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BEFORE THE ARIZONA CORPORATION COMMISSION

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2 KRISTIN K. MAYES
Chairman
3 GARY PIERCE
Commissioner
4 PAUL NEWMAN
Commissioner
5 SANDRA D. KENNEDY
Commissioner
6 BOB STUMP
Commissioner
7

Arizona Corporation Commission

DOCKETED

JUN - 3 2010

DOCKETED BY NR

8 IN THE MATTER OF THE APPLICATION
9 OF AGL NETWORKS, LLC FOR
10 AUTHORITY TO ENCUMBER ASSETS
11
12

DOCKET NO. T-20667A-10-0126

DECISION NO. 71704

ORDER

13 Open Meeting
14 May 26 and 27, 2010
Phoenix, Arizona

15 BY THE COMMISSION:

16 FINDINGS OF FACT

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

26 Background of Applicants

27 2. The Company in its Application represents that:
28 ...

- 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 days¹. 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.

¹ Approximately July 1, 2010.

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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.

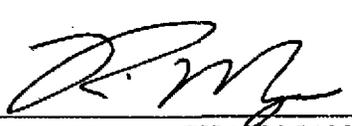
IT IS FURTHER ORDERED that the authorization granted is contingent on AGL Networks, LLC and its parent, AGL Investments, LLC completing a transaction with Zayo Group, LLC whereby Zayo Group, LLC will acquire all of AGL Investments, LLC's membership interests in AGL Networks, LLC.

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

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

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

8 
9 CHAIRMAN


COMMISSIONER

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11 
12 COMMISSIONER


COMMISSIONER


COMMISSIONER

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14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
15 Executive Director of the Arizona Corporation Commission,
16 have hereunto, set my hand and caused the official seal of
17 this Commission to be affixed at the Capitol, in the City of
18 Phoenix, this 3rd day of June, 2010.

19 
20 ERNEST G. JOHNSON
21 EXECUTIVE DIRECTOR

22 DISSENT: _____

23 DISSENT: _____

24 SMO:AFF:ihm\AV

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