



Agenda Date: 3/17/10  
Agenda Item: IB

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
Two Gateway Center  
Newark, NJ 07102  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF ZAYO )  
BANDWIDTH, LLC FOR AUTHORITY TO PROVIDE )  
LOCAL EXCHANGE, INTEREXCHANGE AND )  
EXCHANGE ACCESS TELECOMMUNICATIONS )  
SERVICES THROUGHOUT THE STATE OF NEW )  
JERSEY )  
ORDER )  
DOCKET NO. TE09120992 )

(SERVICE LIST ATTACHED)

Dennis C. Linken, Esq., Stryker, Tams & Dill LLP, Newark, New Jersey - for Petitioner

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the Federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated December 10, 2009, Zayo Bandwidth, LLC ("Petitioner" or "Zayo") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide resold and facilities-based local exchange, interexchange, exchange access and private line telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has filed an affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12.1 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Zayo is a limited liability company organized under the laws of the State of Delaware. The company is a wholly owned subsidiary of Zayo Group, LLC ("Zayo Group") which in turn is wholly owned by Communications Infrastructure Investment, LLC which has no majority owner. Petitioner's principal offices are located at 901 Front Street, Suite 200, Louisville, Colorado 80027.

Zayo Group was organized to acquire and support long-term development of fiber-based bandwidth solutions-oriented business and has made a number of acquisitions to further its business plan. Zayo Group, operating through its four business units provides bandwidth, voice, collocation and interconnection, and managed services to carrier, enterprise, small and medium enterprise, and government customers. According to the Petitioner, certain pro forma intra-corporate transactions are currently being undertaken in order to consolidate the corporate structure of Zayo Group's subsidiaries and to appropriately allocate assets and customers to Zayo Group's various operating units – Zayo Bandwidth, Onvoy Voice Services, Zayo

Enterprise Networks and zColo. One of these pro forma intra-corporate transactions involves reducing the twelve (12) current Zayo Bandwidth companies to Zayo and two affiliates, which Zayo Group has determined will allow the Zayo Bandwidth business unit to be more efficient from a management, accounting and financial perspective. As a result, nearly all of the various Zayo Bandwidth entities, including Zayo Bandwidth Northeast, LLC ("Zayo-NE") and Zayo Bandwidth Northeast Sub, LLC ("Zayo-NE Sub") will be consolidated into Zayo.

Petitioner has submitted copies of its Certificate of Formation from the State of Delaware and its New Jersey Certificate of Authority to Operate as a Foreign Limited Liability Company. Petitioner currently holds authority to provide telecommunications services in Colorado, Idaho, Illinois, Michigan, Minnesota, Ohio, Pennsylvania, Texas and Washington and is in the process of obtaining authority to provide facilities-based and/or resold local exchange and interexchange services in additional states either through a merger with its affiliates or on its own accord.

In conjunction with this petition, Zayo and its regulated affiliates have filed a petition to merge Zayo-NE and Zayo NE Sub with and into Zayo under Docket No. TM09120993. The Company states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and it has not been the subject of any civil or criminal proceedings. Petitioner has not begun negotiations with an Incumbent Local Exchange Carrier ("ILEC") for an interconnection agreement, but Petitioner may either acquire the right to such agreements of its affiliates upon its merger with Zayo-NE and Zayo NE Sub or will obtain its own interconnection agreement with an ILEC.

Petitioner seeks authority to provide resold and facilities-based local exchange, interexchange, exchange access and private line telecommunications services in the State of New Jersey. Zayo provides solutions to carriers, web-centric companies, public institutions and enterprises. Its services primarily include Private Line, Ethernet, Wavelength, Dedicated Internet Access and Collocation services to wholesale and large enterprise customers. Petitioner's business plan is to build communications solutions for large enterprise and carrier customers on an individual case basis for each project need and to provide services using its own facilities and facilities leased from others. Petitioner will initially offer just private line services in New Jersey. Pursuant to N.J.A.C. 14:10-5.6(b), Petitioner has filed an initial private line tariff concurrently with its petition which will become effective thirty (30) days after the Board approves its petition for competitive local exchange carrier authority. According to the Petitioner, the tariff is a mirror image of Zayo-NE and Zayo NE Sub's tariffs, with the exception of the names of the companies and will be merged with and into Zayo under Docket No. TM09120993. Petitioner will file a local exchange, interexchange and exchange access tariff with the Board at least thirty (30) days prior to providing such services. Petitioner maintains a toll-free number for customer service inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which requires that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices located in Louisville, Colorado. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner

also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Zayo states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel, who, according to Zayo are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

## DISCUSSION

On February 8, 1996, the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. §253(a).

Any grant of authority is subject to the right of the Board as the state regulatory authority to impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. §253(c).

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets of qualified applicants. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Zayo's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange, interexchange and exchange access telecommunications services throughout the State of New Jersey.

The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27EE-52 the Petitioner is subject to an annual assessment by both the Board and the Division of Rate Counsel, respectively. The Board notes that the Petitioner will not be permitted to provide local exchange, interexchange and exchange access telecommunications services until a related tariff is filed with the Board.

The Board HEREBY ORDERS that:

- 1) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.

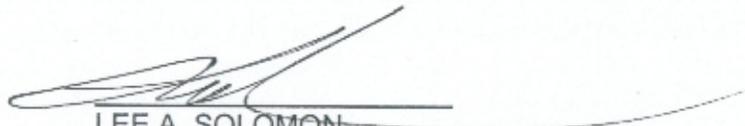
- 2) Pursuant to N.J.S.A. 48:2-62, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

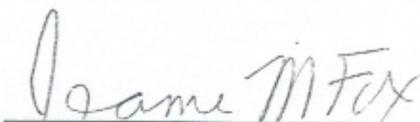
On or before February 1<sup>st</sup> of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

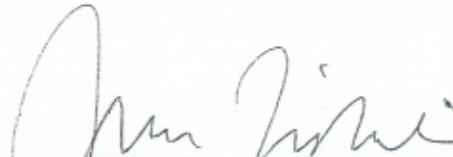
Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintains its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

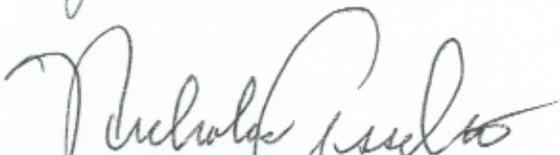
DATED: 3/17/10

BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT

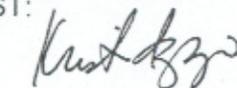
  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

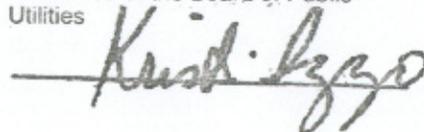
  
NICHOLAS ASSELTA  
COMMISSIONER

  
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



IN THE MATTER OF THE PETITION OF ZAYO BANDWIDTH FOR AUTHORITY TO PROVIDE  
LOCAL EXCHANGE, INTEREXCHANGE AND EXCHANGE ACCESS  
TELECOMMUNICATIONS SERVICES  
IN THE STATE OF NEW JERSEY

DOCKET NO. TE09120992

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