

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, NW, SUITE 800
WASHINGTON, DC 20005**

ORDER

September 25, 2019

**FORMAL CASE NO. TA 03-6, IN THE MATTER OF THE NOTIFICATION OF
THE PROPOSED TRANSFER OF INDIRECT CONTROL OF ZAYO GROUP,
LLC TO FRONT RANGE TOPCO, INC., Order No. 20226**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) accepts the notification of Zayo Group, LLC (“ZGL” or “Licensee”) and Front Range TopCo, Inc. (“Front Range”) (collectively, the “Parties”) as filed to the Commission of the proposed transfer of indirect control of ZGL to Front Range (the “Transaction”). Further, the Commission shall dismiss the Parties’ filing for lack of Commission jurisdiction.

II. BACKGROUND

2. On August 30, 2019, ZGL and Front Range filed notification of a proposed transfer of indirect control of Licensee to Front Range.¹ The Parties filed the notification for informational purposes and do not seek Commission approval of this transaction,² citing *Formal Case No. 892*, Order No. 17536 for support.³

Description of the Parties

A. Zayo Group, LLC

3. In its filing, the Parties describe ZGL as a wholly owned subsidiary of Zayo Group Holdings, Inc. (“ZGH” and together with its subsidiaries, “Zayo”), a publicly traded

¹ *Formal Case No. TA 03-6, In the Matter of the Notification of the Proposed Transfer of Indirect Control of Zayo Group, LLC to Front Range TopCo, Inc. (“Formal Case No. TA 03-6”),* filed August 30, 2019 (“Notification”).

² Notification at 1.

³ *Formal Case No. 892, In the Matter of the Joint Application of Sidera Networks, LLC for Approval of a Pro Forma Intra-Company Transaction (“Formal Case No. 892”),* Order No. 17536, rel. July 10, 2014. (“Order No. 17536”). In Order No. 17536, the Commission held that, “for the sake of administrative economy, CLEC transactions concerning corporate reorganizations and restructurings that are purely intra-corporate in nature, and do not involve transfer of ownership or control to an outside entity or organization, shall only require a Notification of the Transaction. Purely intra-corporate CLEC restructurings or reorganizations shall be subject to dismissal by this Commission.” Order No. 17536, ¶ 6.

Delaware corporation. The Parties state that ZGL is a Delaware limited liability company and a direct subsidiary of ZGH. The Parties state that Zayo's corporate headquarters is located in Boulder, Colorado. ZGL, according to the Parties, is a provider of bandwidth infrastructure and network-neutral colocation and inter-connection services over regional and metropolitan fiber networks. In the District of Columbia ("District"), ZGL is authorized to provide resold and facilities-based local telecommunications services pursuant to Order No. 12708, issued on April 18, 2003,⁴ and Order No. 16379, issued on May 27, 2011.⁵ Licensee is also authorized by the Federal Communications Commission to provide interstate and international telecommunications services.⁶

B. Front Range TopCo, Inc.

4. The Parties describe Front Range as a holding company created for purposes of the Transaction to aggregate the ownership of various investment and co-investment vehicles ultimately managed by (i) affiliates of EQT AB ("EQT") and (ii) affiliates of Digital Colony GP, LLC ("Digital Colony"). Front Range is a Delaware corporation with its principal office in New York, New York.⁷

5. The Parties explain that equity in Front Range, and thus in Licensee's ultimate parent, ZGH indirectly, will be shared among the affiliates of EQT and Digital Colony with each holding approximately 45.3% of the equity; FMR, LLC, an affiliate of Fidelity Investments, will hold approximately 7.6% of the equity; and ZGH's current management team will hold the remaining equity (approximately 1.8%). The Parties state that EQT and Digital Colony will exercise control of Front Range, and thus ZGH through the General Partner of an intermediate Delaware partnership – Front Range JV, LP that aggregates the investment from the affiliates of EQT, Digital Colony and FMR. According to the Parties, the make-up of the Board of Directors of Front Range JV GP, LLC (the "GP")-the General Partner of Front Range JV, LP-will be comprised of ten members: EQT and Digital Colony will each nominate four Directors, FMR will nominate a single director, and the non-executive independent Chairman will be selected by consensus between EQT and Digital Colony, with EQT having the right to nominate and Digital Colony the right to approve the Chairman. As a result, the Parties state that, EQT and Digital Colony will each share 45% control through the GP.⁸

6. The Parties state that EQT was founded in Sweden in 1994 and is a leading alternative investments firm with approximately EUR 61 billion in raised capital across 29

⁴ Formal Case No. TA 03-6, *In the Matter of the Application of PPL Telcom, LLC to Provide Local Telecommunications Services in the District of Columbia*, Order No. 12708, rel. April 18, 2003.

⁵ Formal Case No. TA 03-6, *In the Matter of the Joint Application of Zayo Group, LLC, and Zayo Bandwidth, LLC for Approval of a Pro Forma Intra-Corporate Merger*, Order No. 16379, rel. May 27, 2011.

⁶ Notification at 2.

⁷ Notification at 2.

⁸ Notification at 2.

funds. The Parties maintain that EQT funds have portfolio companies in the United States, Europe, and Asia with total sales of more than EUR 40 billion and approximately 110,000 employees. According to the Parties, investment funds managed by affiliates of EQT have successfully invested in several fiber-based companies in the United States, such as SEGRA (formerly Lumos Networks Corp. and Spirit Communications), and abroad, including BroadNet/GlobalConnect (Denmark, Germany, Norway); IP-Only (Sweden, Denmark, Finland, Norway); Adamo Telecom Iberia SA (Spain); Delta Fiber NL (Netherlands); and Bjørvika IKT AS (Norway). The Parties maintain that those companies operate independently of each other and, following the Transaction, each of the companies and Zayo will continue to operate independently with independent management teams.⁹

7. The Parties state that Digital Colony is a Delaware limited liability company and investment firm dedicated to strategic opportunities in digital infrastructure. The Parties represent that Digital Colony is wholly controlled by Colony Capital, Inc., a leading, publicly-traded U.S. real estate and investment management firm with significant expertise in the telecommunications sector. The Parties maintain that Digital Colony and its affiliates possess a long record of successful investment in communications infrastructure companies in the United States and abroad, providing investment examples such as Aptum Technologies (formerly Cogeco Peer 1), a Canadian data center and fiber network operator; Andean Telecom Partners (formerly Andean Tower Partners) (a mobile and internet infrastructure company in Chile, Colombia, and Peru); Digita Oy (an independent tower operator in Finland); and The Freshwave Group (formerly strattoOpenCell) (a provider of wireless infrastructure in the UK).

8. According to the Parties, some of these principals, in turn, have made minority investments in a number of digital infrastructure companies, including ExteNet Systems (a provider of small cell and other wireless infrastructure); Vertical Bridge (owner and operator of towers and other mobile wireless infrastructure); Mexico Tower Partners (towers and mobile wireless infrastructure); Databank (Data Center and cloud services); and Vantage (Data Centers). The Parties represent that Marc C. Ganzi is the Managing Partner of Digital Colony, and was the sole founder and CEO of Global Tower Partners, which, the Parties assert, grew from its inception in 2003 to become one of the largest privately owned tower companies in the United States at the time of its sale to American Tower Corporation in 2013 for \$4.8 billion.¹⁰

Description of the Transaction

9. The Parties explain that the Agreement and Plan of Merger (the “Agreement”) by and among ZGH, Front Range, and Front Range BidCo, Inc. (“Merger Sub”), ZGH will be merged with and into Merger Sub with ZGH continuing its existence as the surviving corporation. The Transaction will result, according to the Parties, in ZGH transitioning from a publicly traded company to a private company, with ZGH shareholders

⁹ Notification at 2.

¹⁰ Notification at 3.

receiving \$35.00 in cash per share of ZGH's common stock in a transaction valued at approximately \$14.3 billion, including the assumption of approximately \$5.9 billion of Zayo's net debt obligations. Upon the closing of the Transaction, the Parties state that Licensee will become a wholly owned indirect subsidiary of Front Range.¹¹

10. The Parties maintain that the Transaction will occur entirely at the holding company level and will have no adverse impact on Licensee's customers and will not result in service disruption, termination, or customer confusion. The Parties maintain that at the current time, key members of Zayo's current management team are expected to continue to execute Zayo's strategy. According to the Parties, the only significant change resulting from the Transaction will be that ZGH (and indirectly, Licensee) will be owned by Front Range rather than its current shareholders. The Parties contend that Front Range and its ultimate owners are financially well-qualified to become the new owner of Zayo, and that following closing of the Transaction, Zayo will enjoy access to the financial resources and broader management expertise of Front Range and its ultimate owners.¹²

11. The Parties assert that the proposed Transaction will serve the public interest, convenience, and necessity by providing Licensee with access to Front Range's financial and operational expertise. It will permit, according to the Parties, Licensee to continue to provide robust communications solutions to its customers and to better compete in the District's telecommunications marketplace. The Parties state that both EQT and Digital Colony have substantial experience investing in communications infrastructure companies. As such, the Parties maintain that Zayo's current management can call on this experience with Zayo's current management under Front Range's ownership, and seek to build on Zayo's existing assets, support investment in new infrastructure and continue to offer innovative and high-quality services to existing customers. In conclusion, the Parties assert that the Transaction will make Licensee a stronger competitor and thereby benefit consumers.¹³

III. COMMISSION DECISION

A. Transfer of Control

12. D.C. Code § 34-1001 sets forth the Commission's authority to review the transactions filed for Commission consideration and approval. In addition, 15 DCMR § 2511.2 provides the application requirements for entities seeking Commission approval for a corporate restructuring.¹⁴ The first step in this process, however, is for the Commission

¹¹ Notification at 4; *see also* current and post-Transaction corporate ownership structure charts provided as Exhibit A.

¹² Notification at 4.

¹³ Notification at 4.

¹⁴ *See* 15 DCMR § 2511.2 (2015). Specifically, 15 DCMR § 2511.2 states: For any change of ownership or control involving a certificated local exchange carrier that must be approved by the Commission

to determine whether it has authority to review and approve an application for transfer of control or a corporate restructuring, in accordance with D.C. Code § 34-1001. If it determines that it has authority to review the transaction in accordance with D.C. Code § 34-1001, then the Commission will conduct an analysis of the application based on the requirements provided in 15 DCMR § 2511.2.¹⁵

13. The Commission has interpreted D.C. Code §§ 34-1001, 34-214, 34-220 and 34-221 to mean that if a Competitive Local Exchange Carrier has facilities in the District of Columbia, then it can be classified as a public utility under the D.C. Code and therefore certain transactions, such as assignments or transfers, require prior Commission review and approval.¹⁶ ZGL represents that it does not provide jurisdictional retail telecommunications services and nor does it derive revenues from retail telecommunications services lines within the District.¹⁷ Inasmuch as ZGL has no facilities in the District, it does not meet the definition of a public utility. Because ZGL does not meet the statutory definition of a public utility, there is no need for the Commission to analyze the merits of this transaction in accordance with 15 DCMR § 2511.2. Consequently, the Commission accepts ZGL's notification of its transfer of control to Front Range and the Commission shall dismiss the Parties' filing for lack of jurisdiction.

THEREFORE, IT IS ORDERED THAT:

14. The Notification to the Commission of the proposed transfer of indirect control of Zayo Group, LLC to Front Range TopCo, Inc., is accepted as filed and, the Commission shall dismiss further review of the transaction for lack of Commission jurisdiction.

pursuant to D.C. Official Code § 34-1001 (2001), all of the entities involved in the transaction must file an application with the Commission at least sixty (60) days before the proposed closing date of the transaction.

¹⁵ See 15 DCMR § 2511.2(d) (2015) stating the five standards an application for transfer of control or other type of corporate reorganization must meet in order to receive Commission approval.

¹⁶ See *Formal Case No. 990, In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 13139, ¶ 22, rel. March 25, 2004; See also *Formal Case No. 892, In the Matter of Joint Application of CTC Communications Corp., Conversant Communications Resale, L.L.C., and Choice One Communications Resale, L.L.C. for Approval of Pro Forma Intra-Company Changes*, Order No. 16933, rel. October 12, 2012, citing *Formal Case No. 968, Joint Application of AT&T Corporation and Teleport Communications Group, Inc., for Approval of a Transfer of a Franchise*, Order No. 11532 at 5, rel. November 5, 1999, which provided the context for the Commission's authority to review certain transactions. See also *Formal Case No. 892, In the Matter of Joint Application of Crown Castle International Corp., LTS Group Holdings LLC, and Lightower Fiber Networks I, LLC, and Lightower Fiber Networks II, LLC for Approval to Transfer Indirect Control of Lightower fiber Networks, I LLC and Lightower Fiber Networks II, LLC to Crown Castle International Corp.*, Order No. 19116, rel. September 21, 2017, wherein the Commission approved the joint application for transfer of control, finding the Applicants to be public utilities under Commission statutes and rules.

¹⁷ ZGL's most recent Survey Response indicates that it does not provide retail telecommunications services (except non-jurisdictional services) or have any telephone lines or facilities in the District. See *ASMT2019-113-T-2*, Survey Response of Competitive Local Exchange Carrier: Zayo Group, LLC, filed April 5, 2019.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**