

BINGHAM

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Our file no.: 0000350839

July 8, 2010

Via Overnight Courier

Julie P. Orchard, Commission Secretary
Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, Utah 84111

**Re: Joint Application of Zayo Group, LLC and American Fiber
Systems, Inc. for the Indirect Transfer of Control of American Fiber
Systems, Inc. to Zayo Group, LLC**

Dear Ms. Orchard:

On behalf of Zayo Group, LLC and American Fiber Systems, Inc. (together, "Applicants"), enclosed for filing are an original and eight (8) copies of the above-referenced Joint Application. Also enclosed is CD-ROM containing an electronic version of the Joint Application in MSWord and PDF formats.

Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed, postage paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Brett Ferenchak at 202-373-6697.

Respectfully submitted,



Jean L. Kiddoo
Brett P. Ferenchak

Counsel for Zayo Group, LLC

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Hong Kong
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Los Angeles
New York
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Bruce T. Frankiewich
General Counsel & VP of Regulatory Affairs
American Fiber Systems, Inc.
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bfrankiewich@afsnetworks.com

Counsel for Zayo Group, LLC

**BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH**

Joint Application of

Zayo Group, LLC

and

American Fiber Systems, Inc.

for the Indirect Transfer of Control of
American Fiber Systems, Inc. to Zayo Group,
LLC

JOINT APPLICATION

Docket No. _____

JOINT APPLICATION

Zayo Group, LLC (“Zayo Group”) and American Fiber Systems, Inc. (“AFS”) (collectively, “Applicants”), pursuant to Utah Code Ann. §§ 54-4-28 & 54-4-29 and the rules of the Commission, including R746-349-7, respectfully request approval for the indirect transfer of control of AFS to Zayo Group (the “AFS-Zayo Transaction”). AFS is a non-dominant competitive carrier that holds authority from the Commission to provide telecommunications services.

Although the proposed AFS-Zayo Transaction will result in a change in the indirect ownership of AFS, no transfer of authorizations, assets or customers will occur as an immediate consequence of the proposed transaction. AFS will continue to provide service to its existing

customers under the same rates, terms and conditions. Zayo Group, however, plans to change AFS's name to Zayo Metro, Inc.¹ immediately upon completion of the transaction. The proposed transaction, therefore, will be transparent to customers of AFS, except for the name change.

In support of this Joint Application, Applicants provide the following information:

II. DESCRIPTION OF THE APPLICANTS

A. Zayo Group, LLC

Zayo Group is a Delaware limited liability company with principal offices located at 400 Centennial Parkway, Suite 200, Louisville, Colorado 80027. Through its three business units -- Zayo Bandwidth, Zayo Enterprise Services, Zayo Fiber Solutions and zColo -- Zayo Group provides bandwidth, voice, collocation and interconnection, connectivity and dark-fiber related services, and managed services to carrier, enterprise, small and medium enterprise, and government customers. Zayo Group anticipates that, upon completion of the acquisition of AFS-Zayo Transaction, AFS will initially become part of the Zayo Bandwidth business unit.

Zayo Group is not itself authorized to provide telecommunications in any state, and while its subsidiaries hold licenses to provide telecommunications in over 20 states, as well as from the Federal Communications Commission, none currently hold authorizations to provide services in Utah. However, Zayo Group has the technical, managerial, and financial qualifications to acquire control of AFS. Zayo Group's current ownership and operation of its operating subsidiaries demonstrates that Zayo Group is qualified to own and control AFS. Zayo Group is operated by a highly qualified management team, all of whom have extensive backgrounds in the telecommunications industry. Zayo Group's managerial expertise will further strengthen AFS's operations.

¹ Upon completion of the AFS-Zayo Transaction, AFS will notify its customers of the name change and make all appropriate filings with the Commission to reflect its new name.

B. American Fiber Systems, Inc.

AFS is a Delaware corporation with principal offices located at 100 Meridian Centre, Suite 300, Rochester, New York 14618. AFS is a wholly-owned subsidiary of American Fiber Systems Holding Corp. (“AFSHC”), a Delaware holding company whose principal business is telecommunications.² AFS is authorized to provide dedicated facilities-based and resold local exchange, facilities-based interexchange and private line services within Utah pursuant to a Certificate of Public Convenience and Necessity issued in Docket No. 00-2353-01 on February 23, 2001. AFS is authorized to provide telecommunications services in numerous other states pursuant to deregulation, registration or certification. AFS is also authorized by the Federal Communications Commission to provide interstate and international services as a non-dominant carrier.

III. CONTACTS

Questions or any correspondence, orders, or other materials pertaining to this Joint Application should be directed to the following.

For Zayo Group:

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and:

Scott E. Beer
General Counsel
Zayo Group, LLC
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Louisville, CO 80027
303-381-4664 (Tel)
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sbeer@zayo.com

² AFSHC holds no regulatory licenses from this or any other regulatory Commission.

For AFS:

Bruce T. Frankiewicz
General Counsel & VP of Regulatory Affairs
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585-785-5821 (Tel)
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bfrankiewicz@afsnetworks.com

IV. DESCRIPTION OF THE TRANSACTIONS

A. Transfer of Control of AFS to Zayo Group

Zayo Group, Zayo AFS Acquisition Company, Inc. ("Merger Sub"), a direct subsidiary of Zayo Group created specifically for the purposes of this transaction, AFSHC and Robert E. Ingalls, Jr., as the Equity Holder Representative have entered into an Agreement and Plan of Merger dated as of June 24, 2010 (the "Agreement") whereby AFSHC will merge with and into Merger Sub, with AFSHC surviving the merger. As a result of the transaction, AFSHC will become a direct subsidiary, and AFS will become an indirect subsidiary, of Zayo Group. Applicants therefore request authority for the indirect transfer of control of AFS to Zayo Group. For the Commission's convenience, pre- and post-transaction corporate structure charts are provided as Exhibit A.

Immediately following the consummation of the proposed transaction, AFS will continue to offer service with no change in the rates or terms and conditions of service. Therefore, except for the name change, the transfer of control of AFS will be seamless and transparent to consumers in Utah.

V. INFORMATION REQUIRED BY R746-394-7

Pursuant to R746-394-7, Applicants provide the following information:

a. identification that it is not an ILEC,

Applicants confirm that none of the Applicants or their affiliates are an ILEC.

b. identification that it seeks approval of the application pursuant to this rule,

Applicants confirm that they seek approval of the application pursuant to the information adjudication process set forth in this rule.

c. a reasonably detailed description of the transaction for which approval is sought,

A detailed description of the transaction is provided in Section IV, above.

d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and

Applicants will file a Domestic and International Section 214 Application with the FCC. A copy of that Application will be filed with this Commission after it is submitted. In connection with this transaction, Applicants also expect to request approval from the utility regulatory agencies ("PUCs") in the following states: Georgia, Minnesota, New York, Ohio, and Tennessee. Due to the voluminous nature of the state filing, most of which contain the same information, Applicants have only attached as Exhibit B a copy of the New York filing requesting approval. Applicants are also required to provide notice to the PUCs in the following jurisdictions: Connecticut, Idaho, and Nevada. Applicants are providing an informational notice to the PUCs in the following states: Arizona, Florida, Kansas, and Missouri. Due to the voluminous and repetitive nature of the notices to be sent to the PUC, Applicants have not included copies of the notice filings. Applicants will provide any additional filings at the request of the Commission.

e. copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the application.

Applicants have not yet received any notices, correspondence or orders from any federal agency or PUC reviewing the transaction. To the extent requested by the Commission, Applicants

will forward any orders or similar actions approving or denying approval of the transaction.

VI. PUBLIC INTEREST STATEMENT

Applicants submit that the transactions described herein will serve the public interest. Under new ownership, AFS will continue to provide high-quality services in Utah, while gaining access to the additional resources and operational expertise of Zayo Group. The transfer of control, therefore, will give AFS the ability to become a stronger competitor, to the ultimate benefit of consumers. AFS's network complements the existing metro and regional networks of Zayo Group's current business units, giving the operating subsidiaries greater market depth and breadth as a result of the transaction. As a result, the transaction will strengthen the Applicants' ability to compete with other, much larger, fiber providers in the region to the benefit of consumers and the telecommunications marketplace.

Further, except for the name change, the AFS-Zayo Transaction will be conducted in a manner that will be transparent to customers of AFS. The transfer of control of AFS will not result in a change of providers for customers or a transfer of any of AFS's authorizations. Following consummation of the proposed transaction, AFS will continue to provide high-quality communications services to its customers without interruption and without immediate change in rates, terms or conditions.

The public interest will also be served by expeditious consideration and approval of the transaction. For various important business reasons, Applicants intend to complete the AFS-Zayo Transaction within the next ninety (90) days. Moreover, delay in the regulatory approval process will prevent the Applicants from realizing the economic and operational benefits expected from the transaction or delivering expanded services as quickly as the Applicants otherwise would. Applicants emphasize that the proposed transfer of control will be seamless and transparent to the customers of AFS, and in no event will it result in the discontinuance, reduction, loss, or impairment

of service to customers. Accordingly, Applicants request that the Commission commence its examination of the proposed transaction as soon as possible and complete its review so that it will be considered and approved no later than September 15, 2010.

VII. CONCLUSION

For the reasons stated above, Applicants submit that the public interest, convenience, and necessity would be furthered by a grant of this Joint Application and approval for the indirect transfer of control of AFS to Zayo Group.

Bruce T. Frankiewich
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Respectfully submitted,



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Counsel for Zayo Group, LLC

Dated: July 8, 2010

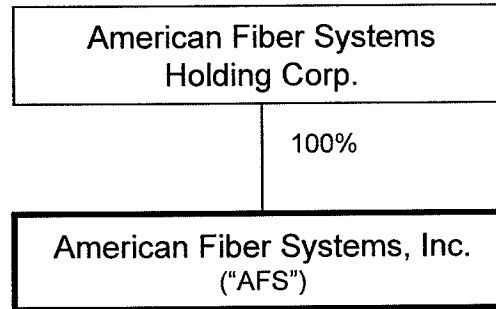
LIST OF EXHIBITS

- | | |
|---------------|--|
| Exhibit A | Pre- and Post-Transaction Corporate Organizational Structure |
| Exhibit B | Copy of New York PUC Filing |
| Verifications | |

EXHIBIT A

Pre- and Post-Transaction Corporate Organizational Structure

Pre-Transaction Corporate Structure of AFS



Post-Transaction Corporate Structure of AFS

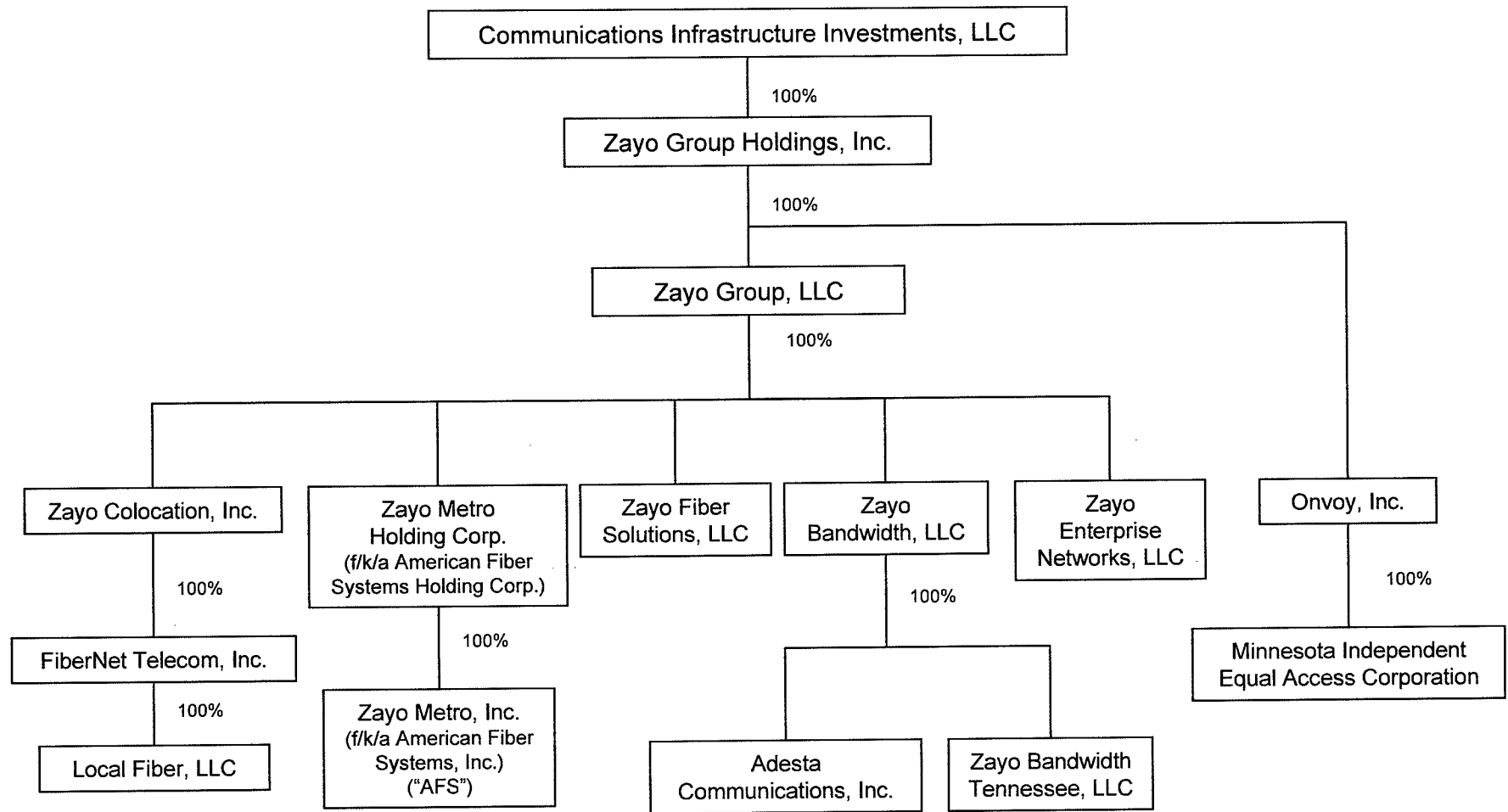


EXHIBIT B

Copy of New York PUC Filing

Jean L. Kiddoo
Brett P. Ferenchak
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brett.ferenchak@bingham.com

July 2, 2010

Via Email

Honorable Jaclyn A. Brillig, Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350
secretary@dps.state.ny.us

**Re: Joint Application of Zayo Group, LLC and American Fiber Systems, Inc. for
(1) the Indirect Transfer of Control of American Fiber Systems, Inc. to Zayo
Group, LLC and (2) American Fiber Systems, Inc. to Participate in Certain
Existing and Additional Financing Arrangements of Zayo Group, LLC**

Dear Ms. Brillig:

On behalf Zayo Group, LLC and American Fiber Systems, Inc., attached for filing with
the Commission is the above-referenced Joint Application.

Please acknowledge receipt and acceptance of this filing. Should you have any
questions, please do not hesitate to contact Brett Ferenchak at 202-373-6697.

Respectfully submitted,



Jean L. Kiddoo
Brett P. Ferenchak

Counsel for Zayo Group, LLC

Cc: Bruce T. Frankiewich (American Fiber Systems, Inc.)

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**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

_____)
Joint Application of)
)
Zayo Group, LLC)
)
and)
)
American Fiber Systems, Inc.)
)
for (1) the Indirect Transfer of Control of American)
Fiber Systems, Inc. to Zayo Group, LLC)
and (2) American Fiber Systems, Inc. to Participate in)
Certain Existing and Additional Financing)
Arrangements of Zayo Group, LLC)
_____)

Case No. _____

JOINT APPLICATION

Zayo Group, LLC (“Zayo Group”) and American Fiber Systems, Inc. (“AFS”) (collectively, “Applicants”), pursuant to New York Public Service Law §§ 100 and 101, and the rules of the Commission, respectfully request approval for (1) the indirect transfer of control of AFS to Zayo Group (the “AFS-Zayo Transaction”) and (2) AFS to participate in certain existing and additional financing arrangements of Zayo Group upon completion of the AFS-Zayo Transaction. AFS is a non-dominant competitive carrier that holds authority from the Commission to provide telecommunications services. AFS does not currently provide telecommunications services, nor does AFS currently have any customers within New York State.

Although the proposed AFS-Zayo Transaction will result in a change in the indirect ownership of AFS, no transfer of authorizations, assets or customers will occur as an immediate consequence of the proposed transaction. AFS will continue to provide service to its existing customers under the same rates, terms and conditions. Zayo Group, however, plans to change

AFS's name to Zayo Metro, Inc.¹ immediately upon completion of the transaction. The proposed transaction, therefore, will be transparent to customers of AFS, except for the name change.

In support of this Joint Application, Applicants provide the following information:

II. DESCRIPTION OF THE APPLICANTS

A. Zayo Group, LLC

Zayo Group is a Delaware limited liability company with principal offices located at 400 Centennial Parkway, Suite 200, Louisville, Colorado 80027. Through its three business units -- Zayo Bandwidth , Zayo Enterprise Services and zColo -- Zayo Group provides bandwidth, voice, collocation and interconnection, and managed services to carrier, enterprise, small and medium enterprise, and government customers. Zayo Group anticipates that, upon completion of the acquisition of AGL Networks, LLC (to be known as Zayo Fiber Solutions, LLC) ("ZFS") on July 1, 2010, ZFS will represent a fourth business unit, which primarily provides connectivity and dark-fiber related services. Zayo Group anticipates that, upon completion of the acquisition of AFS-Zayo Transaction, AFS will initially become part of the Zayo Bandwidth business unit.

While Zayo Group is not itself authorized to provide telecommunications in any state, its subsidiaries hold licenses to provide telecommunications in New York and over 20 other states, as well as from the Federal Communications Commission. In New York, Zayo Bandwidth, LLC ("ZB"), Zayo Group's primary operating subsidiary of the Zayo Bandwidth business unit, is authorized to provide facilities-based and resale of telecommunications

¹ Upon completion of the AFS-Zayo Transaction, AFS will notify its customers of the name change and make all appropriate filings with the Commission to reflect its new name.

services, including local exchange services, pursuant to a Certificate of Public Convenience and Necessity (“CPCN”) granted in Case No. 03-C-0430 on March 27, 2003 as amended in Case No. 09-C-0827 on January 27, 2010.²

Zayo Group has the technical, managerial, and financial qualifications to acquire control of AFS. Zayo Group’s current ownership and operation of ZB demonstrates that Zayo Group is qualified to own and control AFS. Zayo Group is operated by a highly qualified management team, all of whom have extensive backgrounds in the telecommunications industry. Zayo Group’s managerial expertise will further strengthen AFS’s operations. Additional information regarding the technical, managerial and financial qualification of Zayo Group and its subsidiaries has been submitted in prior filings with the Commission and is incorporated by referenced herein.

B. American Fiber Systems, Inc.

AFS is a Delaware corporation with principal offices located at 100 Meridian Centre, Suite 300, Rochester, New York 14618. AFS is a wholly-owned subsidiary of American Fiber Systems Holding Corp. (“AFSHC”), a Delaware holding company whose principal business is telecommunications.³ AFS is authorized to operate as a facilities-based common carrier and reseller of telephone services within the State of New York pursuant to a Certificate of Public Convenience and Necessity issued in Case No. 00-C-1847 on December 18, 2000. AFS is authorized to provide telecommunications services in numerous other states pursuant to deregulation, registration or certification. AFS is also authorized by the Federal

² ZB acquired the CPCN as a result of the merger of Zayo Bandwidth Northeast, LLC (formerly known as PPL Telecom, LLC) with and into ZB, with ZB surviving. The Commission approved the merger in Matter No. 09-02316 (effective Feb. 21, 2010).

³ AFSHC holds no regulatory licenses from this or any other regulatory Commission.

Communications Commission to provide interstate and international services as a non-dominant carrier.

III. CONTACTS

Questions or any correspondence, orders, or other materials pertaining to this Joint Application should be directed to the following.

For Zayo Group:

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and:

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For AFS:

Bruce T. Frankiewich
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IV. DESCRIPTION OF THE TRANSACTIONS

A. Transfer of Control of AFS to Zayo Group

Zayo Group, Zayo AFS Acquisition Company, Inc. (“Merger Sub”), a direct subsidiary of Zayo Group created specifically for the purposes of this transaction, AFSHC and Robert E. Engalls, Jr., as the Equity Holder Representative have entered into an Agreement and Plan of Merger dated as of June 24, 2010 (the “Agreement”) whereby AFSHC will merge with and into Merger Sub, with AFSHC surviving the merger. As a result of the transaction, AFSHC will

become a direct subsidiary, and AFS will become an indirect subsidiary, of Zayo Group. Applicants therefore request authority for the indirect transfer of control of AFS to Zayo Group. For the Commission's convenience, pre- and post-transaction corporate structure charts are provided as Exhibit A.

Immediately following the consummation of the proposed transaction, AFS will continue to offer service with no change in the rates or terms and conditions of service. Therefore, except for the name change, the transfer of control of AFS will be seamless and transparent to consumers in the State of New York.

B. Participation of AFS in the Existing and Additional Financing Arrangements of Zayo Group

Zayo Group and its subsidiaries recently completed new company-wide financing arrangements in an aggregate amount of up to \$325 million consisting of (1) \$250 million in senior secured notes ("Existing Notes"), and (2) up to \$75 million in revolving credit facilities (together with the Existing Notes, the "Existing Facilities"). Zayo Group and all of its current subsidiaries are borrowers and/or guarantors under the financing arrangements and have pledged substantially all of their assets for the financing arrangements.⁴ The financing arrangements also require any *future* subsidiary (created or acquired) of Zayo Group, such as AFS, to become a guarantor and pledge their assets in support of the financing arrangements. As a result, immediately upon completion of the AFS-Zayo Transaction AFS must encumber its property as security for the financing arrangement.

⁴ The Commission authorized ZB to be a borrower/guarantor and to pledge its assets in support of the same financing arrangements that are the subject of this Joint Application. *See* Case No. 10-00007. ZB has filed a separate application to participate in the additional financing arrangements.

Zayo Group used a portion of the proceeds from the notes to pay off existing term loans and revolving credit facilities, which totaled approximately \$180 million. The remainder of the proceeds from the notes and the proceeds from the new revolving credit facility will be used to fund strategic acquisitions and for other permitted purposes, including working capital, capital expenditures, and other general corporate purposes of Zayo Group and its current and future operating subsidiaries.

In order to fund a portion of the AFS-Zayo Transaction, Zayo Group expects to extend the Existing Financing by up to \$125 Million for an aggregate amount of up to \$450 Million. Zayo's current and future subsidiaries, including AFS, will participate in the additional company-wide financing arrangements in the same manner as the current subsidiaries participate in the Existing Financing. The additional financing arrangements may include a combination of senior secured notes and a revolving credit facility(ies) with terms that are substantially similar to or better than the terms of the Existing Financing. Applicants, therefore, request that the Commission permit AFS to participate in the existing and additional financing arrangements of Zayo Group in an aggregate amount of up to \$450 Million.

VI. PUBLIC INTEREST STATEMENT

Applicants submit that the transactions described herein will serve the public interest. Under new ownership, AFS will be able to provide high-quality services in New York, while gaining access to the additional resources and operational expertise of Zayo Group. The transfer of control, therefore, will give AFS the ability to become a stronger competitor, to the ultimate benefit of consumers. AFS's network complements the existing metro and regional networks of Zayo Group's current business units, giving the operating subsidiaries greater market depth and breadth as a result of the transaction. As a result, the transaction will strengthen the Applicants'

ability to compete with other, much larger, fiber providers in the region to the benefit of consumers and the telecommunications marketplace.

Further, except for the name change, the AFS-Zayo Transaction will be conducted in a manner that will be transparent to customers of AFS. The transfer of control of AFS will not result in a change of providers for customers or a transfer of any of AFS's authorizations. Following consummation of the proposed transaction, AFS will continue to provide high-quality communications services to its customers without interruption and without immediate change in rates, terms or conditions.

In addition, AFS's participation in the financing arrangements is consistent with the performance by AFS of services to the public, will not impair the ability of AFS to perform such services and will promote the corporate purposes of AFS. AFS's participation in the financing transaction will be transparent to customers and will not disrupt service, or cause customer confusion or inconvenience.

VII. CONCLUSION

For the reasons stated above, Applicants submit that the public interest, convenience, and necessity would be furthered by a grant of this Joint Application and approval for (1) the indirect transfer of control of AFS to Zayo Group and (2) AFS to participating in the existing and additional financing arrangements of Zayo Group in an aggregate amount of up to \$450 Million as described herein.

Respectfully submitted,



Bruce T. Frankiewich
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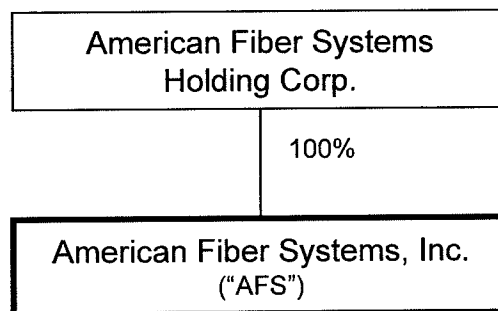
Counsel for Zayo Group, LLC

Dated: July 2, 2010

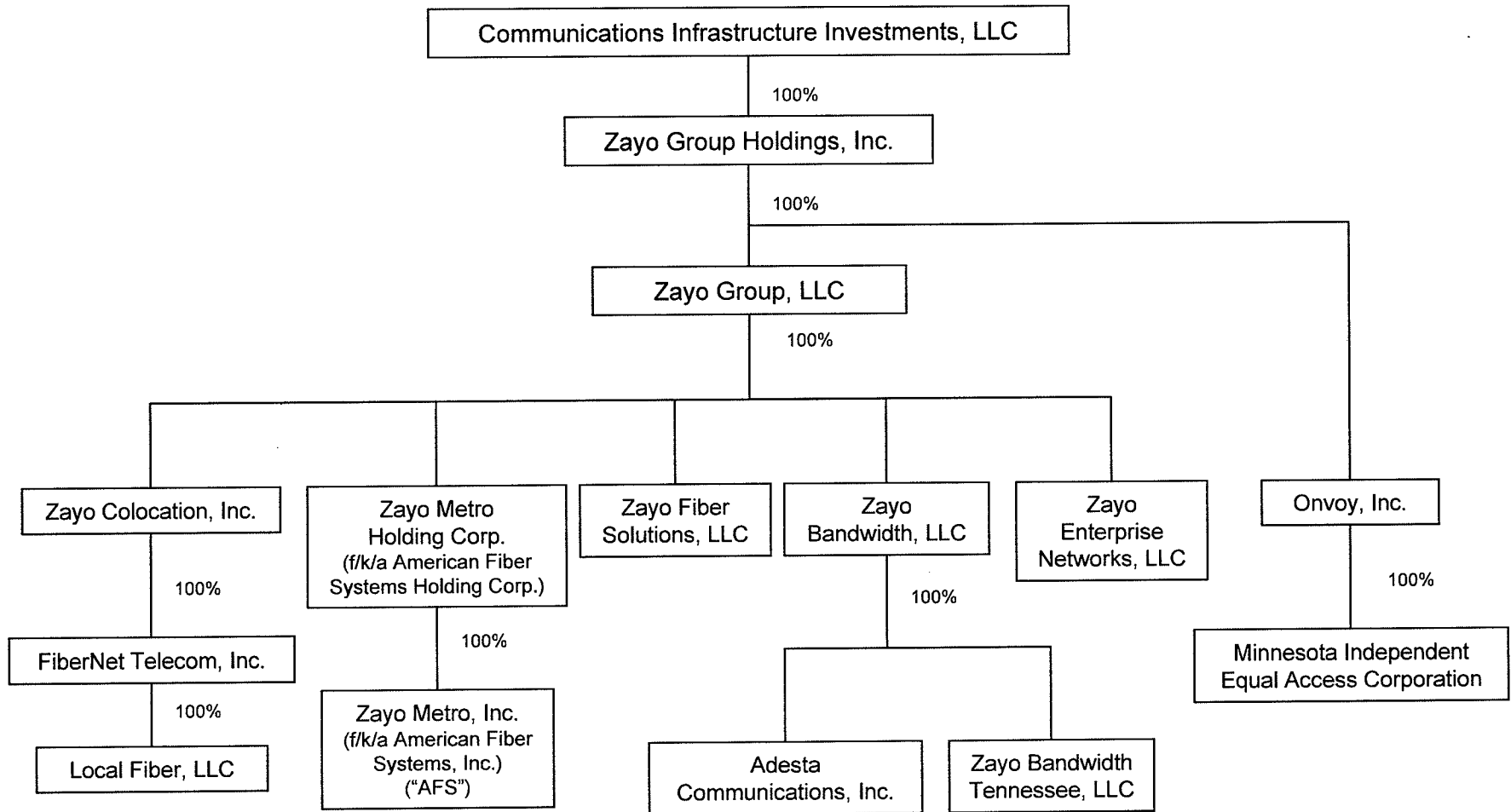
EXHIBIT A

Pre- and Post-Transaction Corporate Structure Charts

Pre-Transaction Corporate Structure of AFS



Post-Transaction Corporate Structure of AFS




STATE OF COLORADO
COUNTY OF BOULDER

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VERIFICATION

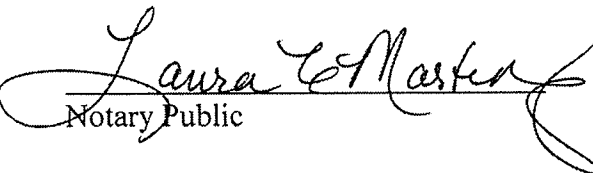
I, Ken desGarenes, state that I am the Chief Financial Officer of Zayo Group, LLC (the "Company"); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.



Ken desGarenes
Chief Financial Officer
Zayo Group, LLC

Sworn and subscribed before me this 30th day of June, 2010.

LAURA C. MARTINEZ
Notary Public
State of Colorado



Notary Public

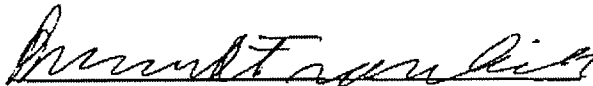
My commission expires April 1, 2012

STATE OF NEW YORK
COUNTY OF MONROE

§
§
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VERIFICATION

I, Bruce T. Frankiewich, state that I am the General Counsel & VP of Regulatory Affairs of American Fiber Systems Holding Corp., the parent company of American Fiber Systems, Inc. (together, the "Company"); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.



Bruce T. Frankiewich
General Counsel & VP of Regulatory Affairs
American Fiber Systems Holding Corp.

Sworn and subscribed before me this 2 day of July, 2010.



Notary Public

My commission expires
MARTIN CONSTABLE
NOTARY PUBLIC, State of N.Y., Monroe Co.
~~My Commission Expires November 28, 2010~~

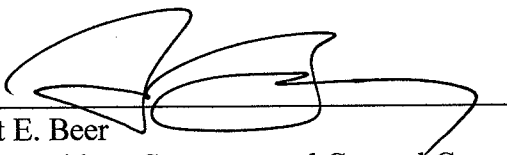
Verifications

STATE OF COLORADO
COUNTY OF BOULDER

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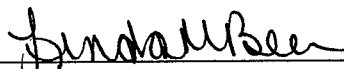
VERIFICATION

I, Scott E. Beer, state that I am the Vice President, Secretary and General Counsel of Zayo Group, LLC (the "Company"); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.



Scott E. Beer
Vice President, Secretary and General Counsel
Zayo Group, LLC

Sworn and subscribed before me this 7th day of July, 2010.



Notary Public

My commission expires 6-8-2011

✓

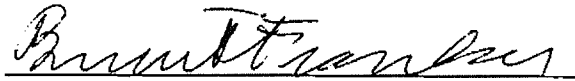
JSB

STATE OF NEW YORK
COUNTY OF MONROE

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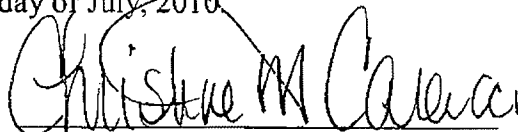
VERIFICATION

I, Bruce T. Frankiewich, state that I am the General Counsel & VP of Regulatory Affairs of American Fiber Systems Holding Corp., the parent company of American Fiber Systems, Inc. (together, the "Company"); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.



Bruce T. Frankiewich
General Counsel & VP of Regulatory Affairs
American Fiber Systems Holding Corp.

Sworn and subscribed before me this 7 day of July, 2010.



Notary Public

My commission expires 2/28/14

CHRISTINE M. CARACCI
NOTARY PUBLIC, State of New York
Monroe Co., Reg. No. 482998C
My Commission Expires 2/28/14