

ORIGINAL



0000110540

RECEIVED
BEFORE THE ARIZONA CORPORATION COMMISSION

2 **COMMISSIONERS**
KRISTIN K. MAYES, Chairman
3 GARY PIERCE
PAUL NEWMAN
4 SANDRA D. KENNEDY
BOB STUMP
5
6

2010 APR 30 P 3: 29

AZ CORP COMMISSION
DOCKET CONTROL

7 IN THE MATTER OF THE APPLICATION OF
ZAYO BANDWIDTH, LLC FOR APPROVAL
8 OF A CERTIFICATE OF CONVENIENCE
AND NECESSITY TO FOR A FACILITIES-
9 BASED LONG DISTANCE AND FACILITIES-
BASED LOCAL EXCHANGE
10 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-20694A-09-0379

STAFF'S NOTICE OF FILING
LATE FILED EXHIBIT

11
12 The Utilities Division of the Arizona Corporation Commission ("Staff") hereby files the late
13 filed exhibit in the above-referenced matter. A hearing was held in this matter on April 30, 2010. At
14 the hearing Staff was asked to file, as a late filed exhibit, the Staff data request, and Zayo Bandwidth,
15 LLC (the "Company") response, discussing the Company's affiliate Zayo Bandwidth Tennessee
16 LLC's litigation involving the City of Memphis. Attached is Staff's data request STF 1.6 and the
17 Company response.

18 RESPECTFULLY SUBMITTED this 30th day of April, 2010.
19
20

Ayesha K. Vohra, Attorney
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

24
25 Original and thirteen (13) copies
of the foregoing were filed this
30th day of April, 2010 with:

26 Docket Control
27 Arizona Corporation Commission
1200 West Washington Street
28 Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

APR 30 2010

DOCKETED BY

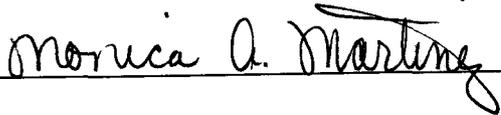
14
2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Copy of the foregoing mailed
this 30th day of April, 2010 to:

Brett P. Ferenchak
Jean L. Kiddoo
BINGHAM MCCUTCHEN, LLP
2020 K Street NW
Washington, DC 20006- 1806

Michael Hallam
LEWIS & ROCA, LLP
40 N. Central Ave., 1 gth Floor
Phoenix, AZ 85004-4429
Attorneys for Zayo Bandwidth, LLC



RESPONSE OF ZAYO BANDWIDTH, LLC TO
STAFF'S FIRST SET OF DATA REQUESTS
DOCKET NO. T-20667A-09-0379

- STF 1.6** Referencing the Company's application, Sections A-11 and A-12, the Company indicates that neither it nor any of its officers, directors, partners or managers have been or are currently the subject of any formal or informal complaint proceedings before any state or federal regulatory commission, administrative agency or law enforcement agency. The Company further states that neither it nor any of its officers, directors, partners or managers have been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.
- a. Please discuss the breach of contract suit filed in Shelby County Chancery Court by the City of Memphis against Zayo.
 - b. Please clarify if this above mentioned breach of contract suit was filed against Zayo Bandwidth, LLC or its parent Company Zayo Group or one the parent Company's other subsidiaries.

- RESPONSE:** (a) Zayo Bandwidth Tennessee, LLC (formerly Memphis Networx, LLC) is the defendant in a lawsuit filed by the City of Memphis in which the City argues that Zayo Bandwidth Tennessee has breached its obligations under the Franchise Agreement. Zayo removed the case filed in Shelby County Chancery Court to the United States District Court for the Western District of Tennessee. The City's claim centers on its contention that it may charge Zayo a 5% of gross revenues franchise fee and may require Zayo to turn over certain of its fiber assets to the City without compensation--based upon City Ordinance 4404. Zayo believes, based upon the prevailing precedent in Tennessee, that the City may only charge a franchise fee which is reasonably related to the franchisee's use of the City's ROW--and neither a percentage of gross revenues fee nor a forced contribution of its assets can be so related. The franchise fee provision in Ordinance 4404 has been litigated by several other parties in Tennessee, notably by Bell South, and the Tennessee Court of Appeals has expressly invalidated the percentage of gross revenue fee provision in Ordinance 4404. Zayo has filed a Motion to Dismiss the City's complaint and a decision is pending.
- (b) The case was filed against Zayo Bandwidth Tennessee, LLC which is a wholly owned subsidiary of Zayo Group, LLC.

RESPONDENT: Christopher P. Yost
General Counsel
Zayo Bandwidth, LLC
901 Front Street, Suite 200
Louisville, CO 80027