

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSE

February 2, 2011

IN RE:

**PETITION OF CII HOLDCO, MEMPHIS
NETWORKX, LLC, MEMPHIS LIGHT GAS &
WATER DIVISION AND MEMPHIS
BROADBAND, LLC FOR APPROVAL OF
CHANGE OF CONTROL OF MEMPHIS
NETWORKX, LLC**

**DOCKET NO.
07-00178**

MOTION TO LIFT ABEYANCE AND APPROVE PETITION

Zayo Bandwidth Tennessee, Inc. ("Zayo"), formerly known as Memphis Networkx, LLC, and CII Holdco, Inc., respectfully requests that, in light of the settlement between Zayo and the City of Memphis, the Authority lift the Abeyance Order issued November 4, 2008, by Hearing Officer Gary Hotvedt and that the Petition for a change-of-control of Memphis Networkx, LLC filed on July 27, 2007 ("Petition") be granted.

As explained in the Petition, Zayo entered into a contract with Memphis Light, Gas & Water Division ("MLG&W") and Memphis Broadband, LLC ("Memphis Broadband") to purchase all of the issued and outstanding equity of Memphis Networkx LLC ("Memphis Networkx"), a competitive local exchange carrier certified by the Authority in Docket 99-00909.¹

On November 4, 2008, the Hearing Officer assigned to this docket issued an "Order Holding Docket in Abeyance." The Order explained that a dispute had arisen between Memphis Networkx and the City of Memphis concerning the carrier's compliance with its city franchise,

¹ Since this transaction did not result in a transfer of the certificate held by Networkx, the Petitioners do not believe that the transfer statute, T.C.A. §65-4-113, applies to this transaction. The Petitioners nevertheless have filed all of the information required for TRA approval of the transaction pursuant to that statute.

that this dispute should be litigated in a court, not before the Authority, and that this Petition "should be held in abeyance pending resolution of the dispute between the parties." Order at 5.

On December 30, 2010, the City of Memphis notified the Authority that Memphis Networkx and the City had "settled their dispute" regarding the carrier's compliance with its franchise and that the City therefore withdrew its opposition to the change-of-control Petition. A lawsuit filed by the City against Memphis Networkx has been "dismissed with prejudice".²

In light of this settlement and the City's withdrawal of its opposition to the Petition, the Petitioners ask that the "Order of Abeyance" be lifted and that the request for a change-in-control of Memphis Networkx be approved nunc pro tunc.³

As demonstrated in the Petition and in the carrier's operations during the last three and one-half years, Zayo has the managerial, technical, and financial abilities to operate Memphis Networkx. The change of control has been transparent to consumers and the additional financial resources contributed to Memphis Networkx by Zayo have improved the carrier's operation and promoted the public interest.⁴

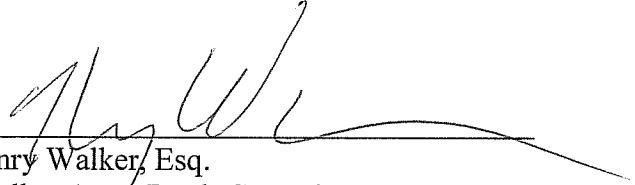
² See "Order Dismissing Case with Prejudice," United States District Court, Western District of Tennessee, January 24, 2011 (attached).

³ As the Petitioners reported to the Authority in September, 2007, the stock purchase was completed in July 30, 2007, so that Zayo could provide immediate financial assistance to Networkx. The Petitioners therefore seek approval of the Petition, nunc pro tunc, as the Authority has done on many prior occasions. See, e.g. Petition of Atmos Engery et al. Docket No. 10-00216 (Approved January 24, 2011).

⁴ In the "Abeyance Order," the Hearing Officer also noted that the TRA had opened a separate investigation into the sale of Memphis Networkx, Docket No. 07-00183, but explained that "these two dockets have separate and distinct purposes" and that the only issue in this docket (07-00178) was whether the Petition met the statutory criteria of T.C.A. §65-4-113.

For these reasons, the Petitioner ask that the Order of Abeyance be lifted and the Petition be approved nunc pro tunc.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Henry Walker', is written over a horizontal line.

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CITY OF MEMPHIS, TENNESSEE,)
)
 Plaintiff/Counter-Defendant,)
 v.) No. 09-2205 Ma P
)
 ZAYO BANDWIDTH TENNESSEE, LLC)
 f/k/a MEMPHIS NETWORKX, LLC)
)
 Defendant/Counter-Plaintiff.)

ORDER DISMISSING CASE WITH PREJUDICE

Before the Court is the parties' January 21, 2011, stipulation of dismissal with prejudice. (D.E. 47). For good cause shown, this case is DISMISSED WITH PREJUDICE, each party to pay its own costs and expenses.

It is so ORDERED this 24th day of January, 2011.

s/Samuel H. Mays, Jr.
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE