



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION)
OF ZAYO GROUP, LLC AND SPREAD HOLDINGS,)
LLC AND NORTHEASTERN ITS, LLC FOR APPROVAL)
OF THE TRANSFER OF INDIRECT CONTROL OF)
NORTHEASTERN ITS, LLC TO ZAYO GROUP, LLC)
ORDER

DOCKET NO. TM17121281

Parties of Record:

Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC, on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On December 11, 2017, Zayo Group, LLC ("Zayo"), Spread Holdings, LLC ("Spread Holdings"), and Northeastern ITS, LLC ("Northeastern") (collectively, "Petitioners"), submitted a Verified Petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 requesting Board approval to transfer control of Northeastern from Spread Holdings to Zayo. Following completion of the transaction, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions.

BACKGROUND

Northeastern is a limited liability company organized under the laws of the Commonwealth of Pennsylvania, with principal offices located in Ridgeland, Mississippi. Northeastern is an indirect, wholly owned subsidiary of Spread Holdings, and is authorized to provide telecommunications services in New Jersey, Ohio and Pennsylvania. According to the petition, Northeastern does not provide intrastate telecommunications services except in Pennsylvania where it provides at most a de minimis amount of intrastate telecommunications services. In New Jersey, Northeastern is authorized to provide facilities-based local exchange, interexchange and carrier exchange services. See, In the Matter of the Petition of Northeastern ITS, LLC for Approval to Provide Local Exchange Telecommunications Services throughout the State of New Jersey, Docket No. TE09030225 (April 27, 2009).

Spread Holdings is a Mississippi limited liability company, with principal offices located in Ridgeland, Mississippi. Spread Holdings is a holding company for its subsidiaries, including Northeastern. Spread Holdings is majority owned by Barksdale Communications, LLC ("Barksdale"), a Mississippi limited liability company whose principal business is its investment in Spread Holdings. Neither Spread Holdings nor Barksdale provide telecommunications services. Spread Networks has four (4) employees located in New Jersey.

Zayo is a direct, wholly-owned subsidiary of Zayo Group Holdings, LLC ("Holdings"), a publicly traded Delaware corporation. Holdings has no majority owner. Zayo and Holding have their corporate headquarters located in Boulder, Colorado. According to the petition, Zayo is a provider of bandwidth infrastructure and network neutral collocation and interconnection services over regional and metropolitan fiber networks. Zayo's services are primarily used by wireless service providers, national and regional carriers and other communications providers, media and content companies, and certain bandwidth-intensive enterprises. Zayo holds authorization to provide intrastate telecommunications services in 48 states and the District of Columbia. In New Jersey, Zayo is authorized to provide local exchange and interexchange telecommunications services. See, In the Matter of the Petition of Zayo Group, LLC for Approval to Provide Local Exchange, InterExchange and Exchange Access Telecommunications Services Throughout the State of New Jersey, Docket No. TE11020049 (May 16, 2011). Zayo has 41 employees in New Jersey.

DISCUSSION

According to the petition, pursuant to an Agreement and Plan of Merger, dated as of November 26, 2017, by and among Zayo, SNMS, LLC (a direct, wholly owned subsidiary of Zayo created for the purposes of the merger) ("Merger Sub"), Spread Holdings, and Barksdale, solely in its capacity as the Unitholder Representative, Zayo will acquire all of the outstanding equity interests in Spread Holdings (the "transaction"). Specifically, Merger Sub will merge with and into Spread Holdings, whereupon the separate existence of Merger Sub will cease and Spread Holdings will survive as a direct, wholly owned subsidiary of Zayo. Northeastern will remain an indirect subsidiary of Spread Holdings and, therefore, Northeastern will become an indirect, wholly owned subsidiary of Zayo.

Petitioners contend that the proposed transaction is consistent with the public interest. The financial, technical, and managerial resources of Zayo are expected to enhance Spread Networks' ability to serve their customers effectively and efficiently. The transaction will expand Spread Networks business operations and portfolio by enabling Spread Networks to offer services to multi-location business and enterprise customers across a larger footprint in combination with Zayo. Petitioners argue the combined networks will enhance the ability of the provider to serve customers effectively and efficiently in a competitive market.

The New Jersey Division of Rate Counsel submitted comments by letter dated December 21, 2017, stating it does not oppose approval of the proposed acquisition provided conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. Specifically, as a condition of approval, Rate Counsel urges that the Board require Petitioners to notify the Board and Rate Counsel, providing an appropriate explanation in writing within a minimum of thirty days prior to effectuating a reduction in New Jersey jobs that is greater than fifteen percent (15%), throughout a three (3) year period following approval.

By letter dated January 3, 2018, Petitioners object to the proposal by Rate Counsel stating that such a condition requiring prior notice is not consistent with the Board's prior decisions in other transfer of control transactions in substantially identical circumstances involving other competitive providers serving the New Jersey market. Petitioners state that Rate Counsel's proposal for advance notice, if adopted would be significantly more burdensome on Petitioners than a requirement to notify the Board after the fact. Imposing an advance notice requirement would place Petitioners at a competitive disadvantage compared to other authorized providers operating in the same market but not subject to such a requirement. Further, Petitioners note that Rate Counsel's proposal is not consistent with what the Board has ordered in similar dockets where the Board has required companies to report after the fact, for three years following closing, headcount reductions in New Jersey greater than 15%.

FINDINGS AND CONCLUSIONS

Pursuant to N.J.S.A. 48:2-51.1(a), the Board shall evaluate the impact of an acquisition of control of a public utility on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1 as set forth above. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

After a careful review of this matter, the Board is satisfied that positive benefits will flow to customers based upon the record, and that the combined enterprise would not be able to exercise market power to raise prices above competitive levels or exclude competitors from the marketplace. The Board therefore **FINDS** that the proposed transaction will have little impact on competition. The Board additionally **FINDS** that there will be no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions and the provision of service quality on competitive offerings is in the public interest.

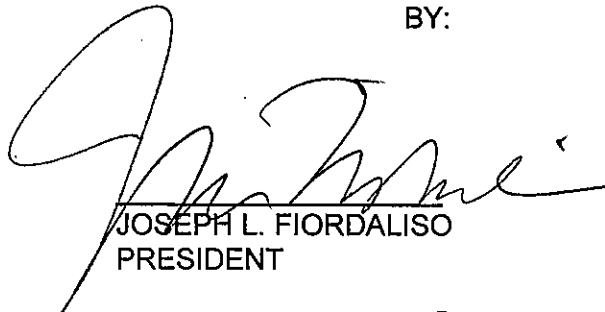
The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. Zayo has 41 employees in New Jersey and Spread Networks has 4 employees in New Jersey. Petitioners stated there are no immediate plans with respect to these employees. Board precedent requires companies to report headcount reductions in New Jersey greater than 15% for a 3-year period after the date of closing. See, In the Matter of the Verified Joint Petition of Broadview Network Holdings, Inc. et al., Docket No. TM10404333 (June 30, 2017). There is no reason to disturb Board precedent based on these facts. The Board, therefore, **FINDS** that Petitioners must notify the Board, providing a written explanation if there is a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of its total employee headcount for a 3-year period after the date of closing. Petitioners have noted, that Spread Networks does not have an employee pension plan, however Spread Networks employees may be able to rollover pre-closing contributions to their existing retirement benefits plan into another qualified benefit plan such as an individual retirement rollover account or a Zayo retirement benefits plan.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with the applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed transaction will have no impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioner to complete the proposed transaction.

This Order shall be effective February 10, 2018.

DATED: 1/31/18

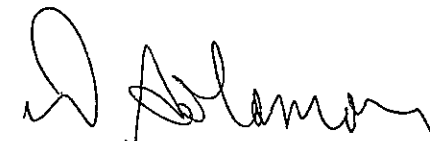
BOARD OF PUBLIC UTILITIES
BY:



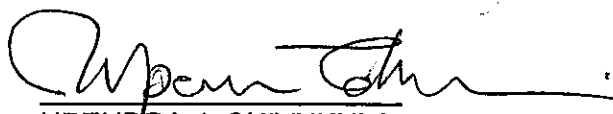
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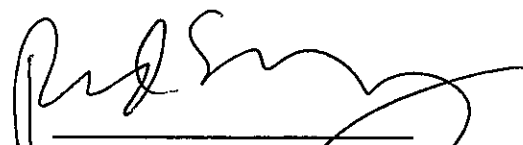
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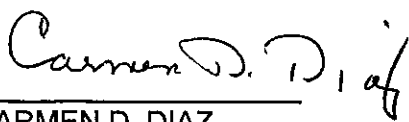
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COMMISSIONER

ATTEST: 
CARMEN D. DIAZ
ASSISTANT BOARD SECRETARY

HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

**IN THE MATTER OF THE VERIFIED JOINT PETITION OF ZAYO GROUP, LLC AND SPREAD HOLDINGS, LLC AND NORTHEASTERN ITS, LLC FOR APPROVAL OF THE TRANSFER OF INDIRECT CONTROL OF NORTHEASTERN ITS, LLC TO ZAYO GROUP, LLC
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