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BEFORE THE ARIZONA CORPORATION

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KRISTIN K. MAYES
Chairman
GARY PIERCE
Commissioner
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner

Arizona Corporation Commission

DOCKETED

SEP -1 2010

DOCKETED BY nr

IN THE MATTER OF THE APPLICATION
OF ZAYO BANDWIDTH, LLC FOR
AUTHORITY TO ENCUMBER ASSETS

DOCKET NO. T-20694A-10-0076

DECISION NO. 71863

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.

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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
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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.

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

3 IT IS FURTHER ORDERED that this Decision become effective immediately.

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

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7 CHAIRMAN

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9 COMMISSIONER

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11 COMMISSIONER

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13 COMMISSIONER

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15 COMMISSIONER

16 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
17 Executive Director of the Arizona Corporation Commission,
18 have hereunto, set my hand and caused the official seal of
19 this Commission to be affixed at the Capitol, in the City of
20 Phoenix, this 31st day of August, 2010.

21 

22 ERNEST G. JOHNSON
23 EXECUTIVE DIRECTOR

24 DISSENT: _____

25 DISSENT: _____

26 SMO:PMC:lh\RM

1 SERVICE LIST FOR: Zayo Bandwidth, LLC
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