



Agenda Date: 12/18/24
Agenda Item: IB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE
TELEVISION AND
TELECOMMUNICATIONS

IN THE MATTER OF PETITION OF ZAYO)	ORDER
NORTHEAST, LLC FOR AUTHORIZATION TO)	
PROVIDE LOCAL EXCHANGE AND)	
INTEREXCHANGE TELECOMMUNICATIONS)	
SERVICES THROUGHOUT THE STATE OF NEW)	DOCKET NO. TE24050295
JERSEY)	

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Joshua M. Bobeck for Zayo Northeast, LLC

BY THE BOARD:

On May 3, 2024, Zayo Northeast, LLC ("Zayo" or "Petitioner") filed a petition with the New Jersey Board of Public Utilities ("Board") pursuant to the New Jersey Telecommunications Act of 1992 ("1992 Act"), N.J.S.A. 48:2-21.16, et seq., and the Federal Telecommunications Act of 1996 ("Federal Act"), Pub. L. No. 104-104, 110 Stat. 56 (1996), requesting an order of approval to provide full facilities-based and resold local exchange and interexchange telecommunications services throughout the State of New Jersey ("Petition"). In support of the Petition, the Petitioner has submitted its financial statements subject to a claim of confidentiality filed pursuant to the Board's rules for determining confidentiality, N.J.A.C. 14:1-12 et seq., and consistent with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. Petitioner also sought a waiver of N.J.A.C. 14:10-1A.13, which requires financial material to comply with the Uniform System of Accounts ("USOA"), and of N.J.A.C. 14:1-5.15(a), pertaining to the requirement under N.J.S.A. 48:3-7.8 that all books and records incident to Petitioner's operations be maintained in the State of New Jersey. By this Order, the Board considers the Petition.

BACKGROUND

Zayo is a privately held limited liability company organized under the laws of the State of Delaware and is a wholly owned, indirect subsidiary of Zayo Group, LLC ("Zayo Group") a Delaware limited liability company. Zayo Group is a wholly owned, direct subsidiary of Zayo Group Holdings, Inc. ("Holdings" and, together with its subsidiaries including Petitioner, "Company"), a Delaware corporation. Petitioner represented that Holdings is owned and controlled by funds and entities

owned or controlled by EQT AB and Digital Colony GP, LLC, which are private equity investors. Zayo has its principal place of business at 1401 Wynkoop Street, Suite 500, Denver, CO 80202.

Zayo Group is a provider of bandwidth infrastructure and interconnection services over regional and metropolitan fiber networks. These services enable customers to manage, operate, and scale their telecommunications and data networks. Zayo Group represented that its customers consist primarily of wireless service providers, national and regional communications service providers, media/Internet/content companies, governments, banks and other bandwidth-intensive enterprises. Zayo Group is authorized to provide competitive local exchange, competitive access, and/or interexchange services in the District of Columbia and every state except Alaska. In New Jersey, Zayo Group is authorized to provide local exchange and interexchange telecommunications services.¹ Under the Zayo brand, Zayo Group's primary telecommunications service offerings include high-capacity bandwidth services such as private line, Ethernet, and wavelength services. Under the Allstream brand, Zayo Group provides voice services, including time division multiplexing based local exchange and interexchange voice services and Voice-over-Internet Protocol services.

Petitioner is a newly formed entity created for the purpose of completing restructuring and financing arrangements of the Company, including the Pro Forma Asset Transfer, which is the subject of a separate petition filed by Zayo Group.² "Pro Forma Asset Transfer" refers to certain restructuring and financing arrangements in which Zayo Group is expected to assign to Petitioner certain assets including communications optical fiber, customer contracts, rights in third party fibers, and associated telecommunications equipment used to provision services or facilities to the affected customers.³

Petitioner stated that it is not authorized to provide intrastate telecommunications services in any state and accordingly does not currently provide intrastate telecommunications services in any state. However, Petitioner represented that it has pending, or plans to file, applications or registrations to provide intrastate telecommunications services in the District of Columbia and thirteen (13) other states in addition to New Jersey. Petitioner asserted that it has not had certification or authorization denied, suspended, terminated, or revoked by any state. While Petitioner does not have authorization to provide intrastate telecommunications services in any state, Zayo Group is authorized to provide competitive local exchange, competitive access, and/or interexchange service in the District of Columbia and every state except Alaska, including New Jersey.⁴

¹ In re the Petition for an Order Authorizing Zayo Group, LLC to Provide Local Exchange and Interexchange and Exchange Access Telecommunications Services throughout the State of New Jersey, BPU Docket No. TE11020049, Order dated May 16, 2011.

² In re the Verified Joint Petition of Zayo Group, LLC and Zayo Northeast, LLC for Approval (1) of Pro Forma Assignment of Certain Assets of Zayo Group, LLC and (2) for Zayo Northeast, LLC to Participate in Certain Financing Arrangements, BPU Docket No. TF24060397, Petition dated June 6, 2024.

³ The Board addressed the Pro Forma Asset Transfer in a separate order issued on December 18, 2024. In re the Verified Joint Petition of Zayo Group, LLC and Zayo Northeast, LLC for Approval (1) of Pro Forma Assignment of Certain Assets of Zayo Group, LLC and (2) for Zayo Northeast, LLC to Participate in Certain Financing Arrangements, BPU Docket No. TF24060397, Order dated December 18, 2024.

⁴ In re the Petition of Zayo Group, LLC for Approval to Provide Local Exchange, Interexchange and Exchange Access Telecommunications Services Throughout the State of New Jersey, BPU Docket No. TE11020049, Order dated May 16, 2011.

Petitioner represented in the Petition that it is not, nor has it ever been, the subject of any civil or criminal proceedings in any jurisdiction. However, in response to a discovery request from Board Staff ("Staff"), Petitioner stated that Zayo Group was the subject of a complaint filed with the Minnesota Public Utility Commission in Docket No. 22-609 regarding an alleged disconnection of a circuit. Zayo Group contested the allegations. Since the docket has not been updated since January 2023, there is no indication that the proceeding was officially closed.

Petitioner sought authority to provide full facilities-based and resold local exchange and interexchange services. According to the Petition, Zayo intends provide services such as Ethernet and other similar high-bandwidth circuits, for high-speed data transport, to enterprise customers and to other communications providers on wholesale basis throughout the State of New Jersey. Petitioner will provide these services primarily using their own facilities, which will be assigned from Zayo Group. Although Petitioner does not currently intend to furnish switched voice or dial tone services to residential customers, Petitioner seeks authority to do so should future market conditions warrant. Petitioner does not currently own or lease facilities in New Jersey but rather will use the communications optical fiber and associated telecommunications equipment assigned to Petitioner by Zayo Group or leased by an affiliate or another provider. Currently Petitioner has not entered into an interconnection agreement with Incumbent Local Exchange carriers because it does not intend to offer services that require an interconnection agreement at this time. The Petitioner has no current plans to construct additional facilities.

Petitioner represented that it will offer its service on a non-discriminatory basis and at competitive rates through individual case basis contracts. Petitioner requests authority to operate throughout the State of New Jersey. Petitioner stated that, at this time, it does not seek to terminate any small or rural exemptions existing under Section 251(f)(1) of the Federal Telecommunications Act of 1996; however, Petitioner seeks statewide authority so that it may expand its service areas as those areas become open to competition. Petitioner asserted that it maintains toll free number for customer service inquiries. Petitioner further represented that it will continuously monitor and maintain a high level of control over its network on a 24-hour-a-day, 7-days-a-week basis.

Pursuant to N.J.A.C. 14:1-1.2, Petitioner also requested a waiver of N.J.A.C. 14:10-1A.13, which requires Petitioner to maintain its books and records in accordance with the USOA, as well as N.J.A.C. 14:1-5.15, which pertains to maintenance of books and records in New Jersey. For administrative efficiencies, Petitioner requested permission to instead maintain its books and records in accordance with Generally Accepted Accounting Principles ("GAAP"). However, the Petitioner stated that it will comply with N.J.A.C. 14:10-1A.13 if the Board does not grant the waiver.

By letter dated June 19, 2024, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments urging the Board to require Zayo to provide to the Board and Rate Counsel, as a condition of approval a link to its website where its "rates, terms, and conditions of service and/or product guide are located," pursuant to N.J.A.C. 14:10-5.2. Rate counsel further requested that Zayo familiarize itself with the consumer protection requirements such as the requirement that, in the event of future changes in rates, terms, and conditions that result in an increase in charges, Zayo must notify the public in accordance with N.J.A.C. 14:10-5.3(b). Rate Counsel also noted that Zayo should be aware of and must comply with the Board's anti-slamming provisions at N.J.A.C. 14:10-11.1, et seq., which are applicable to all telecommunications service providers. Rate Counsel indicated that it did not object to granting the waiver requests in connection with maintenance of books and records per the GAAP as opposed to the USOA as well as maintaining books and records in New Jersey. Accordingly, Rate Counsel did not oppose

a grant of authority or approval of Petitioner's request to provide local and interexchange telecommunications services throughout the State of New Jersey.

On September 4, 2024, Rate Counsel submitted to the Board a revised letter of comments following the Petitioner's July 12 discovery response pertaining to the Minnesota Verified Complaint alleging disconnection of a circuit involved in 9-1-1 calls. Rate Counsel reiterated its requests that the Board impose the conditions identified in its June 19, 2024 letter and opined that, because the final outcome of the Minnesota matter is undisclosed and directly applies to the type of service to be provided within New Jersey, further review or monitoring of Zayo is appropriate.

DISCUSSION AND FINDINGS

On February 8, 1996, the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), was signed into law to promote competition and remove barriers to entry into telecommunications markets. To that end, 47 U.S.C. § 253(a) provides 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." However, pursuant to 47 U.S.C. § 253(b), the Board, as the State's regulatory authority, may impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers on a competitively neutral basis that is consistent with universal service.

In considering the instant Petition for Competitive Local Exchange Carrier (CLEC) authority to provide local exchange and interexchange telecommunication services, the Board recognizes its obligation to not prohibit entry into intrastate telecommunications markets by qualified applicants.⁵ The Board additionally notes that, pursuant to the New Jersey Telecommunications Act of 1992, N.J.S.A. 48:2-21.16 et seq., State policy is to "[p]rovide diversity in the supply of telecommunications services", and the Legislative 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."⁶ Consistent with State and federal law, the Board is empowered to grant CLEC authority to telecommunications companies wishing to provide service in New Jersey.⁷

Therefore, having reviewed the Petition and the information supplied, the Board **HEREBY FINDS** that, with respect to its request for approval to provide local exchange and interexchange services in New Jersey, Petitioner meets the Board's filing requirements. Accordingly, the Board **HEREBY AUTHORIZES** Petitioner to provide local exchange and interexchange services throughout the State of New Jersey. These findings and authorization do not pertain to non-CLEC services. To the extent that a CLEC entity provides non-CLEC services, CLEC rights and privileges are not applicable to those non-regulated services

Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner shall make the rates, terms, and conditions of said service publicly available on its website and shall provide a printed

⁵ 47 U.S.C. § 253(a).

⁶ N.J.S.A. 48:2-21.16(a)(4), (b)(1) and (b)(3).

⁷ N.J.S.A. 48:2-13 and 48:2-21.20(d).

copy of those terms and conditions to a customer upon request and the link to the CLEC website with this information for inclusion on the Board's website.

The Board **HEREBY ORDERS**:

- 1) Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner shall post the terms and conditions of its retail competitive services on its website in a publicly available location and shall also provide a printed copy of those terms and conditions to a customer upon the customer's request.
- 2) Petitioner shall provide the Board and Rate Counsel with a link to the page of the website described above that contains the terms and conditions of its competitive local exchange and interexchange telecommunications services no later than five (5) days after the effective date of this Order. To ensure service quality, the Petitioner shall notify the Board within ten (10) days from the date it begins providing such services to New Jersey customers. Petitioner shall otherwise comply with N.J.A.C. 14:10-5.1 to -5.8 with respect to any initial offerings of service or revisions to rate, terms and conditions.
- 3) In the event Petitioner intends to provide or provides services requiring the provision of 9-1-1 or E-9-1-1 services under Federal law, Petitioner shall provide the Board with a link to the page of its website that contains the terms and conditions of 9-1-1 and E-9-1-1 services to ensure that Petitioner's owned/leased facilities are equipped to provide reliable and functional access to 9-1-1 and E-9-1-1 services to subscribers. To ensure service quality, the Petitioner shall notify the Board within ten (10) days from the date it begins providing such services to New Jersey customers.
- 4) Pursuant to N.J.S.A. 48:2-16(2)(b), N.J.A.C. 14:3-6.3, and N.J.S.A. 48:2-62, Petitioner shall file an annual report and a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive the Board's annual report package from the Division of Audits on or before February 1 of each year, 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. 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 five-dollars (\$5.00) for each day thereafter until such report is filed.
- 5) Failure to comply with this order may result in monetary penalties pursuant to N.J.S.A. 48:2-42, suspension of CLEC authority, and/or revocation of CLEC authority.
- 6) In accordance with N.J.S.A. 48:2-59, N.J.S.A. 48:2-60, and N.J.S.A. 52:27EE-52, Petitioner is subject to an annual assessment by both the Board and Rate Counsel, respectively.

The Petitioner additionally requested a waiver of N.J.A.C. 14:10-1A.13 and N.J.A.C. 14:1-5.15(a). Upon review, the Board **HEREBY FINDS** that the Petitioner demonstrated requisite good cause for the Board to grant such relief pursuant to N.J.A.C. 14:1-1.2. Accordingly, the Board **HEREBY GRANTS** Petitioner permission to adhere to the GAAP and waives the USOA requirements at N.J.A.C. 14:10-1A.13, and bookkeeping requirements at N.J.A.C. 14:1-5.15(a).


Additionally, given that the Zayo Group was the subject of a complaint filed with the Minnesota Public Utility Commission in Docket No. 22-609 regarding an alleged disconnection of a circuit, and since the docket has not been updated since January 2023, and there has been no indication

that the proceeding was officially closed, the Board further **HEREBY ORDERS** the Zayo Group to update the Board, via email to Staff, on any further actions by the Minnesota Department of Commerce on the matter until resolved.

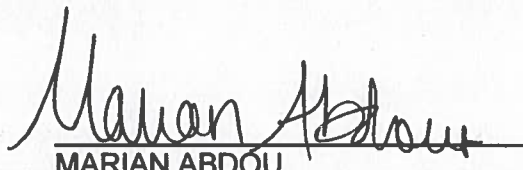
This Order shall be effective December 26, 2024.

DATED: December 18, 2024

BOARD OF PUBLIC UTILITIES
BY:

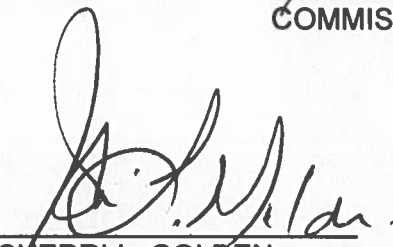

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MARIAN ABDOU
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MICHAEL BANGE
COMMISSIONER

ATTEST:


SHERRI L. GOLDEN
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 PETITION OF ZAYO NORTHEAST, LLC FOR AUTHORIZATION TO PROVIDE
LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES IN THE STATE OF
NEW JERSEY

DOCKET NO. TE24050295

SERVICE LIST

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