

ORIGINAL OPEN MEETING



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MEMORANDUM
Arizona Corporation Commission
DOCKETED

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TO: THE COMMISSION

AUG 10 2010

FROM: Utilities Division

DOCKETED BY	
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AZ CORP COMMISSION
DOCKET CONTROL

DATE: August 10, 2010

RE: ZAYO BANDWIDTH, LLC - APPLICATION FOR AUTHORITY TO ENCUMBER ASSETS (DOCKET NO. T-20694A-10-0076)

Introduction

On March 2, 2010, Zayo Bandwidth, LLC ("Zayo" or "Applicant"), filed an application with the Arizona Corporation Commission ("Commission") requesting approval, to the extent required, to encumber its property through the grant of a security interest in the Applicant's assets, pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285.

Background

Zayo is a Delaware limited liability company whose sole member is Zayo Group, LLC ("Zayo Group"), a Delaware limited liability company.

Commission Decision No. 71781, dated July 12, 2010, granted Zayo a Certificate of Convenience and Necessity to provide facilities-based long distance and facilities-based local exchange telecommunications services in Arizona.

The Applicant is part of Zayo Group's Zayo Bandwidth Business Unit, which provides private line, ethernet, wavelength, dedicated internet access and collocation services to wholesale (e.g., other carriers) and large enterprise customers.¹

Proposed Transaction

The Applicant and certain of Zayo Group's current and future subsidiaries will participate in new company-wide financing arrangements to be obtained in an aggregate amount of up to \$350 million.² Applicant and Zayo Group's other operating subsidiaries will be borrowers and/or guarantors under the debt obligations and pledge substantially all of their assets as security for the new company-wide financing arrangements.

Zayo Group intends to use the proceeds from the notes to pay off its existing term loans and revolving credit facilities, which currently total approximately \$180 million. The remainder

¹ Zayo Bandwidth, LLC application for authority to encumber assets, Docket No. T-20694A-10-0076, page 2.

² The Financing arrangements are expected to include a combination of senior secured notes in an aggregate amount of up to \$275 million and a revolving credit facility in an aggregate amount of up to \$75 million although the exact breakdown in the amounts of the two financing facilities may change.

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 purposes, including working capital, capital expenditures, and other general corporate purposes of Zayo Group and its operating subsidiaries, including the Applicant.

Staff's Analysis

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. Further, Arizona Administrative Code R14-2-804(B) provides that a utility will not, without Commission approval, obtain a financial interest in any affiliate not regulated by the Commission, or guarantee, or assume the liabilities of such affiliate. Under R14-2-804(C), the Commission is to review the transaction to determine if it would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

A pledge of the Applicant's Arizona assets should not impair the availability of service to customers since the Applicant provides competitive services that are available from alternate 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.

The anticipated financings will not alter the rates, terms, conditions or services offered by the Applicant in Arizona.

Public Notice

On April 26, 2010, the Applicant filed an affidavit of publication verifying public notice of its financing application. The Applicant published notice of its financing application in the *Arizona Business Gazette* on April 9, 2010. The *Arizona Business Gazette* is a newspaper of general circulation in the county of Maricopa, Arizona.

Staff's Conclusions and Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Applicant, would not impair its ability to attract capital, nor would it impair the ability of the Applicant to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission authorize the Applicant's request to encumber its Arizona assets in connection with financing arrangements up to \$350 million. Staff further recommends authorizing the Applicant to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

THE COMMISSION

August 10, 2010

Page 3

Staff concludes that a pledge of the Applicant's assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternate 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 Applicant.

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



Steven M. Olea
Director
Utilities Division

SMO:PMC:lh\RM

ORIGINATOR: Pedro M. Chaves

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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 ZAYO BANDWIDTH, LLC FOR
AUTHORITY TO ENCUMBER ASSETS

DOCKET NO. T-20694A-10-0076
DECISION NO. _____
ORDER

Open Meeting
August 24 and 25, 2010
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On March 2, 2010, Zayo Bandwidth, LLC ("Zayo" or "Applicant"), filed an application with the Arizona Corporation Commission ("Commission") requesting approval, to the extent required, to encumber its property through the grant of a security interest in the Applicant's assets, pursuant to Arizona Administrative Code ("A.R.S.") § 40-285.

2. The Applicant seeks approval to encumber Arizona assets as security for up to \$350 million in financing arrangements.

Background of the Applicant

3. Zayo is a Delaware limited liability company whose sole member is Zayo Group, LLC ("Zayo Group"), a Delaware limited liability company.

4. Commission Decision No. 71781, dated July 12, 2010, granted Zayo a Certificate of Convenience and Necessity to provide facilities-based long distance and facilities-based local exchange telecommunications services in Arizona.

...

1 5. The Applicant is part of Zayo Group’s Zayo Bandwidth Business Unit, which
 2 provides private line, ethernet, wavelength, dedicated internet access and collocation services to
 3 wholesale (e.g., other carriers) and large enterprise customers.

4 Proposed Transaction

5 6. The Applicant and certain of Zayo Group’s current and future subsidiaries will
 6 participate in new company-wide financing arrangements to be obtained in an aggregate amount of
 7 up to \$350 million.¹ Applicant and Zayo Group’s other operating subsidiaries will be borrowers
 8 and/or guarantors under the debt obligations and pledge substantially all of their assets as security
 9 for the new company-wide financing arrangements.

10 7. Zayo Group intends to use the proceeds from the notes to pay off its existing term
 11 loans and revolving credit facilities, which currently total approximately \$180 million. The
 12 remainder of the proceeds from the notes and the proceeds from the new revolving credit facility
 13 will be used to fund strategic acquisitions and for other purposes, including working capital,
 14 capital expenditures, and other general corporate purposes of Zayo Group and its operating
 15 subsidiaries, including the Applicant.

16 Analysis & Recommendations

17 8. 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 9. Further, Arizona Administrative Code R14-2-804(B) provides that a utility will not,
 23 without Commission approval, obtain a financial interest in any affiliate not regulated by the
 24 Commission, or guarantee, or assume the liabilities of such affiliate. Under R14-2-804(C), the
 25 Commission is to review the transaction to determine if it would impair the financial status of the
 26

27
 28 ¹ The Financing arrangements are expected to include a combination of senior secured notes in an aggregate amount of up to \$275 million and a revolving credit facility in an aggregate amount of up to \$75 million although the exact breakdown in the amounts of the two financing facilities may change.

1 public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the
2 ability of the public utility to provide safe, reasonable and adequate service.

3 10. A pledge of the Applicant's Arizona assets should not impair the availability of
4 service to customers since the Applicant provides competitive services that are available from
5 alternate service providers. Customers may still have exposure to losses to the extent they have
6 prepaid for service or made deposits; therefore, any authorization for encumbrance should provide
7 customer protection for prepayments and deposits.

8 11. On April 26, 2010, the Applicant filed an affidavit of publication verifying public
9 notice of its financing application. The Applicant published notice of its financing application in
10 the *Arizona Business Gazette* on April 9, 2010. The *Arizona Business Gazette* is a newspaper of
11 general circulation in the county of Maricopa, Arizona.

12 12. Based on its analysis of the proposed transaction, Staff concludes that the
13 transaction would not impair the financial status of the Company, would not impair its ability to
14 attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and
15 adequate service. Staff, therefore, recommends that the Commission authorize the Applicant's
16 request to encumber its Arizona assets in connection with financing arrangements up to \$350
17 million.

18 13. Staff further recommends authorizing the Applicant to engage in any transactions
19 and to execute any documents necessary to effectuate the authorizations granted.

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

26 15. Staff further recommends that Zayo file with the Commission's Docket Control, as
27 a compliance item in this matter, copies of the loan documents, within 60 days of the execution of
28 any financing transaction authorized herein.

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IT IS FURTHER ORDERED that one copy of executed security documents be filed with the Commission's Docket Control within 60 days of the decision in this matter.

IT IS FURTHER ORDERED that this Decision 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:PMC:lh\RM

1 SERVICE LIST FOR: Zayo Bandwidth, LLC
2 DOCKET NO. T-20694A-10-0076

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8 Director, Utilities Division
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