



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 9<sup>th</sup> Floor**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION )  
OF ZAYO GROUP LLC, AND ABOVE NET )  
COMMUNICATIONS, INC. FOR APPROVAL OF )  
CERTAIN PRO FORMA INTRA-COMPANY )  
TRANSACTIONS )

ORDER

DOCKET NO. TM12111030

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 November 19, 2012, Zayo Group, LLC ("Zayo") and AboveNet Communications, Inc. ("AboveNet" and together with Zayo, "Petitioners" or the "Company"), by their counsel and pursuant to N.J.S.A. 48:2-51.1, and the Regulations of the Board of Public Utilities ("Board"), filed a verified petition with the Board requesting approval, to the extent required, of certain pro forma intra-company transactions that will result in the transfer of assets and customers from AboveNet to Zayo (the "Transactions"). Petitioners assert that the proposed Transactions are part of a series of intra-company transactions that will simplify the corporate structure of Zayo. Following the consummation of the proposed Transactions, Zayo will offer services to AboveNet's current customers at existing terms, rates and conditions and AboveNet will surrender its authority to provide services in New Jersey. Petitioners are also requesting a waiver, to the extent necessary, of the Board's slamming rules with respect to the customers that would be transferred from AboveNet to Zayo.

## **BACKGROUND**

Zayo is a Delaware limited liability company with principal offices located in Louisville, Colorado. Zayo is a direct subsidiary of Zayo Group Holdings, Inc., a Delaware corporation which is wholly owned by Communications Investment, LLC ("CII") which has no majority owner. According to the petition, Zayo is a provider of bandwidth infrastructure and network neutral collocation 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 providers, media and content companies, and certain bandwidth-intensive enterprises. Zayo holds authorization to provide intrastate telecommunications services in 42 states and the District of Columbia. In New Jersey, Zayo is authorized to provide local exchange and interexchange telecommunications services. See Order, 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 dated May 16, 2011. Additional information and qualifications of Zayo can be found in that Order.

AboveNet is a Delaware corporation that is a wholly owned subsidiary of Zayo. AboveNet provides dedicated end-to-end fiber optic infrastructure and high-bandwidth Internet connectivity, both domestically and internationally. AboveNet and its subsidiaries are authorized to provide telecommunications services in 32 states and the District of Columbia. In New Jersey, AboveNet (f/k/a Metromedia Fiber Network Services, Inc.) was authorized to provide dedicated and private line services. See Order, I/M/O the Petition of Metromedia Fiber Network Services, Inc. Requesting Authority to Provide Dedicated and Private Line Telecommunications Services throughout New Jersey, Docket No. TE98040202, dated September 14, 1998.

## **DISCUSSION**

As described in the petition, in order to simplify its corporate structure, Zayo is undertaking certain pro forma intra-company transactions that will result in customers and assets moving from AboveNet to Zayo. The transactions will be accomplished by (1) the roll-up of AboveNet into Zayo through a series of Pro Forma mergers, with Zayo as the surviving entity; and/or (2) the pro forma assignment of assets and customers of AboveNet to Zayo, followed by the series of pro forma mergers. Zayo will then be the Company entity that provides telecommunications services throughout the United States.

The Petitioners state that the proposed Pro Forma Transactions will not result in any changes to the services received by customers, including rates, terms and conditions of service. Furthermore, since all of Zayo's subsidiaries, including AboveNet, have the same corporate officers there will be no change in the managerial qualifications of the telecommunications provider serving customers affected by the Pro Forma Transactions, nor will there be a change in the management policies of the Company as a result of the Transactions. Petitioners are also requesting a waiver, to the extent necessary, of the Board's slamming rules with respect to the customers that would be transferred from AboveNet to Zayo. Petitioners state that notice will be sent to all affected customers at least 30 days prior to the transfer informing them of the

transaction and indicating that there will be no change in rates, terms and conditions of service and that they have the right to change carriers if they chose to do so.

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 and N.J.S.A. 48:3-10, 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. According to the petition, Petitioners will continue to maintain the technical, managerial, and financial qualifications to operate and provide telecommunications services in New Jersey following the proposed transaction. The petition states that through this consolidation, Zayo will simplify its corporate structure and in doing so will reduce reporting and accounting burdens resulting in operational efficiencies. The petitioner also states that the Company has forty-eight employees in New Jersey that will not be affected by the Transactions. The Division of Rate Counsel has reviewed this matter and by letter dated December 3, 2012, states that it does not object to Board approval of the 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 since AboveNet's New Jersey customers will continue to receive the same services at the same rates, through the same assets, provided by the same employees and under the same terms and conditions. Also, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners as the transaction will strengthen Petitioner's competitive posture in the telecommunications market. In addition, the Board is persuaded that Petitioners will make every effort to minimize any potential adverse impact to employees in New Jersey.

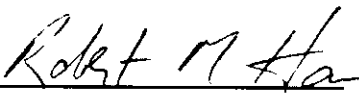
The Board also **FINDS** that, in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-52, following the closing Zayo is responsible for the filing of AboveNet's final annual report with the Board, and for the payment of any outstanding assessment liabilities to the Board and to the Division of Rate Counsel. Following the closing and once all customers have been transferred to Zayo, AboveNet shall surrender its authority to the Board. As for the request for the waiver regarding the Board's slamming rules, the Board **FINDS** that the waiver is necessary in this instance to facilitate the transfer of the AboveNet customers provided that customers are given proper notice of the transfer and the option of seeking alternative carriers.

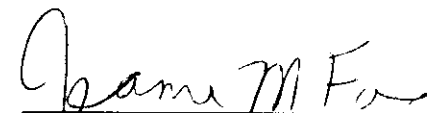
Accordingly, the Board **FINDS** that the internal corporate reorganization will have no material impact on the rates of current customers, or on employees. The Board also **FINDS** that the transactions will have no negative impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **FINDS** that the proposed transaction is in accordance with the law and in the public interest, and **HEREBY ORDERS** that

Petitioners shall notify the Board of the closing of the proposed transaction within 7 days of consummation.

DATED: 1/23/13

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

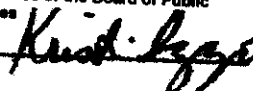
  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
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 VERIFIED JOINT PETITION OF ZAYO GROUP LLC, AND  
ABOVENET COMMUNICATIONS, INC. FOR APPROVAL FOR APPROVAL OF CERTAIN  
PRO FORMA INTRA-COMPANY TRANSACTIONS  
DOCKET NO. TM12111030

SERVICE LIST

Dennis C. Linken, Esq.  
Scarinci & Hollenbeck, LLC  
1100 Valley Brook Avenue  
Lyndhurst, NJ 07071-0790  
[dlinken@scarincihollenbeck.com](mailto:dlinken@scarincihollenbeck.com)

Jean L. Kiddoo, Esq.  
Brett P. Ferenchak, Esq.  
Bingham McCutchen LLP  
2020 K Street, N.W.  
Washington, DC 20006  
[jean.kiddoo@bingham.com](mailto:jean.kiddoo@bingham.com)  
[brett.ferenchak@bingham.com](mailto:brett.ferenchak@bingham.com)

Scot E. Beer, General Counsel  
Jill Sandford, Associate General Counsel  
Zayo Group, LLC  
400 Centennial Parkway, Suite 200  
Louisville, CO 80027  
[Scott.beer@zayo.com](mailto:Scott.beer@zayo.com)

Stefanie A. Brand, Esq.  
Director, Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, NJ 07101  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

James F. Murphy  
Rocco Della Serra  
Board of Public Utilities  
Division of Telecommunications  
44 South Clinton Street, 9th Floor  
Post Office Box 350  
Trenton, New Jersey 08625  
[james.murphy@bpu.state.nj.us](mailto:james.murphy@bpu.state.nj.us)  
[rocco.della-serra@bpu.state.nj.us](mailto:rocco.della-serra@bpu.state.nj.us)

Ayelet Hirsch Korn, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
[ayelet.hirschorn@dol.lps.state.nj.us](mailto:ayelet.hirschorn@dol.lps.state.nj.us)