

# OPEN MEETING



0000111507

**ORIGINAL**

## MEMORANDUM

RECEIVED

Arizona Corporation Commission

**DOCKETED**

2010 MAY 12 A 9:08

TO: THE COMMISSION

FROM: Utilities Division

MAY 12 2010

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: May 11, 2010



RE: IN THE MATTER OF THE APPLICATION OF AGL NETWORKS, LLC FOR AUTHORITY TO ENCUMBER ASSETS (DOCKET NO. T-20667A-10-0126)

### Introduction

On April 5, 2010, AGL Networks, LLC ("AGLN" or "Applicant"), filed an application with the Arizona Corporation Commission ("Commission") requesting authority to encumber its property through the grant of a security interest in the Applicant's assets in support of a proposed financing arrangement pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 and any regulations deemed applicable. The request and participation of AGLN in the proposed financing arrangements are contingent on AGLN and its parent, AGL Investments, LLC ("Parent"), completing a transaction with Zayo Group, LLC ("Zayo Group" and together with AGLN, the "Parties") whereby Zayo Group will acquire all of Parent's membership interests in AGLN.

### Background

#### **AGL Networks, LLC**

AGLN is a Delaware limited liability company with principal business offices located at Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309. AGLN maintains fiber networks in several metropolitan areas, including Atlanta, Georgia, Charlotte, North Carolina; Kansas City, Missouri; Phoenix, Arizona; and in Richmond and Henrico County, Virginia. AGLN currently provides dark fiber transport services to wireline and wireless carriers as well as enterprise companies, government, health care and educational institutions. AGLN does not currently provide any provisioned telecommunications services. In Arizona, AGLN is authorized to provide competitive private line telecommunications services pursuant to Decision No. 71485 issued by the Commission in Docket No. T-20667A-09-0179 on February 23, 2010.

#### **Zayo Group, LLC**

Zayo Group is a Delaware limited liability company with its principal office located at 901 Front Street, Suite 200, Louisville, CO 80027. Through three business units - Zayo Bandwidth, Zayo Enterprise Services and zColo - Zayo Group provides bandwidth, voice, collocation and interconnection, and managed services to carrier, small business, medium business, large business and government customers. Zayo Group anticipates that, upon

completion of the AGLN-Zayo Transaction, AGLN will represent a fourth business unit, which will primarily provide connectivity and dark-fiber related services. Zayo Group proposes to change AGLN's name to Zayo Fiber Solutions, LLC immediately upon completion of the transaction. Although Zayo Group does not have any subsidiaries or affiliates that currently hold a certificate of convenience and necessity ("CC&N") to provide telecommunications services in Arizona, Zayo Bandwidth, LLC ("ZB"), a subsidiary of Zayo Group, has an application pending for a facilities-based long distance and facilities-based local exchange telecommunications services CC&N, Docket No. T- 20694A-09-0379.

#### The Applicant's Transaction

Zayo Group and its subsidiaries recently completed new company-wide financing arrangements in an aggregate amount of up to \$325 million consisting of (1) \$250 million in senior secured notes and (2) up to \$75 million in revolving credit facilities. Zayo Group and all of its current subsidiaries are borrowers and/or guarantors under the financing arrangements and have pledged substantially all of their assets for the financing arrangement. These financing arrangements require any future subsidiary of Zayo Group, such as AGLN, to become a guarantor and pledge their assets in support of the financing arrangements. As a result, immediately upon completion of the AGLN-Zayo Transaction, AGLN must encumber its property as security for the financing arrangements. The Applicant's pledge of assets will include assets located in Arizona that Applicant is not currently using to provide telecommunications services but that could be used to provide telecommunications services in the future. AGLN states in its application that any customer deposits or prepayments of future telecommunications customers will be excluded from the encumbrance or secured by a bond that is not included in the pledged collateral.

Zayo Group used a portion of the proceeds from the notes to pay off existing term loans and revolving credit facilities, which totaled approximately \$180 million. The remainder of the proceeds from the notes and the proceeds from the new revolving credit facility will be used to fund strategic acquisitions and for other permitted purposes, including working capital, capital expenditures, and other general corporate purposes of Zayo Group and its current and future operating subsidiaries. Zayo Group intends to fund the AGLN-Zayo Transaction with the proceeds of the above referenced notes and cash on hand.

The Parties intend to complete the AGLN-Zayo Transaction within the next ninety (90) days<sup>1</sup>. In order to ensure that the Applicant has the necessary approvals to encumber its property through the pledge of its assets upon completion of the AGLN-Zayo Transaction, and to meet its timeline, AGLN requests expedited review and approval by the Commission no later than the Commission's Open Meeting scheduled for June 22-23, 2010.

---

<sup>1</sup> Approximately July 1, 2010.

Staff's Analysis

AGLN is not yet providing service in Arizona. Accordingly, AGLN does not qualify as a Class A company per Arizona Affiliated Interest Rules, Arizona Administrative Code ("A.A.C.") R12-2-801 to R12-2-806 requiring utilities with greater than \$1 million in jurisdictional revenues to obtain prior approval for a transfer of control transaction.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service.

A pledge of the Applicants' Arizona's assets should not impair the availability of service to customers since the Applicants provide competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, any authorization for encumbrance should provide customer protection for prepayments and deposits.

On May 10, 2010, AGLN provided Staff with an advance copy of its public notice of financing application. The Company intends to publish a notice of its financing application in the Arizona Republic on May 14, 2010.

The Applicants were found to be in good standing and in compliance by the Consumer Service and Compliance Sections of the Commission.

Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission authorize AGLN's request to encumber its Arizona assets as described in its application.

Staff concludes that a pledge of the Applicants' assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants.

Staff further recommends that AGLN notify the Commission through a filing in Docket Control within 30 days of the completion of the AGLN-Zayo Transaction.

THE COMMISSION

May 11, 2010

Page 4

Staff further recommends that AGLN file with Docket Control, as a compliance item in this matter, copies of the loan documents, to the Commission Utilities Staff, within 60 days of the execution of any financing transaction authorized herein.



Steven M. Olea  
Director  
Utilities Division

SMO:AFF:lhм\AV

ORIGINATOR: Armando F. Fimbres

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

**BEFORE THE ARIZONA CORPORATION COMMISSION**

KRISTIN K. MAYES  
Chairman

GARY PIERCE  
Commissioner

PAUL NEWMAN  
Commissioner

SANDRA D. KENNEDY  
Commissioner

BOB STUMP  
Commissioner

IN THE MATTER OF THE APPLICATION )  
OF AGL NETWORKS, LLC FOR )  
AUTHORITY TO ENCUMBER ASSETS )  
 )  
 )  
 )

DOCKET NO. T-20667A-10-0126  
DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
May 26 and 27, 2010  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On April 5, 2010, AGL Networks, LLC ("AGLN" or "Applicant"), filed an application with the Arizona Corporation Commission ("Commission") requesting authority to encumber its property through the grant of a security interest in the Applicant's assets in support of a proposed financing arrangement pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 and any regulations deemed applicable. The request and participation of AGLN in the proposed financing arrangements are contingent on AGLN and its parent, AGL Investments, LLC ("Parent"), completing a transaction with Zayo Group, LLC ("Zayo Group" and together with AGLN, the "Parties") whereby Zayo Group will acquire all of Parent's membership interests in AGLN.

Background of Applicants

2. The Company in its Application represents that:

...

- 1 a. AGLN is a Delaware limited liability company with principal business offices located  
2 at Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309. AGLN maintains fiber  
3 networks in several metropolitan areas, including Atlanta, Georgia; Charlotte, North  
4 Carolina; Kansas City, Missouri; Phoenix, Arizona; and in Richmond and Henrico  
5 County, Virginia. AGLN currently provides dark fiber transport services to wireline  
6 and wireless carriers as well as enterprise companies, government, health care and  
7 educational institutions. AGLN does not currently provide any provisioned  
8 telecommunications services. In Arizona, AGLN is authorized to provide competitive  
9 private line telecommunications services pursuant to Decision No. 71485 issued by  
10 the Commission in Docket No. T-20667A-09-0179 on February 23, 2010.
- 11 b. Zayo Group is a Delaware limited liability company with its principal office located at  
12 901 Front Street, Suite 200, Louisville, CO 80027. Through three business units - Zayo  
13 Bandwidth, Zayo Enterprise Services and zColo - Zayo Group provides bandwidth,  
14 voice, collocation and interconnection, and managed services to carrier, small business,  
15 medium business, large business and government customers. Zayo Group anticipates  
16 that, upon completion of the AGLN-Zayo Transaction, AGLN will represent a fourth  
17 business unit, which primarily provides connectivity and dark-fiber related services.  
18 Zayo Group proposes to change AGLN's name to Zayo Fiber Solutions, LLC  
19 immediately upon completion of the transaction. Although Zayo Group does not have  
20 any subsidiaries or affiliates that currently hold a certificate of convenience and  
21 necessity ("CC&N") to provide telecommunications services in Arizona, Zayo  
22 Bandwidth, LLC ("ZB"), a subsidiary of Zayo Group, has an application pending for a  
23 facilities-based long distance and facilities-based local exchange telecommunications  
24 services CC&N, Docket No. T- 20694A-09-0379.

16 The Applicant's Transaction

- 17 3. The Applicants represent that:
- 18 a. Zayo Group and its subsidiaries recently completed new company-wide financing  
19 arrangements in an aggregate amount of up to \$325 million consisting of (1) \$250  
20 million in senior secured notes and (2) up to \$75 million in revolving credit facilities.  
21 Zayo Group and all of its current subsidiaries are borrowers and/or guarantors under the  
22 financing arrangements and have pledged substantially all of their assets for the  
23 financing arrangement. These financing arrangements require any future subsidiary of  
24 Zayo Group, such as AGLN, to become a guarantor and pledge their assets in support  
25 of the financing arrangements. As a result, immediately upon completion of the  
26 AGLN-Zayo Transaction, AGLN must encumber its property as security for the  
27 financing arrangements. Applicant's pledge of assets will include assets located in  
28 Arizona that Applicant is not currently using to provide telecommunications services  
but that could be used to provide telecommunications services in the future. AGLN  
states in its application that any customer deposits or prepayments of future  
telecommunications customers will be excluded from the encumbrance or secured by a  
bond that is not included in the pledged collateral.
- b. Zayo Group used a portion of the proceeds from the notes to pay off existing term loans  
and revolving credit facilities, which totaled approximately \$180 million. The  
remainder of the proceeds from the notes and the proceeds from the new revolving

1 credit facility will be used to fund strategic acquisitions and for other permitted  
2 purposes, including working capital, capital expenditures, and other general corporate  
3 purposes of Zayo Group and its current and future operating subsidiaries. Zayo Group  
4 intends to fund the AGLN-Zayo Transaction with the proceeds of the above referenced  
5 notes and cash on hand.

- 6 c. The Parties intend to complete the AGLN-Zayo Transaction within the next ninety (90)  
7 days<sup>1</sup>. In order to ensure that Applicant has the necessary approvals to encumber its  
8 property through the pledge of its assets upon completion of the AGLN-Zayo  
9 Transaction, and to meet its timeline, AGLN requests expedited review and approval  
10 by the Commission no later than the Commission's Open Meeting scheduled for June  
11 22-23, 2010.

12 Staff's Analysis & Recommendations

13 4. AGLN is not yet providing service in Arizona. Accordingly, AGLN does not  
14 qualify as a Class A company per Arizona Affiliated Interest Rules, Arizona Administrative Code  
15 ("A.A.C.") R12-2-801 to R12-2-806 requiring utilities with greater than \$1 million in  
16 jurisdictional revenues to obtain prior approval for a transfer of control transaction.

17 5. A.R.S. § 40-285 requires public service corporations to obtain Commission  
18 authorization to encumber certain utility assets. The statute serves to protect captive customers  
19 from a utility's act to dispose of any of its assets that are necessary for the provision of service;  
20 thus, it serves to preempt any service impairment due to disposal of assets essential for providing  
21 service.

22 6. A pledge of the Applicants' Arizona's assets should not impair the availability of  
23 service to customers since the Applicants provide competitive services that are available from  
24 alternative service providers. Customers may still have exposure to losses to the extent they have  
25 prepaid for service or made deposits, therefore, any authorization for encumbrance should provide  
26 customer protection for prepayments and deposits.

27 7. On May 10, 2010, AGLN provided Staff with an advance copy of its public notice  
28 of financing application. The Company intends to publish a notice of its financing application in  
the Arizona Republic on May 14, 2010.

---

<sup>1</sup> Approximately July 1, 2010.



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

ORDER

IT IS THEREFORE ORDERED that the application of AGL Networks, LLC requesting approval to encumber assets as described in Findings of Fact Nos. 3a, 3b, and 3c, as discussed herein, be and hereby is approved.

IT IS FURTHER ORDERED that AGL Networks, LLC is authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that the application of AGL Networks, LLC is subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by AGL Networks, LLC.

IT IS FURTHER ORDERED that copies of executed security documents be filed with the Compliance Section within 60 days of the decision in this matter.

IT IS FURTHER ORDERED that the authorization granted is contingent on AGL Networks, LLC and its parent, AGL Investments, LLC completing a transaction with Zayo Group, LLC whereby Zayo Group, LLC will acquire all of AGL Investments, LLC's membership interests in AGL Networks, LLC.

...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...  
...

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

IT IS FURTHER ORDERED that AGL Networks, LLC shall notify the Commission by filing a notice in this docket within 30 days of the AGL Networks, LLC acquisition by Zayo Group, LLC or within 30 days of a failure to complete the AGL Networks, LLC acquisition by Zayo Group, LLC.

IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:AFF:lhmvAV

1 SERVICE LIST FOR: AGL Networks, LLC  
2 DOCKET NO. T-20667A-10-0126

3 Ms. Jean L. Kiddoo  
4 Mr. Brett P. Ferenchak  
5 Bingham McCutchen LLP  
6 2020 K Street, N.W.  
7 Washington, DC 20006

8 Mr. Scott E. Beer  
9 General Counsel  
10 Zayo Group, LLC  
11 901 Front Street, Suite 200  
12 Louisville, Colorado 80027

13 Mr. Thomas H. Campbell  
14 Mr. Michael T. Hallam  
15 Lewis & Roca LLP  
16 40 North Central Avenue  
17 Phoenix, Arizona 85004

18 Mr. Steven M. Olea  
19 Director, Utilities Division  
20 Arizona Corporation Commission  
21 1200 West Washington Street  
22 Phoenix, Arizona 85007

23 Ms. Janice M. Alward  
24 Chief Counsel, Legal Division  
25 Arizona Corporation Commission  
26 1200 West Washington Street  
27 Phoenix, Arizona 85007  
28