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NEW APPLICATION
BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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MAR 26 2012

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COMMISSIONERS

GARY PIERCE - CHAIRMAN 2012 MAR 26 P 2: 28
BOB STUMP
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AZ CORP COMMISSION
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T-20783A-12-0114
T-03777A-12-0114
T-03774A-12-0114

IN THE MATTER OF THE APPLICATION OF)
ZAYO GROUP, LLC, 360NETWORKS (USA))
INC. AND ABOVE NET COMMUNICATIONS,)
INC. FOR AN ORDER AUTHORIZING THE)
ENCUMBRANCE OF THEIR ASSETS)

DOCKET

**APPLICATION FOR
ENCUMBRANCE ORDER
(Expedited Approval Requested)**

Zayo Group, LLC ("Zayo"), 360networks (USA) inc. ("360networks") and AboveNet Communications, Inc. ("AboveNet") (collectively, the "Applicants"), by undersigned counsel and pursuant to A.R.S. § 40-285 and any regulations deemed applicable, hereby request, to the extent necessary,¹ Arizona Corporation Commission ("Commission") approval for Applicants to encumber their respective assets in Arizona in connection with new financing arrangements of Zayo as described in more detail below (the "New Financing").² The New Financing is being

¹ Although Applicants are seeking any necessary approval for them to encumber their respective assets in Arizona in connection with the New Financing, Applicants do so without prejudice to their right to assert that such transactions are beyond the jurisdiction of the Commission.

² None of Zayo, 360networks or AboveNet had more than \$1 million in jurisdictional revenue in Arizona last year and, therefore, none is a Class A Utility. The Commission's Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R12-2-801 to R12-2-806 (the "Affiliated Interest Rules"), do not apply to Applicants.

Another subsidiary of Zayo, American Fiber Systems, Inc. ("AFS"), holds a CCN in Arizona but does not currently have assets or provide intrastate telecommunications services in Arizona (and therefore is not a Class A Utility). AFS, therefore, does not require approval under A.R.S. § 40-285 or the Affiliated

1 undertaken in conjunction with Zayo's proposed acquisition of AboveNet, Inc. ("ABN-Parent"
2 and together with Applicants, the "Parties") and its subsidiaries, including AboveNet (the
3 "AboveNet Merger" and together with the New Financing, the "Transactions").³ The
4 participation of AboveNet in the financing arrangements of Zayo is contingent on ABN-Parent
5 and Zayo completing the AboveNet Merger.

6 In order to consummate the Transactions by mid-year, Applicants request that the
7 Commission grant all relief sought herein as expeditiously as possible, and no later than the
8 Commission's Open Meeting scheduled for June 19-20, 2012, so that Applicants can close the
9 Transactions no later than June 30, 2012 in order to meet critical business objectives. Doing so
10 will enable Applicants to minimize their financial exposure and uncertainty inherent in debt and
11 equity market fluctuations over time and to close the Transactions by the end of Zayo's fiscal year
12 so as to simplify its financial reporting and minimize overall complexity and cost related to
13 accounting for the Transactions.
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16
17 Interest Rules to encumber its assets or provide a guaranty in connection with the financing arrangements
18 of Zayo.

19 ³ Pursuant to the Agreement and Plan of Merger, dated as of March 18, 2012, by and among Zayo,
20 Voila Sub, Inc. (a wholly-owned direct subsidiary of Zayo created for purposes of the merger) ("Merger
21 Sub") and ABN-Parent (the "Agreement"), Zayo will acquire all of the outstanding equity interest in ABN-
22 Parent. Specifically, Merger Sub will merge with and into ABN-Parent, whereupon the separate existence
23 of Merger Sub will cease and ABN-Parent will be the surviving corporation. As a result, ABN-Parent will
24 become a wholly-owned direct subsidiary of Zayo. AboveNet will remain a direct subsidiary of ABN-
25 Parent and, therefore, AboveNet will become an indirect subsidiary of Zayo.

26 Since none of Zayo, AboveNet, or their affiliates, is Class A Utility, Commission approval is not
27 necessary under the Affiliated Interest Rules for the transfer of indirect control of AboveNet to Zayo.
Further, since ABN-Parent is not a "public service corporation," no approval is necessary for the transfer of
indirect control of AboveNet to Zayo under A.R.S. § 40-285.

1 In support of this Application, Applicants provide the following information:

2 **I. DESCRIPTION OF THE PARTIES**

3 **A. Zayo Group, LLC and 360networks (USA) inc.**

4 Zayo is a Delaware limited liability company with principal offices at 400 Centennial
5 Parkway, Suite 200, Louisville, Colorado 80027. Zayo is a wholly-owned subsidiary of Zayo
6 Group Holdings, Inc., a Delaware corporation, which in turn is a wholly-owned subsidiary of
7 Communications Infrastructure Investments, LLC (“CII”), a Delaware limited liability company.
8 CII has no majority owner.

9
10 Zayo is a provider of bandwidth infrastructure and network neutral colocation and
11 interconnection services over dense regional and metropolitan fiber networks, enabling its
12 customers to manage, operate, and scale their telecommunications and data networks. Zayo’s
13 services are primarily used by wireless service providers, national and regional carriers and other
14 communications service providers, media and content companies, and certain bandwidth-intensive
15 enterprises. Zayo’s fiber networks span over 24,000 route miles, serve 153 geographic markets in
16 the District of Columbia and 31 states, including Arizona, and connect to over 4,300 buildings,
17 including approximately 1,978 cellular towers. These networks allow Zayo to provide bandwidth
18 infrastructure services to customers over redundant fiber facilities between key customer
19 locations.
20

21 In Arizona, Zayo is authorized to provide facilities-based local exchange and resold and
22 facilities-based intraLATA and interLATA private line services pursuant to Decision No. 72561;
23 and 360networks is authorized to provide local exchange switched access services and
24 interexchange telecommunications services pursuant to Decision Nos. 69240 and 62710,
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1 respectively. Zayo and 360networks are also authorized by the Federal Communications
2 Commission ("FCC") to provide domestic and/or international telecommunications services.

3 Additional information concerning Zayo's legal, technical, managerial and financial
4 qualifications to complete the Transactions was submitted to the Commission with various prior
5 filings with respect to Zayo's certification and various corporate and financial transactions and is
6 therefore already a matter of public record. Applicants request that the Commission take official
7 notice of these existing descriptions of Zayo's qualifications and incorporate them by reference
8 herein. In support of its financial qualifications, Zayo's financial statements from its most recent
9 SEC Form 10-Q is available at
10

11 <http://www.zayo.com/sites/default/files/FY%202012%20Q2%20Form%2010-Q.pdf>.

12 **B. AboveNet Communications, Inc. and AboveNet, Inc.**

13 AboveNet is a Delaware corporation and wholly-owned direct subsidiary of ABN-Parent, a
14 publicly-held Delaware corporation (NYSE: ABVT). ABN-Parent and AboveNet have principal
15 offices located at 360 Hamilton Avenue, White Plains, New York 10601. ABN-Parent and its
16 subsidiaries, including AboveNet, are leading providers of dedicated end-to-end fiber optic
17 infrastructure and high-bandwidth Internet connectivity, both domestically and internationally.
18 Their optical network enables their corporate, carrier and governmental customers to implement
19 data, video, Internet and multimedia applications.
20

21 Collectively, AboveNet and its subsidiaries are authorized to provide telecommunications
22 services in 32 states and the District of Columbia. In Arizona, AboveNet is authorized to provide
23 facilities-based and resold non-switched dedicated and private line, high capacity fiber optic
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1 telecommunications services pursuant to Decision No. 62628.⁴ AboveNet is also authorized by
2 the FCC to provide interstate and international telecommunications services.

3 **II. DESIGNATED CONTACTS**

4 Questions, correspondence or other communications concerning this Application should be
5 directed to Applicants' counsel of record:

6 For Zayo and 360networks :

and:

7 Thomas H. Campbell
8 Michael T. Hallam
9 Lewis & Roca LLP
10 40 North Central Avenue
11 Phoenix, AZ 85004-4429
12 602-262-5340 (tel)
602-734-3886 (fax)
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13 with copies to:

14 Scott E. Beer
15 General Counsel
16 Zayo Group, LLC
17 400 Centennial Parkway, Suite 200
18 Louisville, CO 80027
303-381-4664 (tel)
303-226-5923 (fax)
scott.beer@zayo.com

19 For ABN-Parent and AboveNet:

With copies to:

20 Brad Mutschelknaus
21 Joan M. Griffin
22 Winafred Brantl
23 KELLEY DRYE & WARREN LLP
24 3050 K Street, N.W.
25 Washington, D.C. 20007
202-342-8819 (tel)
202-342-8451 (fax)

Jill Sandford
Associate General Counsel
AboveNet, Inc.
360 Hamilton Avenue
White Plains, NY 10601
(914) 421-7585 (tel)
(914) 421-6793 (fax)

26 ⁴ The authorization was originally granted in the name of Metromedia Fiber Network Fiber Services,
27 Inc., which subsequently changed its name to AboveNet.

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2 **III. DESCRIPTION OF THE NEW FINANCING**

3 Zayo plans to issue up to \$3 billion in indebtedness⁵ in order to (1) fund a portion of the
4 consideration payable in the AboveNet Merger, (2) repay and redeem ABN-Parent's and its
5 subsidiaries' existing indebtedness of approximately \$55.0 million,⁶ and (3) repay, redeem or
6 tender for Zayo's existing indebtedness of \$710 million.⁷ Zayo is currently negotiating the terms
7 of the New Financing and, therefore, in order to maintain adequate flexibility to respond to market
8 requirements for the New Financing, Applicants seek approval to encumber their assets in
9 connection with financing arrangements as described generally below:
10

11 **Debt Instrument:** Zayo expects that the New Financing will consist of term loans,
12 revolving credit facilities (which can be reborrowed during the term of the commitment)
13 and notes or debentures (including private notes that may be exchanged for public notes).
14 However, in order to maintain flexibility, Applicants seek approval to encumber their
15 assets in connection with indebtedness in the form of notes or debentures (including notes
16 convertible into equity and private notes that may be exchanged for public notes);
17 conventional credit facilities, such as revolving credit facilities and term loans; letters of
18 credit; and bridge loans; or a combination thereof.

19 **Maturity:** Zayo anticipates that the New Financing will consist solely of long-term
20 indebtedness. In the event that Zayo incurs bridge loans as a "bridge" to long-term
21 indebtedness, the bridge loans will likely mature one (1) year after issuance. Zayo expects
22 any long-term indebtedness incurred as part of the New Financing to mature between six
23 (6) and eight (8) years after issuance depending on the type of facility.

24
25 ⁵ To the extent that Zayo is a borrower under the financing arrangements, Zayo is exempt from the
26 provisions of A.R.S. § 40-301 et seq. pursuant to the provisions of A.R.S. § 40-301.D.

27 ⁶ See Docket No. T-03774A-10-0488.

⁷ See Docket Nos. T-20694A-10-0076; T-20694A-10-0076, T-20694A-10-0295; T-20667A-10-
0295; T-03777A-11-0370; and T-20783A-11-0371. Certain of these dockets relate to former subsidiaries
of Zayo that encumbered their assets in support of Zayo's financing arrangements (1) before Zayo obtained
a certificate and (2) before the subsidiaries were merged with and into Zayo with Zayo surviving the
mergers.

1 **Interest:** Any interest rate will likely be the market rate for similar financings and will not
2 be determined until the financing is finalized. Zayo currently expects the New Financing
3 to accrue interest at a floating rate consisting of LIBOR or a prime rate plus an agreed
4 margin. In order to maintain flexibility, however, Applicants seek approval to encumber
5 their assets in connection with indebtedness that, depending on the type of debt securities,
6 facility(ies) or other arrangements, accrues interest at rate(s) that may be fixed (typically
7 set at signing or closing based on then-current market conditions) or floating (consisting of
8 a base rate, which will float with a rate index such as LIBOR or Federal Funds Rate, plus
9 an applicable margin), or a combination of fixed rates and floating rates. Initially, the
10 margins are expected to range from 3.5% to 6.75% depending on the type of facility and
11 base rate used.

12 **Security:** Zayo expects that \$2.5 billion of the New Financing will be secured facilities,
13 which will include a grant of a security interest in the assets of Zayo and its current and
14 future subsidiaries. The remaining \$500 million of the New Financing is expected to be
15 unsecured facilities. In order to maintain flexibility, Applicants seek approval for the full
16 \$3 billion of the New Financing to be secured with security interests in the assets of Zayo
17 and its current and future subsidiaries, including 360networks and AboveNet. For the
18 secured facilities, the stock of Zayo and its subsidiaries may also be pledged as additional
19 security. Additionally, it is expected that Zayo's current and future subsidiaries (including
20 AFS and AboveNet) will provide a guaranty as security for the full \$3 billion in New
21 Financing.

22 **Purpose:** As stated above, the New Financing may be used primarily to fund the
23 consideration payable in the AboveNet Merger, repay, redeem or tender for the existing
24 indebtedness of Zayo and ABN-Parent and their respective subsidiaries, and pay the fees
25 and expenses associated with the Transactions. A portion of the proceeds from the New
26 Financing may also be used for working capital requirements and general corporate
27 purposes of the combined company.

18 Applicants request Commission approval, to the extent necessary, for Zayo, 360networks and,
19 upon consummation of the AboveNet Merger, AboveNet to pledge their respective assets as
20 security for the New Financing.

21 **IV. PUBLIC INTEREST CONSIDERATIONS**

22 Applicants submit that approval of the Transactions described herein will serve the public
23 interest in promoting competition among telecommunications carriers by providing Zayo with
24 access to greater financial resources that will allow Zayo and ABN-Parent and their subsidiaries to
25 combine their operations and thereby become more effective competitors to larger incumbent
26

1 telecommunications providers. The New Financing is necessary and appropriate, is consistent
2 with the performance by Applicants of their respective services to the public, will not impair the
3 ability of these carriers to perform such services, and will promote the corporate purposes of the
4 Applicants. Applicants' participation in the New Financing will be transparent to customers and
5 will not disrupt service or cause customer confusion or inconvenience.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Applicants submit that the public interest, convenience, and
3 necessity would be furthered by grant of this Application, authorizing Applicants to encumber
4 their respective assets as described herein.

5 Respectfully submitted,

6
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18 Counsel for Zayo and 360networks

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21 Joan M. Griffin
22 Winafred Brantl
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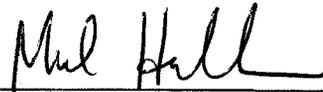
Counsel for AboveNet

28 Dated: March 26, 2012

1 **V. CONCLUSION**

2 For the foregoing reasons, Applicants submit that the public interest, convenience, and
3 necessity would be furthered by grant of this Application, authorizing Applicants to encumber
4 their respective assets as described herein.

5 Respectfully submitted,

6
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wbrantl@kelleydrye.com

Counsel for AboveNet

24 Dated: March 26, 2012

1 Original and 13 copies of the foregoing
2 filed this 26th day of March, 2012 with:

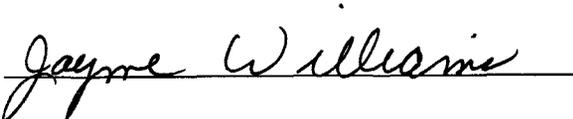
3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing mailed this
8 26th day of March, 2012 to:

9 Lyn Farmer, Esq.
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15 Janice Alward, Esq.
16 Chief Counsel, Legal Division
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Mr. Steven M. Olea
21 Director, Utilities Division
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007

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26 
27

STATE OF NEW YORK

§
§
§

COUNTY OF WESTCHESTER

VERIFICATION

I, Robert Sokota, state that I am Senior Vice President, General Counsel and Secretary of AboveNet, Inc.; that I am authorized to make this Verification on behalf of AboveNet, Inc. and its subsidiaries, which include AboveNet Communications, Inc., (collectively "AboveNet"); that I have read the foregoing document; and that the statements in the foregoing document with respect to AboveNet, except as otherwise specifically attributed, are true and correct to the best of my knowledge, information and belief.

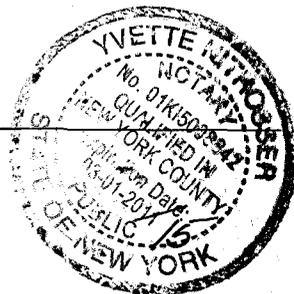
I declare under penalty of perjury that the foregoing is true and correct.

Robert Sokota

Subscribed and sworn to before me this 19 day of March, 2012.

Yvette Mitrosher
Notary Public

My Commission expires: _____



STATE OF COLORADO
COUNTY OF BOULDER

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§
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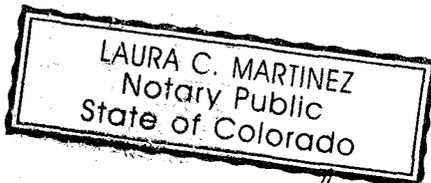
VERIFICATION

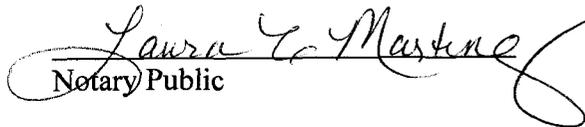
I, Scott E. Beer, am Vice President, General Counsel and Secretary of Zayo Group, LLC and its subsidiaries (collectively, the "Company"); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents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



Scott E. Beer
Vice President, General Counsel and Secretary
Zayo Group, LLC

Sworn and subscribed before me this 21 day of March, 2012.





Notary Public

My commission expires April 1, 2016