

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Zayo Group, LLC (U-6102-C) for
Modification of Its Existing Certificate of Public
Convenience and Necessity

A. 20-__-__
(Filed October 1, 2020)

(PUBLIC VERSION)

**APPLICATION OF ZAYO GROUP LLC (U-6102-C) FOR MODIFICATION OF ITS
EXISTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

[Exhibit B and D Filed Under Seal as Confidential]

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October 1, 2020

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Application of Zayo Group, LLC (U-6102-C) for
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I. INTRODUCTION

Pursuant to Public Utilities Code Section 1001, the Commission’s Rules of Practice and Procedure (Rules), and Decision (D.) 98-12-083, Zayo Group, LLC (Zayo) submits this application to modify its Certificate of Public Convenience and Necessity (CPCN) in connection with its proposed construction of fiber optics cable and specified telecommunication network facilities in areas that fall outside of the utility right-of-way (ROW). D.98-12-083 granted CPCNs to 12 petitioners, including Zayo’s predecessor,¹ authorizing the CPCN-holders to operate as Facilities-based Competitive Local Exchange Carriers (CLCs), to offer resold local exchange services, and/or interLATA and intraLATA interexchange services. The CPCNs’ grant of

¹ On September 28, 1998, Zayo’s predecessor, Highspeed.com of California LLC, later known as NTI of California, LLC (NTIC)), filed Petition #123, requesting a CPCN to provide interLATA and intraLATA interexchange services and competitive local exchange services as a facilities-based carrier and reseller. Commission decision 98-12-083 approved Petition #123, along with the CPCN petitions of eleven other applicants, and granted Highspeed.com the requested authority. Zayo later secured NTIC’s CPCN after merging with and acquiring an ownership interest in NTIC. (See D.08-08-013 [decision approving the joint unopposed application of NTI and Zayo Group, LLC for transfer of control of NTI to Zayo].)

facilities-based authority allows for the construction of new fiber optic cable only in the existing utility rights-of-way.² In approving such activity, the Commission conducted environmental review pursuant to the California Environmental Quality Act (CEQA), and adopted a Mitigated Negative Declaration, which, as pertinent to the instant application, requires the CPCN-holder to petition the Commission for modification of its CPCN in the event that its proposed project extends beyond the existing utility ROW into other rights of way, such as roads, in which the fiber optic cable is to be laid.

Zayo submits this application for modification of its CPCN to authorize construction of fiber optics cable and specified network equipment outside of the utility ROW. Specifically, Zayo seeks a modification of its CPCN to allow it to bury conduit and fiber optic cable along a 193 mile route primarily along the roadway edge of US 395 and immediately adjacent to existing utility rights of way from the Oregon border in the northeastern corner of the state down to the California-Nevada border near Reno. Zayo's CPCN and request for modification are generally consistent with CPCN modification requests that the Commission has previously approved.³ While Zayo already holds a CPCN, below Zayo provides the information required to meet the formal CPCN application requirements.

² The environmental document adopted by D.98-12-083 defines "Utility right-of-way" as "any utility right-of-way, not limited to only telecommunications utility right-of-way."

³ See e.g., *In Re Modification of Level 3 Communications* (Aug. 3, 2000) 2000 WL 1752315, A.99-06-028, D.00-08-016 (approving modification to Level 3 Communications' CPCN to authorize construction of fiber optics cable outside of the utility ROW).

II. FORMAL REQUIREMENTS

1. Information Regarding Applicant – Rule 2.1(a)

Applicant’s full legal name is Zayo Group, LLC. Applicant is a Delaware limited liability company. Applicant’s principal place of business is located at 1821 30th Street, Unit A, Boulder, CO 80301.

2. Contact for Correspondence and Communications – Rule 2.1(b)

All communications, correspondence, and pleadings with respect to this application should be directed to:

William Kissinger
Morgan, Lewis & Bockius, LLP
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: (415) 442-1480
Facsimile: (415) 442-1000
Email:
william.kissinger@morganlewis.com

With copies to:

Ted Gilliam
Zayo Group, LLC
1805 29th Street, Suite 2050
Boulder, CO 80301
Telephone: (303) 414-4131
Email: ted.gilliam@zayo.com

Notices, orders, and other papers may be served upon these persons and such service shall be deemed to be service upon the Applicant.

3. Categorization, Need for hearing, Issues, Schedule – Rule 2.1(c)

1. Proposed Categorization: Zayo proposes that the Commission classify this proceeding as ratesetting. Although this Application does not affect rates, the definitions of “adjudicatory” or “quasi-legislative” clearly do not apply to this application. Under the Commission’s rules, when a proceeding does not clearly fit any of the categories, it should be conducted under the ratesetting procedures. (See Rule 7.1(e)(2).)

2. Need for Hearing: Consistent with the Application of Level 3 Communications, Zayo believes that hearings in this proceeding are unnecessary. The Application is non-controversial and does not raise any material issues of fact.

3. Issues to be Considered: Zayo submits that the only issues to be resolved in this proceeding is whether the Commission should approve Zayo’s request to modify its CPCN to allow Zayo to construct conduit and fiber optic cable and related equipment outside of existing utility ROWs in adjacent roadway ROW, primarily US 395.

4. Proposed Schedule: Zayo respectfully urges the Commission to act on its Application as expeditiously as practicable, in accordance with the following schedule:

Application Filing Date	October 1, 2020
Notice in Daily Calendar	5 Days after Application Filing Date
Protests and Responses	30 Days after Notice in Daily Calendar
Reply to Protests	10 Days after Protests, if any
Pre-Hearing Conference	5 Days after Reply to Protests, if any
Scoping Memo Issued	10 Days after Pre-Hearing Conference
Proposed Decision Issued	90 Days after Application Filing Date
Commission Final Decision	120 Days after Application Filing Date

4. Organization and Qualification to Transact Business – Rule 2.2

Zayo is a limited liability company organized under the laws of Delaware. A copy of Zayo’s certificate of formation and a current certificate of good standing establishing Zayo’s authority to conduct business in California were most recently provided to the Commission in proceeding A.19-06-006. (See Exhibit B to Application, dated June 13, 2019). Real time verification of Zayo’s good standing with the California Secretary of State may be found at Businesssearch.sos.ca.gov/.

5. Financial Statement – Rule 2.3

Zayo’s audited financial statements as provided in the SEC Form 10-K filing for the period ending June 30, 2019 are attached as **Exhibit A**.⁴

⁴ In March 2020 Zayo changed its year end from June 30th to December 31st. As such, Zayo’s next audit will be for the period ending December 31, 2020.

6. CEQA Compliance – Rule 2.4

In granting Zayo’s CPCN in 1998, the Commission documented compliance with CEQA with an Initial Study and Mitigated Negative Declaration (MND), referred to as “Negative Declaration 12.” (See D.98-12-083, Appendix D).⁵ Among the findings detailed in Negative Declaration 12 was that there would be no impacts to wetland habitat and that the route would be designed to avoid all known cultural resources. In addition, Negative Declaration 12, and the Mitigation Measures adopted therein, includes the requirement that “if a proposed project extends beyond the utility right-of-way into undisturbed areas or other right-of-way [such as roads], the petitioner shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN).” (See D.98-12-083, Appendix D, pp. 8). Negative Declaration 12 further specifies that where a proposed project does extend beyond the utility ROW, an “appropriate environmental analysis of the impacts of the[] site specific activities shall be done.” (*Id.*) To assist with the required review identified in Negative Declaration 12, Zayo submits with its Application a Proponent’s Environmental Assessment (PEA) attached as **Exhibit B**.⁶ As required by Rule 2.4, Zayo is submitting with this Application the original and three copies of the PEA.

7. Description of Proposed Construction – Rule 3.1(a)

As noted above, Zayo intends to construct fiber optics infrastructure and associated facilities (such as conduits, fiber optics cable, handholes and manholes) in connection with the

⁵ Zayo’s CPCN was issued as part of the “batched MND” process that the Commission used to grant authority to applicants from approximately 1996 through late 1999. Recipients of these CPCNs have full facilities-based construction authority, which permits the installation of facilities within existing structures and existing utility ROWs. No further authority from or environmental review by the Commission under CEQA is required by these CPCN-holders, so long as the proposed construction remains within the existing structures and utility ROWs. As here, route-specific environmental review under CEQA is required *only if* the proposed construction falls outside of existing structures or the existing utility ROW.

⁶ Consistent with the Commission’s CEQA Pre-filing Guidelines PEA Checklist, Zayo provided Commission staff with a draft of the PEA on July 31, 2020. On September 24, 2020, Commission staff provided comments on the PEA which have been incorporated into the attached PEA.

transport and transmission of communications. Zayo may rely on existing facilities obtained from other carriers and utilities or construct its own facilities, as necessary. Similar to the project evaluated in Negative Declaration 12 and approved in D.98-12-083, construction of the project would occur within utility ROW or generally within existing roadways or other previously developed and disturbed public ROWs that are proximate or otherwise adjacent to the utility ROWs.

8. List of Competitors, Cities and Counties – Rule 3.1(b)

Zayo’s competitors are other CLCs that own and operate “telephone lines,” as defined in California Public Utilities Code § 233. Pursuant to D.97-06-107, telecommunication services providers are no longer required to comply with the requirements of Rule 3.1(b) (formerly Rule 18(b)). Thus, Zayo has not mailed a copy of this Application to all potential competitors and counties. Upon request, Zayo will provide a copy of this Application to any requesting party.

9. Areas of Service (Maps) – Rule 3.1(c)

Zayo is a long haul broadband infrastructure provider and already holds statewide CPCN authority. A map illustrating the area of Zayo’s proposed construction route is attached hereto as **Exhibit C**.

10. Permits – Rule 3.1(d)

Zayo is not aware of any health and safety permits required for the provision of the services described herein. As a Commission-certificated public utility, Zayo will require no municipal franchises. Zayo will abide by all applicable local permitting requirements in carrying out the activities authorized by the Commission.

11. Public Convenience and Necessity – Rule 3.1(e)

The Commission has previously determined that the public convenience and necessity require that competition be allowed in the provision of competitive local exchange service.⁷ The Commission's approval of Zayo's Application will benefit the public interest by expanding the availability of technologically advanced telecommunications services within the state and among the states. The modification of the CPCN will improve broadband access in California and neighboring states and allow for the development of new infrastructure in the form of open conduit that local internet service providers can make use of in order to provide high speed broadband service to underserved areas of the State. Further, the grant of Zayo's Application will result in investment in new infrastructure within California, promoting local employment and economic growth a time when such investment is sorely needed.

12. Estimated Cost of Construction; Economic Feasibility – Rule 3.1(f)

The estimated total cost of the construction, including sections in California is described **Exhibit D**, filed under seal as confidential, proprietary information pursuant to the rules of the Commission.

13. Financial Ability and Financing Information – Rule 3.1(g)

Zayo's established history of operation as a provider of telecommunications services generally demonstrates that it is financially qualified to offer the telecommunications services for which it seeks authority. Further, Zayo's audited financial statements provided as in **Exhibit A**, clearly demonstrate that the company is financially capable of constructing and operating the proposed project.

⁷ See Rulemaking 95-04-043/Investigation 95-04-044.

14. Proposed Rates – Rule 3.1(h)

Zayo requests a waiver for its services to be offered on a non-tariffed basis consistent with Commission decisions relieving CLCs of tariffing requirements.⁸ Consistent with D.07-09-018, the Commission has granted exemptions from tariff filing requirements to CPCN applicants that did not offer residential basic service.⁹ Zayo will offer its service on a non-discriminatory basis and at competitive rates but will do so through individual case basis contracts.

15. General Order 104-A – Rule 3.1(i)

Although Zayo is not a publicly traded company, it is the wholly-owned subsidiary Zayo Group Holdings, Inc. (ZGH), a privately-owned company formerly a publicly-traded Delaware corporation (NYSE: ZAYO). Zayo incorporates by reference ZGH's Securities and Exchange Commission filings, including its proxy statements, 10-K, and Annual Reports.¹⁰

16. Number of Customers – Rule 3.1(j)

Zayo estimates that it will directly serve 6-12 customers during the first year of operation and 20 or more customers during the fifth year of operations under its requested authority. Confidentiality prevents Zayo from disclosing the identity of its customers, but most of them are household names and each will make use of the proposed line to support and serve millions of end users and customers.

17. Technical and Managerial Competence (D.95-12-056, App. C, D.13-05-035)

Zayo is well qualified managerially and technically to provide the expanded authority requested in this Application. Zayo already holds a CPCN with the Commission and has been

⁸ G.O. 96-B, Telecommunications Industry Rule 5, provides that the Commission may “grant[...] exceptions from the general requirement . . . that a Utility serve its California customers under its filed tariff.” In D.07-09-018, the Commission established detariffing rules for carriers such as CLCs.

⁹ See, e.g., D.11-12-014, D.12-08-036, and D.13-01-010.

¹⁰ See *SEC Filings*, ZGH, available at: <https://investors.zayo.com/financials-and-results/sec-filings/default.aspx>.

operating in California since 2008 when Zayo secured NTIC's CPCN and merged with and acquired an ownership interest in NTIC.¹¹ The Company's management team includes individuals with substantive experience in successfully developing and operating telecommunications businesses. Consequentially, the Company has adequate internal technical resources and management expertise in the telecommunications industry to support its California operations. Specific details of the business and technical experience of the Company's key officers and management personnel are attached as **Exhibit E**.

Because this application seeks authority to expand the scope of authority for an existing CPCN holder, Zayo respectfully submits that the certification required under D.13-05-035 is not required.

18. Request for Exemptions

Zayo respectfully requests that it be accorded the same streamlined regulatory treatment received by non-dominant interexchange carriers (NDIECs), and other CLECs pursuant to D.96-02-075, as previously granted to Zayo's predecessor in D.98-12-083, including:

1. Exemption from the provisions of Pub. Util. Code sections 816-830 (pertaining to the issuance of stocks and securities) and Pub. Util. Code section 851 (pertaining to the transfer or encumbrance of utility assets when such transfer or encumbrance is for the purpose of securing debt). The Commission has previously concluded that NDIECs should be exempt from the provisions and requirements of Pub. Util. Code sections 816-830 and 851 (insofar as these sections pertain to the issuance of securities and transfer or encumbrance of utility property for purposes of

¹¹ See, D.08-08-013 (decision approving the joint unopposed application of NTI and Zayo Group, LLC for transfer of control of NTI to Zayo). Additionally, Zayo's predecessors have operated in California since approximately 1996.

**VERIFICATION AND SWORN AFFIDAVIT
ON BEHALF OF ZAYO GROUP, LLC**

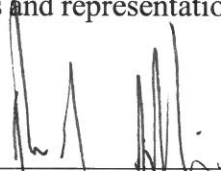
(Pursuant to D.13-05-035, Attachment B)

My name is Ted Gilliam. I am General Counsel for Western U.S. and Strategic Networks at Zayo Group, LLC (Zayo). My personal knowledge of the facts stated herein has been derived from my management of Applicant. I affirm that Zayo:

- Certifies that all information in the foregoing Application for CPCN are true and correct;
- Because Zayo is an existing CPCN holder, it has already posted a continuous bond in the amount of \$25,000, issued by a corporate surety company authorized to transact surety business in California, and with the Commission listed as the obligee on the bond.

I affirm and declare under penalty of perjury under the laws of the State of California, including Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure, that, to the best of my knowledge, all of the statements and representations made in this Application are true and correct.

Dated: October 1, 2020



Ted Gilliam

LIST OF EXHIBITS

- Exhibit A – Financial Information of Zayo Group LLC (June 2019)
- Exhibit B – Proponents Environmental Assessment [**CONFIDENTIAL**]
- Exhibit B – Proponents Environmental Assessment [**PUBLIC**]
- Exhibit C – Map of Proposed Project
- Exhibit D – Estimated Cost of Construction [**CONFIDENTIAL**]
- Exhibit E – Professional Biographies of Key Management Personnel