



Agenda Date: 8/16/23
Agenda Item: IVA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE
TELEVISION AND
TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION) ORDER
OF ZAYO GROUP, LLC AND ELECTRIC LIGHTWAVE,)
LLC D/B/A ALLSTREAM FOR WAIVER OF MASS)
MIGRATION RULES) DOCKET NO. TO23050279

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Dennis Linken, Esq., Scarinci Hollenbeck, on behalf of the Petitioners
Stan Barrett, Esq., Scarinci Hollenbeck, on behalf of the Petitioners

BY THE BOARD:

On May 4, 2023, Zayo Group, LLC (“Zayo Group”) and Electric Lightwave, LLC d/b/a Allstream (“Electric Lightwave,” and collectively with Zayo Group, “Petitioners”) submitted a Verified Joint Petition with the New Jersey Board of Public Utilities (“Board”) requesting, to the extent necessary, a waiver of the Board’s mass migration rules at N.J.A.C. 14:10-12.1 *et seq.* (“Petition”). To the extent that the Board believes approval is required, the Petitioners requested approval pursuant to N.J.S.A. 48:3-7.

The Petitioners stated that the request is in connection with a planned pro forma consolidation of Electric Lightwave into Zayo Group, with Zayo Group remaining as the surviving entity (“Pro Forma Consolidation”). The Petitioners asserted that since Electric Lightwave is a reseller and has not obtained an authorization from the Board to provide local exchange or interexchange service, Electric Lightwave is not a public utility and N.J.S.A. 48:3-7 does not apply to the Pro Forma Consolidation.

The Petitioners stated that the Pro Forma Consolidation is part of an effort to simplify the corporate structure of Zayo Group Holdings, Inc. and its subsidiaries, reduce reporting and accounting burdens, and provide operational efficiencies. The Petitioners asserted that the Pro Forma Consolidation will be seamless to New Jersey customers and will not result in any change in service. The Petitioners contended that the same managerial and operations personnel that currently operate Electric Lightwave will continue to operate a portion of Allstream business as a separate division within Zayo Group. Zayo Group’s existing experienced management and

operations personnel will oversee the remaining operations without oversight from the Allstream division. Petitioners asserted that the transaction as planned is in the public interest, as it will allow Petitioners to become a stronger competitor, which will ultimately benefit consumers.

BACKGROUND

Zayo Group is a Delaware limited liability company authorized to provide competitive local exchange, competitive access, and/or interexchange services in the District of Columbia and every state except Alaska and Hawaii. Zayo Group has authorization from the Federal Communications Commission (“FCC”) to provide domestic and international telecommunications services in addition to certain point-to-point wireless services. In New Jersey, Zayo Group has authorization to provide local exchange and interexchange telecommunications services pursuant to Board authorization granted on May 16, 2011.¹ Zayo Group provides bandwidth infrastructure and interconnection services over regional and metropolitan fiber networks that enable customers to manage, operate, and scale their telecommunications and data networks. Zayo Group’s primary telecommunications services offered include high-capacity bandwidth services, such as private line, Ethernet, and wavelength services. Zayo Group customers consist primarily of wireless service providers, national and regional communications service providers, media/Internet/content companies, governments, banks, and other bandwidth-intensive enterprises.

Electric Lightwave is a Delaware limited liability company that provides telecommunications services primarily in Arizona, California, Colorado, Idaho, Minnesota, Montana, Nevada, North Dakota, Oregon, Utah and Washington. Electric Lightwave provides a range of communication and networking services to businesses, wholesale carriers, web content providers, government organizations and educational institutions. Services include, but are not limited to, facilities-based local, resold long distance, Internet, VoIP, broadband transport, and data services. In New Jersey, Electric Lightwave provides resold long distance service pursuant to an Authorized Resale Carrier Letter of Acknowledgement, dated September 20, 1996. Electric Lightwave has authorization by the FCC to provide domestic and international telecommunications services.

Electric Lightwave is a wholly owned, direct subsidiary of Zayo Group. Zayo Group is a wholly owned, direct subsidiary of Zayo Group Holdings, Inc. (“Holdings” and, together with its subsidiaries including Petitioners, the “Company”), which is a Delaware corporation. Zayo Group and Holdings have a principal office located at 1821 30th Street, Unit A, Boulder, Colorado 80301. Electric Lightwave has a principal office located at 18110 SE 34th Street; Building One, Suite 100, Vancouver, Washington 98683

The Petitioners stated that in order to simplify the Company’s corporate structure, Zayo Group is undertaking certain pro forma intra-company transactions, which includes the consolidation of Electric Lightwave into Zayo Group. The Pro Forma Consolidation will result in Electric Lightwave merging with and into Zayo Group, at which point Electric Lightwave will cease and Zayo Group will be the surviving entity. Upon completion of the Pro Forma Consolidation, Zayo Group will establish an “Allstream” division that will utilize the management and operations personnel that currently operate Electric Lightwave. The Allstream division will continue to operate those portions of the Electric Lightwave business that provide traditional voice services, not currently

¹ In re the Petition of Zayo Group, LLC for Approval to Provide Local Exchange, Interexchange and Exchange Access Telecommunications Services Throughout the State of New Jersey, BPU Docket No. TE11020049, Order dated May 16, 2011.

provided by Zayo Group. The Petitioners affirm that there will be no change in the managerial qualifications of the telecommunications provider serving the customers affected by the Pro Forma Consolidation.

The Petitioners asserted that all of Electric Lightwave's customers in New Jersey are commercial entities located in other states that receive service under individually negotiated contracts and are therefore not considered mass-market service customers. The Petitioners contended that the Board's mass migration rules were intended to cover a change in the provider for such customers, especially under the circumstances where the change in provider will occur as part of an intra-company consolidation pursuant to which ownership, control and management policies will remain the same. The Petitioners claim that it would be unduly burdensome, unnecessary, and potentially confusing to customers for the Petitioners to comply with the Board's mass migration rules under the instant circumstances. The Petitioners argued that from its customers' point of view, the transaction will simply result in a change in the legal name of their provider rather than a discontinuance or other change in their services. The Petitioners noted that the Board granted similar waivers in connection with prior pro forma consolidations in 2014² and 2008.³

Petitioners asserted that the Pro Forma Consolidation is in the public interest as it would simplify the Company's existing corporate structure and be more efficient from a management, operations, regulatory, accounting, finance and customer perspective. The Petitioners stated that the Pro Forma Consolidation will reduce the Company's reporting and accounting burdens and provide other operational efficiencies. The Petitioners claimed that, because of the efficiencies and focus, the Company will become a stronger competitor, to the ultimate benefit of consumers.

The Petitioners stated that the Pro Forma Consolidation will be seamless to New Jersey customers and will not result in a change in service. Zayo Group will utilize the "Allstream" brand with respect to the affected New Jersey customers that receive services not currently provided by Zayo Group with the remaining customers receiving service under the "Zayo" brand. The Petitioners further stated that the rates, terms and conditions of their services will not change because of the Pro Forma Consolidation and that all customers will be notified of the Pro Forma Consolidation at least 30 days prior to the pro forma consolidation of Electric Lightwave into Zayo Group.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated June 9, 2023, stating that it does not object to Board approval of the Petitioners' requests provided the recommended conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. Rate Counsel stated that any potential degradation in service, service quality, and customer service capability resulting from attrition in employment post-transaction would not be in the public interest in New Jersey. As a condition of approval, Rate Counsel urges that the Board require the Petitioners to notify the Board and Rate Counsel and provide an appropriate explanation in writing within a minimum of 30 days prior to effectuating a reduction in New Jersey jobs that is greater than fifteen percent (15%), throughout a three (3) year period post-issuance of the Board's Order.

² See In re Light Tower Fiber Long Island et al., BPU Docket No. TM14040343, Order dated June 18, 2014.

³ See In re Light Tower Fiber and Keyspan Communications, BPU Docket No. TM08040212, Order dated June 13, 2008.

DISCUSSION AND FINDINGS

Pursuant to N.J.S.A. 48:2-51.1(a), the Board shall evaluate the impact of an acquisition of control of a public utility on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1, as set forth above. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension benefits obligations to any of its employees.

As to the request for a waiver of the mass migration rules at N.J.A.C. 14:10-12.1 *et seq.*, the Board **FINDS** that Petitioners have demonstrated good cause for the waiver. Petitioners serve commercial entities who will remain customers post-closing of the Pro Forma Consolidation in accordance with the terms of their customer service agreements, and who will be advised of the Pro Forma Consolidation. Further, ownership, control and management policies will remain the same following the Pro Forma Consolidation. For these reasons, Petitioners' request for a waiver of N.J.A.C. 14:10-12.1 *et seq.* is **HEREBY GRANTED**.

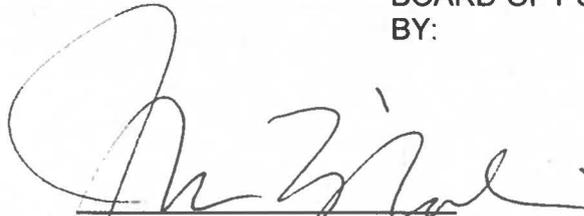
The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality, and customer service capability based on post-transaction employment attrition. While Rate Counsel seeks notice prior to any reduction, Board precedent requires companies to provide notice and explanation to the Board following any jobs reductions in New Jersey greater than 15% for a 3-year period after the date of closing. The Board, therefore, **HEREBY ORDERS** that Petitioners must notify the Board and Rate Counsel, providing a written explanation following a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of its total jobs for a three-year (3) period after the date of closing.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with applicable law and is not contrary to the public interest. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.

This Order shall be effective on August 23, 2023.

DATED: August 16, 2023

BOARD OF PUBLIC UTILITIES
BY:



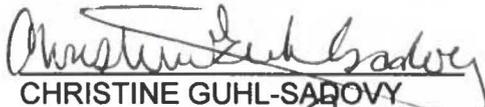
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER



CHRISTINE GUHL-SADOVY
COMMISSIONER



MARIAN ABDOU
COMMISSIONER

ATTEST: 
SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

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RULES - DOCKET NO. TO23050279

SERVICE LIST

For Petitioners

Dennis Linken
Stan Barrett
Scarinci | Hollenbeck
150 Clove Rd., 9th Floor
Little Falls, NJ 07424
dlinken@sh-law.com
sbarrett@sh-law.com

with copies to:

Catherine Wang
Brett P. Ferenchak
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Ave. N.W.
Washington, DC 20004-2541
catherine.wang@morganlewis.com
brett.ferenchak@morganlewis.com

Lauren Lantero
General Counsel, Corporate
Zayo Group, LLC
1821 30th Street, Unit A
Boulder, CO 80301
lauren.lantero@zayo.com

Donna Heaston
Senior Corporate Counsel
Allstream
2800 Campus Drive, Suite 140
Plymouth, MN 55441
donna.heaston@zayo.com

New Jersey Division of Rate Counsel

140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0350

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Robert Glover, Esq.
Assistant Deputy Rate Counsel
rglover@rpa.nj.gov

Emily Smithman, Esq.
Assistant Deputy Rate Counsel
esmithman@rpa.nj.gov

Tara Dickerson, Senior Legal Assistant
tdickerson@rpa.nj.gov

NJ Department of Law and Public Safety

Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Pamela Owen, DAG, Assistant Section Chief
pamela.owen@law.njoag.gov

Terel Klein, DAG
terel.klein@law.njoag.gov

Board of Public Utilities

44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Sherri L. Golden, Secretary
board.secretary@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Lawanda R. Gilbert, Director
lawanda.gilbert@bpu.nj.gov

Rocco Della Serra
rocco.dellaserra@bpu.nj.gov

John Borrmann
john.borrmann@bpu.nj.gov

Carol Artale, Deputy General Counsel
carol.artale@bpu.nj.gov

Steven Athanassopoulos, Legal Specialist
steven.athanassopoulos@bpu.nj.gov