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**On Behalf Of:** AboveNet, Inc., AboveNet Communications, Inc. and Zayo Group, LLC

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March 22, 2012

**Via eFiling**

Burl W. Haar, Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East  
Suite 350  
St. Paul, MN 55101-2147

**Re: Joint Application of AboveNet, Inc., AboveNet Communications, Inc. and Zayo Group, LLC for Approval for the Transfer of Indirect Control of AboveNet Communications, Inc. to Zayo Group, LLC**

Dear Mr. Haar:

On behalf of AboveNet, Inc., AboveNet Communications, Inc. and Zayo Group, LLC, enclosed for filing with the Commission is the above-referenced Joint Application.

Please acknowledge receipt and acceptance of this filing. 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

Enclosure

cc: Linda Chavez (MN DOC)

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**BEFORE THE STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Application of  
AboveNet, Inc., AboveNet Communications,  
Inc. and Zayo Group, LLC for Approval for the  
Transfer of Indirect Control of AboveNet  
Communications, Inc. to Zayo Group, LLC

MPUC Docket No. \_\_\_\_\_

**JOINT APPLICATION**

AboveNet, Inc. (“ABN-Parent”), AboveNet Communications, Inc. (“AboveNet”) and Zayo Group, LLC (“Zayo”) (collectively, the “Applicants”), by undersigned counsel and pursuant to Minn. Stat. Section 237.74, subd. 12, and the rules of the Minnesota Public Utilities Commission (“Commission”), hereby request Commission approval to complete the transfer of indirect control of AboveNet to Zayo (the “Transaction”). In order to consummate the Transaction by mid-year, Applicants request that the Commission grant all relief sought herein as expeditiously as possible, and no later than June 18, 2012, so that Applicants can close the Transaction by June 30, 2012, and meet critical business objectives. Doing so will enable Applicants to minimize their financial exposure and uncertainty inherent in debt and equity market fluctuations over time and to close the Transaction by the end of Zayo’s fiscal year so as to simplify its financial reporting and minimize overall complexity and cost related to accounting for the Transaction.

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

## **I. DESCRIPTION OF THE APPLICANTS**

### **A. ABN-Parent and AboveNet**

ABN-Parent is a publicly-held Delaware corporation (NYSE: ABVT) with principal offices located at 360 Hamilton Avenue, White Plains, New York 10601. AboveNet is a Delaware corporation and wholly-owned direct subsidiary of ABN-Parent. ABN-Parent and its subsidiaries, including AboveNet, are leading providers of dedicated end-to-end fiber optic infrastructure and high-bandwidth Internet connectivity, both domestically and internationally. Their optical network enables their corporate, carrier and governmental customers to implement data, video, Internet and multimedia applications.

Collectively, AboveNet and its subsidiaries are authorized to provide telecommunications services in 32 states and the District of Columbia. In Minnesota, AboveNet is authorized to provide local niche telecommunications services pursuant to Commission authorization granted in Docket No. P-5812/NA-99-1193 on November 15, 1999.<sup>1</sup> AboveNet is also authorized by the Federal Communications Commission (“FCC”) to provide interstate and international telecommunications services.

### **B. Zayo Group, LLC**

Zayo is a Delaware limited liability company with principal offices at 400 Centennial Parkway, Suite 200, Louisville, Colorado 80027. Zayo is a wholly-owned subsidiary of Zayo Group Holdings, Inc., a Delaware corporation and wholly-owned subsidiary of Communications Infrastructure Investments, LLC (“CII”), a Delaware limited liability company. CII has no majority owner. Zayo is a provider of bandwidth infrastructure and network neutral colocation and interconnection services over dense regional and metropolitan fiber networks, enabling its

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<sup>1</sup> The authorization was originally granted in the name of Metromedia Fiber Network Fiber Services, Inc., which subsequently changed its name to AboveNet.

customers to manage, operate, and scale their telecommunications and data networks. Zayo's services are primarily used by wireless service providers, national and regional carriers and other communications service providers, media and content companies, and certain bandwidth-intensive enterprises.

Zayo's fiber networks span over 45,500 route miles, serve 70 metro markets in the District of Columbia and 42 states, including Minnesota, and connect to over 5,100 buildings, including approximately 2,250 cellular towers. These networks allow Zayo to provide bandwidth infrastructure services to customers over redundant fiber facilities between key customer locations.

In Minnesota, Zayo holds a conditional certificate to provide local exchange and interexchange services and an operational certificate to provide local niche services granted by the Commission in Docket No. P6854/NA-11-103; American Fiber Systems, Inc. ("AFS"), a subsidiary of Zayo, is authorized to provide facilities-based and resold local exchange and interexchange services pursuant to certificates granted in Docket No. P-5980/NA-00-1519; and 360networks (USA) inc. ("360networks"), another subsidiary of Zayo, is authorized to provide local exchange and interexchange telecommunications services pursuant to certificates granted in Docket No. P-5816/NA99-1233. Zayo, AFS and 360networks are also authorized by the FCC to provide domestic and international telecommunications services. Additional information concerning Zayo's legal, technical, managerial and financial qualifications to complete the Transaction has been submitted to the Commission with various prior filings with respect to Zayo's certification and various transactions and is therefore already a matter of public record. Applicants request that the Commission take official notice of these existing descriptions of Zayo's qualifications and incorporate them by reference herein. In support of its financial

qualifications, Zayo provides a copy of its financial statements from its most recent SEC Form 10-Q as Exhibit A.

## **II. DESIGNATED CONTACTS**

Questions, correspondence or other communications concerning this Application should be directed to Applicants' counsel of record:

For Zayo:

Jean L. Kiddoo  
Brett P. Ferenchak  
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[brett.ferenchak@bingham.com](mailto:brett.ferenchak@bingham.com)

With copies to:

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For ABN-Parent and AboveNet:

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914-421-6793 (fax)  
[jsandford@above.net](mailto:jsandford@above.net)

## **III. DESCRIPTION OF THE TRANSACTION**

Pursuant to the Agreement and Plan of Merger, dated as of March 18, 2012, by and among Zayo, Voila Sub, Inc. (a wholly-owned direct subsidiary of Zayo created for purposes of the merger) ("Merger Sub") and ABN-Parent (the "Agreement"),<sup>2</sup> Zayo will acquire all of the outstanding equity interests in ABN-Parent (the "AboveNet Merger"). Specifically, Merger Sub

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<sup>2</sup> The Agreement is provided as Exhibit B.

will merge with and into ABN-Parent, whereupon the separate existence of Merger Sub will cease and ABN-Parent will be the surviving corporation. As a result, ABN-Parent will become a wholly-owned direct subsidiary of Zayo. AboveNet will remain a direct subsidiary of ABN-Parent and, therefore, AboveNet will become an indirect subsidiary of Zayo. Diagrams depicting the pre- and post-transaction corporate organization structures of the companies are appended hereto as Exhibit C.

The current customers of AboveNet will remain customers of AboveNet immediately following the AboveNet Merger. Accordingly, the AboveNet Merger will be seamless to customers, who will continue to enjoy the same rates, terms and conditions of service as they do prior to closing. The only immediate change resulting from the AboveNet Merger will be that AboveNet will be ultimately owned by Zayo.

Zayo is managerially, technically, and financially well-qualified to complete the Transaction. As noted above, Zayo and its subsidiaries currently provide telecommunications services in the District of Columbia and 42 states, including Minnesota. For additional detail on the financial and managerial qualifications of Zayo, please see [www.zayo.com](http://www.zayo.com). AboveNet will therefore continue to have the managerial, technical and financial qualifications to provide high quality telecommunications services to consumers in Minnesota supported by experienced Zayo management. AboveNet will also be supported by the financial resources of Zayo.

#### **IV. PUBLIC INTEREST CONSIDERATIONS**

Applicants submit that the Transaction described herein will serve the public interest. As part of Zayo, AboveNet will continue to provide high-quality telecommunications services to consumers while gaining access to the additional resources and operational expertise of Zayo. AboveNet will also benefit by being able to offer services to multi-location business and

enterprise customers across a larger footprint in combination with Zayo. AboveNet's network complements Zayo's network and the acquisition will increase Zayo's existing fiber footprint. Approval of the Transaction also will serve the public interest in promoting competition among telecommunications carriers by providing Applicants with access to greater financial resources that will allow them to combine their operations and thereby become more effective competitors to larger incumbent telecommunications providers. In essence, the Transaction will make AboveNet and Zayo stronger competitors and thereby benefit consumers.

The Transaction described herein will not result in a change of carrier for any customers or any assignment of existing Commission authorizations. Further, the rates, terms and conditions of services currently provided by AboveNet to its customers will not change as a result of the Transaction.

V. **CONCLUSION**

For the foregoing reasons, Applicants submit that the public interest, convenience, and necessity would be furthered by grant of this Application, authorizing Applicants to complete the Transaction described herein.

Respectfully submitted,



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Joan M. Griffin  
Winafred Brantl  
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Counsel for ABN-Parent and AboveNet

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Counsel for Zayo

Dated: March 22, 2012

## **LIST OF EXHIBITS**

Exhibit A      Financial Statements

Exhibit B      Agreement

Exhibit C      Diagrams of the Pre- and Post-Transaction Corporate Organization Structure

Verifications

STATE OF NEW YORK

§  
§  
§

COUNTY OF WESTCHESTER

**VERIFICATION**

I, Robert Sokota, state that I am Senior Vice President, General Counsel and Secretary of AboveNet, Inc.; that I am authorized to make this Verification on behalf of AboveNet, Inc. and its subsidiaries, which include AboveNet Communications, Inc., (collectively "AboveNet"); that I have read the foregoing document; and that the statements in the foregoing document with respect to AboveNet, except as otherwise specifically attributed, are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

*Robert Sokota*

Subscribed and sworn to before me this 19. day of March, 2012.

*Yvette Kitacoser*  
Notary Public

My Commission expires:



STATE OF COLORADO  
COUNTY OF BOULDER

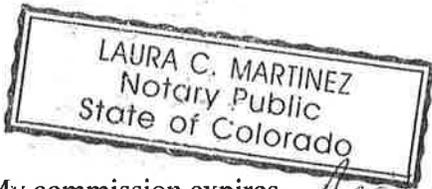
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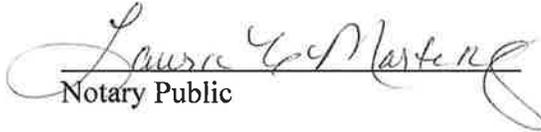
**VERIFICATION**

I, Scott E. Beer, am Vice President, General Counsel and Secretary of Zayo Group, LLC and its subsidiaries (collectively, 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, General Counsel and Secretary  
Zayo Group, LLC

Sworn and subscribed before me this 21 day of March, 2012.



  
\_\_\_\_\_  
Notary Public

My commission expires April 1, 2016