

ORIGINAL
OPEN MEETING



MEMORANDUM
Arizona Corporation Commission
DOCKETED

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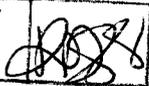
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MAY 10 2011

TO: THE COMMISSION

FROM: Utilities Division

DATE: May 10, 2011

DOCKETED BY 

DOCKET CONTROL

RE: ZAYO GROUP, LLC, ZAYO BANDWIDTH, LLC AND ZAYO FIBER SOLUTIONS, LLC FOR APPROVAL TO COMPLETE CERTAIN PRO FORMA INTRA-CORPORATE TRANSACTIONS (DOCKET NOS. T-20783A-11-0097, T-20694A-11-0097 AND T-20667A-11-0097)

On February 25, 2011, Zayo Group, LLC ("Zayo"), Zayo Bandwidth, LLC ("ZB") and Zayo Fiber Solutions, LLC ("ZFS") (jointly the "Applicants") filed an application requesting the Arizona Corporation Commission's ("Commission") approval to complete a proposed merger of ZB and ZFS with and into Zayo pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285(A), Arizona Administrative Code ("A.A.C." R14-2-1107 and A.A.C. R14-2-1904 *et seq.* The Applicants also request that the Certificates of Convenience and Necessity ("CC&Ns") granted to ZB and ZFS be cancelled upon conclusion of the proposed transaction. Additionally, the Applicants request approval of the proposed transaction concurrent with Commission approval of Zayo's Application for a CC&N in Docket No. T-20783A-11-0024.

Background

Zayo, ZB and ZFS are Delaware limited liability companies with principal business offices at 400 Centennial Parkway, Suite 200, Louisville, Colorado 80027. ZB and ZFS are currently wholly-owned direct subsidiaries of Zayo, a wholly-owned direct subsidiary of Zayo Group Holdings, Inc. ("Holdings"). Holdings is a Delaware corporation wholly-owned by Communications Infrastructure Investments, LLC ("CII"), a Delaware limited liability company.

The Transaction

The Applicants state the proposed transaction is being undertaken to simplify the existing corporate structure as described in Exhibit A of its application. The Applicants state that the proposed transaction will not result in any changes to services received by ZB and ZFS customers in Arizona, including rates, terms and conditions. The Applicants propose to transfer each of the affected customers pursuant to terms of that customer's service contract that permit transfer to affiliates and/or pursuant to the customer's written authorization. Customers will receive written notice of the proposed changes.

Staff's Analysis

ZFS was granted a CC&N in Decision No. 71485, dated February 23, 2010. ZB was granted a CC&N in Decision No. 71781, dated July 12, 2010. As 2010 was their first year of

operation, neither company has filed a Utilities Division Annual Report. In response to Staff's request, ZB and ZFS provided advance copies of their 2010 Utilities Division Annual Reports indicating that neither had local exchange or long distance customers being served at the end of 2010. The Applicants explained to Staff that ZFS currently provides 24 business customers with contractual dark fiber services not regulated by the Commission. In 2011, ZB began providing services to one customer via an individual case basis ("ICB") contract. The Applicants do not serve residence end-users.

The Applicants have provided Staff with a customer notice that will be sent to customers at least 30 days prior to completion of the proposed transition if approved by the Commission. As the customers under contract are few and enterprise¹ in nature, Staff also understands that direct communications will take place with such customers. As stated in the Application and clarified directly with Staff, existing customers will be transferred to Zayo upon receipt of the requested CC&N in Docket No. T-20783A-11-0024.

A.A.C. R14-2-1107(B) requires that "no later than 20 days after the application is filed, the telecommunications company shall publish legal notice of the application in all counties affected by the application." Notice pertaining to this application was published in the *Arizona Republic* on March 28, 2011. The corresponding affidavit of publication was filed by the Applicants in Docket Control on April 6, 2011.

A.A.C. R14-2-1904 *et seq* (commonly known as the "Slamming Rules") were designed to prevent the unauthorized transfer of customers by companies. The Applicants seeking the Commission's approval of a waiver in the proposed transaction is appropriate. Staff notes, however, that ZB and ZFS have very few regulated service customers, and, therefore, Staff does not believe the waiver requested by the Applicants is warranted. Seeking direct approval from the few customers to effectuate the proposed transfer should not be burdensome for the Applicants.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to assign or dispose of a utility's assets as proposed by the merger in this transaction. 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. Staff concludes that the proposed transaction will not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers.

Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of Zayo (the company that will emerge from the proposed transaction and may be granted a CC&N in Docket No. T-20783A-11-0024), would not impair

¹ Business customers with 100 or more local exchange access lines.

THE COMMISSION

May 10, 2011

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its ability to attract capital, nor would it impair the ability of the Zayo to provide safe, reasonable, and adequate service. Staff supports the Applicants' request for a waiver of A.A.C. R14-2-1107(B). Staff does not support the Applicants' request for a waiver of A.A.C. R14-2-1904 *et seq.*

Staff recommends that one copy of executed security documents be filed with Docket Control, as a compliance item in this docket, within 90 days of the decision in this matter. Additionally, Staff recommends that the Commission grant approval of the proposed transaction concurrent with approval of the Application for a CC&N submitted by Zayo in Docket No. T-20783A-11-0024. Staff further recommends approval of the Applications to cancel ZB's and ZFS' CC&Ns. In addition, Staff recommends that the cancellations not become effective until a decision is issued by the Commission in Docket No. T-20783A-11-0024. Upon cancellation of its CC&N, ZB and ZFS will no longer be authorized to provide telecommunications services in Arizona. Therefore, ZB and ZFS will no longer be subject to the requirements of Decision Nos. 71485 and 71781, respectively.



for

Steven M. O'Lea
Director
Utilities Division

SMO:AFF:lhm\RM

ORIGINATOR: Armando F. Fimbres

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BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

IN THE MATTER OF THE APPLICATION)
OF ZAYO GROUP, LLC, ZAYO)
BANDWIDTH, LLC AND ZAYO FIBER)
SOLUTIONS, LLC FOR APPROVAL TO)
COMPLETE CERTAIN PRO FORMA)
INTRA-CORPORATE TRANSACTIONS)

DOCKET NOS. T-20783A-11-0097
T-20694A-11-0097
T-20667A-11-0097

DECISION NO. _____

ORDER

Open Meeting
May 24 and 25, 2011
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On February 25, 2011, Zayo Group, LLC ("Zayo"), Zayo Bandwidth, LLC ("ZB") and Zayo Fiber Solutions, LLC ("ZFS") (jointly the "Applicants") filed an application requesting the Arizona Corporation Commission's ("Commission") approval to complete a proposed merger of ZB and ZFS with and into Zayo pursuant to Arizona Revised Statutes ("A.R.S." § 40-285(A), Arizona Administrative Code ("A.A.C.") R14-2-1107 and A.A.C. R14-2-1904 et seq.

2. The Applicants also request that the Certificates of Convenience and Necessity ("CC&N") granted to ZB and ZFS be cancelled upon conclusion of the proposed transaction. Additionally, the Applicants request approval of the proposed transaction concurrent with Commission approval of Zayo's Application for a CC&N in Docket No. T-20783A-11-0024.

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1 Background

2 3. Zayo, ZB and ZFS are Delaware limited liability companies with principal business
3 offices at 400 Centennial Parkway, Suite 200, Louisville, Colorado 80027. ZB and ZFS are
4 currently wholly-owned direct subsidiaries of Zayo, a wholly-owned direct subsidiary of Zayo
5 Group Holdings, Inc. ("Holdings"). Holdings is a Delaware corporation wholly-owned by
6 Communications Infrastructure Investments, LLC ("CII"), a Delaware limited liability company.

7 The Transaction

8 4. The Applicants state the proposed transaction is being undertaken to simply the
9 existing corporate structure as described in Exhibit A of its application. The Applicants state that
10 the proposed transaction will not result in any changes to services received by ZB and ZFS
11 customers in Arizona, including rates, terms and conditions. The Applicants propose to transfer
12 each of the affected customers pursuant to terms of that customer's service contract that permit
13 transfer to affiliates and/or pursuant to the customer's written authorization. Customers will
14 receive written notice of the proposed changes.

15 Staff's Analysis

16 5. ZFS was granted a CC&N authority in Decision No. 71485 in Docket No.
17 T-20667A-09-0179, dated February 23, 2010. ZB was granted a CC&N authority in Decision
18 No. 71781 in Docket No. T-20694A-09-0379, dated July 12, 2010.

19 6. As 2010 was their first year of operation, neither company has filed a prior Utilities
20 Division Annual Report. In response to Staff's request, ZB and ZFS provided advance copies of
21 their 2010 Utilities Division Annual Reports indicating that neither had local exchange or long
22 distance customers being served at the end of 2010.

23 7. The Applicants explained to Staff that ZFS provides 24 business customers with
24 contractual dark fiber services not regulated by the Commission. In 2011, ZB began providing
25 services to one customer via an individual case basis ("ICB") contract. The Applicants do not
26 serve residence end-users.

27 8. The Applicants have provided Staff with a customer notice that will be sent to
28 customers at least 30 days prior to completion of the proposed transition if approved by the

1 Commission. As the customers under contract are few and enterprise¹ in nature, Staff also
2 understands that direct communications will take place with such customers.

3 9. As stated in the Application and clarified directly with Staff, existing customers
4 will be transferred to Zayo upon receipt of the requested CC&N in Docket No. T-20783A-
5 11-0024.

6 10. A.A.C. R14-2-1107(B) requires that “no later than 20 days after the application is
7 filed, the telecommunications company shall publish legal notice of the application in all counties
8 affected by the application.” Notice pertaining to this application was published in the *Arizona*
9 *Republic* on March 28, 2011. The corresponding affidavit of publication was filed by the
10 Applicants in Docket Control on April 6, 2011.

11 11. A.A.C. R14-2-1904 *et seq* (commonly known as the “Slamming Rules”) were
12 designed to prevent the unauthorized transfer of customers by companies. The Applicants seeking
13 the Commission’s approval for a waiver in the proposed transaction is appropriate.

14 12. Staff notes, however, that ZB and ZFS have very few regulated service customers
15 and, therefore, Staff does not believe the waiver requested by the Applicants is warranted. Seeking
16 direct approval from the few customers to effectuate the proposed transfer should not be
17 burdensome for the Applicants.

18 13. A.R.S. § 40-285 requires public service corporations to obtain Commission
19 authorization to assign or dispose of a utility’s assets as proposed by the merger in this transaction.
20 The statute serves to protect captive customers from a utility’s act to dispose of any of its assets
21 that are necessary for the provision of service; thus, it serves to preempt any service impairment
22 due to disposal of assets essential for providing service.

23 14. Based on its analysis of the proposed transaction, Staff concludes that the
24 transaction would not impair the financial status of Zayo (the company that will emerge from the
25 proposed transaction and may be granted a CC&N in Docket No. T-20783A-11-0024) would not
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¹ Business customers with 100 or more local exchange access lines.

1 impair its ability to attract capital, nor would it impair the ability of the Zayo to provide safe,
2 reasonable, and adequate service.

3 15. Staff supports the Applicants' request for a waiver of A.A.C. R14-2-1107(B). Staff
4 does not support the Applicants' request for a waiver of A.A.C. R14-2-1904 et seq.

5 16. Staff recommends that one copy of executed security documents be filed with
6 Docket Control, as a compliance item in this docket, within 90 days of the decision in this matter.

7 17. Additionally, Staff recommends that the Commission grant approval of the
8 proposed transaction concurrent with approval of the Application for a CC&N submitted by Zayo
9 in Docket No. T-20783A-11-0024.

10 18. Staff further recommends approval of the Applications to cancel ZB's and ZFS'
11 CC&Ns. In addition, Staff recommends that the cancellations not become effective until a
12 decision is issued by the Commission in Docket No. T-20783A-11-0024. Upon cancellation of its
13 CC&N, ZB and ZFS will no longer be subject to the requirements of Decision Nos. 71485 and
14 71781, respectively.

15 CONCLUSIONS OF LAW

16 1. Zayo Group, LLC, Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC are
17 public service corporations within the meaning of Article XV of the Arizona Constitution and
18 A.R.S. § 40-285.

19 2. The Commission has jurisdiction over Zayo Group, LLC, Zayo Bandwidth, LLC
20 and Zayo Fiber Solutions, LLC and the subject matter in this filing.

21 3. The Commission, having reviewed the filing and Staff's Memorandum dated
22 May 10, 2011 concludes that it is in the public interest to grant approval as proposed and discussed
23 herein.

24 ORDER

25 IT IS FURTHER ORDERED that Zayo Group, LLC, Zayo Bandwidth, LLC and Zayo
26 Fiber Solutions, LLC be authorized to engage in any transactions and to execute any documents
27 necessary to effectuate the authorizations granted.

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IT IS FURTHER ORDERED that the application of Zayo Group, LLC, Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC be and, is hereby, granted concurrent with the granting of Commission approval of the Application for a CC&N submitted by Zayo Group, LLC in Docket No. T-20783A-11-0024.

IT IS FURTHER ORDERED that the certificates of convenience granted to Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC be cancelled concurrent with the approval of the Application for a CC&N submitted by Zayo Group, LLC in Docket No. T-20783A-11-0024.

IT IS FURTHER ORDERED that copies of executed security documents shall be filed with the Compliance Section within 90 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 _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:AFF:lh\RM

1 SERVICE LIST FOR: Zayo Group, LLC, Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC
2 DOCKET NOS. T-20783A-11-0097, T-20694A-11-0097 and T-20667A-11-0097

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