

NEW APPLICATION

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

SANDRA D. KENNEDY
Commissioner

FEB 25 2011

BRENDA BURNS
Commissioner

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In the Matter of the Joint Application of :

Zayo Group, LLC :

Zayo Bandwidth, LLC :

and :

Zayo Fiber Solutions, LLC :

T-20782A-11-0097
T-20694A-11-0097
Docket No. T-20667A-11-0097
(Expedited Approval Requested)

For Authority to Complete Certain *Pro* :
Forma Intra-Corporate Transactions :

JOINT APPLICATION FOR AUTHORITY TO COMPLETE CERTAIN *PRO FORMA* INTRA-CORPORATE TRANSACTIONS

Zayo Group, LLC (“Zayo”), Zayo Bandwidth, LLC (“ZB”) and Zayo Fiber Solutions, LLC (“ZFS” and together with Zayo and ZB, the “Applicants”), pursuant to A.R.S. § 40-285(A) and R14-2-1107 and R14-2-1904 *et seq.* of the Arizona Administrative Code, respectfully request authority from the Arizona Corporation Commission (“Commission”), to the extent required, to complete (1) the proposed *pro forma* merger of ZB with and into Zayo, with Zayo surviving the merger (the “ZB Merger”) and (2) the proposed *pro forma* merger of ZFS with and into Zayo, with Zayo surviving the merger (the “ZFS Merger”) (the ZB Merger and ZFS Merger together, the “*Pro Forma* Transactions”). The *Pro Forma* Transactions, along with certain other proposed *pro forma* intra-corporate transactions that will not involve other com-

panies certificated in Arizona, are being undertaken by Applicants to simplify their existing corporate structure. Subject to regulatory approval, Applicants currently propose to complete the intra-corporate transaction as soon as possible after March 31, 2011.

Applicants also request that the certificates of convenience and necessity (“Certificates”) and tariffs of ZB and ZFS be cancelled upon notification by Applicants that the *Pro Forma* Transactions were completed.

In support of this filing, Applicants provide the following information:

I. DESCRIPTION OF THE APPLICANTS

Zayo, ZB and ZFS are Delaware limited liability companies. Zayo, ZB and ZFS currently have their principal business office at 400 Centennial Parkway, Suite 200, Louisville, Colorado 80027. ZB and ZFS are currently wholly owned direct subsidiaries of Zayo. Zayo is a wholly owned direct subsidiary of Zayo Group Holdings, Inc. (“Holdings”), a Delaware corporation which is wholly owned by Communications Infrastructure Investments, LLC (“CII”), a Delaware limited liability company. CII has no majority owner. Pre- and post-*Pro Forma* Transactions corporate organization charts for Applicants are provided as part of Exhibit A.

Upon completion of the *Pro Forma* Transactions, Zayo will begin providing telecommunications service to the customers of ZB and ZFS. Zayo is seeking authorization to provide local exchange and/or facilities-based interexchange telecommunications services in the states where such authority is required to operate the businesses being transferred to it in the *Pro Forma* Transactions, including in Arizona. See Docket No. 11-0024. Additional information regarding Zayo is provided in that Docket and is incorporated by reference herein. Applicants request that this Application be approved concurrently with Zayo’s certification application.

ZB currently provides Private Line, Ethernet, Wavelength, Dedicated Internet Access (“DIA”) and Collocation services to wholesale (e.g., other carriers) and large enterprise customers. In Arizona, ZB is authorized to provide facilities-based local exchange and long distance pursuant to authority granted by Decision No. 71781 issued in Docket No. T-20694A-09-0379 on July 12, 2010. Upon completion of the ZB Merger, this certificate will no longer be necessary and may be cancelled upon notification from Applicants that the *Pro Forma* Transactions were completed.

ZFS currently offers dark fiber and customer network solutions, Private Line, Ethernet, Wavelength, Dedicated Internet Access (“DIA”) and other communication services to wireline and wireless carriers as well as enterprise companies, government, health care and educational institutions. In Arizona, ZFS is authorized to provide competitive private line telecommunications services pursuant to authority granted by Decision No. 71485 issued in Docket No. T-20667A-09-0179 on February 23, 2010. Upon completion of the ZFS Merger, these certificates will no longer be necessary and may be cancelled upon notification from Applicants that the *Pro Forma* Transactions were completed.

Collectively, Zayo and its subsidiaries have five (5) employees in Arizona

II. CONTACTS

Questions or any correspondence, orders, or other materials pertaining to this filing should be directed to the following:

For Applicants:

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III. DESCRIPTION OF *PRO FORMA* INTRA-CORPORATE TRANSACTIONS

As described above, Zayo proposes to complete various proposed *pro forma* intra-corporate transactions including: (1) the merger of ZB with and into Zayo, with Zayo surviving and (2) the merger of ZFS with and into Zayo, with Zayo surviving. The *Pro Forma* Transactions are part of Zayo's effort to simplify its existing corporate structure. Corporate structure charts illustrating the current corporate structure of Applicants and the proposed structure following the *Pro Forma* Transactions are provided as Exhibit A. Applicants request that the Commission grant all authority necessary for Applicants to complete the proposed *Pro Forma* Transactions.¹

¹ Applicants note that ZB and ZFS are authorized to participate in the company-wide financing arrangements of Zayo in an aggregate amount of up to \$450 million, of which an aggregate amount of up to \$425 million has been completed. See Docket Nos. T-20694A-10-0076, T-20694A-10-0295 and T-20667A-10-0295. Zayo also participates in those company-wide financing arrangements as the borrower and by pledging its assets as security under those financing arrangements. Zayo will continue to participate in those financing arrangements, which will not change as a result of the *pro forma* intra-corporate transactions except that the various subsidiaries of Zayo that will be merged into

The proposed *Pro Forma* Transactions will not result in any changes to the services received by customers, including rates, terms and conditions of service. Each of the affected customers will be transferred pursuant to terms of that customer's service contract that permit transfer to affiliates and/or pursuant to the customer's written authorization and affected customers will receive notice of these *pro forma* changes. A sample of the notice that will be sent to customers is provided as **Exhibit B**.

V. **PUBLIC INTEREST CONSIDERATIONS**

Applicants submit that the proposed *Pro Forma* Transactions described herein are in the public interest. The *Pro Forma* Transactions will simplify Zayo's existing corporate structure and reduce its reporting and accounting burdens and provide other operational efficiencies. Furthermore, the *Pro Forma* Transactions will be virtually transparent to customers and will not result in any change in their services. The primary change will be the corporate name of the company providing the affected customer's telecommunications service; since all affected customers are already familiar with the "Zayo" brand, this change will not cause any customer confusion. Therefore, the *Pro Forma* Transaction proposed would not result in customer confusion.

All of Zayo's subsidiaries, including ZB and ZFS, share the same corporate officers and certain other technical, managerial and operational personnel. There will therefore be no material change in the technical, managerial and operational qualifications of the telecommunications provider serving the affected customers.

Zayo or otherwise dissolve will no longer participate in the financing arrangements. To the extent the Commission believes Zayo requires approval to continue participating in its existing financing arrangements in an aggregate amount of up to \$450 million, Zayo seeks that approval in this Joint Application. Additional information regarding the financing arrangements is provided in the Dockets referenced above and is incorporated herein by reference.

VI. REQUEST FOR EXPEDITED REVIEW

Applicants are seeking to complete the proposed *Pro Forma* Transactions as expeditiously as possible in order to realize the benefits of the proposed *Pro Forma* Transactions. Accordingly, Applicants respectfully request that the Commission expedite the processing of this Application and grant the requested authority as soon as possible.

VII. REQUEST FOR WAIVER OF SLAMMING RULES

As noted above, written notice of the Transaction and of the customer base transfer will be provided to ZB's and ZFS's Arizona telecommunications customers via a bill insert provided at least 30 days prior to the *Pro-Forma* Transactions. A sample of the customer notification is attached hereto as **Exhibit B**. Further, as stated above, ZB and ZFS customers will be transferred to Zayo pursuant to terms of that customer's service contract that permit transfer to affiliates and/or pursuant to the customer's written authorization. As such, Applicants do not believe the Slamming Rules apply to the *Pro Forma* Transaction. Nevertheless, Applicants respectfully request, to the extent the Commission believes they are applicable, that the Commission grant a waiver of AAC R14-2-1904 *et seq.* (the "Slamming Rules") and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases provided in Section 64.1120(e).

VIII. REQUEST FOR WAIVER OF DISCONTINUANCE RULES

Applicants respectfully request that the Commission grant a waiver of AAC R14-2-1107, which governs a telecommunications company's discontinuance of competitive local exchange or interexchange services in the state. Applicants do not believe that the discontinuance rule applies to this proceeding because it involves *pro forma* mergers that will not result in

telecommunications services being discontinued to any customer of ZB or ZFS.² Current ZB and ZFS customers will receive at least 30 days notice of the transaction. It would be confusing for customers to *also* receive a notice regarding a ZB or ZFS discontinuance of service for the proposed ZB Merger and/or ZFS Merger or for the planned customer transfer notice to include a discussion regarding a discontinuance since no affected customer will be discontinued as a result of the *Pro-Forma* Transactions. *See* Decision No. 70706 (waiving discontinuance rules in transfer of control case).

In the event that the Commission does not believe that a waiver of the rule in its entirety is appropriate, Applicants respectfully request that the Commission grant a waiver of AAC R14-2-1107(B) which requires a telecommunications company providing competitive local exchange or interexchange service to publish legal notice of an application to discontinue or abandon services in counties affected by the application within 20 days of the Application. As stated herein, Zayo will acquire the customer accounts of ZB and ZFS in the state of Arizona, and those customers will continue to receive high quality telecommunications services at the same rates, terms and conditions as currently provided by ZB and ZFS. Written notice of this transaction and of the customer base transfer will be provided to ZB's and ZFS's Arizona customers via a bill insert at least 30 days prior to the transfer. Published notice to the entire community is therefore unnecessary. The Commission's waiver of R14-2-1107(B) will serve the public interest and Applicants will provide the affected customers with ample notice of the transaction.

² Commission Staff has previously come to this same conclusion. *See* Docket No. T-0376IA-04-0710, Addendum to Staff Report (Dec. 27, 2004) (stating "Staff does not believe that the transfer of certain customers qualifies as a discontinuance of service or an abandonment of any portion of its service area. Therefore, Staff does not believe that AAC RI4-2-1107 applies").

IX. REQUEST TO CANCEL THE CERTIFICATIONS AND ASSOCIATED TARIFFS OF ZB AND ZFS

Following the *Pro Forma* Transactions, ZB and ZFS will no longer exist as corporate entities. Therefore, Applicants request that, upon notification from Applicants that the *Pro Forma* Transaction has been completed, the Commission cancel the Certificates of ZB and ZFS.

X. CONCLUSION

WHEREFORE, for the reasons set forth above, Applicants request the Commission grant all authority necessary for the Applicants to complete the proposed *Pro Forma* Transactions. Applicants also request a waiver of AAC R14-2-1904 et seq. and AAC R14-2-1107(B) and whatever further relief that the Commission deems appropriate to authorize the consummation of the proposed *Pro Forma* Transactions described herein. Finally, Applicants requests that the Certificate and tariffs of ZB and ZFS be cancelled upon notification by Applicants that the *Pro Forma* Transactions were completed.

RESPECTFULLY SUBMITTED this 25th day of February, 2011.

LEWIS AND ROCA LLP



Thomas H. Campbell
Michael T. Hallam
40 North Central Avenue
Phoenix, AZ 85004

Counsel for Applicants

ORIGINAL and thirteen (13) copies
of the foregoing filed this 25th day
of February, 2010 with:

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

Copy of the foregoing mailed this
25th day of February, 2010 to:

Lyn Farmer, Esq.
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Hearing Division
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Janice Alward, Esq.
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Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
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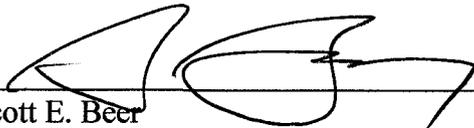
Jayne Williams

STATE OF COLORADO
COUNTY OF BOULDER

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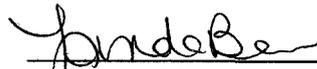
VERIFICATION

I, Scott E. Beer, state that I am the Vice President, General Counsel and Secretary of Zayo Group, LLC and its subsidiaries (collectively, the "Company"); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.



Scott E. Beer
VP, General Counsel & Secretary
Zayo Group, LLC

Sworn and subscribed before me this 31st day of January, 2011.



Notary Public LINDA J. BEER

My commission expires 6-8-2011

EXHIBIT A

Pre- and Post-*Pro Forma* Transactions Corporate Structure Charts

Current Corporate Organization Structure of Zayo Group, LLC

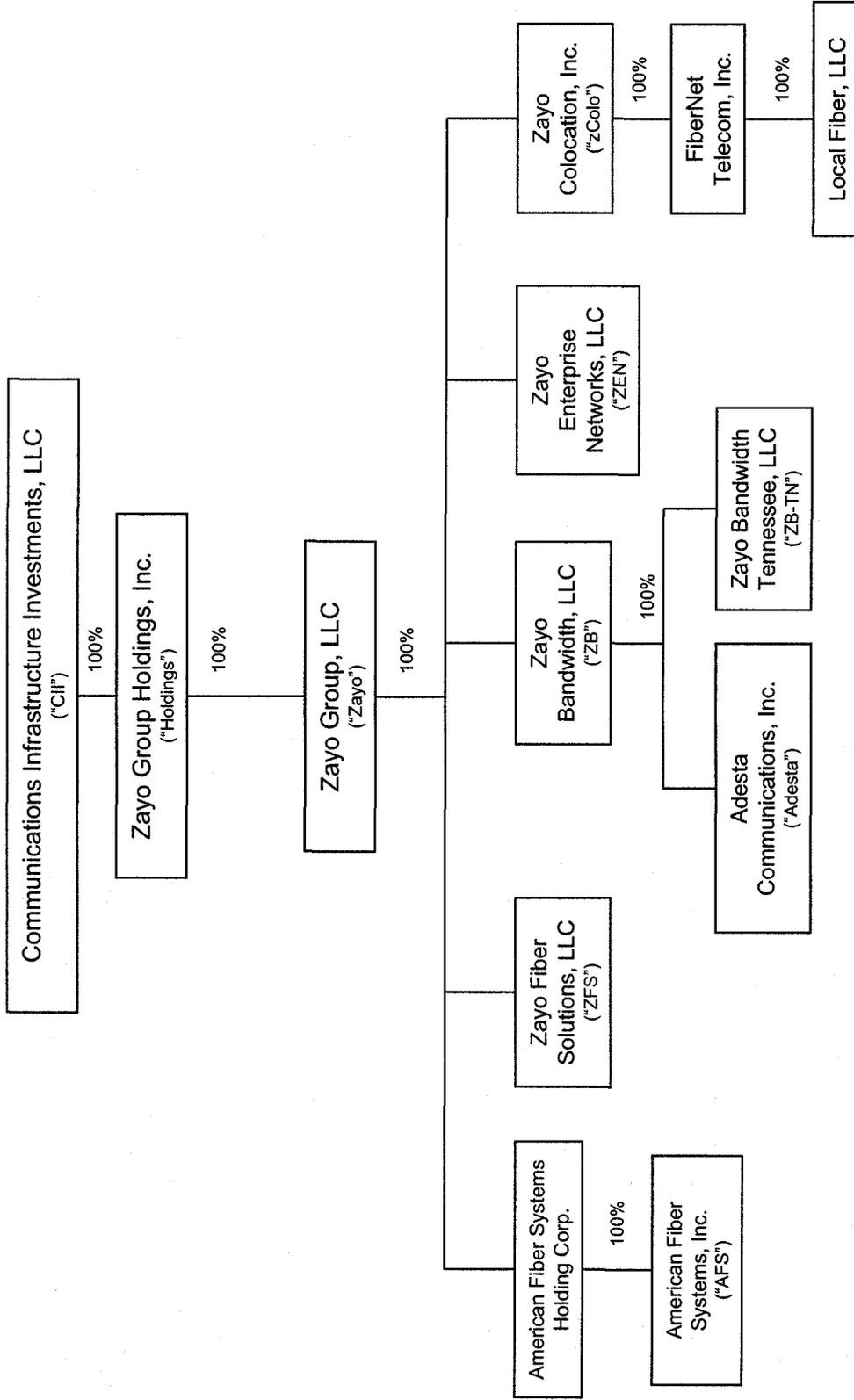
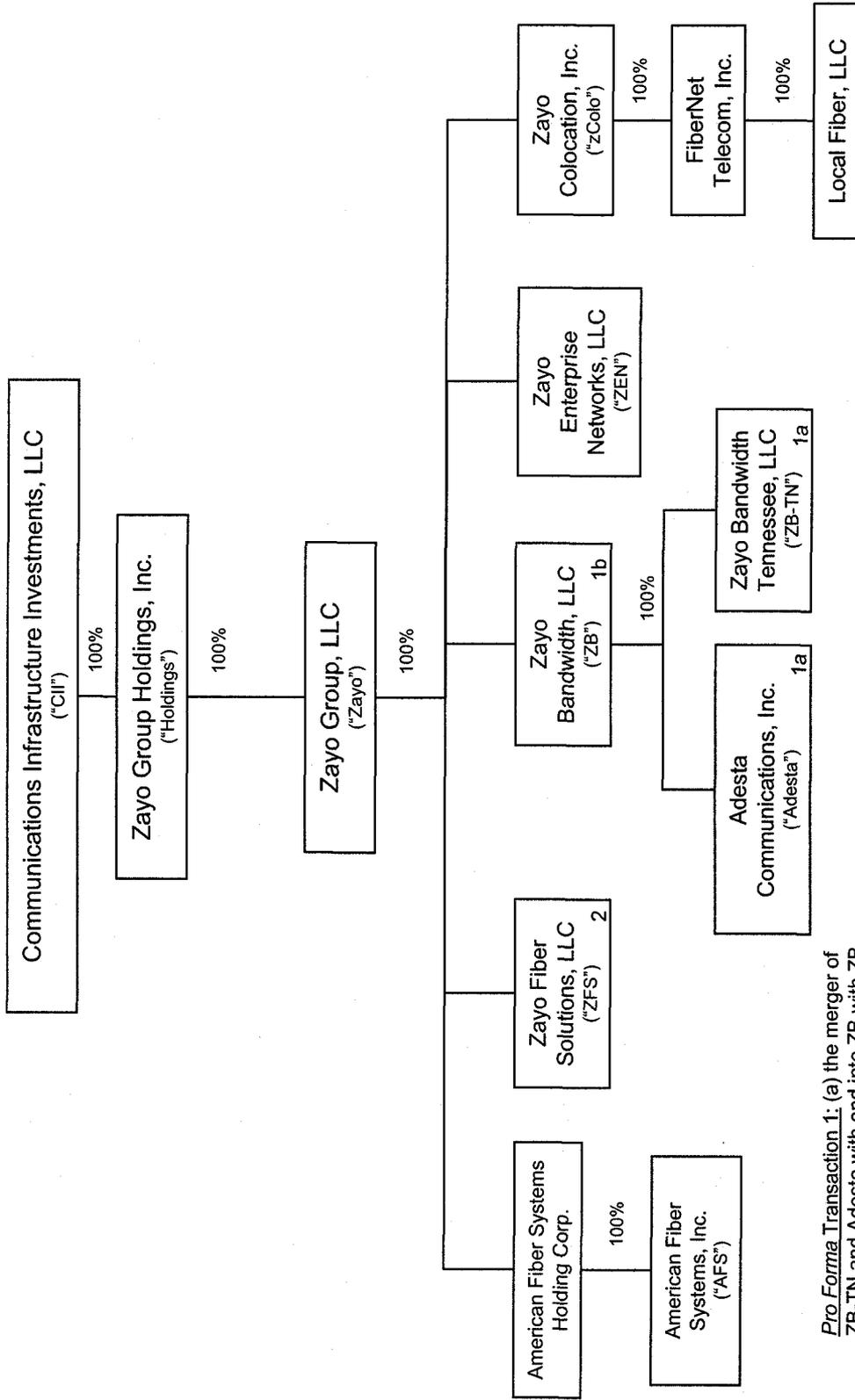


Illustration of Pro Forma Transactions Regarding Zayo Group, LLC



Pro Forma Transaction 1: (a) the merger of ZB-TN and Adesta with and into ZB with ZB surviving and (b) the merger of ZB with and into Zayo with Zayo surviving.

Pro Forma Transaction 2: the merger of ZFS with and into Zayo, with Zayo surviving.

Note: Direct ownership of ZEN will be transferred to an affiliate.

Post-Pro Forma Transactions
Corporate Organization Structure of Zayo Group, LLC

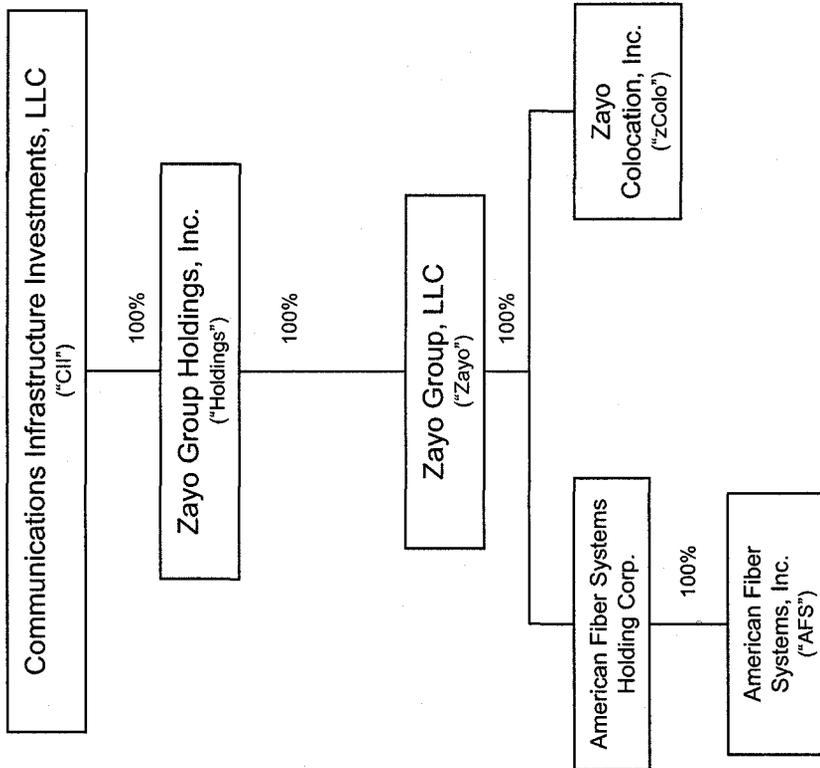


EXHIBIT B

Sample Customer Notice

The applicable affected customers will receive notice of the merger through a bill notation. The notice will be provided to customers in their bill issued at least 30 days prior to the merger. The text of the bill notation will be substantially similar to the following:

On or about [DATE], Zayo Group, LLC will undertake an internal corporate reorganization and consolidation. Thus, the Zayo corporate entity that will provide your telecommunications services will be Zayo Group, LLC. Your services and the associated pricing and terms and conditions of service will not change as a result of this intra-corporate consolidation. There is no charge associated with this change and any preferred carrier freeze you have will remain in place. You will receive a bill from Zayo Group and we will continue to resolve any issues you may have with your account or service using the same customer service number: 1-866-236-2824.

We recognize that you always have a choice in telecommunications carrier and believe that this intra-corporate consolidation will enhance our ability to serve you. Zayo Group looks forward to continuing to provide you with the superior service you are accustomed to receiving and to the opportunity to provide you additional services.