

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") entered into as of March 15, 2023, by and between the VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT ("DHCD") and CONNECT HOLDING II LLC d/b/a Brightspeed, a Delaware limited liability company ("ISP") (ISP and DHCD are referred to herein individually a "Party" and collectively "Parties") provides as follows:

RECITALS:

- A. Central Telephone Company of Virginia, a subsidiary of Lumen Technologies, Inc. ("Lumen") was awarded funding through the Federal Communication Commission's Rural Digital Opportunity Fund ("RDOF") program to cover a portion of the cost of building and maintaining a fiber optic network and providing broadband service to 1,037 unserved locations ("the RDOF Funded Area") in the Counties of Campbell, Greene and Madison ("Locality and collectively Localities") ("Project");
- B. The Project is intended to provide the RDOF Funded Area with fiber-to-the-home access to broadband internet access service, in order to meet the future needs of residents and businesses in those areas of the Localities.
- C. The Thomas Jefferson Planning District Commission including, the Counties of Campbell, Greene and Madison and Firefly/Central Virginia Electric Cooperative applied for and were awarded a Virginia Telecommunication Initiative ("VATI") Grant for certain areas of the Localities, conditionally including the RDOF Funded Area; and
- D. Central Telephone Company of Virginia challenged the award of VATI funding for the RDOF Funded Area (the "Challenge ") pursuant to the VATI Guidelines; and
- E. By letter dated December 2, 2021, DHCD directed the parties to enter into negotiations with the aim of entering into a memorandum of understanding; and
- F. ISP and the Localities through the Thomas Jefferson Planning District Commission were unable to reach agreement on the terms of a memorandum of understanding or otherwise resolve the Challenge; and
- G. DHCD has taken the Challenge under advisement; and
- H. The ownership of Central Telephone Company of Virginia was transferred from Lumen to Brightspeed on October 3, 2022, which transfer of control was approved by the Virginia State Corporation Commission on April 22, 2022 in Case No. PUR-2021-00246 and by the Federal Communications Commission in that certain Memorandum

and Order and Declaratory Ruling In the Matter of Lumen Technologies, Inc. and Connect Holding, LLC Application for Consent to Transfer Control, docket WC 21-350, August 19, 2022; and

- I. Brightspeed is the successor in interest to Lumen's ownership of Central Telephone Company of Virginia; and
- J. ISP desires to enter into this MOU on the terms set forth herein.

AGREEMENT:

NOW THEREFORE, in good and sufficient consideration of the foregoing recitals and the mutual covenants hereinafter contained, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Timely Completion of Project. ISP shall fully complete the Project on or before December 15, 2024. ISP shall begin work on the Project, to include general planning, engineering, design, and construction pursuant to the Project schedule, within two (2) business days following the execution of this MOU by the Parties without the need of any other notice to proceed. ISP shall proceed to diligently prosecute the work of the Project at all times. Time shall be of the essence for as to all of the ISP's obligations under this MOU. ISP agrees to provide DHCD any and all information and documents which DHCD may request, from time to time, in connection with ISP's ability to promptly commence work on the Project and to prosecute the work of the Project diligently, including, without limitation, on the subjects of acquisition of rights, design, financing, procurement of labor, materials and equipment, permitting, and required approvals. ISP represents and warrants that it has assumed all of Lumen's obligations under RDOF for the RDOF Funded Area, that the "Closing" as that term is defined in that certain Purchase Agreement dated as of August 3, 2021 by and among Lumen and others and ISP occurred on October 3, 2022, and that it has received all of Lumen's rights to the Rural Digital Opportunity Funded Area and is able and ready to commence work on the Project.

2. Extensions of Time. ISP shall not be entitled to any extensions of time except as agreed to by DHCD in writing in its sole and absolute discretion and then only upon a compelling showing of justification by the ISP based upon events or conditions occurring after the execution of this MOU by ISP and which are expressly limited to following: fire, hurricanes, floods, earthquakes, war, acts of terrorism, civil disorder, pandemic other than the existing Coronavirus pandemic, and labor strikes or disruptions occurring within Virginia. In order to constitute a compelling showing, the ISP must demonstrate that the event or condition is the sole cause of delay. ISP further agrees to notify DHCD in writing within 24 hours of the occurrence of the event upon the occurrence of any event or condition upon which ISP seeks to base a request for an extension of time and that, should it fail to provide such notice, it shall not be entitled to

any extension of time based upon such event or condition. DHCD's determination of sufficiency justification of delay shall not be subject to challenge in any form.

3. Project Schedule/Proof of Ability to Perform. Simultaneously with the execution of this agreement, ISP shall provide DHCD and the Thomas Jefferson Planning District with a critical path method ("CPM") schedule that incorporates a measurable and verifiable milestone timeline schedule for completion of the Project, similar to that required in VATI awards but recognizing this projected is not funded with VATI grant funds, in a form that is satisfactory to DHCD in its sole and absolute discretion that provides for the timely completion of the Project ("Project") and establishes the measurable and verifiable milestones listed below ("Milestones"). DHCD will issue written approval of the timeline schedule and set the Milestones for completion and the deadlines for satisfaction of Milestones. See Exhibit A for a copy of the approved CPM.

The CPM schedule shall incorporate all events and activities that affect the critical path of the Project, to include, without limitation, information regarding design, procurement of labor, materials and equipment, permitting, required approvals, and Project closeout elements. The ISP shall update the CPM schedule as events and activities occur that affect the critical path of the Project, but in no event less than monthly in frequency; provided, however, that such updates shall not excuse or modify ISP's obligations to timely commence, prosecute and complete the project. ISP agrees that by submitting the CPM schedule by this MOU, and without more, it represents and warrants as a presently existing fact that the contents of such schedule are true and accurate in all respects and that DHCD may rely upon such representations.

Further, and simultaneously with the execution of this agreement, ISP shall provide DHCD with all information and documentation which DHCD may request to confirm that ISP is prepared to immediately commence work, including, without limitation, information and documents regarding design, procurement of labor, materials and equipment, permitting, and required approvals. ISP shall provide such other information during the course of the Project as DHCD may request regarding the ISP's ability to perform its obligations under the terms of this MOU. ISP shall immediately notify DHCD should there be any material change in the ISP's ability to timely and properly complete construction of the Project.

4. Inspections. DHCD or its designee shall have the right, but not the obligation to inspect the Project and the work performed and labor, materials and equipment supplied in the course of the prosecution of the Project. DHCD will use best efforts to provide reasonable advance notice of inspections absent a finding of need by DHCD for an inspection without advance notice. DHCD shall have the right to make inspections without notice should it conclude in its sole and absolute discretion that such inspections are necessary.

5. Reporting Requirements. ISP shall provide DHCD and the Thomas Jefferson Planning District Commission monthly updates in writing on the status of

construction of the Project beginning March 15, 2023 (subsequent updates shall be provided no later than the 15th of each month). The written updates shall include, but not be limited to the following:

- i. The number of passings for which service is available;
- ii. The number of subscribers to service (which shall include the total number of Customers and the number of new Customers within the most recent quarter);
- iii. All information deemed necessary by DHCD in its sole and absolute discretion demonstrating that ISP is in compliance with the CPM schedule; and
- iv. Specific addresses for each passing for which service is available.

ISP agrees that by submitting the reports required by this MOU, and without more, it represents and warrants as a presently existing fact that the contents of such reports are true and accurate in all respects and that DHCD may rely upon such representations.

6. Status of Challenge. For so long as ISP is not in default under the terms of this MOU, DHCD agrees to take the Challenge under advisement. DHCD reserves the right to grant or deny the Challenge, in whole or in part and with or without conditions, should DHCD determine that doing so would be in the best interests of the Commonwealth and its goal of achieving affordable, reliable, universal high-speed broadband in DHCD's sole and absolute discretion. The Thomas Jefferson Planning District Commission, Counties of Campbell, Greene and Madison and Firefly/Central Virginia Electric Cooperative consent to the terms contained herein.
7. Completion of the Project. Once the Project has achieved final completion and the ISP has provided to DHCD (i) thirty (30) days advance written notice of final completion of the Project and (ii) such information and documentation evidencing final completion of the RDOF locations in the Counties of Campbell, Greene and Madison, provided to the FCC indicating that those locations are serviceable. DHCD in its reasonable discretion, DHCD shall have the option to complete a final inspection. The right of Inspection does not include the right of audit any financial statements, expenses or other matters as there is no VATI funding issued to ISP. This final inspection shall be to confirm that the required network was constructed as required in the RDOF Award Fund Area. DHCD shall have 30 days after receipt of the aforesaid notice from ISP to make its final inspection. ISP's reporting obligations under this MOU shall terminate upon notice from DHCD that it has determined that the required network was constructed as required in the RDOF Award Fund Area has been constructed; provided, however, and notwithstanding anything contained herein to the contrary, DHCD shall have the right to request one or more inspections upon reasonable notice to ISP specifying the reason for such resumption of inspections if DHCD determines that there has been a significant material change in circumstances that justifies such resumption of inspections and ISP agrees to permit such inspections in its discretion, which shall not be unreasonably withheld.

8. Termination of MOU. DHCD may terminate this MOU and deny ISPs challenge at any time should it determine, in its sole and absolute discretion, that there has been an event of default or that ISP is unlikely to complete the Project in a timely fashion or if ISP fails to comply or is likely to fail to comply with any one or more of ISP's obligations under this MOU. If DHCD, terminates this MOU, ISP agrees to interpose no objection of any kind to an action by the Locality, or others related to the achievement of universal broadband access in the Locality, including, but not limited to, the receipt by the Locality of the full amount of VATI funds requested. Upon termination, DHCD may take such other actions it deems necessary to ensure proper deployment of broadband services within the Locality/Localities, including, without limitation, denial of the Challenge and release of VATI funds to the Thomas Jefferson Planning District Commission on behalf of the Counties of Campbell, Greene and Madison and Firefly/Central Virginia Electric Cooperative for the purpose of broadband deployment by them in the Localities.

9. Event of Default. ISP shall be deemed to be in default under the terms of this MOU should any of the following occur as determined by DHCD in its sole and absolute discretion:

- a. ISP undergoes a merger or transfer of its assets;
- b. A receiver is appointed for ISP;
- c. A voluntary or involuntary petition under Title 11 of the U.S. Code is filed in the United States Bankruptcy Court naming ISP as a party;
- d. ISP fails to properly or timely complete the Project;
- e. ISP fails to timely and diligently prosecute the work of the Project;
- f. ISP fails to meet any one or more of the Milestones established in this MOU for which it has not obtained an extension of time;
- g. ISP fails to timely and fully pay all of its construction contractors on the Project;
- h. ISP fails to cooperate with DHCD regarding inspections;
- i. ISP fails to timely and properly comply with the reporting requirements established in this MOU;
- j. ISP violates any local, state or Federal regulation, law or statute in connection with the prosecution of the Project;
- k. ISP breaches or has breached any agreement with Counties of Campbell, Greene and Madison for the provision of internet service or wired or wireless communications service;
- l. ISP otherwise commits a breach of this MOU and fails to cure said breach within two (2) business following written notification of said breach from DHCD;
- m. ISP fails to timely supply DHCD with the CPM schedule;
- n. ISP fails to properly or timely update the CPM schedule;
- o. ISP fails to adhere to the CPM schedule;
- p. ISP fails to properly or timely make any one or more required reportings;

- q. ISP violates the terms of any permit or approval required for the prosecution of the work on the Project; and
- r. ISP, or any one or more of its subcontractors or any person or entity supplying labor, materials, work or equipment to ISP, takes any action or commits any inaction that jeopardizes or causes the Project or any milestones established under this MOU to not be properly or timely completed; and
- s. ISP fails to notify DHCD of any event, action, inaction or condition on the part of ISP that would constitute an event of default under the terms of this MOU.

10. Remedies. The Parties agree that this MOU is a valid, binding and enforceable contract. ISP agrees to fully defend, indemnify and hold the Commonwealth, DHCD, and the Localities harmless from and against any and all costs, expenses, damages, and losses suffered by the Localities, DHCD or the Commonwealth as a result of ISP's default under the terms of this MOU, including without limitation any and all litigation costs and fees incurred by DHCD (including legal fees) in connection with said default or arising out of or relating to the assumption of Lumen's RDOF obligations by ISP. Without waiver or limitation of the foregoing, and upon default by ISP under the terms of this MOU, DHCD shall have the right to deny the Challenge and release any VATI funds made the subject of the Challenge to Locality and terminate ISP's rights under this MOU without liability to or recourse against DHCD. At no time shall any failure by DHCD to invoke its rights under the terms of this MOU be deemed to be a waiver in whole or in part of such rights.

11. Amendments. The Parties may alter or change the terms of this MOU only by a written amendment executed by the Parties.

12. Other Broadband Projects. For the purpose of clarification and without in any way limiting the rights of the Counties of Campbell, Greene and Madison, or any other entity, nothing in this MOU shall be interpreted to prevent the Counties of Campbell, Greene and Madison or any other entity, to the extent not prohibited by VATI Program Guidelines or other applicable rules or regulations, from undertaking or providing funding for the establishment, enhancement, or expansion of broadband internet or similar services in or around the Counties of Campbell, Greene and Madison, including in the RDOF Areas to be served by ISP pursuant to this MOU.

13. Miscellaneous.


- a. This MOU is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. Exclusive Jurisdiction and venue for any litigation arising out of or involving this MOU shall lie in the Circuit Court of the City of Richmond, Virginia and such litigation shall be brought only in such court.

- b. This MOU may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.
- c. If any provision of this MOU is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
- d. Any notice or communication required or permitted under this MOU shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in Section 12(h) or to such address as one Party may have furnished to the other in writing.
- e. No assignment of this MOU or any of ISP's obligations under the terms of this MOU shall be valid absent DHCD's written consent to such assignment. ISP agrees to execute and deliver such documents deemed necessary by DHCD in its sole and absolute discretion to memorialize the assumption of Lumen's RDOF obligations.
- f. ISP waives its rights to a jury trial.
- g. This MOU shall not create any rights in third-parties or otherwise constitute a third-party beneficiary contract.
- h. Notices and reports shall be sent to the parties at the following addresses:
 - i. LOCALITY: Thomas Jefferson PDC, Attn: Christine Jacobs P.O. Box 1505, Charlottesville, VA 22902
 - ii. DHCD Virginia Department of Housing and Community Development. Attn: Tamarah Holmes. Ph.D. 600 Main Street, Ste 300, Richmond VA 23219
 - iii. Brightspeed, Attention Pamela Sherwood, Mailing address: P.O. Box 1330 Fayetteville, NC 28302-1330 and via email to broadband@brightspeed.com
- i. It is agreed by all parties hereto that the terms of this MOU are contractual and not a mere recital.
- j. Any exhibits identified herein are hereby incorporated by reference. The introductory recitals set forth above are hereby incorporated into this MOU as an expression of the parties' intent and understanding and are incorporated herein as if repeated in full and are true in all respects.
- k. All parties hereto and those signing on their behalf represent and warrant that they possess the full and complete authority to covenant and release as herein provided and further represent and warrant that they have the full and complete authority to execute the releases herein contained. All parties hereto represent and warrant that they have not assigned any of their respective claims hereby released.
- l. The parties hereto represent and state that they have carefully read the foregoing MOU and know the contents thereof and sign the same as their own free act and deed after having the advice of their respective independent legal counsel.


- m. This MOU reflects the entire agreement by and between the parties related to the Challenge and no statements, promises or inducements made by any of the parties related to the Challenge which are not contained herein, shall be valid and binding.
- n. The captions and section headings contained herein are for convenience only and shall not be used in construing or enforcing any of the provisions of this MOU. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders. The singular shall include the plural and vice versa unless the context specifically requires otherwise.
- o. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties hereto agree that this MOU may be transmitted between them by facsimile machine or email. The parties hereto intend that faxed or emailed signatures shall constitute original signatures and that a faxed or emailed version of this MOU containing the signatures (original or faxed or emailed) of the parties hereto shall be binding on the parties hereto.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives and agents, have set their hands as of the day and year first above written.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

BY:  DATE: March 15, 2023
Tamarah Holmes, Ph.D. Director, Office of Broadband

Connect Holding II LLC d/b/a BRIGHTSPEED

BY:  DATE: February 27, 2023
Pamela Sherwood, Senior Regulatory,
Broadband Infrastructure and Compliance Counsel

Pursuant to Section 6 of this agreement, the following entities consent to his agreement:

COMMONWEALTH OF VIRGINIA

GREENE COUNTY

Brenda G. Garton

BY: Brenda G. Garton (Mar 8, 2023 15:23 EST)

DATE: Mar 8, 2023

Brenda G. Garton, County Administrator

COMMONWEALTH OF VIRGINIA

CAMPBELL COUNTY

Frank Rogers


BY: Frank Rogers (Mar 6, 2023 16:26 EST)

DATE: Mar 6, 2023

Frank Rogers, County Administrator

COMMONWEALTH OF VIRGINIA

MADISON COUNTY

BY:  Jonathon Weakley (Mar 9, 2023 17:22 EST)

DATE: Mar 9, 2023

Jonathon Weakley, County Administrator

COMMONWEALTH OF VIRGINIA

THOMAS JEFFERSON PLANNING DISTRICT COMMISSION

BY: 

DATE: 3/2/2023

Christine Jacobs, Executive Director

COMMONWEALTH OF VIRGINIA

FIREFLY

BY: 

DATE: Mar 15, 2023

Gary Wood, Firefly

Exhibit A

PROJECT GANTT CHART Project name RDOF MOU VA <i>Quarterly view</i>		Q1 2023	Q2 2023	Q3 2023	Q4 2023	Q1 2024	Q2 2024	Q3 2024	Q4 2024
SUMMARY OF MOST IMPORTANT MILESTONES									
Project Completion		25%		50%		75%		100%	
Pre-Construction	Sub-activities								
	Design	10%	25%	50%	70%	85%	100%		
	Make Ready / Permits	5%	20%	40%	60%	70%	85%	100%	
	Bill of Material	5%	20%	40%	60%	70%	85%	100%	
Construction	Sub-activities								
	Fiber Placing		10%	25%	40%	50%	60%	80%	100%
	Fiber Splicing and Testing			20%	35%	45%	55%	75%	100%
Install Ready	Sub-activities								
	Construction Complete & Network Ready			15%	30%	40%	50%	70%	100%
Closeout	Sub-activities								
	Provide Copy of the Final HUBB Report Submitted to FCC								100%












FinalTJPDC RDOF MOU BSPD Executed

Final Audit Report

2023-03-15


Created:	2023-03-02
By:	Christine Jacobs (cjacobs@tjpc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAATm7MZCA1QjJoYIkIUzoW81wF92Yw4BqF

"FinalTJPDC RDOF MOU BSPD Executed" History

-  Document created by Christine Jacobs (cjacobs@tjpc.org)
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-  Document emailed to fjrogers@co.campbell.va.us for signature
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2023-03-06 - 9:25:25 PM GMT- IP address: 104.244.104.2
-  Signer fjrogers@co.campbell.va.us entered name at signing as Frank Rogers
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-  Document e-signed by Frank Rogers (fjrogers@co.campbell.va.us)
Signature Date: 2023-03-06 - 9:26:19 PM GMT - Time Source: server- IP address: 104.244.104.2
-  Document emailed to bgarton@gcva.us for signature
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-  Signer bgarton@gcva.us entered name at signing as Brenda G. Garton
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 Document e-signed by Jonathon Weakley (jweakley@madisonco.virginia.gov)


Signature Date: 2023-03-09 - 10:22:50 PM GMT - Time Source: server- IP address: 70.33.146.110

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 Document e-signed by Gary Wood (gwood@mycvec.com)

Signature Date: 2023-03-15 - 2:58:55 PM GMT - Time Source: server- IP address: 205.220.239.2

 Agreement completed.

2023-03-15 - 2:58:55 PM GMT

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