



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
PO Box 350
Trenton, NJ 08625-0350
www.nj.gov/bpu

TELECOMMUNICATIONS

I/M/O VERIFIED JOINT PETITION OF)
360NETWORKS CORPORATION,)
360NETWORKS (USA) INC. AND ZAYO)
GROUP, LLC (1) FOR APPROVAL OF THE)
TRANSFER OF INDIRECT CONTROL OF)
360NETWORKS (USA) INC. TO ZAYO)
GROUP, LLC; (2) FOR 360NETWORKS)
(USA) INC. TO PARTICIPATE IN NEW)
EXISTING FINANCING ARRANGEMENTS)
OF ZAYO GROUP, LLC; AND (3) FOR)
ZAYO GROUP, LLC TO ENTER INTO)
NEW FINANCING ARRANGEMENTS)

ORDER OF APPROVAL

DOCKET NO. TM11100635

Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC for Petitioners
Stefanie A. Brand, Esq., Director Division of Rate Counsel

BY THE BOARD:

On October 7, 2011, 360networks Corporation (“360-Parent”), 360networks (USA) inc. (“360networks”) and Zayo Group, LLC (“Zayo”) (collectively, the “Petitioners”), filed a verified joint petition (“Petition”) with the Board pursuant to New Jersey Statutes, N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10, N.J.S.A. 48:3-7 and N.J.S.A. 48:3-9, requesting Board approval: (1) to complete the transfer of indirect control of 360networks to Zayo; (2) for 360networks to participate in new and existing financing arrangements of Zayo; and (3) to the extent necessary for Zayo to enter into new financing arrangements (the “Transactions”). On October 26, 2011, Petitioners responded to information requests of Staff and the Division of Rate Counsel (the “Responses”).

BACKGROUND

360-Parent is a corporation organized under the laws of British Columbia with principal offices located at 2101 4th Avenue, Suite 2000, Seattle, Washington 98121. 360networks holdings (USA) inc. (“360-Holdings”) is a Nevada corporation and indirect¹ subsidiary of 360-Parent. 360networks is a Nevada corporation and a wholly owned direct subsidiary of 360-Holdings.

¹ 360-Holdings is currently an indirect subsidiary of 360-Parent. Immediately prior to completion of the Transactions that are the subject of this Petition, 360-Parent will undergo a *pro forma* amalgamation resulting in 360-Holdings becoming a direct subsidiary of 360-Parent. 360networks seeks approval of the amalgamation as part of the Petition.

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 services and switched access services in 17 states. In New Jersey, 360networks (f/k/a Worldwide Fiber Networks) is authorized to provide local exchange and interexchange telecommunications services. See I/M/O the Petition for an Order Authorizing Worldwide Fiber Networks, Inc. to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE00040271, Order of Approval dated February 20, 2001. The Petitions state that 360networks does not have any revenues or employees in the State of New Jersey.

Zayo is a Delaware limited liability company with principal offices in Louisville, Colorado. 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. CII has no majority owner. Zayo is a provider of bandwidth infrastructure and network neutral colocation and interconnection services over regional and metropolitan fiber 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 New Jersey, and connects to over 4,300 buildings, including approximately 1,978 cellular towers. In New Jersey, Zayo is authorized to provide local exchange and interexchange telecommunications services. See I/M/O the Petition of Zayo Group, LLC for Approval to Provide Local Exchange, Interexchange and Exchange Access Telecommunications Services Throughout the State of New Jersey, Docket No. TE11020049, Order dated May 16, 2011. Zayo is also authorized by the Federal Communications Commission to provide domestic and international telecommunications services. The Petition states that Zayo has eleven employees in New Jersey and that there will be no impact upon them and therefore no harm to Zayo's employees as a result of the Transactions.

DISCUSSION

Pursuant to the Stock Purchase Agreement, dated as of October 6, 2011, by and among 360-Parent, 360networks (fiber holdco) ltd., 360networks (fiber subco) ltd. and Zayo, Zayo will acquire all of the outstanding shares of 360-Holdings (the "360 Transaction"). As a result of the 360 Transaction, 360-Holdings will become a direct subsidiary of Zayo. 360networks will remain a direct subsidiary of 360-Holdings and, therefore, an indirect subsidiary of Zayo. The petition states that 360 networks will benefit from the Transactions by being able to offer services to multi-location business and enterprise customers across a much larger footprint in combination with Zayo.

Petitioners are also requesting approval of certain financing transactions related to the change of control. Recently, Zayo issued \$350 million in senior secured notes as well as entering into a \$100 million revolving credit facility. In connection with the financings Zayo pledged certain of its assets as security. Under existing financings all of Zayo's existing and future subsidiaries are required to provide a guaranty and related pledge of assets as security for the financings. Petitioners are requesting approval for 360networks to participate in the existing financings upon consummation of the 360networks transaction.

In order to fund the acquisition of 360networks, Zayo plans to incur up to \$355 million in

additional indebtedness. The indebtedness may consist of short-term and long term loans 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. The financings may also take the form of conventional credit facilities, such as revolving credit facilities and term loans, letters of credit, bridge loans or a combination thereof.

Maturities of the loans will vary from five to 8 years. Interest rates will be determined at closing and will reflect current market rates for similar financings. Rates may also be at fixed or floating rates.

Petitioners request Board approval for Zayo to borrow and pledge its assets as security and upon consummation of the 360 transaction for 360 networks to provide a guaranty and related pledge of assets.

In evaluating this petition, the Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1; N.J.A.C. 14:1-5.14(c). Also, under N.J.S.A. 48:3-7, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to any of its employees.

The Petitioners assert that as part of Zayo, 360networks will continue to provide high-quality telecommunications services to consumers, while gaining access to the additional resources and operational expertise of Zayo. Petitioners state that 360networks will also benefit by being able to offer services to multi-location business and enterprise customers across a much larger footprint in combination with Zayo. Petitioners further state that 360networks' network complements Zayo's network and the acquisition will increase Zayo's existing fiber footprint, giving the combined companies greater market depth and breadth as a result of the Transactions. Petitioners assert that the Transactions will make 360networks and Zayo stronger competitors and thereby benefit consumers.

The Staff's review indicates that the financing transactions and the use of the proceeds associated therewith are appropriate. While there is no guarantee in this regard, especially given the competitive environment in which Petitioner operates, the Board is satisfied that the transactions will not have an adverse impact on Petitioner's operations in New Jersey.

The Division of Rate Counsel has reviewed this matter and, by letter dated November 7, 2011, states that it does not object to this Petition.

FINDINGS AND CONCLUSIONS

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on rates or service quality as 360networks does not have any New Jersey customers at this time; nor will there be a negative impact on employees. Moreover, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners as the transaction will strengthen 360network's competitive posture in the telecommunications market due to its access to additional resources.

Accordingly, after careful review of this matter, the Board FINDS that the change of control will have no negative 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 will positively benefit competition. Therefore, after investigation, having

considered the record 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 Petitioners shall notify the Board of the closing of the proposed transactions within 7 days of the consummation of the transfer.

The Board FINDS that the proposed financing transaction is consistent with the applicable law and is in the public interest. The Board therefore, approves the purposes thereof. The Board HEREBY AUTHORIZES Petitioners to:

Enter into the subsidiary guarantee and to pledge jurisdictional assets in support of the financing to the extent that there are or may in the future be any such assets.

This Order is subject to the following provisions.

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 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.
4. The authority granted in this Order shall become null and void and of no effect with respect to any portion which is not exercised on or before May 1, 2013.
5. Petitioners shall notify the Board, within five business days, of any material changes in the proposed financing, and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.
6. Petitioners shall notify the Board of any material default on the terms of the notes within five business days of such occurrence.

DATED: 11/30/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT

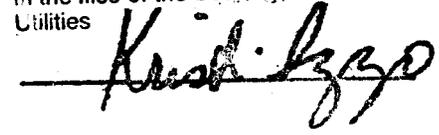

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
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


Service List

Docket No. TM11100635

Dennis C. Linken
Scarinci & Hollenbeck, LLC
1100 Valley Brook Avenue
Lyndhurst, NJ 07071-0790
dlinken@scarincihollenbeck.com

Jean L. Kiddoo
Tamar E. Finn
Brett P. Ferenchak
Bingham McCutchen LLP
2020 K Street, N.W., Suite 1100
Washington, DC 20006-1806
jean.kiddoo@bingham.com
tamar.finn@bingham.com
brett.ferenchak@bingham.com

Scott E. Beer
General Counsel
Zayo Group, LLC
400 Centennial Parkway, Suite 200
Louisville, CO 80027
sbeer@zayo.com

Michel Singer Nelson
Associate General Counsel
360networks
370 Interlocken Blvd., Suite 600
Broomfield, CO 80021
mnelson@360.net

Stefanie A. Brand
Director, Division of Rate Counsel
Department of the Public Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
niratepayer@advocate.state.nj.us

James F. Murphy
Rocco Della Serra
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, New Jersey
james.murphy@bpu.state.nj.us
rocco.della-serra@bpu.state.nj.us

Mark Beyer
Robert Wojciak
Office of the Economist
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, New Jersey
Mark.Beyer@bpu.state.nj.us
Robert.Wojciak@bpu.state.nj.us

Alex Moreau
Department of Law & Public Safety
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07102
alex.moreau@dol.lps.state.nj.us