

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

)
In the Matter of the Joint Application of) DOCKET NO. 12-2289-01
360networks (USA) inc., American Fiber)
Systems, Inc., and Zayo Group, LLC for)
Approval of Certain Pro Forma)
Intra-Corporate Transactions)
)
In the Matter of the Joint Application of) DOCKET NO. 12-2353-01
360networks (USA) inc., American Fiber)
Systems, Inc., and Zayo Group, LLC for)
Approval of Certain Pro Forma)
Intra-Corporate Transactions)
)
In the Matter of the Joint Application of) DOCKET NO. 12-2536-02
360networks (USA) inc., American Fiber)
Systems, Inc., and Zayo Group, LLC for)
Approval of Certain Pro Forma)
Intra-Corporate Transactions) REPORT AND ORDER
)

ISSUED: January 29, 2013

By The Commission:

The above-entitled matters are before the Commission on the joint application of 360networks (USA) inc. (“360networks”), American Fiber Systems, Inc. (“AFS”), and Zayo Group, LLC (“Zayo”), (collectively, “Applicants”) for approval to complete certain pro forma intra-company transactions that will result in the assets and customers of 360networks and AFS moving to Zayo. Applicants filed the application on December 10, 2012 and requested expedited review and action. The application contains all the information required by Utah Admin. Code R746-349-7(A)(1).

On December 21, 2012, in response to a Commission action request, the Division of Public Utilities (“Division”) submitted a recommendation to approve the application. The memo states, in part: “The Division has reviewed the joint application of 360networks, AFS[,]

and Zayo for approval of the pro-forma intra-company transactions and believes that the transfer is in the public interest. As a result of the transfer, the Company should be in a better position to provide expanded and advanced telecommunications services in the State of Utah.”

Pursuant to Utah Admin. Code R746-349-7(A)(2), the Commission issued a public notice of the application and notice of hearing on January 2, 2013, allowing for the submission of comments by any interested party regarding the application. No comments or objections were received.

On January 24, 2013, the Administrative Law Judge for the Commission held a hearing, pursuant to Utah Admin. Code R746-349-7(A)(2). Brett Ferrenchak appeared telephonically on behalf of the Applicant, along with Jill Sandford, and Mr. Ferrenchak moved for *pro hac vice* admission. Justin Jetter, Assistant Utah Attorney General, appeared for the Division, and was accompanied by William Duncan, Telecommunications Manager for the Division.

No objection was made to Mr. Ferrenchak’s motion for *pro hac vice* admission, and the motion was granted. The ALJ took administrative notice of the application and memoranda filed by the Division recommending approval. Applicant’s witness, Ms. Sander, testified that no changes to the application were necessary and applicant desired expedited approval. Mr. Duncan testified on behalf of the Division in support of the application. Mr. Duncan further testified that approval of the pro forma intra-company transactions in this docket is in the public interest. No one appeared at the hearing objecting to the application.

Under Utah Admin. Code R746-349-7, “[i]f no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume

that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.” Utah Admin. Code R746-349-7(A)(3). Because there is no objection to the granting of the application, the Commission thus presumes the application for approval of transfer of indirect control is in the public interest. Moreover, the Division’s memoranda and testimony provide additional support for approval of the application.

ORDER

For the foregoing reasons, the Commission approves the pro forma intra-company transactions that will result in the assets and customers of 360networks (USA) inc. and American Fiber Systems, Inc. moving to Zayo Group, LLC.

DATED at Salt Lake City, Utah, this 29th day of January, 2013.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 29th day of January, 2013, as the Report and Order issued by the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#241469

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of January, 2013, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic-Mail

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