



Agenda Date: 8/7/19

Agenda Item: IVA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION)
OF ZAYO GROUP, LLC AND FRONT RANGE TOPCO,) ORDER
INC. FOR APPROVAL OF THE TRANSFER OF)
INDIRECT CONTROL OF ZAYO GROUP, LLC TO)
FRONT RANGE TOPCO, INC.) DOCKET NO. TM19060749

Parties of Record:

Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC, on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On June 25, 2019, Front Range TopCo, Inc. ("Transferee" or "Front Range") and Zayo Group, LLC ("ZGL") (collectively, the "Petitioners") submitted a Verified Petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 requesting Board approval for a proposed transfer of indirect control of ZGL to Transferee (the "Transaction"). As a result of the transaction, ZGL will become an indirect, wholly owned subsidiary of Front Range. Following closing of the transaction, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions to ZGL customers.

BACKGROUND

ZGL, a Delaware limited liability company, is a direct subsidiary of Zayo Group Holdings, Inc. ("ZGH") (together with its subsidiaries, "Zayo"), a publicly-traded Delaware corporation. Zayo is a provider of bandwidth infrastructure, network neutral colocation, and interconnection services over regional and metropolitan fiber networks. ZGH's operating subsidiaries are authorized to provide competitive local exchange, competitive access and/or interexchange services in the District of Columbia and every state except Alaska. The primary telecommunications service offerings of ZGH's operating subsidiaries include high-capacity bandwidth services such as private line, Ethernet, and wavelength services. In New Jersey, ZGL is authorized to provide local exchange and interexchange telecommunications services. See In the Matter of 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 (May 16, 2011). ZGL has 39 employees in New Jersey.

Front Range, a Delaware corporation, is a holding company created for purposes of the Transaction to aggregate the ownership of various investment and co-investment vehicles ultimately managed by (i) affiliates of EQT AB ("EQT") and (ii) affiliates of Digital Colony GP, LLC ("Digital Colony"). Front Range has a principal office in New York, New York.

EQT, founded in Sweden in 1994, is an alternative investments firm. EQT funds have portfolio companies in the United States, Europe, and Asia with approximately 110,000 employees. Investment funds managed by affiliates of EQT have invested in several fiber-based companies in the United States, including SEGRA (formerly Lumos Networks Corp. and Spirit Communications), and abroad, including BroadNet/GlobalConnect (Denmark, Germany, Norway); IP-Only (Sweden, Denmark, Finland, Norway); Adamo Telecom Iberia SA (Spain); Delta Fiber NL (Netherlands); and Bjørvika IKT AS (Norway). Currently, each of these companies operate independently of each other, and following the Transaction each of these companies and ZGL will continue to operate independently with independent management teams.

Digital Colony, a Delaware limited liability company, is a global investment firm dedicated to digital infrastructure. The firm was launched in 2018 by Digital Bridge Holdings, LLC ("Digital Bridge"), an investor in, and operator of mobile and Internet connectivity, and Colony Capital, Inc. (NYSE: CLNY) a global real estate and investment management firm.

DISCUSSION

Pursuant to an Agreement and Plan of Merger (the "Agreement"), dated May 8, 2019, by and among ZGH, Front Range, and Front Range BidCo, Inc. ("Merger Sub"). ZGH will be merged with and into Merger Sub with ZGH continuing as the surviving corporation. The Transaction will result in ZGH transitioning from a publicly-traded company to a private company.

According to the Petition, under the terms of the Agreement, at the closing of the Transaction, ZGH shareholders will receive \$35 in cash per share of ZGH's common stock in a transaction valued at approximately \$14.3 billion, including the assumption of approximately \$5.9 billion of Zayo's net debt obligations. At the closing of the Transaction, ZGL will become an indirect, wholly owned subsidiary of Front Range.

Petitioners state that the Transaction will occur entirely at the holding company level and will have no adverse impact on ZGL's customers. As such, the Transaction will not result in service disruption, termination, or customer confusion. The Petition states that key members of Zayo's current management team are expected to continue to execute Zayo's strategy. The only significant change resulting from the Transaction will be that ZGH (and indirectly, ZGL) will be owned by Front Range rather than its current shareholders.

Petitioners submit that the transaction is in the public interest convenience and necessity by providing ZGL with access to Transferee's financial and operational expertise, permitting ZGL to continue to provide robust communications solutions to its customers and to better compete in the New Jersey telecommunications marketplace. The Petition states that Petitioners have not engaged in any material integration planning. Therefore, no current plans with regard to the New Jersey employees of Petitioners have been developed at this time. Zayo does not have a U.S. employee pension plan for New Jersey employees. Employees' existing rights in any other retirement benefit plan offered by Zayo will be retained upon completion of the Transaction.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated July 18, 2019, stating it does not oppose approval of the proposed Petitioners' requests in this matter provided conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. As a condition of approval, Rate Counsel urges that the Board require Petitioners to notify the Board and Rate Counsel and to provide an appropriate explanation in writing within a minimum of thirty days prior to effectuating an elimination of greater than 15% of the New Jersey employees' positions throughout a three (3) year period following approval.

By letter dated August 2, 2019, Petitioners object to the proposal by Rate Counsel stating that such a condition requiring prior notice is not consistent with the Board's prior decisions in other transfer of control transactions in substantially identical circumstances involving other competitive providers serving the New Jersey market. Petitioners state that Rate Counsel's proposal for advance notice, if adopted would be significantly more burdensome on Petitioners than a requirement to notify the Board after the fact. Imposing an advance notice requirement would place Petitioners at a competitive disadvantage compared to other authorized providers operating in the same market but not subject to such a requirement. Further, Petitioners note that Rate Counsel's proposal is not consistent with what the Board has ordered in similar dockets where the Board has required companies to report after the fact, for three years following closing, headcount reductions in New Jersey greater than 15%.

FINDINGS AND CONCLUSIONS

Pursuant to N.J.S.A. 48:2-51.1(a), the Board shall evaluate the impact of an acquisition of control of a public utility on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. 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 as set forth above. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

After a careful review of this matter, the Board is satisfied that positive benefits will flow to customers based upon the record, and that the Petitioners would not be able to exercise market power to raise prices above competitive levels or exclude competitors from the marketplace. The Board therefore **FINDS** that the proposed transaction will have little impact on competition. The Board additionally **FINDS** that there will be no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions and the provision of service quality on competitive offerings is in the public interest.

The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. Zayo currently has 39 employees in New Jersey. Board precedent requires companies to report headcount reductions in New Jersey greater than 15% for a 3-year period after the date of closing. See Order, In the Matter of the Verified Joint Petition of Broadview Network Holdings, Inc. et al., Docket No. TM10404333 (June 30, 2017). There is no reason to disturb Board precedent based on these facts. The Board, therefore, **FINDS** that Petitioners must notify the

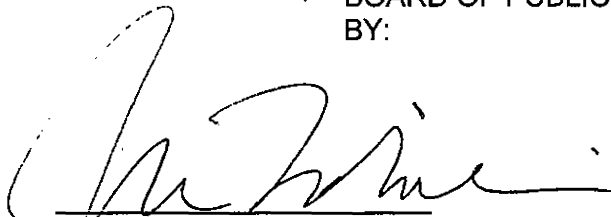
Board, providing a written explanation following a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of its total employee headcount for a 3-year period after the date of closing.¹

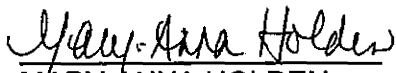
Accordingly, the Board **FINDS** that the proposed transaction is consistent with the applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed transaction will have no 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 **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.


This Order shall be effective August 17, 2019.


DATED: 8/7/19

BOARD OF PUBLIC UTILITIES
BY:

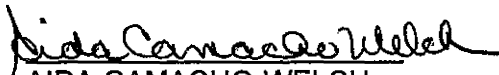

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MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

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

¹ This condition supersedes the reporting condition in the Board's January 31, 2018 Order issued I/M/O the Verified Joint Petition of Zayo Group, LLC and Spread Holdings, LLC and Northeastern ITS, LLC for Approval of the Transfer of Indirect Control of Northeastern ITS, LLC to Zayo Group, LLC, Docket No, TM17121281.

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RANGE TOPCO, INC. FOR APPROVAL OF THE TRANSFER OF INDIRECT CONTROL OF
ZAYO GROUP, LLC TO FRONT RANGE TOPCO, INC.
DOCKET NO. TM19060749**

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