

ORIGINAL
OPEN MEETING



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MEMORANDUM
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Arizona Corporation Commission

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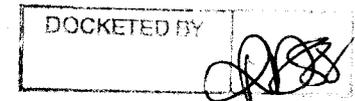
TO: THE COMMISSION

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NOV 16 2011

FROM: Utilities Division

AZ CORP COMMISSION
DOCKET CONTROL



DATE: November 16, 2011

RE: ZAYO GROUP, LLC FOR APPROVAL OF A FINANCING ORDER
AUTHORIZING VARIOUS FINANCING TRANSACTIONS (DOCKET NO.
T-20783A-11-0371)

Introduction

On October 11, 2011, Zayo Group, LLC ("Zayo" or "Applicant") filed an application seeking approval from the Arizona Corporation Commission ("ACC" or "Commission") pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 for Zayo to encumber its assets in Arizona. The proposed transaction is in connection with certain financing arrangements of Zayo being undertaken in conjunction with the proposed acquisition of 360networks holdings (USA) inc. ("360-Holdings") and its subsidiaries, including 360networks (USA) inc. ("360networks" and together with 360-Holdings and Zayo, the "Parties")), by Zayo. In order to consummate the proposed transactions in the fourth quarter of this year, Zayo requested that the Commission consider this matter no later than December 8, 2011.

Background

Zayo Group, LLC

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

Zayo is a provider of bandwidth infrastructure and interconnection services over regional and metropolitan fiber networks, enabling its customers to manage, operate, and scale their telecommunications and data networks. Zayo's services are primarily used by wireless service providers, national and regional carriers and other communications service providers, media and content companies, and certain bandwidth-intensive enterprises.

Zayo's fiber networks span over 24,000 route miles, serve 153 geographic markets in the District of Columbia and 31 states, including Arizona, and connect to over 4,300 buildings, including approximately 1,978 cellular towers. These networks allow Zayo to provide bandwidth infrastructure services to customers over redundant fiber facilities between key

customer locations. The majority of the markets that Zayo serves have few other networks capable of providing similar bandwidth infrastructure services.

In Arizona, Zayo is authorized to provide facilities-based local exchange and resold and facilities-based intraLATA and interLATA private line services pursuant to Decision No. 72561.

360networks holdings (USA) inc. and 360networks (USA) inc.

360-Holdings is a Nevada corporation and indirect subsidiary of 360networks Corporation (“360-Parent”), a corporation organized under the laws of British Columbia with principal offices located at 2101 Fourth Avenue, Suite 2000, Seattle, Washington 98121. 360networks is a Nevada corporation and a wholly-owned direct subsidiary of 360-Holdings.

360networks is 360-Holdings’ operating subsidiary that provides regulated telecommunications services. 360networks provides Private Line Transport, Ethernet, and IP Transit services to telecommunications providers and end users. 360networks’ facilities-based fiber optic backbone provides coverage spanning 18,000 route miles covering 22 states and British Columbia. 360networks also provides wholesale Voice over Internet Protocol (“VoIP”) services and switched access services in 17 states, including Arizona.

360networks is authorized to provide local exchange and interexchange services in 36 states. In Arizona, 360networks is authorized to provide local exchange switched access services and interexchange telecommunications services pursuant to Decision Nos. 69240 and 62710, respectively.

The Proposed Transaction

The Applicant represents the following in its application:

Pursuant to the terms of an October 6, 2011 stock purchase agreement, Zayo will acquire all of the outstanding shares of 360-Holdings. As a result of the acquisition, 360-Holdings will become a direct subsidiary of Zayo. 360networks will remain a direct subsidiary of 360-Holdings and, therefore, will become an indirect subsidiary of Zayo. In order to fund the acquisition, Zayo plans to incur up to \$355 million in additional indebtedness. Zayo is currently negotiating the terms of the proposed financing.

While Zayo expects that the proposed financing will consist of short-term and long-term term loans, in order to maintain flexibility, Zayo seeks approval for indebtedness in the form of secured or unsecured notes or debentures (including notes convertible into equity and private notes that may be exchanged for public notes); conventional credit facilities, such as revolving credit facilities (which can be re-borrowed during the term of the commitment) and term loans; letters of credit; and bridge loans; or a combination thereof.

While Zayo expects any long-term indebtedness incurred as part of the proposed financing to mature approximately five (5) years following the closing of the acquisition of 360networks, in order to maintain flexibility, Zayo seeks approval for indebtedness that will mature up to eight (8) years after issuance following the 360 Transaction.

Any interest rate for the proposed financing will likely be the market rate for similar financings and will not be determined until the financing is finalized. Zayo currently expects the proposed financing to accrue interest at a floating rate consisting of LIBOR¹ or a prime rate plus an agreed margin. In order to maintain flexibility, however, Zayo seeks approval for indebtedness that, depending on the type of debt securities, facility(ies) or other arrangements, accrues interest at rate(s) that may be fixed (typically set at signing or closing based on then current market conditions) or floating (consisting of a base rate, which will float with a rate index such as LIBOR or Federal Funds Rate, plus an applicable margin), or a combination of fixed rates and floating rates.

Some and perhaps all of the proposed financing is expected to be secured by a security interest in the assets of Zayo and its current and future subsidiaries. The stock of Zayo and its subsidiaries may also be pledged as additional security. Additionally, it is expected that Zayo's current and future subsidiaries will provide a guaranty as security for the proposed financing.

Zayo states that the proposed transactions will serve the public interest in promoting competition among telecommunications carriers by providing the Parties with access to greater financial resources that will allow them to combine their operations and thereby become more effective competitors. The proposed transactions are believed by Zayo to result in combined companies with greater market depth and breadth. The financing arrangements will be transparent to customers and will not disrupt service or cause customer confusion or inconvenience.

Staff's Analysis and Conclusions

Zayo and 360networks are not investor-owned Class A utilities as defined by R14-2-801 of the Commission's Public Utility Holding Companies and Affiliated Interest rules. As such, no approval is required for the indirect transfer of control of 360networks resulting from the acquisition of 360-Holdings by Zayo.

In discussion with Staff, Zayo confirmed that prepaid customer funds and/or deposits will not be encumbered as part of the security for the proposed financing. Zayo published notice of

¹ The London InterBank Offer Rate or LIBOR is the interest rate that banks charge each other for loans. This rate is applicable to the short-term international interbank market, and applies to very large loans borrowed for anywhere from one day to five years. This market allows banks with liquidity requirements to borrow quickly from other banks with surpluses, enabling banks to avoid holding excessively large amounts of their asset base as liquid assets. The LIBOR is officially fixed once a day by a small group of large London banks (the British Bankers Association), but the rate changes throughout the day., source: www.investorwords.com & www.investopedia.com

its financing application in the Arizona Republic on September 18, 2011. The corresponding affidavit was filed in Docket Control on October 31, 2011.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to “sell, lease, assign, mortgage or otherwise dispose of or 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.

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Additionally, 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 alternative service providers.

Staff states for the Commission’s consideration that Zayo violated Decision No. 72393.² In Decision No. 72393, dated May 27, 2011, the Commission approved the proposed Zayo Group, LLC, Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC reorganization concurrent with its approval of an Application for a CC&N submitted by Zayo Group, LLC in Docket No. T-20783A-11-0024. Because the CC&N application was approved by the Commission on August 24, 2011, in Decision No. 72561,³ Commission approval of the proposed reorganization became effective on that date. The reorganization was consummated on June 30, 2011, 55 days in advance of the effective date of the Commission’s approval. Zayo states in a September 7, 2011 filing that Zayo’s actions in implementing the reorganization proposed in Docket No. T-20783A-11-0097 and approved by Decision No. 72393 resulted from a miscommunication within Zayo.⁴

Recommendations

Staff recommends approval of Zayo’s request to pledge its assets as security for the financing as described in its application subject to the condition that all customer deposits and prepayments be excluded from the proposed transactions. Staff further recommends that within 90 days of a decision in this matter, copies of executed security documents and loan documents shall be provided to the Compliance Section, but not docketed, and notice thereof be filed with Docket Control.

² 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 No. T-20783A-11-0097, Decision No. 72393, May 27, 2011.

³ In the matter of the application of Zayo Group, LLC for approval of a Certificate of Convenience and Necessity for Facilities-Based Local Exchange Services and Resold and Facilities-Based IntraLATA and IntraLATA Private Line Services, T-20783A-11-0024, Decision No. 72561, August 24, 2011.

⁴ In the matter of the application of Zayo Group, LLC for approval of a Certificate of Convenience and Necessity for Facilities-Based Local Exchange Services and Resold and Facilities-Based IntraLATA and IntraLATA Private Line Services, T-20783A-11-0024, Disclosure to Correct Testimony, September 7, 2011.

Staff also recommends that Zayo Group, LLC be advised of their obligation to comply with all Commission rules and decisions and warned that future violations may result in penalties.

A handwritten signature in black ink, appearing to read 'Steven M. Olea', with a long horizontal stroke extending to the right.

Steven M. Olea
Director
Utilities Division

SMO:AFF:lhmkR

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 FOR APPROVAL)
 OF A FINANCING ORDER AUTHORIZING)
 VARIOUS FINANCING TRANSACTIONS)

DOCKET NO. T-20783A-11-0371
 DECISION NO. _____
ORDER

Open Meeting
To Be Determined
 Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Zayo Group, LLC (“Zayo” or “Applicant”) is certificated to provide intrastate telecommunications service as a public service corporation in the State of Arizona.
2. On October 11, 2011, Zayo filed an application seeking approval from the Arizona Corporation Commission (“ACC” or “Commission”) pursuant to Arizona Revised Statutes (“A.R.S.”) § 40-285 for Zayo to encumber its assets in Arizona. The proposed transaction is in connection with certain financing arrangements of Zayo being undertaken in conjunction with the proposed acquisition of 360networks holdings (USA) inc. (“360-Holdings”) and its subsidiaries, including 360networks (USA) inc. (“360networks” and together with 360-Holdings and Zayo, the “Parties”)), by Zayo.
3. In order to consummate the proposed transactions in the fourth quarter of this year, Zayo requested that the Commission consider this matter no later than December 8, 2011.

...
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1 Background

2 **Zayo Group, LLC**

3 4. Zayo is a Delaware limited liability company with principal offices at 400 Centennial
4 Parkway, Suite 200, Louisville, Colorado 80027. Zayo is a wholly-owned subsidiary of Zayo
5 Group Holdings, Inc., a Delaware corporation and wholly-owned subsidiary of Communications
6 Infrastructure Investments, LLC (“CII”), a Delaware limited liability company.

7 5. Zayo is a provider of bandwidth infrastructure and interconnection services over
8 regional and metropolitan fiber networks, enabling its customers to manage, operate, and scale
9 their telecommunications and data networks. Zayo’s services are primarily used by wireless
10 service providers, national and regional carriers and other communications service providers,
11 media and content companies, and certain bandwidth-intensive enterprises.

12 6. Zayo’s fiber networks span over 24,000 route miles, serve 153 geographic markets in
13 the District of Columbia and 31 states, including Arizona, and connect to over 4,300 buildings,
14 including approximately 1,978 cellular towers. These networks allow Zayo to provide bandwidth
15 infrastructure services to customers over redundant fiber facilities between key customer locations.
16 The majority of the markets that Zayo serves have few other networks capable of providing similar
17 bandwidth infrastructure services.

18 7. In Arizona, Zayo is authorized to provide facilities-based local exchange and resold
19 and facilities-based intraLATA and interLATA private line services pursuant to Decision
20 No. 72561.

21 **360networks holdings (USA) inc. and 360networks (USA) inc.**

22 8. 360-Holdings is a Nevada corporation and indirect subsidiary of 360networks
23 Corporation (“360-Parent”), a corporation organized under the laws of British Columbia with
24 principal offices located at 2101 Fourth Avenue, Suite 2000, Seattle, Washington 98121.
25 360networks is a Nevada corporation and a wholly owned direct subsidiary of 360-Holdings.

26 9. 360networks is 360-Holdings’ operating subsidiary that provides regulated
27 telecommunications services. 360networks provides Private Line Transport, Ethernet, and IP
28 Transit services to telecommunications providers and end users. 360networks’ facilities-based

1 fiber optic backbone provides coverage spanning 18,000 route miles covering 22 states and British
2 Columbia. 360networks also provides wholesale Voice over Internet Protocol (“VoIP”) services
3 and switched access services in 17 states, including Arizona.

4 10. 360networks is authorized to provide local exchange and interexchange services in 36
5 states. In Arizona, 360networks is authorized to provide local exchange switched access services
6 and interexchange telecommunications services pursuant to Decision Nos. 69240 and 62710,
7 respectively.

8 The Proposed Transaction

9 The Applicant represents the following in its application:

10 11. Pursuant to the terms of a October 6, 2011 stock purchase agreement, Zayo will
11 acquire all of the outstanding shares of 360-Holdings. As a result of the acquisition, 360-Holdings
12 will become a direct subsidiary of Zayo. 360networks will remain a direct subsidiary of 360-
13 Holdings and, therefore, will become an indirect subsidiary of Zayo. In order to fund the
14 acquisition, Zayo plans to incur up to \$355 million in additional indebtedness. Zayo is currently
15 negotiating the terms of the proposed financing.

16 12. While Zayo expects that the proposed financing will consist of short-term and long-
17 term term loans, in order to maintain flexibility, Zayo seeks approval for indebtedness in the form
18 of secured or unsecured notes or debentures (including notes convertible into equity and private
19 notes that may be exchanged for public notes); conventional credit facilities, such as revolving
20 credit facilities (which can be re-borrowed during the term of the commitment) and term loans;
21 letters of credit; and bridge loans; or a combination thereof.

22 13. While Zayo expects any long-term indebtedness incurred as part of the proposed
23 financing to mature approximately five (5) years following the closing of the acquisition of
24 360networks, in order to maintain flexibility, Zayo seeks approval for indebtedness that will
25 mature up to eight (8) years after issuance following the 360 Transaction.

26 14. Any interest rate for the proposed financing will likely be the market rate for similar
27 financings and will not be determined until the financing is finalized. Zayo currently expects the

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1 proposed financing to accrue interest at a floating rate consisting of LIBOR¹ or a prime rate plus
2 an agreed margin. In order to maintain flexibility, however, Zayo seeks approval for indebtedness
3 that, depending on the type of debt securities, facility(ies) or other arrangements, accrues interest
4 at rate(s) that may be fixed (typically set at signing or closing based on then current market
5 conditions) or floating (consisting of a base rate, which will float with a rate index such as LIBOR
6 or Federal Funds Rate, plus an applicable margin), or a combination of fixed rates and floating
7 rates.

8 15. Some and perhaps all of the proposed financing is expected to be secured by a
9 security interest in the assets of Zayo and its current and future subsidiaries. The stock of Zayo
10 and its subsidiaries may also be pledged as additional security. Additionally, it is expected that
11 Zayo's current and future subsidiaries will provide a guaranty as security for the proposed
12 financing.

13 16. Zayo states that the proposed transactions will serve the public interest in promoting
14 competition among telecommunications carriers by providing the Parties with access to greater
15 financial resources that will allow them to combine their operations and thereby become more
16 effective competitors. The proposed transactions are believed by Zayo to result in combined
17 companies with greater market depth and breadth. The financing arrangements will be transparent
18 to customers and will not disrupt service or cause customer confusion or inconvenience.

19 Staff's Analysis and Conclusions

20 17. Zayo and 360networks are not investor-owned Class A utilities as defined by R14-2-
21 801 of the Commission's Public Utility Holding Companies and Affiliated Interest rules. As such,
22 no approval is required for the indirect transfer of control of 360networks resulting from the
23 acquisition of 360-Holdings by Zayo.

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26 ¹ The London InterBank Offer Rate or LIBOR is the interest rate that banks charge each other for loans. This rate is
27 applicable to the short-term international interbank market, and applies to very large loans borrowed for anywhere
28 from one day to five years. This market allows banks with liquidity requirements to borrow quickly from other banks
with surpluses, enabling banks to avoid holding excessively large amounts of their asset base as liquid assets. The
LIBOR is officially fixed once a day by a small group of large London banks (the British Bankers Association), but
the rate changes throughout the day., source: www.investorwords.com & www.investopedia.com

1 18. In discussion with Staff, Zayo confirmed that prepaid customer funds and/or deposits
2 will not be encumbered as part of the security for the proposed financing. Zayo published notice
3 of its financing application in the Arizona Republic on September 18, 2011. The corresponding
4 affidavit was filed in Docket Control on October 30, 2011.

5 19. A.R.S. § 40-285 requires public service corporations to obtain Commission
6 authorization to “sell, lease, assign, mortgage or otherwise dispose of or encumber” certain utility
7 assets. The statute serves to protect captive customers from a utility’s act to dispose of any of its
8 assets that are necessary for the provision of service; thus, it serves to preempt any service
9 impairment due to disposal of assets essential for providing service.

10 20. Based on its analysis of the proposed transaction, Staff concludes that the transaction
11 would not impair the financial status of the Company, would not impair its ability to attract capital,
12 nor would it impair the ability of the Company to provide safe, reasonable, and adequate service.
13 Additionally, Staff concludes that a pledge of the Applicant’s assets would not impair the
14 availability of service to customers since the Applicant provides competitive services that are
15 available from alternative service providers.

16 21. Staff states for the Commission’s consideration that Zayo violated Decision No.
17 72393.² In Decision No. 72393, dated May 27, 2011, the Commission approved the proposed
18 Zayo Group, LLC, Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC reorganization
19 concurrent with its approval of an Application for a CC&N submitted by Zayo Group, LLC in
20 Docket No. T-20783A-11-0024. Because the CC&N application was approved by the
21 Commission on August 24, 2011, in Decision No. 72561,³ Commission approval of the proposed
22 reorganization became effective on that date. The reorganization was consummated on June 30,
23 2011, 55 days in advance of the effective date of the Commission’s approval. Zayo states in a
24 September 7, 2011 filing that Zayo’s actions in implementing the reorganization proposed in
25

26 ² In the matter of the application of Zayo Group, LLC, Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC for
27 approval to complete certain Pro Forma Intra-Corporate Transactions, Docket No. T-20783A-11-0097, Decision No.
28 72393, May 27, 2011.

³ In the matter of the application of Zayo Group, LLC for approval of a Certificate of Convenience and Necessity for
Facilities-Based Local Exchange Services and Resold and Facilities-Based IntraLATA and IntraLATA Private Line
Services, T-20783A-11-0024, Decision No. 72561, August 24, 2011.

1 Docket No. T-20783A-11-0097 and approved by Decision No. 72393 resulted from a
2 miscommunication within Zayo.⁴

3 Recommendations

4 22. Staff has recommended approval of Zayo’s request to pledge its assets as security for
5 the financing as described in its application subject to the condition that all customer deposits and
6 prepayments be excluded from the proposed transactions. Staff further recommended that within
7 90 days of a decision in this matter, copies of executed security documents and loan documents
8 shall be provided to the Compliance Section, but not docketed, and notice thereof be filed with
9 Docket Control.

10 CONCLUSIONS OF LAW

11 1. Zayo Group, LLC is a public service corporation within the meaning of Article XV
12 of the Arizona Constitution.

13 2. The Commission has jurisdiction over Zayo Group, LLC and the subject matter in
14 this Application.

15 3. The Commission, having reviewed the filing and Staff’s Memorandum dated
16 November 16, 2011, concludes that it is in the public interest to approve the Application as
17 proposed and discussed herein.

18 ORDER

19 IT IS THEREFORE ORDERED that the application of Zayo Group, LLC as described
20 herein, be and hereby is approved.

21 IT IS FURTHER ORDERED that the application of Zayo Group, LLC is subject to the
22 condition that all customer deposits and prepayments be excluded from this transaction.

23 IT IS FURTHER ORDERED that Zayo Group, LLC is authorized to engage in any
24 transactions and to execute any documents necessary to effectuate the authorizations granted.

25 ...

26 ...

27 _____
28 ⁴ In the matter of the application of Zayo Group, LLC for approval of a Certificate of Convenience and Necessity for
Facilities-Based Local Exchange Services and Resold and Facilities-Based IntraLATA and IntraLATA Private Line
Services, T-20783A-11-0024, Disclosure to Correct Testimony, September 7, 2011.

1 IT IS FURTHER ORDERED that within 90 days of a decision in this matter, copies of
2 executed security documents and loan documents shall be provided to the Compliance Section, but
3 not docketed, and notice thereof be filed with Docket Control.

4 IT IS FURTHER ORDERED that Zayo Group, LLC be advised of their obligation to
5 comply with all Commission rules and decisions and is hereby warned that future violations may
6 result in penalties.

7 IT IS FURTHER ORDERED that this Decision will become effective immediately.

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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:lhmkR

1 SERVICE LIST FOR: Zayo Group, LLC
2 DOCKET NO. T-20783A-11-0371

3 Mr. Thomas H. Campbell
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8 Ms. Jean L. Kiddoo
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18 Mr. Steven M. Olea
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20 Arizona Corporation Commission
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23 Ms. Janice M. Alward
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