



State of New Jersey  
DIVISION OF RATE COUNSEL  
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September 13, 2024

**Via Electronic Mail Only**

Ms. Sherri L. Golden,  
Board Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Fl.  
P.O. Box 350  
Trenton, New Jersey 08625-0350  
[Board.Secretary@bpu.nj.gov](mailto:Board.Secretary@bpu.nj.gov)

Re: I/M/O the Verified Joint Petition of Zayo Group, LLC and Zayo Northeast, LLC for Approval (1) of a *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**

Dear Board Secretary:

The New Jersey Division of Rate Counsel (“Rate Counsel”) has reviewed the above referenced Verified Joint Petition of Zayo Group, LLC (“Zayo Group”) and Zayo Northeast, LLC (“Zayo NE” and together with Zayo Group, the “Petitioners”) filed with the New Jersey Board of Public Utilities (“Board”) seeking Board approval (1) of a *pro forma* assignment of certain assets of Zayo Group to Zayo NE (the “*Pro Forma Assignment*”), including to the extent necessary a 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* assignment of certain customers from Zayo Group to Zayo NE, and (2) for Zayo NE to participate in certain financing arrangements described below (“Petition”).<sup>1</sup> Rate Counsel is providing an electronic filing only.<sup>2</sup> Kindly acknowledge receipt of the electronic filing for Rate Counsel’s records. For the reasons that follow, Rate Counsel does not oppose Board approval of Petitioners’ requests in this matter.

**Petitioners**

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<sup>1</sup> Petition at p.1.

<sup>2</sup> Pursuant to e-filing procedures approved by the Board under Docket No. Docket No. EO20030254, dated March 19, 2020.

Petitioners are Delaware limited liability companies with a principal office located at 1401 Wynkoop Street, Suite 500, Denver, Colorado 80202.<sup>3</sup> Zayo NE is a wholly owned subsidiary of Zayo Group.<sup>4</sup> Zayo Group is a direct, wholly owned subsidiary of Zayo Group Holdings, Inc. (“Holdings”), a Delaware corporation.<sup>5</sup> Zayo Group provides competitive local exchange, competitive access, and/or interchange services in the District of Columbia and every state except Alaska.<sup>6</sup> Zayo Group is authorized to provide local exchange and interexchange services in New Jersey.<sup>7</sup> Zayo NE has a pending application for authorization to provide local exchange and interexchange telecommunications services in New Jersey in Board Docket No. TE24050295.<sup>8</sup> Zayo Group and its affiliates have approximately 50 employees in New Jersey.<sup>9</sup>

**Pro Forma Assignment**

The *Pro Forma Assignment* is part of Zayo Group’s internal restructuring plan to organize its network and operations in the Northeast and Mid-Atlantic United States which also involves securing financing to support its network and operations and for other general corporate purposes.<sup>10</sup> Zayo Group plans to execute this restructuring by assigning to Zayo NE customers and certain assets in New Jersey, such as communications optical fiber, certain customer contracts, rights in third party fibers, and associated telecommunications equipment used to provide services or facilities to customers.<sup>11</sup> Attached to the Petition, Petitioners provided a diagram of the *Pro Forma Assignment* labeled Exhibit A as well as a sample notice that will be provided to customers labeled Exhibit B.

Petitioners state that the *Pro Forma Assignment* serves the public interest.<sup>12</sup> Specifically, all of the customers assigned to Zayo NE will continue to receive service, without interruption,

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<sup>3</sup> Id. at p. 2.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> I/M/O 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 (Order dated May 16, 2011).

<sup>8</sup> Petition at p. 2.

<sup>9</sup> Id., at p. 7.

<sup>10</sup> Id. at p. 3.

<sup>11</sup> Id. at pp. 4 and 7.

<sup>12</sup> Id. at p. 7.

from Zayo NE under the same rates, terms and conditions of services as with Zayo Group.<sup>13</sup> Additionally, Petitioners assert that the *Pro Forma Assignment* will not disadvantage customers or cause confusion or disruption to customers because Zayo Group and Zayo NE will advertise and provide services under the “Zayo” brand and use the same customer service, technical, operations and management personnel.<sup>14</sup>

### **Waiver of Mass Migration Rules**

Petitioners contend the Board’s mass migration rules located at N.J.A.C. 14:10-12.1 *et seq.* do not apply to the *Pro Forma Assignment*; however, to the extent required, Petitioners also request a waiver of these rules.<sup>15</sup> Petitioners assert Zayo Group’s New Jersey customers should not be considered mass market service customers because they “are commercial entities or carrier customers who receive service under individually negotiated contract.”<sup>16</sup> Rate Counsel defers to the Board’s determination as to the applicability of its’ mass migration rules to the customers affected under the *Pro Forma Assignment*.

With respect to Petitioners’ requested waiver of the Board’s mass migration rules, Rate Counsel notes that although the Board has the authority to waive its mass migration rules pursuant to N.J.A.C. 14:10-12.2(d), 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. Petitioners will advise their customers of the *Pro Forma Assignment* at least 30 days prior to the *Pro Forma Assignment* and provided a sample of the notice to be provided to customers.<sup>17</sup> Petitioners assert that compliance with the mass migration rules without modification or waiver may confuse affected customers because, from the customers’ point of view, the *Pro Forma Assignment* will simply result in a change in a legal name of the entity providing service within the same Zayo corporate family rather than a discontinuance or other change in their services.<sup>18</sup> Moreover, as noted by Petitioners, there is Board precedent permitting waiver of its mass migration requirements under

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<sup>13</sup> Id. at p. 4.

<sup>14</sup> Id. at pp. 4-5.

<sup>15</sup> Id. at 5.

<sup>16</sup> Ibid.

<sup>17</sup> Id. at p. 4. See Petition Exhibit B.

<sup>18</sup> Petition at p. 5.

similar pro forma transactions.<sup>19</sup> Therefore, according to Petitioners, these circumstances justify waiver of the mass migration rules.

Rate Counsel relies on the assertions provided by Petitioners surrounding the *Pro Forma Assignment*, including the commitment to provide at least 30 days-notice, the commitment to provide transparent notice of the Pro Forma Assignment as included in the sample notice attached as Exhibit B of the Petition, the status of affected customers as commercial entities or carrier customers who individually negotiate service contracts, and the absence of any change or discontinuance of service. Accordingly, Rate Counsel does not oppose Board approval of the proposed *Pro Forma Assignment* or any required waiver of the Board’s mass migration rules.

### **Financing Arrangements**

As part of Zayo Group’s internal restructuring plan, Zayo NE requests Board approval to participate in certain financing arrangements described in the Petition (“Financing Arrangements”).<sup>20</sup> Petitioners seek Board approval to participate in existing, new, amended or restated Financing Arrangements.<sup>21</sup> Under the Financing Arrangements, Zayo Issuer, LLC would be the borrower.<sup>22</sup> The proposed debt instruments Petitioners plan to use in the Financing Arrangements include one or more of the following: notes or debentures (including notes convertible into equity and private notes that may be exchanged for public notes); conventional credit facilities, such as revolving credit facilities and term loans; letters of credit; and bridge loans; or a combination of the above.<sup>23</sup> Some or all of the Financing Arrangements may include a security interest in the assets of Zayo Issuer, LLC and its current and future subsidiaries, including Zayo NE.<sup>24</sup> Additional security in the Financing Arrangements may include equity in

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<sup>19</sup> Ibid. citing I/M/O Zayo Group et al., Docket No. TO23050279 (Aug 16, 2023); I/M/O Light Tower Fiber Long Island et al., Docket No. TM14040242 (June 18, 2014); I/M/O Light Tower Fiber and Keyspan Communications, Docket No. TM08040212 (June 13, 2008).

<sup>20</sup> Petitioners contend that the aggregate amount of the requested financing “constitutes business, commercial, and financial information that is confidential, proprietary and non-public.” Affidavit of Laren Lantero at ¶ 3. Rate Counsel executed a Non-Disclosure Agreement with Petitioners and Board Staff on September 3, 2024 in order to review the aggregate amount and other confidential information provided in responses to Board Staff discovery requests.

<sup>21</sup> Petition at p. 5.

<sup>22</sup> Petition at p. 6. Upon completion of the restructuring plan described in the Petition, Zayo Issuer, LLC would become the direct parent and 100% owner of Zayo NE. See Petition Exhibit A.

<sup>23</sup> Petition at p. 6.

<sup>24</sup> Ibid.

Zayo Issuer, LLC and its current and future subsidiaries, such as Zayo NE.<sup>25</sup> Petitioners intend to use the proceeds from the Financing Arrangements for acquisitions, refinancing existing debt, funding capital to support growth capital needs, including those of Zayo NE, and/or providing working capital to fund general corporate purposes.<sup>26</sup> The rates, terms and conditions, maturity dates, and dates of issuance that are part of the Financing Arrangements will be determined by market conditions and the lenders' requirements at the time of each issuance.<sup>27</sup> Because Zayo Group does not offer an employee pension plan for its New Jersey employees, the contemplated Financing Arrangements will not affect the ability of Petitioners to fulfill pension obligations.<sup>28</sup>

Petitioners assert the Financing Arrangements will promote the public interest by fostering competition between telecommunications carriers by providing Zayo NE with access to financial resources that would enable it to compete in the marketplace.<sup>29</sup> Further, Petitioners assert that the Financing Arrangements will not impair its ability to provide service to the public.<sup>30</sup> Importantly, Petitioners state the Financing Arrangements will not have any "adverse impact on the customers of Zayo NE and will not disrupt service or cause customer confusion or inconvenience."<sup>31</sup>

Prior Board approval is required in order to effectuate any encumbrance or mortgage of property of a telecommunications service provider as contemplated in the Petition pursuant to N.J.S.A. 48:3-7, -9 and -10 and N.J.A.C. 14:1-5.9. Otherwise, the transaction is void under New Jersey law.<sup>32</sup> Petitioners have provided information required under the statute and the Board's regulations and additional information in reply to Board Staff's discovery requests in support of

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<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Id. at p. 6-7.

<sup>29</sup> Id. at p. 7.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> N.J.S.A. 48:3-9, *et seq.* states that if the Board finds that after investigation there is doubtful benefit to the petitioner, the Board may withhold approval. *See, Interstate Telephone & Telegraph Co. v. Board of Public Utility Commissioners*, 84 NJL (Sup. Ct. 1913), wherein the court interpreted the 'approval of the purpose' provision to empower the Board with the authority to withhold approval if in its judgment the purpose of the debt incurred will have doubtful benefit to the applicant.

their assertion that the Financing Arrangements are not contrary to the public interest and will serve a beneficial purpose for New Jersey customers.<sup>33</sup>

Rate Counsel supports action which promotes increased competition and innovation in the New Jersey telecommunications market for the benefit of customers in this state. As asserted by Petitioners, the requested action is expected to further assist in ensuring that Petitioners are able to better compete in the telecommunications market and achieve positive benefits the Financing Arrangements are expected to produce. Rate Counsel relies on Petitioners' assertions that the financing arrangements contemplated in the Petition will not in any event result in the reduction or impairment of service to New Jersey customers.<sup>34</sup> Accordingly, Rate Counsel does not oppose the Board's grant of Petitioners' request to participate in the Financing Arrangements contemplated in the Petition.

### **Conclusion**

For the reasons stated above, Rate Counsel does not object to Board approval of the Pro Forma Assignment of Zayo Group's assets, including a waiver of the Mass Migration Rules, and Zayo NE's participation in the Financing Arrangements described in the Petition. Thank you for your attention to this matter.

Very truly yours,

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

*/s/ Robert Glover*

Robert Glover  
Assistant Deputy Rate Counsel

RMG/td  
c: Service List

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<sup>33</sup> Petition at p. 7; Additional information was provided by Petitioners under cover letter dated July 19, 2024, in response to Board Staff's information requests.

<sup>34</sup> Rate Counsel notes that New Jersey assets are being pledged to support a loan for funds to be used outside of New Jersey. Rate Counsel explicitly relies on this statement, and the assurance that any default outside of New Jersey will not negatively impact New Jersey customers.