

MICHAEL DUVAL  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0320  
IDAHO BAR NO. 11714

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Street Address for Express Mail:  
11331 W CHINDEN BLVD, BLDG 8, SUITE 201-A  
BOISE, ID 83714

Attorney for the Commission Staff

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ELECTRIC	)	
LIGHTWAVE, LLC'S AND ZAYO GROUP,	)	CASE NOS. ELI-T-23-01
LLC'S JOINT APPLICATION FOR	)	ZAY-T-23-01
APPROVAL TO ASSIGN THE CERTIFICATE	)	
OF PUBLIC CONVENIENCE AND	)	
NECESSITY HELD BY ELECTRIC	)	COMMENTS OF THE
LIGHTWAVE, LLC TO ZAYO GROUP, LLC	)	COMMISSION STAFF

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COMMISSION STAFF (“STAFF”) OF the Idaho Public Utilities Commission, by and through its Attorney of record, Michael Duval, Deputy Attorney General, in response to the Notice of Application and Notice of Modified Procedure in Order No. 35846 issued on July 10, 2023, submits the following comments.

### BACKGROUND

On March 23, 2023, Electric Lightwave, LLC d/b/a Allstream (“Electric Lightwave”) and Zayo Group, LLC (“Zayo”) (referred to collectively as “the Applicants”) jointly applied to the Idaho Public Utilities Commission (“Commission”) seeking approval to transfer Electric Lightwave’s Certificate of Public Convenience and Necessity (“CPCN”) No. 344 to Zayo with Zayo being the remaining entity after assuming CPCN No. 344. The Applicants refer to this

process as the “Pro Forma Consolidation<sup>1</sup>.” *Application* at 1. While retaining their original request, the Applicants filed an amended application (“Application”) on April 3, 2023, for compliance purposes. The Commission issued a Notice of Application and sets deadlines for interested persons to comment on the Application, and for the Applicants to reply.<sup>2</sup>

## APPLICATION

The Applicants are both Delaware limited liability companies<sup>3</sup> and they are both authorized to engage in telecom business activities in Idaho<sup>4</sup>. Electric Lightwave is a wholly owned subsidiary of Zayo with a principal office located at 18110 SE 34th Street; Building One, Suite 100, Vancouver, Washington 98683. Zayo is wholly owned by Zayo Group Holdings, Inc.,<sup>5</sup> with a principal office located at 1821 30th Street, Unit A, Boulder, Colorado 80301.

The Applicants assert that the Pro Forma Consolidation is part of the Company’s efforts to simplify its corporate structure, reduce the reporting and accounting burdens, provide operational efficiencies, and save costs by reducing the duplication of roles within the Applicants’ corporate structures. *Id.*

The Applicants state that Zayo is a provider of bandwidth infrastructure and interconnection services over regional and metropolitan fiber networks. These telecommunications service offerings include high-capacity bandwidth services such as private lines, Ethernet, and wavelength services. Its customers consist primarily of wireless service providers, national and regional communications service providers, media/Internet/content companies, governments, banks, and other bandwidth-intensive enterprises. In Idaho, Zayo Group is authorized to provide wholesale telecommunications service pursuant to Order No. 32765 issued in Case No. ZAY-T-12-01 and is registered as an Other Telecommunications Provider. *Id.* at 2.

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<sup>1</sup> See Exhibit A Corporate Structure of Applicants before and after the Pro Forma Consolidation.

<sup>2</sup> See Order No. 35846.

<sup>3</sup> See Exhibit B Certificate of Formation.

<sup>4</sup> See Exhibit C Certificate of Authority to Transact Business in Idaho.

<sup>5</sup> See Exhibit A.

The Applicants state that Electric Lightwave provides a broad range of communication and networking services to businesses, wholesale carriers, web content providers, government organizations, and educational institutions. These services include but are not limited to, facilities-based local, resold long-distance, Internet, broadband transport, and data services. Currently, in Idaho, Electric Lightwave is authorized to provide local exchange telecommunication services pursuant to First Amended Certificate No. 344 issued by Commission Order No. 29528 in Case No. ELI-T-04-2. Both Zayo and Electric Lightwave have been authorized to provide domestic and international services by the Federal Communications Commission. *Id.* at 3.

The Applicants explain that as a result of certain Pro Forma intra-company transactions undertaken by Zayo, Electric Lightwave was consolidated into Zayo. This means that the Pro Forma Consolidation is expected to result in the merger of Electric Lightwave with and into Zayo Group, whereby the separate existence of Electric Lightwave will cease, and Zayo will be the surviving entity. Once the Pro Forma Consolidation is completed, the Applicants plan for Zayo to form a division that will be known as Allstream. This division will provide the services that Electric Lightwave once provided—including certain services not currently provided by Zayo. The Applicants state that customer rates and terms of service would not change if Electric Lightwave’s customers are served directly by Zayo. Zayo plans to use Electric Lightwave’s existing facilities (and other facilities) to provide local exchange services. *Id.* at 4.

The Applicants state their request is in the public interest and ask that it be granted on an expedited basis. Additionally, subject to receipt of applicable regulatory approvals, the Applicants proposed to complete the Pro Forma Consolidation as soon as possible within the calendar year of 2023. *Id.* at 4.

## STAFF ANALYSIS

Staff conducted a review of this Joint Application and concluded that the CPCN Certificate No. 344 that was granted to Electric Lightwave should be canceled and Zayo be issued a new CPCN certificate of its own.

The joint Application submitted by the Applicants proposes a Pro Forma Consolidation which is expected to result in the merger of Electric Lightwave with and into Zayo, whereby the separate existence of Electric Lightwave will cease, and Zayo will be the surviving entity. Thus, as a direct result of this transaction, the CPCN Certificate No 344 that Electric Lightwave holds, should be cancelled—since Electric Lightwave will no longer exist as a separate entity.

This CPCN Certificate No. 344 was issued to Electric Lightwave, Inc. to authorize Electric Lightwave to provide telecommunications services to Idaho residences and businesses, including basic exchange services, within parts of the state of Idaho. The Commission approved Electric Lightwave's Certificate by Order No. 27627 issued July 15, 1998. Order No. 27627 limited the areas in which Electric Lightwave is authorized to provide local telecommunications service to only within the counties of Ada, Canyon, Boise, and Elmore. Subsequently, pursuant to Commission Order No. 29528 issued June 22, 2004, Certificate No. 344 was amended to reflect the change in name from Electric Lightwave, Inc. to Electric Lightwave, LLC. The Company is registered with the Secretary of State as a foreign limited liability company with the foreign name Electric Lightwave, LLC.

The Joint Application proposes that the CPCN Certificate No. 344 be transferred to Zayo once the Pro Forma Consolidation is completed. However, Staff believes that this certificate should be canceled and Zayo should be issued its own CPCN certificate since it will be the only remaining standing entity. As shown in the Application, Zayo does fulfill all the requirements for the issuance of a CPCN certificate.

Zayo asserts that, as far as customers are concerned, the Pro Forma Consolidation will be seamless and will not result in any change in their services. Zayo will use the familiar "Allstream" brand with respect to the affected customers that receive services, primarily traditional voice services, not currently provided by Zayo. The remaining affected customers will be served under the "Zayo" brand. The rates, terms, and conditions of the customers' services will not change. Additionally, there will be no change in the managerial qualifications of the telecommunications provider serving the customers affected by the Pro Forma

Consolidation. The managerial and operations personnel that currently operate Electric Lightwave will continue to operate a portion of the Allstream business as a separate division within Zayo and the remaining operations will be overseen by Zayo's existing experienced management and operations personnel.

In Idaho, Zayo is already authorized to provide wholesale telecommunications service pursuant to Order No. 32765 issued in Case No. ZAY-T-12-01 and is registered as an Other Telecommunications Provider. The new CPCN certificate will also be statewide in scope and will encompass the authority to provide telecommunications service offerings of both Zayo and Electric Lightwave.

## **STAFF RECOMMENDATION**

### **1. Electric Lightwave, LLC. and CPCN Certificate No. 344**

Staff has reviewed Electric Lightwave's Application and recommends that CPCN Certificate No. 344 be canceled to reflect the Pro Forma Consolidation of Electric Lightwave into Zayo.

### **2. Zayo Group, LLC**

Staff has reviewed Zayo's Application and believes the Company understands the Commission's rules and requirements related to the provision of telecommunication services in Idaho. Based on this review, Zayo's filing fulfills the requirements of procedural Rule 114 and Order No. 26665. Staff also believes the Company possesses the requisite financial, managerial, and technical qualifications necessary to operate as a provider of telecommunications services in the entire state of Idaho.

Therefore, Staff recommends that Zayo be issued a Certificate of Public Convenience and Necessity subject to the following conditions:

1. Zayo complies with the number pooling and reporting requirements of the North American Numbering Plan Administrator, as set forth in Commission Order No. 30425;
2. Zayo provides necessary reports and contributions appropriate to the Idaho Universal Service Fund, Idaho Telecommunications Relay Services, and Idaho Telecommunications Service Assistance Program, and complies with all future

reporting requirements deemed appropriate by the Commission for competitive telecommunications providers;

3. Prior to issuance of the CPCN, Zayo files a final price list outlining all its rates, terms, and conditions with the Commission;
4. Zayo provides three reports to the Commission indicating the number of basic local exchange customers it has and the services being offered. These reports will be due as follows:
  - a. November 27, 2023;
  - b. March 25, 2024;
  - c. July 29, 2024; and

If Zayo fails to provide the three reports, Zayo shall relinquish its CPCN and all telephone numbers it has been assigned or the Commission will by its own order revoke the Company's CPCN.

5. If Zayo is not providing basic local exchange service by the time the third report is due, the Commission by its own order will revoke the Company's CPCN.

Respectfully submitted this 31st day of July 2023.



Michael Duval  
Deputy Attorney General

Technical Staff: Johan Kalala-Kasanda

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 31<sup>ST</sup> DAY OF JULY 2023, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NOS. ELI-T-23-01 / ZAY-T-23-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

<p>LAUREN LANTERO VP GENERAL COUNSEL CORPORATE ZAYO GROUP LLC 1821 30<sup>TH</sup> ST UNIT A BOULDER CO 80301 E-MAIL: <a href="mailto:Lauren.lantero@zayo.com">Lauren.lantero@zayo.com</a></p>	<p>CATHERINE WANG BRETT P FERENCHAK MORGAN LEWIS &amp; BOCKIUS 1111 PENNSYLVANIA AVE NW WASHINGTON DC 20004-2541 E-MAIL: <a href="mailto:catherine.wang@morganlewis.com">catherine.wang@morganlewis.com</a> <a href="mailto:brett.ferenchak@morganlewis.com">brett.ferenchak@morganlewis.com</a></p>
<p>DOUGLAS DENNEY VP LEGAL &amp; REGULATORY ALLSTREAM 18110 SW 34<sup>TH</sup> ST STE 100 VANCOUVER WA 86383 E-MAIL: <a href="mailto:doug.denney@allstream.com">doug.denney@allstream.com</a></p>	

  
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SECRETARY