

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

<b>IN RE:</b>	<b>November 10, 2010</b>	)	
		)	
<b>JOINT PETITION OF ZAYO GROUP, LLC FOR</b>		)	<b>DOCKET NO.</b>
<b>APPROVAL OF CHANGE OF CONTROL OF</b>		)	<b>10-00159</b>
<b>AMERICAN FIBER SYSTEMS, INC.</b>		)	

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**ORDER APPROVING *JOINT PETITION***

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This matter came before Chairman Mary W. Freeman, Director Eddie Roberson and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 27, 2010 for consideration of the *Joint Petition of Zayo Group, LLC for Approval of Change of Control of American Fiber Systems, Inc.* (“*Joint Petition*”) filed on August 3, 2010 by Zayo Group, LLC (“Zayo Group”), American Fiber Systems Holding Corp. (“AFSHC”), and its wholly-owned subsidiary, American Fiber Systems, Inc. (“AFS”) (Zayo Group, AFSHC, and AFS collectively, the “Petitioners”) requesting approval of the indirect change of control of AFS to Zayo Group. As a result of the transaction, AFSHC will become a direct subsidiary, and AFS will become an indirect subsidiary of Zayo Group.

AFS is a Delaware corporation and subsidiary of AFSHC, a Delaware holding company. AFS provides dark fiber and bandwidth services to carrier and large enterprise customers. In Tennessee, AFS is authorized to offer intrastate communications services pursuant to Authority Order in Docket No. 00-00988 issued on January 24, 2001. AFSH holds no regulatory license from any regulatory commission, including the Authority.

Zayo Group is a Delaware limited liability company and is wholly-owned by Zayo Group Holdings, Inc. (“Holdings”), a Delaware corporation, which in turn is wholly-owned by Communications Infrastructure Investment, LLC (“CII” together with Zayo Group and Holdings, the “Company”), a Delaware limited liability company. CII has no majority owner. Through its business units, Zayo Group provides bandwidth, connectivity and dark-fiber related services, voice, collocation and interconnection, and managed services to carrier, enterprise, small and medium enterprise, and government customers. Zayo Group does not provide telecommunications service in any state.

#### **THE JOINT PETITION**

Zayo Group has entered into a contract to purchase controlling interest in AFSHC. Specifically, Zayo Group, Zayo AFS Acquisition Company, Inc. (“Merger Sub”), a direct subsidiary of Zayo Group created for the purposed of this transaction, AFSHC, and Robert E. Ingalls, Jr., as the Equity Holder Representative, have entered into an Agreement and Plan of Merger dated as of June 24, 2010 (the “Agreement”) whereby AFSHC will merge with and into Merger Sub, with AFSHC surviving the merger. As a result of the transaction, AFSHC will become a direct subsidiary, and AFS will become an indirect subsidiary of Zayo Group.

#### **FINDINGS AND CONCLUSIONS**

Tenn. Code Ann. § 65-4-113(a) (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, which in pertinent part, states as follows:

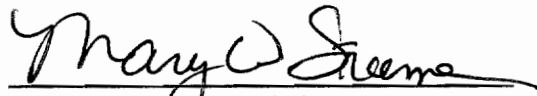
Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to

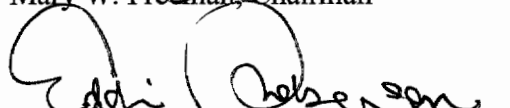
the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Based on the filings in this docket, the panel found that this transaction serves the public interest because it will provide AFS with access to additional resources and operational expertise. As a result, the transaction will strengthen Zayo Group's ability to compete with other, much larger, fiber providers in the region to the benefit of consumers in the telecommunications marketplace. The Petitioners point out that the name of AFS is expected to change to "Zayo Metro, Inc." Otherwise, AFS will continue to provide communications services to its customers without interruption and without change in rates, terms or conditions of service. Based on the record and the findings, the panel voted unanimously to approve the *Joint Petition* pursuant to Tennessee Code Annotated § 65-4-113, contingent upon approval by the Federal Communications Commission ("FCC"). The Petitioners were directed to file with the Authority any documentation from the FCC regarding subsequent action on the transfer.

**IT IS THEREFORE ORDERED THAT:**

The *Joint Petition of Zayo Group, LLC for Approval of Change of Control of American Fiber Systems, Inc.* is approved, contingent upon approval by the Federal Communications Commission. The Applicants shall file with the Tennessee Regulatory Authority any documentation from the Federal Communications Commission regarding subsequent action on the transfer.

  
Mary W. Freeman, Chairman

  
Eddie Roberson, Director

  
Sara Kyle, Director