavior and broadly stated investment goals, presenting the possibilities that Apollo either lacks genuine commitment to such investment, or has over-estimated the speed at which fiber deployment operations are possible for Brightspeed. Both possibilities should give the Commission pause about approving the transfer application without more detailed information and enforceable commitments from the applicants regarding their deployment plans.

III. Enforceable Fiber Deployment Conditions Are Necessary to Protect the Public Interest in Equitable and Efficient Broadband Deployment

The Application presents only a vague sketch of the transferee's fiber deployment plans insufficient to satisfy the public interest standard that guides such reorganization applications. To ensure that the public interest in equitable and efficient broadband infrastructure investment is protected, the Commission should only approve the Application with specific and enforceable conditions surrounding Connect Holding's fiber deployment plan.

As a threshold matter, more specificity and details regarding deployment plans are needed for the Commission to make an informed decision about the purported benefits of the proposed transfer. The applicants tout an increase in capital to support the fiber to the premises ("FTTP") deployment, however the recently passed bipartisan infrastructure bills already make billions of

⁷ Michael Sainato, *Alabama coalminers on strike for 10 months vow not to be 'starved out'*, The Guardian (Jan. 25, 2022), <https://www.theguardian.com/politics/2022/jan/25/alabama-coalminers-warrior-met-coal-strike-10-months>.

dollars in federal broadband subsidies available to support FTTP deployment. CWA correctly observes that “it is not unreasonable to expect that a standalone Lumen entity would strongly attempt to qualify for such subsidies in order to upgrade many parts of its footprint.”⁸ The applicants must therefore present with greater specificity how their specific plans present a public interest benefit beyond allowing Lumen to avail itself of the already-available capital support.

PK supports the CWA proposal that any transfer be accompanied by interim deployment requirements tied to the transferee’s deployment plan, similar to those imposed in the T-Mobile-Sprint merger.⁹ Especially given concerns over Apollo’s short-term investment horizon, firm commitments with enforceable timelines, backed up by potential penalties for failing to meet deployment goals, are essential to ensure that the transfer serves to promote genuine investment in broadband infrastructure deployment. Such conditions are unlikely to impose an independent burden on investment in deployment, considering that they can be harmonized with the timelines and safeguards that will accompany federal infrastructure funding.

Additionally, the Commission should not approve this transfer without conditions targeted at closing the digital divide and improving digital equity. Specifically, PK supports CWA’s proposals that the Commission mandate conditions to guarantee equitable broadband deployment and participation in state and federal affordable broadband offering programs.¹⁰ CWA highlights how Lumen has consistently and dramatically underdelivered for rural and lower-income

⁸ CWA Comments at 5.

⁹ CWA Comments at 6; *see Memorandum Opinion and Order*, In the Matter of Applications of T-Mobile US, Inc., and Sprint Corporation For Consent To Transfer Control of Licenses and Authorization, WT Docket No. 18-197, at 13 (released Nov. 5, 2019).

¹⁰ CWA Comments at 7-8.

customers in its service areas, and this must be rectified in any plan for future deployment.¹¹

Definitive commitments to participate in affordability programs is another condition that can serve to support lower-income and underserved communities and promote the Commission's universal service and digital equity goals.

IV. The Commission Should Impose Transfer Conditions to Prevent Legacy Service Abandonment and Neglect

While the deployment of new FTTP infrastructure is at the core of the application and should be a key area of concern for the Commission's analysis given the historic push to deploy broadband internet across the nation, the Commission must also concern itself with Lumen's considerable legacy service infrastructure and how Connect Holding intends to serve as steward over these aging networks. CWA observes that much of Lumen's network "still relies on the same copper cables that were installed in the 1980s" and that there is a real risk that "the deployment [of FTTP] will not be done rapidly or equitably among its residential customers that continue to rely on the same old copper cables".¹² Many of these customers are concentrated in rural and lower-income areas that may make them targets for cost-cutting given the transferee's aggressive investment timeline. PK echoes CWA's concerns that Connect Holding will look to abandon these customers through a mixture of explicit copper cable network retirement applications and de facto abandonment through neglect and divestment from legacy service in these areas in favor of deployment in more profitable markets. While strong conditions that ensure equitable deployment partially addresses this concern, this must be supplemented with measures that protect consumers that continue to rely on legacy services.

¹¹ CWA Comments at 7.

¹² CWA Comments at 9-10.

CWA proposes that the Commission require Connect Holding to establish a “comprehensive service quality improvement plan for areas that are not being transitioned to fiber in a timely fashion and commit to meet state service quality standards where applicable. Furthermore, as part of any plan, Connect Holding should set aside sufficient copper maintenance budgets, including funds dedicated to preventative maintenance, and hiring of adequate staffing needed to address issues on a timely basis.”¹³ Such commitments will go a long way to ensuring that customers reliant on older networks are not abandoned through simple neglect.

The issue of staffing is closely tied to the issue of continued support for legacy service. As CWA notes, “[t]he degradation of Lumen’s infrastructure is closely correlated with the decline in the number of trained, career employees in the field.”¹⁴ A stable and experienced workforce is a key component of the continued efficiency and reliability of legacy networks, and a sign of ongoing commitment to those service areas. Unfortunately, Lumen has already exhibited a troubling trend of continued divestment from trained, unionized workers to non-union, lower-wage contractors. Especially given the course of events at Warrior Met Coal, addressed above, there is real cause for concern that Apollo would accelerate these trends to the detriment of their customers. The Commission should, in line with its interests in both labor market issues and protecting legacy service, not approve the Application without enforceable commitments on the part of the transferee to respect the labor and organizing rights of its employees and continued commitment to full staffing consistent with its service quality improvement and broadband deployment plans.

¹³CWA Comments at 10.

¹⁴ CWA Comments at 12.

Another potential concern for legacy service customers is formal technology transition copper retirement applications. In July 2021, Lumen filed a Section 214 application to discontinue legacy voice service on Little Gasparilla Island, Florida.¹⁵ The application sought to rely on third party mobile wireless networks as an adequate replacement service for wireline voice service and to receive streamlined approval. The Commission correctly evaluated the unprecedented nature of this request and denied streamlined treatment. After PK, Benton Institute for Broadband & Society, Center for Rural Strategies, Common Sense Media, CWA, INCOMPAS, and Media Alliance filed a petition expressing interest in the proceeding, Lumen withdrew its application.

This incident is of note because the instant Application notes that “Apollo will also explore the use of alternatives to copper for broadband where available, including fixed wireless.”¹⁶ While different from reliance on third-party mobile wireless service, this indicates a continuity of interest between Lumen and Apollo in substituting wireless service for wireline services in an effort to retire copper networks without replacing them with FTTP.

While any applications for copper retirement can and should be addressed on their individual factual merits by the Commission under its established standards, as a general matter the Commission should require, as a condition of the transfer, a commitment to continued wireline service by Connect Holding. Wireless—fixed or otherwise—may play a role in the broadband ecosystem in some truly exceptional areas, but in areas already served by copper wire compelling evidence should be required to show why FTTP deployment or continued copper

¹⁵ See In the Matter of Section 63.71 Application of Embarq Florida, Inc. d/b/a CenturyLink, a Lumen Company For Authority Pursuant to Section 214 of the Communications Act of 1934, As Amended, to Discontinue a Telecommunications Service, WC Docket No. 21-298 Comp. Pol. File No. 1710 (Jul. 14, 2021).

¹⁶ Application, Exh. 1 at 11.

wire service is impractical. An enforceable commitment in this area that distinguishes Connect Holding from Lumen is an example of how the transaction could benefit the public, but unfortunately the current application seems to indicate a potentially harmful continuity of policy.

V. Conclusion

Given the current record before the Commission, the applicants have not only failed to show that there is a public interest benefit to the proposed transfer, but the records shows that there are significant and serious concerns that it will be detrimental. Therefore, because the applicants have failed to show that the transaction will benefit the public interest, the Commission should reject the Application to transfer the domestic and international section 214 authorizations and wireless licenses currently held by Lumen to Apollo, Connect Holding, or its affiliates. If the parties wish to continue to pursue the transaction, the Commission should obtain additional information, commitments, and impose enforceable conditions on the applicants that address the serious public interest harms raised above, if it determines that they would be effective.

Respectfully submitted,

/s/ Nicholas P. Garcia
Policy Counsel
nick@publicknowledge.org

Public Knowledge
1818 N Street, NW, Suite 410
Washington, DC 20036

February 2, 2022