

<sup>1</sup> This Order is limited to Zayo's request for a CCN. To invoke market regulation, Zayo shall file its notice in a separate docket.

### **Legal Standard for Granting Certificate of Public Convenience and Necessity**

Zayo's *Application* was made pursuant to and considered in light of the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 (Supp. 2010), which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

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(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

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Furthermore, pursuant to Tenn. Code Ann. § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

### **August 22, 2011 Hearing**

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on August 12, 2011. On August 18, 2011, Zayo filed a motion requesting that its witness, Mr. Scott Sawyer be permitted to appear and participate telephonically

during the Hearing.<sup>2</sup> The Hearing Officer granted the motion subject to certain conditions on August 19, 2011.<sup>3</sup> No persons sought intervention prior to or during the Hearing.

During the Hearing held on August 22, 2011, Mr. Sawyer, General Counsel, participated by telephone, presented testimony, and was subject to examination by the panel. Henry Walker, Esq. represented the Company. On September 1, 2011, Mr. Sawyer's witness certification and the Notary Public Affidavit of Ms. Mary T. Buley were filed in the docket file as required in the Hearing Officer's Order allowing telephonic participation.<sup>4</sup>

#### **I. Zayo's Qualifications**

1. Zayo is a Delaware limited liability company and was licensed to transact business in Tennessee by the Secretary of State as of May 26, 2009.

2. The complete street address of the corporate office of Zayo is 300 South Highway 169, Suite 7000, Minneapolis, MN 55426-1137. The telephone number is (866) 629-8200.

3. The *Application* and supporting information existing in the record indicate that Zayo has the requisite technical and managerial ability to provide the applied for telecommunications services within the State of Tennessee. Specifically, Zayo's senior management team possesses sufficient business, technical and operational experience.

4. Zayo has the necessary capital and financial ability to provide the services it proposes to offer.

5. Zayo has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.

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<sup>2</sup> *Motion of Zayo Enterprise Networks, LLC to Permit Scott Sawyer to Appear Telephonically at the Hearing on the Merits* (August 18, 2011).

<sup>3</sup> *Order Granting Telephonic Participation in Hearing* (August 19, 2011).

<sup>4</sup> *Id.*

## **II. Proposed Services**

Zayo will provide interexchange and private line telecommunications statewide and is seeking the full range of resold and facilities-based local exchange and interexchange authority throughout the state so that it can have flexibility in provisioning its services in the future.

## **III. Permitting Competition to Serve the Public Convenience and Necessity**

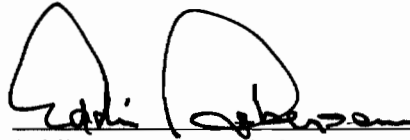
Upon a review of the *Application* and the record in this matter, the panel found that approval of Zayo's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State of Tennessee and fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

## **IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program**

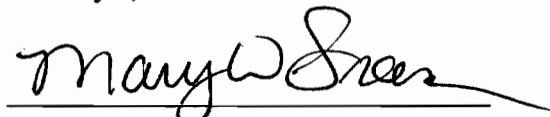
Zayo has filed a satisfactory small and minority-owned telecommunications business participation plan pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority's Rules.

### **IT IS THEREFORE ORDERED THAT:**

The *Application for a Certificate to Provide Facilities-Based and Resold Competing Local Telecommunications Services and Facilities-Based and Resold Interexchange Telecommunications Services* filed by Zayo Enterprise Networks, LLC is approved.

  
Eddie Roberson, Chairman

  
Sara Kyle, Director

  
Mary W. Freeman, Director