

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the
Joint Application of 360
360networks (USA) Inc.,
American Fiber Systems, Inc.,
and Zayo Group, LLC, for
Approval of Certain Pro Forma
Intra-Corporate Transactions.

Docket No. 12-2289-01

In the Matter of the
Joint Application of
360networks (USA), Inc.,
American Fiber Systems, Inc.,
and Zayo Group, LLC, for
Approval of Certain Pro Forma
Intra-Corporate Transactions.

Docket No. 12-2353-01

In the Matter of the
Joint Application of
360networks (USA), Inc.,
American Fiber Systems, Inc.,
and Zayo Group, LLC, for
Approval of Certain Pro Forma
Intra-Corporate Transactions.

Docket No. 12-2536-02

~~~~~  
HEARING  
~~~~~

TAKEN AT: Heber M. Wells Building
160 East 300 South, Room 451
Salt Lake City, Utah 84111

DATE: Thursday, January 24, 2013

TIME: 9:00 a.m. to 9:14 a.m.

REPORTED BY: Michelle Mallonee, RPR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

For the Applicant:

BRETT P. FERENCHAK, ESQ.

BINGHAM MCCUTCHEN, LLP

2020 K Street NW

Washington, DC, 2006-1806

JILL SANDFORD, ESQ.

ASSOCIATE GENERAL COUNSEL

ZAYO GROUP, LLC

400 Centennial Parkway

Suite 200

Louisville, CO 80027

FOR DIVISION OF PUBLIC UTILITIES:

JUSTIN JETTER, ESQ.

UTAH ATTORNEY GENERAL'S OFFICE

160 East 300 South

5th Floor

Salt Lake City, Utah 84111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESS

PAGE

JILL SANDFORD

Direct Examination by Mr. Ferenchak

6

BILL DUNCAN

Direct Examination by Mr. Jetter

9

Cross-Examination by the Court

10

EXHIBITS

(None)

1

Hearing

2

January 24, 2013

3

PROCEEDINGS

4

THE COURT: Good morning, everyone. My name is Melanie Reif, and I'm the administrative law judge for the Utah Public Service Commission. And this morning we are hearing three dockets in this hearing scheduled for 9 a.m., January 24, 2013. The dockets are as follows: 12-2289-01, 12-2353-01, and Docket 12-2536-02.

10

11

12

13

14

15

16

17

18

19

20

Very briefly, as set forth in the Notice of Application for Approval of Certain Pro Forma Intra-Corporate Transactions and Notice of Hearing, this particular hearing relates to an application that was filed on December 10, 2012, by 360networks, American Fiber Systems, and Zayo Group, collectively the applicants in this matter. They have filed for Commission approval to complete certain pro forma intra-company transactions that will result in the assets and customers of 360networks and American Fiber Systems moving to Zayo Group. And this hearing is being held pursuant to Rule 746-349-7.

21

22

23

24

We have with us today the applicants via telephone. And I'd like to take this time to let them make their appearances, and then turn to the Division to let them make their appearances.

25

Mr. Ferenchak, would you like to proceed, please.

1 MR. FERENCHAK: Yes. Thank you, your Honor.
2 My name is Brett Ferenchak. I'm with Bingham McCutchen, and
3 I am counsel for the applicants.

4 THE COURT: Thank you. And Ms. Sandford.

5 MS. SANDFORD: Yes. Jill Sandford, Associate
6 General Counsel of Zayo Group, LLC, the applicants.

7 THE COURT: Thank you.

8 MR. JETTER: And this is Justin Jetter,
9 representing the Division of Public Utilities. And with me is Bill
10 Duncan, also with the Division of Public Utilities.

11 THE COURT: Thank you. And welcome, everyone.
12 Mr. Ferenchak or Ms. Sandford, would either of you
13 like to proceed, briefly describing the application. And then we'll
14 move to the Division for their response.

15 MR. FERENCHAK: Yes, your Honor. As an initial
16 matter, however, I'd like to move for admission pro hac vice,
17 pursuant to Rule 746-100-6.

18 THE COURT: Your motion is granted, sir.

19 MR. FERENCHAK: Thank you.

20 DIRECT EXAMINATION

21 BY-MR.FERENCHAK:

22 Q. As an initial question, Ms. Sandford, I just wanted
23 to ask whether there were any changes that needed to be made
24 to the joint application, or whether you proffer it as filed.

25 A. With respect to the timing of the pro forma

1 transactions, we currently expect them to occur in late February
2 or early March, rather than January 30, 2013, as stated in the
3 application. Nevertheless, we request that the Commission
4 approve the application as soon as possible so we have the
5 flexibility to complete the pro forma transactions as soon as we
6 have the necessary nationwide regulatory approval. Otherwise,
7 the application is accurate as filed.

8 MR. FERENCHAK: I have no further questions,
9 your Honor. However, I would like to clarify for the record that
10 applicants requested that the certificates of 360networks and
11 American Fiber Systems be canceled, effective upon notification
12 that the pro forma transactions have occurred, rather than upon
13 approval of this application by the Commission.

14 THE COURT: Yes. I'm aware of that, Mr.
15 Ferenchak, and I don't see any cause for concern about that.
16 We wouldn't typically be canceling a certificate until we received
17 your notice that your transaction has occurred. So do be sure
18 to keep us in the loop with everything that you've got going on
19 with the changes that are occurring, okay?

20 MR. FERENCHAK: Absolutely, your Honor.

21 THE COURT: Okay. And let me back up just one
22 moment to Ms. Sandford just to be sure, and if I need to swear
23 her in after the fact.

24 Are you proposing her as a witness?

25 MR. FERENCHAK: Yes, I apologize, your Honor,

1 yes.

2 THE COURT: Okay. I think we got ahead of
3 ourselves once before like this. It sometimes is a little tricky
4 when you're on the phone and I'm not sure what's going on on
5 that end. So to the extent that you have called Ms. Sandford in
6 support of your application.

7 Ms. Sandford, do you testify that the testimony
8 that--or excuse me, do you swear that the testimony you've
9 given today is the truth?

10 MS. SANDFORD: I do, your Honor.

11 THE COURT: Thank you very much. Then the
12 record will be so noted that your testimony was taken under
13 oath. Thank you very much.

14 And Mr. Jetter, do you have any questions for Ms.
15 Sandford?

16 MR. JETTER: I have no questions for Ms.
17 Sandford.

18 THE COURT: Okay. And would you like to proceed
19 with the Division's response.

20 MR. JETTER: Yes, your Honor. We'd like to swear
21 in our witness, Bill Duncan.

22 THE COURT: All right. Mr. Duncan, thank you for
23 raising your right hand. And do you swear that the testimony
24 you are about to give today is the truth?

25 MR. DUNCAN: Yes.

1 THE COURT: Thank you. You may proceed.

2 BILL DUNCAN, having been first duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY-MR.JETTER:

6 Q. Mr. Duncan, have you reviewed the memorandum
7 that's been filed by the Division of Public Utilities?

8 A. Yes.

9 Q. And do you have any corrections that you would
10 like to make to this memo?

11 A. Yes. In reviewing the memo this morning prior to
12 the hearing--and this is the memo dated December 21, 2012
13 from the Division to the Commission--I noticed that in the top
14 section in regards to the docket numbers, there were some
15 errors in the docket numbers. The correct docket numbers are
16 12-2289-01. And then the second one was incorrect. It has
17 12-2363-01, and that should be 12-2353-01. And then the third
18 is 12--it says 12-2536-01, it should be 02.

19 Q. And in relation to the second paragraph on the
20 "Recommendation" section, it discusses canceling the CPCN
21 immediately.

22 Do you believe that it would be in the public
23 interest to allow the CPCN to remain in effect until notified that
24 these transactions have occurred?

25 A. Yes.

1 MR. JETTER: I believe that's all the corrections
2 that we'd like to make to this memorandum. And we'd like to
3 submit it to the record with those.

4 THE COURT: Thank you. Those changes are so
5 noted.

6 And Mr. Ferenchak, do you have any questions for
7 the witness, Bill Duncan, of the Division?

8 MR. FERENCHAK: No, your Honor.

9 THE COURT: Okay. Just one question for you, Mr.
10 Duncan.

11 CROSS-EXAMINATION

12 BY-THE COURT:

13 Q. Is it the Division's view that this transfer is in the
14 public interest?

15 A. Yes, it is.

16 Q. And that granting the request would likewise be in
17 the public interest and be just and reasonable as well?

18 A. Yes. The Division believes that.

19 Q. Okay. Thank you very much.

20 THE COURT: Is there anything else that either
21 party wants to offer?

22 MR. FERENCHAK: No, your Honor.

23 MR. JETTER: I don't think so.

24 THE COURT: Okay. The Commission takes notice
25 that there has been no objection raised in this case. In

1 reviewing the docket, there is no such indication of that.

2 And I will ask at this time if there is any objection.

3 And hearing none, the application will be approved pursuant to
4 Rule 746-349-7, which requires that if no objection to the
5 proposed transaction is submitted in any file comments or reply
6 comments, the Commission will presume the approval of the
7 transaction is in the public interest and use the information
8 contained in the application and accompanying documents as
9 evidence to support a Commission order.

10 Thank you very much. We'll be adjourned.

11 (The matter was adjourned at 9:14 a.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CERTIFICATE

State of Utah)

ss.

County of Salt Lake)

I, Michelle Mallonee, a Registered Professional Reporter in and for the State of Utah, do hereby certify:

That the proceedings of said matter was reported by me in stenotype and thereafter transcribed into typewritten form;

That the same constitutes a true and correct transcription of said proceedings so taken and transcribed;

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action, and that I am not interested in the event thereof.

Michelle Mallonee, RPR, CSR