



PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20554

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DA 21-1204
September 24, 2021

**APPLICATIONS FILED FOR THE TRANSFER OF CONTROL OF
GLOBAL CROSSING AMERICAS SOLUTIONS, LLC,
CENTURYLINK LATIN AMERICAN SOLUTIONS, LLC, AND
LEVEL 3 COMMUNICATIONS ST. CROIX, INC. TO PATAGONIA HOLDCO LLC,
AND FOR GRANT OF INTERNATIONAL SECTION 214 AUTHORITY TO
CENTURYLINK LATIN AMERICAN SOLUTIONS, LLC**

PLEADING CYCLE ESTABLISHED

WC Docket No. 21-340

Comments Due: October 8, 2021

Reply Comments Due: October 15, 2021

By this Public Notice, the Wireline Competition Bureau and International Bureau (together, Bureaus) seek comment from interested parties on applications filed by Lumen Technologies, Inc. (Lumen), Global Crossing Americas Solutions, LLC (GCAS), CenturyLink Latin American Solutions, LLC (CLAS), Level 3 Communications St. Croix, Inc. (Level 3 St. Croix) (GCAS, CLAS, and Level 3 St. Croix, collectively, the Lumen LatAm Entities), and Patagonia Holdco LLC (Patagonia Holdco) (Lumen, the LatAm Entities, and Patagonia Holdco, collectively, Applicants), pursuant to sections 214 of the Communications Act of 1934, as amended (Act),¹ the Cable Landing License Act of 1921,² and sections 1.767, 63.03-04, 63.18, and 63.24 of the Commission's rules,³ requesting approval to transfer control of the Lumen LatAm Entities from Lumen to Patagonia Holdco.⁴ In addition to seeking approval for the

¹ 47 U.S.C. § 214.

² 47 U.S.C. §§ 34-39; *see also* Exec. Ord. No. 10530, Sec. 5(a), reprinted as amended at 3 U.S.C. § 301 (delegating the President's authority under the Cable Landing License Act to the Commission).

³ 47 CFR §§ 1.767, 63.03-04, 63.18, 63.24.

⁴ Joint Application for Consent to Transfer Control of Section 214 Authority and Submarine Cable Licenses, WC Docket No. 21-340 (filed Aug. 20, 2021) (Lead Application). As referenced in Attachment A to this Public Notice, Applicants have filed applications for the transfer of control of domestic and international section 214 authority, an application for international section 214 authority for CLAS, and an application for the transfer of control of submarine cable landing licenses held or to be held by GCAS (collectively, applications). On September 20, 2021, Applicants filed a supplement to the applications. Letter from Nicholas Alexander, Counsel for Lumen, and Wayne D. Johnsen, Counsel for Patagonia Holdco, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-340, IB File Nos. ITC-T/C-20210820-00121, ITC-T/C-20210824-00124, SCL-T/C-20210821-00035, ITC-214-20210824-00125 (filed Sept. 20, 2021) (Sept. 20, 2021 Supplement).

proposed transfer of control of the Lumen LatAm Entities, Patagonia Holdco also requests, pursuant to section 63.18 of the Commission's rules,⁵ section 214 authority for CLAS to provide international telecommunications services upon consummation of the proposed transaction.⁶

Lumen, a publicly-traded Delaware corporation, provides telecommunications services, broadband, and other services in all 50 states and the District of Columbia through its various operating subsidiaries.⁷ Lumen indirectly wholly-owns the Lumen LatAm Entities.⁸ The Lumen LatAm Entities provide competitive enterprise and wholesale telecommunications services in the United States and the U.S. territories in the Caribbean.⁹ GCAS, a Delaware limited liability company, holds a Commission authorization for the Americas-II submarine cable system¹⁰ and provides domestic and international telecommunications services.¹¹ Applicants state that, at closing, GCAS will also hold the submarine cable landing licenses for the Mid-Atlantic Crossing, Pan American Crossing, and South American Crossing submarine cable systems (collectively, LatAm Cable Licenses), which are currently held by another Lumen subsidiary, Global Crossing Telecommunications, Inc. (GCTI).¹² CLAS, a Delaware limited liability company, provides domestic telecommunications services and currently provides international telecommunications services under the international section 214 authorization held by its direct parent, Level 3 Communications, LLC.¹³ Level 3 St. Croix is a corporation formed under the laws of the U.S. Virgin Islands and provides domestic telecommunications services.¹⁴

Patagonia Holdco, a Delaware limited liability company, was formed for the purpose of acquiring the Lumen LatAm Entities and does not, itself, provide telecommunications services.¹⁵ Following the

⁵ 47 C.F. R. § 63.18.

⁶ Lead Application at 2, Attach. 5 (International Section 214 Authority Application).

⁷ *Id.* at 3.

⁸ *Id.*

⁹ Lead Application at Attach. 3 (Information required by 47 C.F.R. § 63.04) at 1.

¹⁰ *Id.* at 4. *See also* SCL-LIC-19980429-00019; SCL-MOD-20191202-00038.

¹¹ Lead Application at 4. *See also* ITC-214-19950717-00062; ITC-214-19950831-00047; ITC-214-19970703-00372; and ITC-MOD-20200221-00034.

¹² Lead Application at n.3 and 4. *See also* (A) SCL-LIC-19981030-00023; SCL-MOD-20020415-00035; (Mid-Atlantic Crossing); (B) SCL-LIC-19981103-00022; SCL-MOD-20110524-00020; (Pan American Crossing); and (C) SCL-LIC-19990823-00015; SCL-MOD-20020415-00054; SCL-MOD-20150129-00002; (South American Crossing). While Patagonia Holdco is acquiring the LatAm Cable Licenses and assets as part of the proposed transaction, it is not acquiring GCTI; rather, GCTI will continue to be an indirect, wholly-owned subsidiary of Lumen both before and after consummation of the proposed transaction. Lead Application at n. 8.

¹³ *Id.* at 4-5. CLAS is a wholly-owned subsidiary of Level 3 Communications, LLC (Level 3) and provides international services under the section 214 authorization held by Level 3, ITC-214-19971229-00821, pursuant to section 63.21(h) of the Commission's rules, 47 CFR § 63.21(h). *Id.* at n.5; Sept. 20, 2021 Supplement at 3. Since Level 3 Communications, LLC is not being acquired as part of the proposed transaction, Patagonia Holdco seeks, as part of the applications, a grant of international section 214 authority to CLAS effective upon consummation of the proposed transaction so that it may continue providing international telecommunications services. Lead Application at n. 5 and at 5 and 11; Attach. 5 (International Section 214 Authority Application).

¹⁴ *Id.* at 5.

¹⁵ *Id.* and Attach. 3 at 1.

consummation of the proposed transaction, Patagonia Holdco will be indirectly wholly-owned by Stonepeak Patagonia Holdings LLC (SP Holdings), a Delaware limited liability company, which, in turn, will be owned by Stonepeak Patagonia Intermediate Holdings LP (SP Intermediate Holdings), a Delaware limited partnership holding a 70% equity and 70% voting interest in SP Holdings, and AustralianSuper Investment Fund No. 2 (AusSuper Fund No. 2), an Australian Trust holding an approximate 30% equity and 30% voting interest in SP Holdings.¹⁶ Applicants state that the sole limited partner of SP Intermediate Holdings is Stonepeak Patagonia Upper Holdings LP (SP Upper Holdings),¹⁷ a Delaware limited partnership, and that the limited partners of SP Upper Holdings will be investment funds affiliated with U.S.-based private equity funds managed by Stonepeak Partners LP (d/b/a Stonepeak Infrastructure Partners (Stonepeak)), a Delaware limited liability company.¹⁸ Stonepeak is affiliated with ExteNet Systems, Inc (ESI) and its subsidiaries,¹⁹ a provider of telecommunications services in multiple states, and Radiate Holdings, L.P. (Radiate) and its subsidiaries,²⁰ a provider of telecommunications, cable, and broadband services in multiple states.²¹ Stonepeak is indirectly held and controlled by Michael Dorrell, a U.S. and Australian citizen.²² Applicants state that other than the interest holders identified, no other entity or individual will, upon consummation of the proposed transaction, hold a 10% or greater direct or indirect equity or voting interest in Patagonia Holdco or the Lumen LatAm Entities.²³

¹⁶ Lead Application at 5. Applicants state that the beneficial owner of AusSuper Fund No. 2 is AustralianSuper, Australia's largest public pension fund and that the Trustee of AusSuper Fund No. 2 is AustralianSuper Investments Pty Ltd, an Australian Proprietary Company (AusSuper Investments). *Id.* at 5-6. AusSuper Investments is wholly-owned by AustralianSuper Pty Ltd, an Australian Proprietary Company (AusSuper PTY), which is also the Trustee of AustralianSuper. *Id.* at 6. AusSuper PTY is equally owned by the Australian Council of Trade Unions, the union body representing Australian workers, and the Australian Industry Group, an employer organization representing Australian businesses. *Id.* at 5-6, 24-25 and Attach. 1 at 3.

¹⁷ *Id.* at 6. Applicants state that the general partner for both SP Intermediate Holdings and SP Upper Holdings is Stonepeak Associates IV LLC (Associates IV), a Delaware limited liability company. *Id.*

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 8-9.

²¹ *Id.*

²² *Id.* at 7-8.

²³ *Id.* at 26. Applicants state that the following limited partners of SP Upper Holdings will hold an indirect equity interest in the Lumen LatAm Entities: Stonepeak Infrastructure Fund IV (AIV V) LP (SP Infrastructure IV) (an approximate 58.46%), a Delaware limited partnership; Stonepeak Infrastructure Fund IV (Lux) (AIV VIII) SCsp (SP Infrastructure (Lux) (an approximate 8.26%), a Luxembourg special limited partnership; and Stonepeak Patagonia (Co-Invest) Holdings LP (SP (Co-Invest) Holdings) (an approximate 3.26%), a Delaware limited partnership. *Id.* Applicants note that these percentages are based on applying a multiplier of 70% to the interests held by SP Upper Holdings. *Id.* at n. 12. Applicants also state that because the process of completing the syndication of the equity interests is ongoing, the percentages held by these funds likely will change, and that Stonepeak is "still in the process of syndicating certain interests in Patagonia Holdco and the Lumen LatAm Entities. These interests will be held through limited partnership interests in SP Upper Holdings. To the extent that these syndication efforts result in the addition of a new 10% or greater indirect equity or voting holder, the applications will be amended and updated as appropriate." *Id.* at n.30. The Lead Application provides further information on these entities and other intermediate U.S.-based and foreign entities in the ownership structure. *See* Lead Application at 7, 20-22 and Attach. 1 (Pre- and Post-Transaction Organization Charts) at 3.

Pursuant to the terms of the proposed transaction, Patagonia Holdco will directly or indirectly acquire all of the equity interests of the Lumen LatAm Entities, resulting in the transfer of control of GCAS, CLAS, and Level 3 St. Croix to Patagonia Holdco.²⁴ According to Applicants, prior to consummation of the proposed transaction, the LatAm Cable Licenses will be assigned from GTCI to GCAS on a *pro forma* basis, along with the related submarine cable infrastructure for each of those systems.²⁵ Consequently, Applicants seek consent to the transfer of control of GCAS as the holder of each of the LatAm Cable Licenses as well as a licensee on the Americas-II cable.²⁶

Applicants assert that a grant of the applications would serve the public interest, convenience, and necessity.²⁷ They state that Stonepeak's investment will provide the Lumen LatAm Entities access to additional financial resources to focus on further developing and improving their network and services while continuing to serve existing customers under the same rates, terms, and conditions.²⁸ According to the Applicants, the proposed transaction will not adversely affect telecommunications competition in any domestic or U.S. international market.²⁹

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the applications set out in Attachment A are being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.³⁰

GENERAL INFORMATION

The applications identified herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

²⁴ Lead Application at 10. Applicants provide a complete listing of the authorizations to be held by GCAS, CLAS, and Level 3 St. Croix. *Id.* at Attach. 6 (Authorizations Held by Lumen LatAm Entities).

²⁵ *Id.* at n.8 and 10.

²⁶ *Id.* at 10.

²⁷ *Id.* at 11-14.

²⁸ *Id.* at 12-14.

²⁹ *Id.* at 13. Applicants identify what they refer to as *de minimus* overlaps of service areas between the Lumen LatAm Entities and ESI, as well as one of the Radiate companies. Of the Lumen LatAm Entities, only GCAS and CLAS provide service in the contiguous 48 states, and only GCAS provides facilities based services. In San Diego, California and McAllen, Texas, GCAS, upon closing, will own or control facilities to provide international transport in those service areas while ESI provides facilities based wholesale services in those markets, consisting primarily of outdoor DAS/Small Cell networks and domestic dark fiber and domestic transport service. Also upon closing, GCAS will be able to provide facilities based transport services between the Hollywood, Florida and Grover Beach, California cable landing stations, while one of the Radiate companies provides facilities based services, primarily for residential and business end users, in Grover Beach, California. Sept. 20, 2021 Supplement at 2.

³⁰ See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020). See also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000).

Interested parties may file comments **on or before October 8, 2021**, and reply comments **on or before October 15, 2021**. Comments may be filed in both the docket and the international file using the Commission's Electronic Comment Filing System (ECFS) and the International Bureau Filing System (IBFS) or by paper.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/> and IBFS at <http://licensing.fcc.gov/myibfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.³¹ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Gregory Kwan, Wireline Competition Bureau, gregory.kwan@fcc.gov;
- 2) David Krech, Policy Division, International Bureau, david.krech@fcc.gov; and
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b),

³¹ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.³² A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Gregory Kwan, (202) 418-1191, Wireline Competition Bureau, or David Krech, International Bureau, (202) 418-7443.

³² See 47 CFR § 1.45(c).

ATTACHMENT A

SECTION 214 AUTHORIZATIONS

A. International

The application for CenturyLink Latin American Solutions, LLC for authority to provide facilities-based service in accordance with section 63.18(e)(1) of the Commission's rules, and resale service in accordance with section 63.18(e)(2) of the Commission's rules, 47 CFR § 63.18(e)(1), (2), has been assigned file number ITC-214-20210824-00125.

The applications for consent to the transfer of control of certain international section 214 authorizations have been assigned the file numbers listed below.

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20210820-00121	Global Crossing Americas Solutions, LLC	ITC-214-19950717-00062 ITC-214-19950831-00047 ITC-214-19970703-00372 ITC-MOD-20200221-00034
ITC-T/C-20210824-00124	CenturyLink Latin American Solutions, LLC	ITC-214-20210824-00125. ³³

B. Domestic

Applicants filed an application to transfer control of domestic section 214 authority in connection with the proposed transaction. In light of the multiple applications pending before the Commission with respect to this transaction and the public interest review associated with them, the domestic transfer of control application is not subject to streamlined treatment.³⁴

³³ CenturyLink Latin American Solutions, LLC currently provides international service under the section 214 authority held by its 100% direct parent, Level 3 Communications, LLC, pursuant to 47 CFR § 63.21(h).

³⁴ 47 CFR § 63.03.

CABLE LANDING LICENSES

The application for consent to the transfer of control of certain cable landing licenses has been assigned the file number listed below.

<u>File Number</u>	<u>Licensee</u>	<u>License Number</u>
SCL-T/C-20210821-00035	Global Crossing Americas Solutions, LLC	SCL-MOD-20020415-00035. ³⁵ SCL-MOD-20110524-00020. ³⁶ SCL-MOD-20150129-00002. ³⁷ SCL-MOD-20191202-00038. ³⁸

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³⁵ The current license file number for the Mid-Atlantic Crossing cable system. The license will be assigned from Global Crossing Telecommunications, Inc. to Global Crossing Americas Solutions, LLC prior to consummation of the proposed transaction.

³⁶ The current license file number for the Pan American Crossing cable system. The license will be assigned from Global Crossing Telecommunications, Inc. to Global Crossing Americas Solutions, LLC prior to consummation of the proposed transaction.

³⁷ The current license file number for the South American Crossing cable system. The license will be assigned from Global Crossing Telecommunications, Inc. to Global Crossing Americas Solutions, LLC prior to consummation of the proposed transaction.

³⁸ The current license file number for the Americas-II cable system.