



State of New Jersey  
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Director

**Via Electronic and Regular Mail**

June 9, 2023

Ms. Sherri Golden, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625-0350

Re: In the Matter of Verified Joint Petition of Zayo Group, LLC and Electric Lightwave, LLC d/b/a Allstream for Waiver of Mass Migration Rules  
BPU Docket No.: TO23050279

Dear Secretary Golden:

The New Jersey Division of Rate Counsel (“Rate Counsel”) has reviewed the above referenced Verified Joint Petition of Zayo Group, LLC (“Zayo Group”) and Electric Lightwave, LLC d/b/a Allstream (“Electric Lightwave”) (collectively, “Petitioners”), filed with the New Jersey Board of Public Utilities (“Board”) seeking a Board waiver of the Board’s mass migration rules, *N.J.A.C. 14:10-12.1 et seq.*, in connection with the planned *pro forma* consolidation of Electric Lightwave into Zayo Group, with Zayo Group remaining as the surviving entity.<sup>1</sup> Rate Counsel submits the within comments on this matter for the Board’s consideration. For the reasons that follow, Rate Counsel does not object to Board approval of Petitioners’ requests in this matter.

**Petitioners and Transaction**

Zayo Group and Electric Lightwave are both Delaware limited liability companies. Electric Lightwave is a wholly owned, direct subsidiary of Zayo Group. Zayo Group is a wholly owned, direct subsidiary of Zayo Group Holdings, Inc. (“Holdings” and, together with its subsidiaries including Petitioners, the “Company”), a Delaware corporation.<sup>2</sup> Zayo Group provides bandwidth infrastructure and interconnection services over regional and metropolitan fiber networks. In New Jersey, Zayo Group is authorized to provide local exchange and interexchange telecommunications services.<sup>3</sup> Also in New Jersey, Electric Lightwave provides resold long distance service.<sup>4</sup> Petitioners state that Electric Lightwave is not a public utility under

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<sup>1</sup> Verified Joint Petition, p. 1.

<sup>2</sup> *Id.*, p. 2.

<sup>3</sup> *Id.*, pp. 2-3.

<sup>4</sup> *Id.*, p. 3.

New Jersey law because it is only a reseller and has not obtained authorization from the Board to provide local exchange or interexchange service.<sup>5</sup>

Petitioners state that the intra-company reorganization (“Pro Forma Consolidation”)<sup>6</sup> will be seamless to New Jersey customers and will not result in any change in their services and that the same managerial and operations personnel that currently operate Electric Lightwave will continue to operate Allstream.<sup>7</sup> Petitioners assert that the Transaction as planned is in the public interest as it will allow Petitioners to become a stronger competitor, which will ultimately benefit consumers.<sup>8</sup> The pro forma consolidation will merge Electric Lightwave with and into Zayo Group, and at the conclusion of the transaction Electric Lightwave will cease to exist and Zayo Group will establish an “Allstream” division that will continue to operate portions of the Electric Lightwave business that provide services not currently provided by Zayo Group.<sup>9</sup>

In addition, Petitioners have requested a waiver of the Board’s mass migration regulations under *N.J.A.C.14:10-12.1 et seq.* Petitioners provided a copy of the Customer Notice as required under federal regulations that will be mailed by Zayo Group and Electric Lightwave to current customers 30-days prior to the assignment and transfer of customers to Zayo Group, which confirms to customers that services will continue under the same rates, conditions and terms of service.<sup>10</sup>

## Discussion

Rate Counsel notes that Board approval of any sale or merger must be based on the Board’s satisfaction that the transaction will result in positive benefits and is in the public interest. Petitioners assert that this pro forma consolidation will benefit New Jersey consumers.<sup>11</sup> Petitioners have also requested a waiver of the Board’s mass migration rules. Although the Board has the authority to waive its mass migration rules pursuant to *N.J.A.C. 14:10-12.3(d)* and *14:10-12.6(m)*, such waivers should only occur under very limited circumstances determined on a case by case basis and only when it is clear that customers will not be prejudiced or suffer detrimental impact by the waiver of notices required under the Board’s regulations. Rate Counsel defers to the Board’s determination as to the applicability of its’ mass migration rules to the customers affected under the transfer/consolidation transaction contemplated herein. Notwithstanding, Rate Counsel notes that New Jersey customers are commercial entities receiving service under individually negotiated contracts and would not be considered mass market service customers and that Petitioners have asserted that customers will be advised of the *pro forma consolidation* via bill notations and have provided sample notices for the Board’s review. *See* Petition, Exhibit B. Therefore, additional customer notice as required under the Board’s mass migration regulations may lead to customer confusion, and may justify approval of

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<sup>5</sup> *Id.*, p. 1.

<sup>6</sup> A depiction of the Transaction is provided in Petition attachment, Exhibit A.

<sup>7</sup> Verified Joint Petition, p. 6.

<sup>8</sup> *Id.*, p. 6.

<sup>9</sup> *Id.*, pp. 4-5.

<sup>10</sup> *Id.*, Exhibit B.

<sup>11</sup> *Id.*, pp. 6-7.

the requested waiver. Moreover, as noted by Petitioners there is Board precedent permitting waiver of its mass migration requirements under similar fact sensitive filings.<sup>12</sup>

In connection with New Jersey employment issues, Petitioners state that the same managerial and operations personnel that currently operate Electric Lightwave will continue to operate Allstream.<sup>13</sup> Petitioners do not assert that the change will not directly affect employees, nor do they mention employee benefits. Rate Counsel respectfully urges that the Board require the following as a condition of approval, to diminish any potential degradation in service, service quality and customer service capability resulting from attrition in employment post the transaction which would not be in the public interest.

- Petitioners must notify the Board and Rate Counsel providing an appropriate explanation in writing within a minimum of thirty days prior to effectuating a reduction in New Jersey jobs that is greater than fifteen percent (15%) throughout a three (3) year period post-issuance of the Board's Order.

Rate Counsel supports the contemplated continued provision of innovative, high quality telecommunications services to the public and the promotion of increased competition in the New Jersey telecommunications market for the benefit of both residential and business customers in this state. Accordingly, Rate Counsel would not oppose Board approval of the proposed intra-company transfer/assignment based on the recommendations discussed herein.

Thank you for your attention to this matter.

Very truly yours,

BRIAN O. LIPMAN, ESQ.  
DIRECTOR  
DIVISION OF RATE COUNSEL

EFS/td  
c: Service List

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Emily F. Smithman, Esq.  
Assistant Deputy Rate Counsel

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<sup>12</sup> *Id.*, pp. 5-6.

<sup>13</sup> *Id.*, p. 6.