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BEFORE THE ARIZONA CORPORATION COMMISSION

1  
2 GARY PIERCE  
3 Chairman  
4 BOB STUMP  
5 Commissioner  
6 SANDRA D. KENNEDY  
7 Commissioner  
8 PAUL NEWMAN  
9 Commissioner  
10 BRENDA BURNS  
11 Commissioner

Arizona Corporation Commission

DOCKETED

OCT - 4 2012

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8 IN THE MATTER OF THE APPLICATION  
9 OF ZAYO GROUP, LLC,  
10 360NETWORKS(USA) INC. AND  
11 ABOVE NET COMMUNICATIONS, INC.  
12 FOR AN ORDER AUTHORIZING THE  
13 ENCUMBRANCE OF THEIR ASSETS

DOCKET NOS. T-20783A-12-0319  
T-03777A-12-0319  
T-03774A-12-0319

DECISION NO. 73523

ORDER

14 Open Meeting  
15 September 19 and 20, 2012  
16 Phoenix, Arizona

16 BY THE COMMISSION:

17 FINDING FACTS

18 1. On July 12, 2012, Zayo Group ("Zayo"), 360networks (USA), Inc. ("360networks") and  
19 AboveNet Communications. Inc. ("AboveNet") (collectively "the Applicants") filed an application  
20 requesting Arizona Corporation Commission ("Commission") approval, pursuant to A.R.S. §40-  
21 285, to encumber their respective assets in Arizona in connection with up to \$120 Million in  
22 Additional Revolving Facilities. The Additional Revolving Facilities will be available to the  
23 Applicants and Zayo Group's other subsidiaries (collectively, "the Company") upon receipt of the  
24 necessary regulatory approvals.

25 Background

26 2. Zayo is a Delaware limited liability company with principal offices at 400 Centennial  
27 Parkway, Suite 200, Louisville, Colorado 80027. Zayo is a wholly-owned subsidiary of Zayo  
28 Group Holdings, Inc., a Delaware corporation, a wholly-owned subsidiary of Communications

1 Infrastructure Investments, LLC (“CII”), a Delaware limited liability company. In Arizona, Zayo  
2 is authorized to provide facilities-based local exchange and resold and facilities-based intraLATA  
3 and interLATA private line services pursuant to Decision No. 72561.

4 3. 360networks was acquired by Zayo in December of 2011. Its principal offices are  
5 located at 2101 4th Avenue, Suite 2000, Seattle, Washington 98121. 360networks is a full service  
6 wholesale provider of Private Line Transport, Ethernet, IP, and VoIP services and is authorized to  
7 provide local exchange switched access services and interexchange telecommunications services in  
8 Arizona pursuant to Decision Nos. 69240 and 62710, respectively. Zayo and 360networks are  
9 authorized by the Federal Communications Commission (“FCC”) to provide domestic and/or  
10 international telecommunications services.

11 4. AboveNet is a Delaware corporation and wholly-owned direct subsidiary of AboveNet,  
12 Inc. (“ABN-Parent”) a publicly-held Delaware corporation. ABN-Parent and AboveNet have  
13 principal offices located at 360 Hamilton Avenue, White Plains, New York 10601. ABN-Parent  
14 and its subsidiaries, including AboveNet, are providers of dedicated end-to-end fiber optic  
15 infrastructure and high-bandwidth Internet connectivity, both domestically and internationally. In  
16 Arizona, AboveNet is authorized to provide facilities-based and resold non-switched dedicated and  
17 private line, high capacity fiber optic telecommunications services pursuant to Decision No.  
18 62628. AboveNet is also authorized by the FCC to provide interstate and international  
19 telecommunications services.

#### 20 The Transaction

21 5. On March 26, 2012, Applicants filed an application (“March 26 Application”)  
22 seeking approval to pledge their assets in connection with up to \$3 Billion in new financing  
23 arrangements (the “Financing”). At the time, Applicants did not yet know the precise terms and  
24 amounts of the debt instruments that would be available and the March 26 Application therefore  
25 described a range of the expected terms and conditions of the Financing.

26 6. The Commission approved the March 26 Application on June 27, 2012 (Decision  
27 73251). Shortly before closing the Financing, Zayo Group and its lenders determined that  
28 advantageous financial market conditions and the Company’s potential future needs justified an

1 advantageous financial market conditions and the Company's potential future needs justified an  
2 increase in the aggregate amount of the financing by \$120 Million, subject to obtaining all  
3 necessary regulatory approvals for the Additional Revolving Facilities.

4         7.       On July 2, 2012, consistent with the Commission's prior approval, Zayo Group  
5 completed its \$3 Billion Financing that included the following: (1) \$750 Million 8.125% Senior  
6 Secured First Priority Notes due 2020 ("Secured Notes"); (2) \$500 Million 10.125% Senior  
7 Unsecured Notes due 2020 ("Unsecured Notes"); (3) Term Loans in the amount of \$1.62 Billion to  
8 mature on July 2, 2019 (the "Term Loans") and (4) revolving loan facilities, swing line loans and  
9 letters of credit ("Revolving Facilities") in an amount of up to \$130 Million, which amount may be  
10 increased by up to an additional \$120 Million (the "Additional Revolving Facilities") upon receipt  
11 of all necessary regulatory approvals.

12         8.       The Revolving Facilities have an interest rate of London InterBank Offered Rate  
13 ("LIBOR") plus a margin of 5.375% or Base Rate plus a margin of 4.375% (with margin subject to  
14 quarterly adjustment based on Zayo Group's leverage ratio), will mature on July 2, 2017 and are  
15 secured by a security interest in substantially all of the assets of the Company. Because the March  
16 26 Application did not envision, and therefore the Commission's Decision No. 73251 did not  
17 approve, the Additional Revolving Facilities, Applicants hereby seek approval to encumber their  
18 respective assets in connection with the Additional Revolving Facilities in the aggregate amount of  
19 up to \$120 Million.

20 Staff's Analysis

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

26         10.      The Applicants state that the proposed transaction will not affect the rates, terms  
27 and conditions by which the applicants offer service in Arizona. The Applicants also state that the  
28 financing arrangements will not result in an interruption or disruption of service, and will be

1 seamless and transparent to customers. Additionally, the Applicants confirmed via email that any  
2 deposits, prepayments or advance payments held by Zayo will not be included in the proposed  
3 encumbrance. Staff concludes that the proposed transaction will not impair the availability of  
4 service to customers since the Applicants provide competitive services that are available from  
5 alternative service providers.

#### 6 Staff's Recommendations

7 11. Based on its analysis of the proposed transaction, Staff concludes that the  
8 transaction would not impair the financial status of Zayo, would not impair its ability to attract  
9 capital, nor would it impair the ability of the Zayo to provide safe, reasonable, and adequate  
10 service. Customers may still have exposure to losses to the extent they have prepaid for service or  
11 made deposits. Therefore, Staff recommends approval of the application subject to the condition  
12 that all customer deposits and prepayments be excluded from encumbrance.

13 12 Staff further recommends authorizing the Applicants to engage in any  
14 transactions and to execute any documents necessary to effectuate the authorizations granted.  
15 Additionally, Staff recommends that one copy of executed security documents be filed with the  
16 Utilities Division and a letter confirming such filing be docketed as a compliance item in this  
17 docket, within 90 days following execution of the proposed transaction.

#### 18 CONCLUSIONS OF LAW

19 1. Zayo Group, LLC, 360networks (USA) inc. and AboveNet Communications, Inc.  
20 are public service corporations within the meaning of Article XV of the Arizona Constitution.

21 2. The Commission has jurisdiction over Zayo Group, LLC, 360networks (USA) inc.  
22 and AboveNet Communications, Inc. and the subject matter in this filing.

23 3. The Commission, having reviewed the filing and Staff's Memorandum dated  
24 August 17, 2012, concludes that it is in the public interest to grant approval as proposed and  
25 discussed herein.

#### 26 ORDER

27 IT IS THEREFORE ORDERED that the application of Zayo Group, LLC, 360networks  
28 (USA) Inc. and AboveNet Communications, Inc. requesting approval to encumber their Arizona

assets in connection with the additional revolving facilities of up to \$120 Million be and hereby approved, subject to the condition that all customer deposits and prepayments be excluded from encumbrance

IT IS FURTHER ORDERED that the Applicants be and hereby are authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that one copy of the executed security documents shall be filed with the Utilities Division and a letter confirming such filing shall be docketed as a compliance item in this docket within 90 days following execution of the proposed transaction.

IT IS FURTHER ORDERED that this Decision become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

*Paul R. Smith*  
CHAIRMAN

*Robert J. ...*  
COMMISSIONER

*Robert J. ...*  
COMMISSIONER

*Paul Newman*  
COMMISSIONER

*Brenda Burns*  
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 4<sup>th</sup> day of October, 2012.

*Ernest G. Johnson*  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:KAS:sms/BH

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