

Joint Application of Zayo Group, LLC and Electric Lightwave, LLC d/b/a Allstream for (1) Approval of a Pro Forma Consolidation and (2) Cancellation of Electric Lightwave, LLC's Certificate of Public Convenience and Necessity	<u>DOCKET NOS. 23-2202-01 and 23-2536-01</u> <u>ORDER CANCELING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY</u>
--	--

ISSUED: March 21, 2023

I. BACKGROUND

On February 7, 2023, Zayo Group, LLC (“Zayo Group”) and Electric Lightwave, LLC d/b/a Allstream (“Electric Lightwave” and together with Zayo Group, “Applicants”), filed a joint application (“Application”) with the Public Service Commission (PSC) seeking:

- (i) Authority to complete a pro forma consolidation of Electric Lightwave into Zayo Group, with Zayo Group remaining as the surviving entity (“Pro Forma Consolidation”);¹
- (ii) Cancellation of Electric Lightwave’s Certificate of Public Convenience and Necessity (CPCN), effective upon completion of the Pro Forma Consolidation (“Cancellation”);² and
- (iii) Waiver of Utah Code Ann. § 54-8b-18 and Utah Admin. Code R746-349-5 to the “change in the provider of Electric Lightwave’s customers that will result from the” Pro Forma Consolidation (“Waiver”), if applicable.³

The Division of Public Utilities (DPU) filed comments on February 13, 2023. DPU states that the Applicants have complied with the CPCN cancellation rules under Utah Admin. Code R746-349-7 and recommends the PSC acknowledge the notification of Pro Forma Consolidation contained in the Application and cancel Electric Lightwave’s CPCN. DPU did not address the Waiver.

¹ See Application at 1 & n.1.

² See *id.* at 2. Electric Lightwave’s CPCN was issued on August 16, 1995, in Docket No. 94-2202-01.

³ Application at 2.

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Pro Forma Consolidation

The PSC concludes that Applicants are exempt from the requirements of Utah Code Ann. § 54-4-30 because each is a competitive entrant and neither receives high-cost support from the Utah Universal Public Telecommunications Support Fund.⁴ In addition, no party has identified a statutory or other legal requirement for the PSC to approve the Pro Forma Consolidation, and no party has requested a declaratory ruling on the issue pursuant to Utah Admin. Code R746-101-1, et seq.

Accordingly, the PSC acknowledges that a notification of the Pro Forma Consolidation was filed as part of the Application and gives notice it will take no further action in this docket with regard to approval of the Pro Forma Consolidation unless a party files a request for agency action and explains the basis on which the PSC may or should act.

B. CPCN Cancellation and Waiver

The Utah Code generally prohibits a change of customer telecommunications providers unless customers are notified about any “change in the provider of any public telecommunications service to a subscriber [and the notice] complies, at a minimum, with Subsections (2)(a) through (e).”⁵ Subsections (2)(a) through (e) generally require notification to customers of the nature, extent, and rates of the service being offered and associated rate changes, confirmation from the customer that it is aware of the rate changes, and customer authorization of those changes and the change in telecommunications provider.

⁴ See Utah Code Ann. §§ 54-8b-3.4(1)(a)(i) & 54-8b-3.4(2).

⁵ Utah Code Ann. § 54-8b-18(2) (the “Anti-Slamming Statute”).

According to the Application regarding the Cancellation, Electric Lightwave is a wholly owned, direct subsidiary of Zayo Group and Zayo Group is a wholly owned, direct subsidiary of Zayo Group Holdings, Inc. The Application states that the Pro Forma Consolidation was filed in an effort “to simplify [the Company’s⁶] corporate structure, reduce the reporting and accounting burdens ..., and provide operational efficiencies.”⁷ It further states that “[u]pon completion of the [Pro Forma Consolidation], Zayo Group will establish an ‘Allstream’ division that will continue to operate those portions of the Electric Lightwave business that provide services, primarily traditional voice services, not currently provided by Zayo Group. The Allstream division will utilize the management and operations personnel that currently operate Electric Lightwave.”⁸

Importantly, the Application represents the Pro Forma Consolidation “will be seamless to customers and will not result in any change in their services.”⁹ Specifically, “the rates, terms[,] and conditions of their services will not change as a result of the [Pro Forma Consolidation].”¹⁰ The Application further explains that “there will be no change in the managerial qualifications of the telecommunications provider serving the customers affected by the [Pro Forma Consolidation] since the managerial and operations personnel that currently operate Electric Lightwave will continue to operate a portion of the Allstream business as a separate division within Zayo Group and the remaining operations will be overseen by Zayo Group’s existing

⁶ The Company is defined as “Zayo Group Holdings, Inc. ... together with its subsidiaries, including [Zayo Group LLC and Electric Lightwave].” Application, at 2.

⁷ Application at 2.

⁸ *Id.* at 5. It is also our understanding that the “Allstream” division will operate pursuant to Zayo Group, LLC’s CPCN, issued on March 10, 2011, in Docket No. 11-2536-01.

⁹ Application at 5.

¹⁰ *Id.*

experienced management and operations personnel.”¹¹ Finally, the Application provides a sample notice that will be sent to Electric Lightwave’s customers regarding the Pro Forma Consolidation.¹²

The Applicants also seek a Waiver of the Anti-Slamming Statute and related regulations regarding the transfer of customer bases. As noted above, the Application represents that the rates, terms, and conditions of customers’ services will not change as a result of the Pro Forma Consolidation, and the transaction is simply an internal corporate reorganization. Based on these representations, the PSC concludes that Applicants’ Pro Forma Consolidation does not violate the Anti-Slamming Statute and related regulations.¹³

Accordingly, based on DPU’s comments and recommendation that the Pro Forma Consolidation and cancellation of Electric Lightwave’s CPCN is in the public interest, the representations in the Application, and Applicants’ assurances and DPU’s agreement that (i) the process will be seamless for customers such that no customers’ rates, terms, or conditions of service will change, and (ii) the technical and managerial capabilities of Zayo Group will remain intact, we find and conclude that the cancellation of Electric Lightwave’s CPCN is in the public interest and there is no violation of the Anti-Slamming Statute and related regulations, thus no Waiver is necessary.¹⁴

¹¹ *Id.* at 6.

¹² *Id.*, Exhibit B.

¹³ In addition, we rely on the Federal Communications Commission’s guidance related to anti-slamming laws and policies. In this regard, the FCC concluded that, “. . . a change in corporate structure that is invisible to the affected subscribers does not constitute a sale or transfer for purposes of section 258 . . .” *See* First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129, FCC 01-156.

¹⁴ Based on this conclusion, no hearing on this request is necessary. *See* Utah Code Ann. § 54-8b-3.

ORDER

We acknowledge that a notification of the Pro Forma Consolidation was filed as part of the Application. Additionally, based on our review and analysis of the Application and DPU's comments and recommendations, and in the absence of any opposition to the Application, the PSC authorizes the cancellation of Electric Lightwave's CPCN. Electric Lightwave's CPCN, issued on August 16, 1995, in Docket No. 94-2202-01, is canceled, effective as of the completion of the Pro Forma Consolidation.

DATED at Salt Lake City, Utah, March 21, 2023.

/s/ John Delaney
Presiding Officer

Approved and Confirmed March 21, 2023, as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#327361

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 written order by filing a request for review or rehearing with the PSC 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 PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC'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 CERTIFY that on March 21, 2023, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Catherine Wang (catherine.wang@morganlewis.com)
Brett P. Ferenchak (brett.ferenchak@morganlewis.com)
Morgan, Lewis & Bockius, LLP
Counsel for Applicants

Lauren Lantero (Lauren.lantero@zayo.com)
General Counsel, Corporate Zayo Group, LLC

Douglas Denney (doug.denney@allstream.com)
Vice President, Legal & Regulatory Allstream

Patricia Schmid (pschmid@agutah.gov)
Patrick Grecu (pgrecu@agutah.gov)
Robert Moore (rmoore@agutah.gov)
Utah Assistant Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Alyson Anderson (akanderson@utah.gov)
Bela Vastag (bvastag@utah.gov)
Alex Ware (aware@utah.gov)
Jacob Zachary (jzachary@utah.gov)
(ocs@utah.gov)
Office of Consumer Services

Administrative Assistant