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BOARD OF PUBLIC UTILITIES TRENTON, NJ BOARD OF PUBLIC UTILITIES TRENTON, NJ

August 2, 2019

Via Electronic and Regular Mail

Aida Camacho-Welsh, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue
3rd Floor, Suite 314
Trenton, NJ 08625

Re: I/M/O the Petition of Zayo Group, LLC and Front Range TopCo, Inc., for Approval of the Transfer of Indirect Control of Zayo Group, LLC to Front Range TopCo, Inc. BPU Docket No.: TM19060749 Our File No.: 41049.1200

Dear Secretary Camacho-Welsh:

On June 25, 2019, Front Range TopCo, Inc. ("Front Range") and Zayo Group, LLC ("ZGL") (together, "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 48:3-10 requesting Board approval for the proposed transfer of indirect control of ZGL, through its parent Zayo Group Holdings, Inc. ("ZGH") (collectively, "Zayo"), to Front Range ("Transaction").¹ On July 18, 2019, the New Jersey Division of Rate Counsel ("Rate Counsel") filed a response letter with the Board.² Rate Counsel has proposed "that the Board require at a minimum 30-day written notice to the Board and Rate Counsel when New Jersey employees are slated for a workforce reduction that is greater than fifteen percent (15%) throughout a three (3) year period post-issuance of the Board's Order as a condition of approval..."³

Petitioners object to such a condition because the notice requirement is administratively burdensome and unnecessary. Petitioners have no plans to reduce the New Jersey workforce of Zayo.⁴ Further, the pension protections required by N.J.S.A. 48:3-7 and 48:3-10 are not raised by the Transaction as Zayo employees' retirement plans do not include pensions.⁵ Zayo's employees will continue to enjoy all retirement benefits currently offered.⁶ As such, the facts of this matter are distinguishable

¹ Petition, at 1.

² Rate Counsel Letter, at 1.

³ *Id.*, at 2-3.

⁴ Petition, at 7.

⁵ *Id.*

⁶ *Id.*

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from other matters where the Board imposed a notice requirement due to a concern about an adverse impact upon customers.⁷ The *Broadview-Windstream Transaction* transferred control of one competitive provider to another competitive provider and involved 168 employees⁸, significantly greater than the number involved here. Further, Rate Counsel and the Board worried employee attrition could result from the combination of providers and diminish service, service quality, and customer service capabilities. Here, Zayo employs only 39 people in New Jersey. Moreover, the transaction does not consolidate two competitive providers and post-transaction Zayo will continue to operate with the same employee levels with the same access to retirement benefits. As such, there is no reason to believe service, service quality, or customer service capability will diminish.

Alternatively, if the Board determines such a condition is necessary, Petitioners object to Rate Counsel's proposal, because it is not consistent with the Board's prior decision involving Zayo or in other transfer of control transactions in substantially identical circumstances involving other competitive providers serving the New Jersey market. Specifically, in a prior decision, the Board required Zayo to "notify the Board, providing a written explanation if there is 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."⁹ In multiple other transfer of control transactions involving competitive providers, the Board has required certificated companies to report a change in employee workforce only after the fact, for three years following the Order authorizing the transaction.¹⁰

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. Employee decisions require careful consideration of not only the health of the company's business and customer service, but also employee privacy and the ability of affected employees to obtain new employment with as little disruption as possible. As providers operating in a highly competitive market, Petitioners require the flexibility to make business decisions as quickly as possible. 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. An advance notice requirement also would risk premature disclosure of workforce changes inconsistent with employee privacy and potentially complicate employees' ability to pursue other job arrangements on the most advantageous terms and timing. Petitioners respectfully submit that no notice is necessary, but if the Board decides to place a workforce condition on Petitioners it should be consistent with conditions,

⁷ See, e.g., *I/M/O Verified Joint Petition of Broadview Network Holdings, Inc. et al.*, Docket No. TM 170404333, Order at 4 (June 30, 2017) (*Broadview-Windstream Transaction*).

⁸ *Id.* at 2-3.

⁹ See *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, Order at 3 (Jan. 31, 2018) (*Zayo-Northeastern Transaction*).

¹⁰ See *I/M/O Verified Joint Petition of Crown Castle International Corp., Transferee, ITS Group Holdings LLC, Transferor, and Fiber Technologies Networks, L.L.C., Lightower Fiber Networks I, LLC and Lightower Fiber Networks II, LLC, Licensees, for Approval to Transfer Indirect Control of Licensees to Crown Castle International Corp.*, Docket No. TM17080830, Order at 4 (Oct. 20, 2017); *Verified Joint Petition of GTT Americas, LLC, Pivotal Global Capacity, LLC and GC Pivotal, LLC d/b/a Global Capacity for Approval to Transfer Control of GC Pivotal, LLC to GTT Americas, LLC*, Docket No. TM17060688, Order at 3 (Aug. 23, 2017); *I/M/O Verified Joint Petition of Broadview Network Holdings, Inc. et al.*, Docket No. TM 170404333, Order at 4 (June 30, 2017).

particularly with respect to timing of any notice, in recent orders affecting other competitive carrier transactions and Zayo's prior approval. For example, a requirement that for three years following the order authorizing the transaction Petitioners shall notify the Board within 30 days after the fact of any planned workforce reduction in New Jersey greater than 15% from current employee levels (39 employees).

Finally, the Petitioners respectfully request that if the Board enacts such a condition that it clarify any new condition supersedes the condition in the *Zayo-Northeastern Transaction*.¹¹ For example, should the Board approve the Transaction described in this proceeding, Zayo should not need to provide notice post-Transaction unless its New Jersey workforce is reduced to 33 employees, as it currently employs 39 employees.¹²

As always, should you require any further information, please do not hesitate to contact me. I thank you for your kind attention.

Very truly yours,



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¹¹ *Zayo-Northeastern Transaction*, at 3.

¹² See Petitioners' Letter on July 26, 2019, at 1 (correcting Zayo's employee count in New Jersey to 39).