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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

AUG 24 2011

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

DOCKETED BY *nr*

IN THE MATTER OF THE APPLICATION OF ZAYO GROUP, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE AND RESOLD AND FACILITIES-BASED INTRALATA AND INTERLATA PRIVATE LINE TELECOMMUNICATION SERVICES IN ARIZONA.

DOCKET NO. T-20783A-11-0024

DECISION NO. 72561

OPINION AND ORDER

DATE OF HEARING: July 6, 2011
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Michael Hallam, LEWIS AND ROCA, LLP, on behalf of Applicant; and
Ms. Ayesha Vohra, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On January 24, 2011, Zayo Group, LLC ("Zayo" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for approval of a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based local exchange and resold and facilities-based intraLATA and interLATA private line telecommunication services in Arizona. The Company's application also requests a determination that its proposed services are competitive in Arizona.

On March 15, 2011, Zayo filed an amended tariff.

On April 29, 2011, the Commission's Utilities Division ("Staff") filed a Staff Report recommending approval of Zayo's application, subject to certain conditions.

1 On May 2, 2011, Zayo filed a Request for Expedited Hearing (“Request”) stating that
2 expedited approval of its application would allow the Company to proceed with a merger transaction
3 filed in a separate docket with the Commission.¹ Zayo contended that the merger approvals in all
4 other states would be finalized by mid-May and that an expedited hearing in this matter was
5 necessary to complete the merger transactions.

6 On May 13, 2011, by Procedural Order, a hearing on the application was scheduled for July 6,
7 2011, other procedural deadlines were established, and Zayo’s Request was denied.

8 On June 6, 2011, Zayo filed an Affidavit of Publication stating that public notice of the
9 Company’s application had been published in *The Arizona Republic*, a newspaper of general circulation,
10 on May 26, 2011.

11 On July 1, 2011, Zayo filed its initial tariff.

12 On July 6, 2011, the hearing was held as scheduled. Zayo and Staff appeared through counsel
13 and presented testimony and evidence. No members of the public were present to give public
14 comment.

15 At the conclusion of the hearing, the matter was taken under advisement pending submission
16 of a Recommended Opinion and Order to the Commission.

17 * * * * *

18 Having considered the entire record herein and being fully advised in the premises, the
19 Commission finds, concludes, and orders that:

20 **FINDINGS OF FACT**

- 21 1. Zayo is a Delaware limited liability corporation, headquartered in Louisville,
22 Colorado.²
- 23 2. Communications Infrastructure Investments, LLC is the ultimate parent of Zayo.³
- 24 3. Zayo is a wholly-owned subsidiary of Zayo Group Holding, Inc, a Delaware
25 corporation, wholly owned by Communications Infrastructure Investments, LLC.⁴

27 ¹ Docket No. T-20783A-11-0097.
² Application at A-8.
³ Application at Exhibit A.
28 ⁴ Id.

1 4. Zayo is the direct parent of three subsidiaries authorized to transact business in
2 Arizona. The three subsidiaries include Zayo Bandwidth, LLC (“Zayo Bandwidth”),⁵ Zayo Fiber
3 Solutions, LLC (“Zayo Fiber”),⁶ and American Fiber Systems, Inc. (“American Fiber”)⁷

4 5. On January 24, 2011, Zayo filed an application with the Commission requesting
5 statewide authority to provide local exchange and private line services to business customers. Zayo’s
6 application also requests a determination that its proposed services are competitive in Arizona.

7 6. Notice of the application was given in accordance with the law.

8 7. Staff recommends that the Commission approve Zayo’s application for a CC&N to
9 provide telecommunication services in Arizona.

10 8. Staff further recommends that:

- 11 a. Zayo comply with all Commission Rules, Orders, and other requirements
12 relevant to the provision of intrastate telecommunications services;
- 13 b. Zayo abide by the quality of service standards that were approved by the
14 Commission for Qwest in Docket No. T-01051B-93-0183;
- 15 c. Zayo be prohibited from barring access to alternative local exchange service
16 providers who wish to serve areas where Zayo is the only local provider of
17 local exchange service facilities;
- 18 d. Zayo notify the Commission immediately upon changes to Zayo’s name,
19 address or telephone number;
- 20 e. Zayo cooperate with Commission investigations including, but not limited to
21 customer complaints;
- 22 f. The rates proposed by Staff are for competitive services. In general, rates for
23 competitive services are not set according to rate of return regulation. Staff
24 obtained information from Zayo indicating that its net book value or fair value
25 rate base at the end of 12 months of operation would be \$22,500,000. Additionally, Zayo provided a revenue projection of \$100,000 for its first 12-months of operations. Staff has reviewed the rates to be charged by the Company and believes they are just and reasonable as they are comparable to other providers offering service in Arizona. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in Staff’s analysis;

26 ⁵ Zayo Bandwidth, LLC is authorized to provide facilities-based local exchange and long distance telecommunication services pursuant to Decision No. 71781 (July 12, 2010).

27 ⁶ Zayo Fiber Solutions, LLC is authorized to provide competitive private line telecommunication services in Arizona pursuant to Decision No. 71485 (February 23, 2010).

28 ⁷ American Fiber Systems, Inc. is authorized to provide competitive facilities-based, resold local exchange, resold interexchange, and access telecommunication services in Arizona pursuant to Decision No. 63936 (August 6, 2001).

- 1 g. Zayo offer Caller ID with the capability to toggle between blocking and
2 unblocking the transmission of the telephone number at no charge;
- 3 h. Zayo offer Last Call Return service that will not return calls to telephone
4 numbers that have the privacy indicator activated; and
- 5 i. The Commission authorizes Zayo to discount its rates and service charges to
6 the marginal cost of providing the services.

7 9. Staff recommends that Zayo's CC&N be considered null and void after due process if

8 Zayo fails to comply with the following conditions:

- 9 a. Zayo shall docket a conforming tariff for each of its proposed services within
10 365 days from the date of a Decision in this matter, or 30 days prior to
11 providing service, whichever comes first. The tariffs submitted shall coincide
12 with the application.
- 13 b. Zayo shall:
- 14 i. Procure either a performance bond or irrevocable sight draft letter of
15 credit ("ISDLC") equal to \$100,000. The minimum performance bond
16 or ISDLC of \$100,000 should be increased if at any time it would be
17 insufficient to cover advances, deposits, and/or prepayments collected
18 from Telesphere's customers. The performance bond or ISDLC should
19 be increased in increments of \$50,000. This increase should occur
20 when the total amount of advances, deposits, and/or prepayments is
21 within \$10,000 of the total performance bond or ISDLC amount; and
- 22 ii. File the original performance bond or ISDLC with the Commission's
23 Business Office and copies of the performance bond or ISDLC with
24 Docket Control, as a compliance item in this docket, within 90 days of
25 the effective date of the Decision in this matter or 10 days before the
26 first customer is served, whichever comes first. The original
27 performance bond or ISDLC must remain in effect until further order of
28 the Commission. The Commission may draw on the performance bond
or ISDLC, on behalf of, and for the sole benefit of the Company's
customers, if the Commission finds, in its discretion, that the Company
is default of its obligations arising from its Certificate. The
Commission may use the performance bond or ISDLC funds, as
appropriate, to protect the Company's customers and the public interest
and take any and all actions the Commission deems necessary, in its
discretion, including, but not limited to returning prepayments or
deposits collected from the Company's customers.
- iii. Zayo shall notify the Commission through a compliance filing within
30 days of the commencement of service to end-user customers; and
- c. Zayo shall abide by the Commission adopted rules that address Universal
Service in Arizona, which indicates that all telecommunications service
providers that interconnect into the public switched network shall provide
funding for the Arizona Universal Service fund. Zayo should make the
necessary monthly payments required under by A.A.C. R14-2-1204(B).

1 10. Staff further recommends that approval of the application be conditioned on the following:

- 2 a. That Zayo's application be approved based upon its representation to the
3 Commission that Zayo will be providing local exchange service directly to
4 end-users in Arizona. Should Zayo not provide service directly to end-user
 customers, it shall notify the Commission and file for cancellation of its
 CC&N.

5 11. At hearing Zayo's witness testified that Zayo agrees to comply with all of Staff's
6 recommendations.⁸

7 **Technical Capability**

8 12. Zayo is currently authorized to provide telecommunication services in 29 states.⁹
9 Zayo's above-captioned application seeks a CC&N to provide provide local exchange and private
10 line telecommunication services that are currently being provided by Zayo's Arizona subsidiaries
11 Zayo Bandwidth and Zayo Fiber, upon completion of an intra-corporate consolidation.¹⁰

12 13. In a separate docket, Zayo, Zayo Bandwidth, and Zayo Fiber filed a joint application
13 with the Commission requesting approval to complete the proposed merger of Zayo Bandwidth and
14 Zayo Fiber with and into Zayo.¹¹ Upon completion of the merger, the CC&Ns of Zayo Bandwidth
15 and Zayo Fiber would be cancelled. Under the merger proposal, Zayo Bandwidth and Zayo Fiber
16 were to transfer each of its affected customers to Zayo pursuant to the terms of that customer's
17 service contracts.¹²

18 14. On May 27, 2011, the Commission issued Decision No. 72393 approving the merger
19 transaction between Zayo and its subsidiaries.

20 15. Currently, Zayo's subsidiaries are authorized to provide telecommunication services in
21 the District of Columbia and the following states: Arizona, California, Colorado, Delaware, Georgia,
22 Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nevada, New
23 Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia,
24 Washington, and West Virginia.¹³

26 ⁸ Associate General Counsel, Peter Chevalier testified on behalf of Zayo. Tr. at 11.

27 ⁹ Tr. at 8.

27 ¹⁰ Id.

27 ¹¹ See, Application filed in Docket T-20783A-11-0097 et. al.

28 ¹² Id.

28 ¹³ Application at A-18.

1 16. According to Staff, many of the officers of Zayo are the same officers currently
2 providing management oversight to Zayo Bandwidth, Zayo Fiber, and American Fiber.¹⁴ The top
3 officers for Zayo and its subsidiaries have a combined total of more than 60 years in the
4 telecommunication industry.¹⁵

5 17. Zayo currently has four employees in Arizona and anticipates adding two or more in
6 the future.¹⁶

7 18. Zayo's witness stated that Zayo has three national call centers located in Tulsa,
8 Oklahoma, Minneapolis, Minnesota, and Denver, Colorado and that Arizona customers will access
9 one of the call centers by dialing a 1-800.¹⁷

10 19. Based on the above information, Staff concluded that Zayo has the technical capability
11 to provide its proposed services in Arizona.

12 **Financial Capabilities**

13 20. Zayo provided audited consolidated financial statements for Zayo and its subsidiaries
14 for the years ending June 30, 2008; June 30, 2009; and June 30, 2010.¹⁸ As of June 30, 2010, Zayo
15 reported Total Assets of \$564,381,000; Shareholder Equity of \$213,136,000; and Net Income of
16 \$461,000.¹⁹

17 21. Zayo's application states that it will rely on its on financial resources to provide its
18 proposed services in Arizona.²⁰

19 22. Zayo's proposed tariff states that under certain conditions it may require customers to
20 make advance payments.²¹ Based on the information contained in Zayo's proposed tariff, Staff
21 recommends that Zayo procure a performance bond or ISDLC in the amount of \$100,000.²² Staff
22 also recommends that if Zayo, at some future date, desires to discontinue the services it is requesting
23 to provide that Zayo file an application pursuant to A.A.C. R14-2-1107 to do so.²³

24 _____
¹⁴ Staff Report at 2.

25 ¹⁵ Application at Exhibit B.

26 ¹⁶ Tr. at 13.

27 ¹⁷ Tr. at 14.

28 ¹⁸ Application at Attachment D.

¹⁹ Id.

²⁰ Application at B-3.

²¹ Applicant Tariff No. 1, Section 2.6.

²² Staff Report at 3.

²³ Staff Report at 3.

1 **Rates and Charges**

2 23. Zayo will be competing with other incumbent local exchange carriers (“ILECs”) and
3 various other competitive local exchange carriers (“CLECs”), and interexchange carriers (“IXCs”) in
4 Arizona in order to gain new customers.²⁴

5 24. Staff reviewed Zayo’s proposed tariff and concluded that Zayo’s proposed rates are
6 comparable to other competitive local carrier and local incumbent carriers operating in Arizona.²⁵
7 Therefore, given the competitive environment in which Zayo will be providing service, Staff believes
8 Zayo will not be able to exert any market power and competitive process will result in rates that are
9 just and reasonable.²⁶

10 25. With the filing of this application, Zayo requests a determination that its proposed
11 rates are for competitive services. In anticipation of Commission approval of proposed merger, Zayo
12 projects that its net book value at the end of twelve months of operations will be \$22,500,000 in
13 Arizona jurisdictional assets.²⁷ Further, Zayo anticipates projected revenues of \$100,000 during the
14 same time period.²⁸

15 26. Based on Staff’s review of Zayo’s proposed rates; the competitive environment Zayo
16 will be providing its proposed services; and consideration of Zayo’s FVRB, Staff does not believe
17 Zayo’s FVRB should be given substantial weight in this analysis.²⁹

18 **Local Exchange Carrier Specific Issues**

19 27. Staff recommends that pursuant to A.A.C. R14-2-1308(A) and federal laws and rules,
20 Zayo should make number portability available to facilitate the ability of customers to switch
21 between authorized local carriers within a given wire center without changing their telephone number
22 and without impairment to quality, functionality, reliability, or convenience of use.³⁰

23 28. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that
24 interconnect into a public switched network shall provide funding for the Arizona Universal Service
25

26 ²⁴ Staff Report at 4.

²⁵ Id.

²⁶ Id.

27 ²⁷ Application at B-3.

²⁸ Application at B-4.

28 ²⁹ Staff Report at 4.

³⁰ Staff Report at 5.

1 Fund ("AUSF"). Staff recommends that Zayo contribute to the AUSF as required by the A.A.C. and
 2 that Zayo make the necessary monthly payments as required under A.A.C. R14-2-1204(B).³¹

3 29. In Commission Decision No. 59421 (December 20, 1995) the Commission approved
 4 quality of service standards for Qwest which imposed penalties for unsatisfactory levels of service.
 5 In this matter, Zayo does not have similar history of service quality problems, and therefore Staff
 6 recommends that the penalties outlined in the Qwest Decision not apply to Zayo at this time.³²

7 30. In areas where Zayo is the only local exchange service provider, Staff recommends
 8 that Zayo be prohibited from barring access to alternative local exchange service providers who wish
 9 to serve the area.³³

10 31. Zayo will provide all customers with 911 and E911 service where available, or will
 11 coordinate with ILECs and emergency service providers to facilitate the service.³⁴

12 32. Pursuant to prior Commission Decisions, Zayo may offer customers local signaling
 13 services such as Caller ID and Call Blocking, so long as the customer is able to block and unblock
 14 each individual call at no additional cost.³⁵

15 Complaint Information

16 33. The Commission's Consumer Services Section reports that there is no complaint
 17 history for Zayo in Arizona.

18 34. Staff states that no pending or past formal or informal complaints and no civil or
 19 criminal proceedings have been filed involving Zayo.

20 35. Zayo states that none of its officers, directors, or partners has been involved in any
 21 civil or criminal investigations, or any formal or informal complaints.³⁶ Zayo also states that none of
 22 its officers, directors, or partners has been convicted of any criminal acts in the past ten years.³⁷

23 36. Staff's review of the Company did not reveal any issues related to its top officers.³⁸

24 ...

25 ³¹ Staff Report at 5.

26 ³² Id.

26 ³³ Staff Report at 6.

27 ³⁴ Id.

27 ³⁵ Id.

27 ³⁶ Application at A-11.

28 ³⁷ Application at A-12.

28 ³⁸ Staff Report at 6.

1 **Competitive Analysis**

2 37. Staff recommends approval of Zayo’s proposed services as competitive.

3 38. Based on Staff’s analysis that Zayo will have to convince customers to purchase its
4 services; Zayo will be unable to adversely affect the competitive environment in which it will be
5 operating; and the numerous alternative providers available to provide the proposed services, Zayo’s
6 proposed services should be classified as competitive.

7 39. Staff’s recommendations are reasonable and should be adopted.

8 **CONCLUSIONS OF LAW**

9 1. Zayo Group, LLC is a public service corporation within the meaning of Article XV of
10 the Arizona Constitution, A.R.S. § 40-281 and 40-285.

11 2. The Commission has jurisdiction over Zayo Group, LLC and the subject matter of the
12 application.

13 3. Notice of the application was given in accordance with the law.

14 4. A.R.S. §§ 40-282 allows a telecommunication company to file an application for a
15 CC&N to provide competitive telecommunication services.

16 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
17 Statutes, it is in the public interest for Zayo Group, LLC to provide the telecommunication services
18 set forth in its application.

19 6. The telecommunication services Zayo Group, LLC proposes to provide are
20 competitive within Arizona.

21 7. Staff’s recommendations are reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the application of Zayo Group, LLC, for a Certificate of Convenience and Necessity to provide facilities-based local exchange and resold and facilities-based intraLATA and interLATA private line telecommunication services in Arizona, is hereby conditionally approved, subject to the conditions set forth in Findings of Fact Nos. 8, 9, and 10.

IT IS FURTHER ORDERED that if Zayo Telecom, LLC, fails to comply with the Staff conditions described in Findings of Fact No. 9, the Certificate of Convenience and Necessity granted herein shall be considered null and void after due process.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN

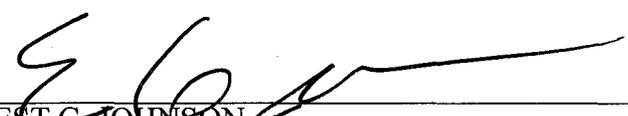
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COMM. STUMP


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 the Commission to be affixed at the Capitol, in the City of Phoenix, this 24th day of August, 2011.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:db

1 SERVICE LIST FOR:

ZAYO GROUP, LLC

2 DOCKET NO.:

T-20783A-11-0024

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