



Agenda Date: 08/19/09
Agenda Item: IVE

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT PETITION OF ZAYO)	ORDER OF APPROVAL
GROUP, LLC AND LOCAL FIBER L.L.C. FOR)	
AUTHORITY FOR (1) THE INDIRECT TRANSFER OF)	
CONTROL OF LOCAL FIBER L.L.C. TO ZAYO GROUP,)	
LLC AND ITS OWNERS; AND (2) THE PARTICIPATION)	
OF LOCAL FIBER L.L.C. IN EXISTING AND NEW)	
FINANCING ARRANGEMENTS OF ZAYO GROUP, LLC.)	DOCKET NO. TM09060438
IN THE MATTER OF THE JOINT PETITION OF ZAYO)	AMENDMENT OF ORDER
BANDWIDTH NORTHEAST, LLC AND, ZAYO)	OF APPROVAL
BANDWIDTH NORTHEAST SUB, LLC FOR AUTHORITY)	
TO INCUR DEBT OBLIGATIONS AND ENCUMBER)	
UTILITY PROPERTY)	DOCKET NO. TF08020082

(SERVICE LIST ATTACHED)

BY THE BOARD:

On June 1, 2009, Zayo Group, LLC ("Zayo" or "Parent") and Local Fiber LLC ("Local Fiber") filed a petition pursuant N.J.S.A. 48:2-51.1, 48:3-10, 48:3-7 and 48:3-9 seeking the Board's approval for (1) the indirect transfer of control of Local Fiber from FiberNet Telecom Group, Inc. ("FiberNet") to Zayo (the "Local Fiber Transfer") and (2) upon closing of the Local Fiber Transfer, the participation of Local Fiber in existing financing arrangements of Zayo (the "Local Fiber Petition"). On July 17, 2009, Zayo and Local Fiber filed an amendment to the Local Fiber Petition to reflect new financing arrangements of Zayo.

Similarly on July 17, 2009, Zayo Bandwidth Northeast, LLC ("Zayo-NE") and Zayo Bandwidth Northeast Sub, LLC ("Zayo-NE Sub" and together with Zayo-NE, the "Zayo Northeast") (Zayo, Zayo Northeast and Local Fiber collectively, the "Petitioners"), filed a request for modification to order in Docket TF08020082 (the "Zayo Northeast Request") for Board approval of certain new financing arrangements of Zayo pursuant to N.J.S.A. 48:3-7 and 48:3-9.

BACKGROUND

FiberNet is a publicly-traded Delaware corporation that functions as a holding company for its indirect, wholly owned subsidiary, Local Fiber, a New York limited liability company. The following Delaware corporations are intermediate holding companies between FiberNet and Local Fiber: FiberNet Operations, Inc. and FiberNet Telecom, Inc. All these companies are located at 220 W. 42nd Street, 13th Floor, New York, New York 10036.

In New Jersey, Local Fiber is authorized to provide competitive local exchange and interexchange telecommunications services. See Order I/M/O the Petition for an Order Authorizing Local Fiber, LLC to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE00090695, dated January 10, 2002. The petition states that Local Fiber has 86 customers in New Jersey and currently has no employees located in the state.

Zayo Group, LLC is a Delaware limited liability corporation with its principal business office located in Louisville, Colorado. Parent is wholly owned by Zayo Holdings, Inc, which in turn is wholly owned by the Communications Infrastructure Investment, LLC ("CII"). CII has no majority owner. According to the petition, Parent's "Zayo Bandwidth" operating group provides fiber-based bandwidth products to other carriers, business and enterprise customers. Zayo Bandwidth network spans 23 states. In New Jersey, Parent has two Zayo Bandwidth subsidiaries: Zayo Bandwidth Northeast, LLC ("Zayo-NE" f/k/a PPL Telecom, LLC) and Zayo Bandwidth Northeast Sub, LLC ("Zayo-NE Sub" f/k/a PPL Prism, LLC). See Order I/M/O the Application of PPL Telecom, LLC for Authority to Provide Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE03030186, dated May 8, 2003 and Order I/M/O the Application of PPL Telecom, LLC for Authority to Provide Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE03030186, dated May 8, 2003. The petition states that collectively, Zayo-NE and Zayo-NE Sub currently have 19 carrier customers and two employees in New Jersey.

In an Order of Approval in Docket No. TF08020082 dated May 9, 2008, Zayo-NE and Zayo-NE Sub were authorized to participate in a consolidated credit facility of up to \$135 million to be secured by Zayo and its subsidiaries, including Zayo Northeast. In an Amendment of Order of Approval in Docket No. TF08020082, Zayo-NE and Zayo-NE Sub were authorized to participate in an increased consolidated credit facility of up to \$175 million to be secured by Zayo and its subsidiaries, including Zayo Northeast (the "Existing Financing Arrangements"). To date, Zayo has borrowed \$150 million of the \$175 million in Existing Financing Arrangements authorized by the Board.

DISCUSSION

Pursuant to an Agreement and Plan of Merger ("Agreement") dated as of May 28, 2009, between Zayo, Zayo Merger Sub, Inc. ("Merger Sub") and FiberNet, Zayo will acquire indirect control of Local Fiber. Under the Agreement, Merger Sub, a direct subsidiary of Zayo formed for the purposes of this transaction, will merge with and into FiberNet with FiberNet surviving the merger. As a result of the merger, FiberNet will become a direct subsidiary of Zayo and Local Fiber will become an indirect subsidiary of Zayo. Upon completion of the transaction, Local Fiber will become part of Zayo's "Zayo Bandwidth" operating group, which provides fiber-based bandwidth products to other carriers, business and enterprise customers.

Zayo and Local Fiber assert that under new ownership, Local Fiber will continue to provide high-quality telecommunications services to consumers, while gaining access to the additional resources and operational expertise of Zayo. The Local Fiber Transfer will therefore give Local Fiber the ability to become a stronger competitor, to the ultimate benefit of consumers.

In the Local Fiber Petition and Zayo Northeast Request, Petitioners also explain that Zayo will borrow the remaining \$25 million of the term loans previously authorized by the Board and an additional \$10 million ("New Financing Arrangements"). Petitioners submit that the New Financing Arrangements represents a comprehensive company-wide financing arrangement and that all of the current and future subsidiaries of Zayo, including Zayo Northeast and, upon completion of the Local Fiber Transfer, Local Fiber, will participate as co-borrowers and/or co-

guarantors and will pledge their assets as security. As a result of the New Financing Arrangements, the total long-term debt obligations of Zayo will be in an aggregate of up to \$185,000,000 in credit facilities.

Petitioners explained that the terms of the New Financing Arrangements will be substantially the same as the existing term loans under the Existing Financing Arrangements. In particular, the New Financing Arrangements will have the same interest rate and maturity date (November 7, 2013) as the term loans under the Existing Financing Arrangements.

A portion of the proceeds from the New Financing Arrangements will fund, in part, the Local Fiber Transfer. The proceeds from the New Financing Arrangements may also fund other strategic acquisitions and other permitted purposes, including working capital, capital expenditures, refinancing of existing indebtedness of Zayo's current and future subsidiaries, and other general corporate purposes of Zayo and its operating subsidiaries, including Zayo Northeast and, upon completion of the Local Fiber Transfer, Local Fiber.

The Petitioners assert that participation in the financing arrangements described herein will provide Petitioners with the opportunity to maintain their competitive position with access to greater financial resources.

Petitioners state that the transaction will not result in a change of carrier for customers or any assignment of existing Board authorizations and Local Fiber will continue to provide services to its existing customers in New Jersey pursuant to the existing rates, terms and conditions. Following the transaction, and after appropriate notices to customers and any other required regulatory filings, Local Fiber states that it may change its name to reflect the "Zayo Bandwidth" brand.

The Division of Rate Counsel has reviewed this matter and, by letter dated July 22, 2009, recommended that the Board approve the Local Fiber Petition and Zayo Northeast Request subject to a condition regarding disclosure of Petitioners' fiber mapping in New Jersey.

FINDINGS AND CONCLUSIONS

After a thorough review of the Local Fiber Petition and Zayo Northeast Request and all related documents, the Board concludes that there will be no negative impact on rates or service quality since the New Jersey customers of Local Fiber and Zayo Northeast will continue to receive the same services from the same entities at the same rates and under the same terms and conditions; nor will there be a significant negative impact on employees.

The Board also concludes that the financing arrangements are in accordance with law and that the use of the proceeds associated therewith is appropriate. The Board is satisfied that the financing arrangements will not have an adverse impact on Petitioners' operations in New Jersey.

With respect to Rate Counsel's request that approval be conditioned upon the disclosure of Petitioner's fiber mapping in New Jersey, the Board notes that there are currently open dockets with the FCC and NTIA (National Telecommunications and Information Administration) through which the Board would more appropriately obtain this data.

Accordingly, after careful review of this matter, the Board **FINDS** that the change of control will have no material impact on the rates of current customers, or on employees. The Board also **FINDS** that the transfer will have no negative impact on the provision of safe, adequate and proper service, and may positively benefit competition. Therefore, after investigation, having

considered the petition and exhibits submitted in this proceeding, the Board FINDS that the proposed transfer is in accordance with the law and is in the public interest. The Board HEREBY ORDERS that the Petitioners shall notify the Board of the closing of the proposed transactions within 7 days of the consummation of the Transaction. The Board FURTHER ORDERS that this approval will expire if the Transaction is not fully consummated on or before August 31, 2010.

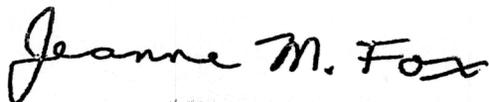
With regard to the financing, the Board HEREBY AUTHORIZES the petitioners to provide their guarantee, serve as co-borrowers, or otherwise provide security in connection with financing up to \$185 million.

This order is subject to the following provisions.

- 1 This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
3. This order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by Petitioners.

DATED: 8/19/09

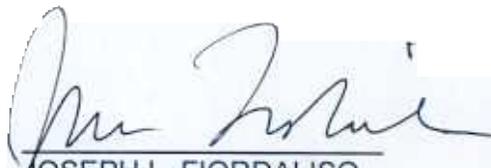
BOARD OF PUBLIC UTILITIES
BY:



JEANNE M. FOX
PRESIDENT



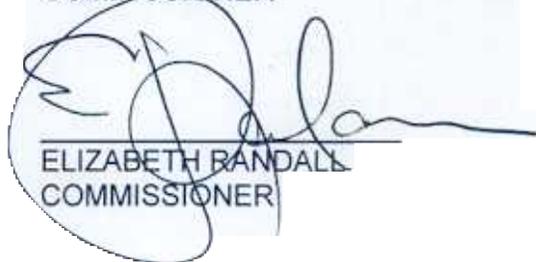
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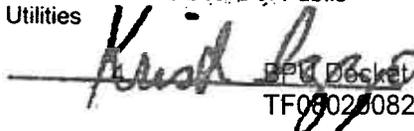
ELIZABETH RANDALL
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



BPU Docket Nos. TM09060438 &
TF09020082

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Docket Nos. TM09060438 and TF08020082

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