1805 29th Street, Suite 2050
Boulder, CO 80301

NOTICE OF EX PARTE

October 4, 2016

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket No. 13-238; 2012 Biennial Review of Telecommunications Regulations, WT Docket No. 13-32; and Acceleration of Broadband Deployment: Expanding the reach and reducing the cost of Broadband Deployment by improving Policies regarding Government rights of way and Wireless Facilities Siting, WC Docket No. 11-59

Dear Ms. Dortch:

On September 30, 2016, the representatives of Zayo Group Holdings, Inc. ("Zayo") listed below met with the Commission staff copied on this letter.

At the meeting, Zayo provided the attached document to the Commission staff, which, among other things, explains Zayo's experience with, and views regarding, small cell rights of way permitting and municipal broadband deployment. During the meeting, the Zayo representatives and Commission staff discussed these matters in more detail, specifically:

- Zayo's facility activity and business model, such as network configuration, ownership and deployment of poles, and neutral hosting concepts
- Issues causing delays in the permitting process and other deterrents to network deployment and investment in broadband infrastructure, including lack of local and state government familiarity with small cells, and permitting challenges
- Carrier/customer dynamics and carrier investment strategies
- Private/public partnerships
- The reality and importance of immediate 4G diversification and the 5G transition

Finally, Zayo proposed that the FCC take action on these matters to solve for issues of timeliness, predictability, and cost in order to incentivize increased investment in broadband infrastructure.

Please contact me if you have any questions regarding this matter.

Sincerely,

/s/ Wendy Cassity

Wendy Cassity

cc:
Jon Wilkins
Charles Mathias
Paul de Sa
Chas Eberle

Representatives of Zayo:
Wendy Cassity, VP, General Counsel & Secretary
Dylan DeVito, VP Network Development & AGC
Jake Fuller, VP Mobile Infrastructure
Dennis Kyle, SVP Strategic Marketing & Business Development
Laura Littman, Corporate Counsel
Anand Mehta, VP Strategy
Gary Pulford, Director, Federal Government

Attachment

ZAYO GROUP - MEETING WITH THE FCC

September 30, 2016, 11:30-12:30 pm ET

Zayo Attendees:
Wendy Cassity, VP & General Counsel
Dylan DeVito, VP Network Development & AGC
Jake Fuller, VP, Mobile Infrastructure
Dennis Kyle, SVP Strategic Marketing & Business Development
Laura Littman, Corporate Counsel
Anand Mehta, VP, Strategy
Gary Pulford, Director, Federal Government

Who we are: Zayo was founded in 2007 and went public in October 2014. We are a provider of communications infrastructure and carrier-neutral colocation services and offer a full suite of products, including high-capacity dark fiber, wavelength, Ethernet and other connectivity solutions over regional and metropolitan fiber networks in North America and Europe:

Our assets

International Network

8,778,822 fiber miles
112,660 route miles

Unique Metro Fiber

24,282 buildings
152 avg metro fiber count

Datacenters

61 zColo data centers
>668k billable sf

People

3,224 employees
175 QBHC

What we do

zayo

Products*
38% Dark Fiber Solutions
45% Network Connectivity
16% Colo & Cloud Infrastructure
1% Other

Customers*
6.8k customers
54% of rev from enterprise & content
46% carriers & wireless

* Excludes Zayo Canada

Leading Fiber & Data Center Consolidator
38 acquisitions to date
6 since Jan 2015

Track record

Financial[1]

~$2.0B revenue
~$1.0B adjusted EBITDA

Growth

27 consecutive quarters of sequential revenue growth[2]

Value Creation

$1.1B invested equity since 2007 inception
>$6.7B equity value[3]
>6x return

Vision: Amass fiber, data center, and structure assets and unleash their value by providing exceptional communications infrastructure services

Mission: Accelerate our customers' capabilities to bring freedom and prosperity to the world by providing enormous high-quality bandwidth

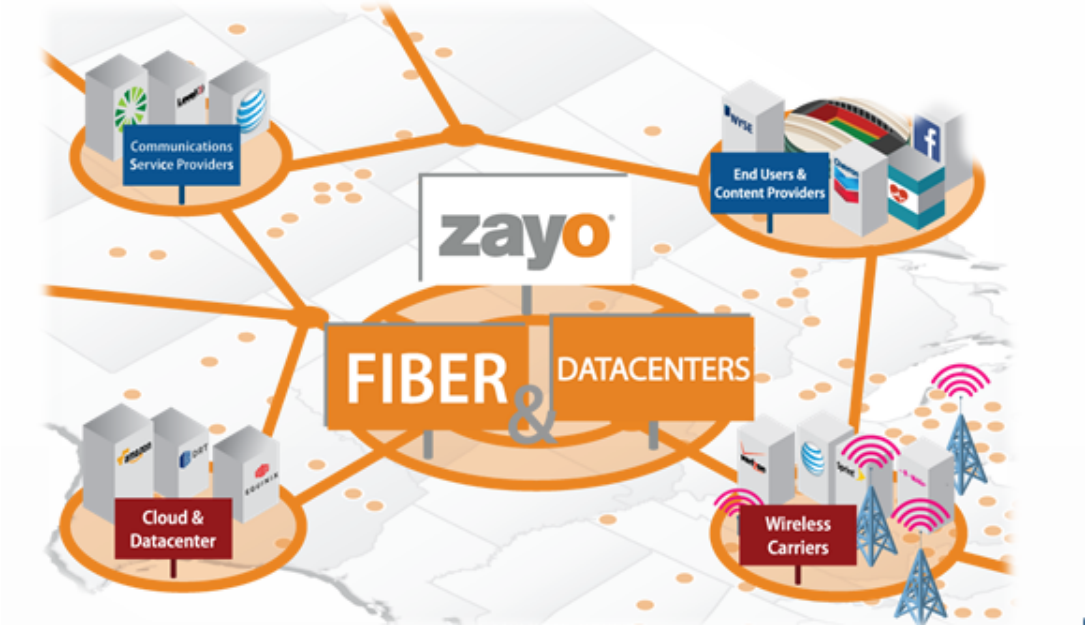
Our business model: Zayo utilizes existing owned infrastructure and commits significant capital to build new fiber infrastructure to meet customers' needs, providing customers with flexible, customized solutions. See below major network expansions:

($M)

Geography	SPG	Booking Qtr[2]	Estimated Capital Expenditures	NetNew Sales (Bookings) MRR & MAR	Upfront Charges
West	Mobile Infrastructure	Mar-14	$58	$0.4	$38
Midwest	Dark Fiber	Sep-14	$75	$0.1	$0
Southwest	Dark Fiber	Sep-14	$22	$0.1	$0
West	Mobile Infrastructure	Mar-15	$39	$0.4	$32
South	Mobile Infrastructure	Mar-15	$189	$0.6	$25
SouthWest	Dark Fiber	Mar-15	$24	$0.2	$0
Midwest	Mobile Infrastructure	Jun-15	$88	$0.4	$21
Northwest	Mobile Infrastructure	Jun-15	$61	$0.6	$0
Southeast	Mobile Infrastructure	Dec-15	$98	$0.3	$6
~~Midwest[3]~~	~~Mobile Infrastructure~~	~~Dec-15~~	~~$38~~	~~$0.2~~	~~$3~~
South	Mobile Infrastructure	Dec-15	$36	$0.2	$3
South	Mobile Infrastructure	Mar-16	$75	$0.2	$2
South	Dark Fiber	Jun-16	$34	$0.3	$30
Cumulative Changes [1]			*$9*	*$0.0*	*$0*
Total			$808	$3.7	$156

	Capital Expenditures	Gross Installs	Upfront Received
Actual Through Jun-16	$215	$0.5	$47
Percentage of Committed	27%	13%	30%

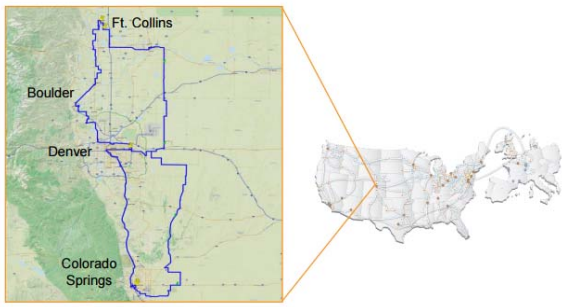
Fiber & Datacenters are Core Components of Communications Infrastructure…



Tranzact: Is our innovative, online platform that allows self-service management and purchasing of bandwidth services, enabling customers to manage, operate, and scale their telecommunications and data networks.

Our recent accomplishments:

UCHealth selects Zayo for holistic bandwidth infrastructure



- comprehensive services, including colocation, waves and dark fiber
- network enables technologically advanced delivery of healthcare, including real-time, high-definition (HD) medicine
- leverages existing Denver datacenters and dense (largely FTT funded) fiber footprint

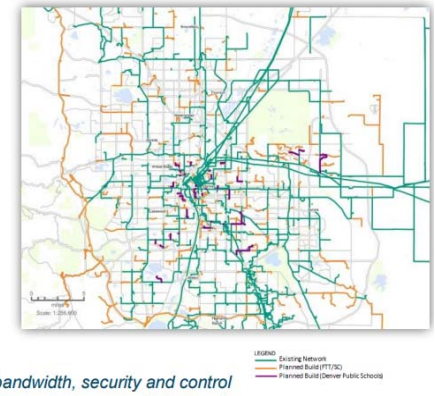
penetration of dark fiber continues to expand

Denver Public Schools

deal connects **153** sites, including **2** datacenters

618 mile solution includes:
562 miles existing and planned network
56 miles new construction

additionally…
1,178 mile Texas school district win leverages FTT build in Dallas
122 sites



dark fiber provides schools with the bandwidth, security and control necessary to meet today's and plan for tomorrow's connectivity needs

FTT market expansion and small cell acceleration drove >90% of committed speculative projects in quarter

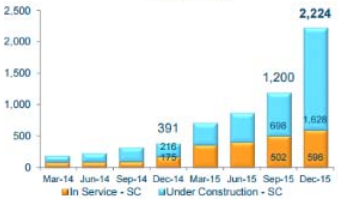
Large Atlanta FTT Project

fiber network to increase by **>1,000** route miles

adding **~500** towers

~$100M of committed capex

Small Cells



committed to build **>1,000** incremental small cells

~$75M in committed capex

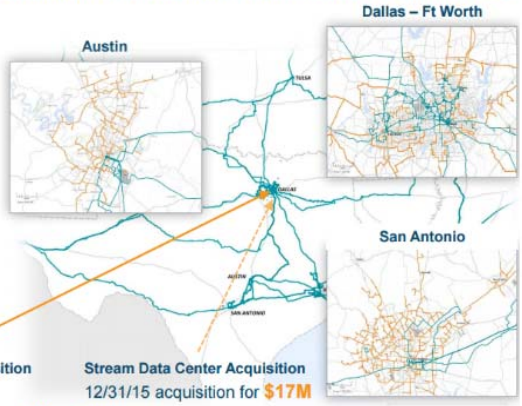
85% QoQ growth

FTT market expansion in Austin / San Antonio and Clearview acquisition add to Texas presence

fiber network to increase by **~3,000** route miles

adding **>900** towers

~$265M of committed capex



Clearview Data Center Acquisition
closed 4/1/16 for **$19M**
2 datacenter locations totaling **30k** billable square feet

Stream Data Center Acquisition
12/31/15 acquisition for **$17M**
36k billable square feet

Fortune 500 customer deployment of nationwide 6x100g Wavelengths

- customer needed a nationwide dedicated high-bandwidth network to support growing business requirements
- zayo leveraged existing 100G wave backbone to meet aggressive delivery schedule

Fortune 500 customer sale leveraging existing metro footprint

- customer replacing lit network with more scalable, higher bandwidth solution
- leveraged existing dark fiber infrastructure, minimizing capex

Our regulatory interests:

Small Cell ROW Permitting Challenges and Wireline Broadband Deployment:

- Permitting/Approval challenges
  - Many municipalities have an unsure path forward for how to get the rights to install a small cell
  - High costs to access the ROW in many jurisdictions making small cells cost prohibitive
- Zayo believes that fiber will play a key role in small cell backhaul (and later 5G) deployment, and so Zayo's ability to achieve permitting is paramount.
- Local regulation of access to the public rights-of-way is currently a patchwork of ad-hoc, disparate and often unpublished procedures that regularly add substantial uncertainty, delay and cost to network deployment. This has the effect of prohibiting the ability of providers to enter the local market and provide telecommunications service.
- Section 253 of the Telecom Act provides preemption authority in subsection (d): "If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency."
- Zayo would like to help the Commission build a record demonstrating that the current lack of uniform Federal standards leads to distortions in investment decisions, service inefficiencies and ultimately deters much needed investment in network infrastructure.
- Obtaining access to the public ROW is critical to deployment of telecom infrastructure. If access is more burdensome, time-consuming or expensive than necessary, it creates significant obstacles to making service available and affordable.
- A timeline for public ROW access and defined standard of compensation would open underserved markets and quicken the pace of new network deployment.
  - The process of negotiating individual agreements is often so prolonged and unpredictable that investment and market entry is severely delayed or even completely deterred.
  - Municipal staffs have little incentive to prioritize franchise/license agreements. 6 months is an average timeframe, and some can take 1-2 years or more.
  - Many municipalities seek "pot of gold" compensation rather than reimbursement of the direct costs associated with a provider's use of the public ROW. The appropriate standard is reimbursement of pro rata direct costs relating to occupation of the public ROW. Several states have codified this and similar standards (Tennessee, Washington).
  - These factors are often exacerbated in the most underserved communities where municipal resources to work agreements and efficiently manage ROW access are more limited.

Business Data Services: Zayo commented on the NPRM proposing the following:

- Incumbent carriers should be prohibited from using the following anti-competitive contractual terms and conditions in all markets, as Zayo has experienced and seen how these terms make markets less competitive and block new entrants. Prohibiting these practices will enable Zayo and other competitive service providers to enter into markets, generally by building into those markets, and provide innovative, competitive service offerings to customers.
  - Percentage commitments (whether based on purchases prior to the contract term or escalating commitments based on purchases earlier in the contract term) as they allow incumbents to leverage their market power to lock in customers and use price discrimination based on customers' needs.
  - "Tying" arrangements, including geographic tying, which provide for an unfair competitive advantage for incumbents who use this practice to condition the purchase of services in non-competitive locations on the purchase of services in competitive locations, and take-or-pay provisions, where incumbents are able to force customers to purchase other services from them by counting those purchases towards the take-or-pay term in a previous contract. To prevent possible circumvention of these prohibitions, Zayo recommends that this prohibition be defined broadly to include any provision in a carrier's contract for BDS under which the price, terms or conditions applicable under that contract are contingent upon or affected in any way by the customer's purchases of any other services, whether from the carrier or from a third party. Zayo urges the Commission to adopt a comprehensive prohibition on tying to prevent inadvertent creation of loopholes that creative incumbents will inevitably exploit.

- Unreasonable term commitments for BDS. While it is reasonable for a provider to require some minimum term of service, incumbents have abused this practice by combining term commitments for individual BDS circuits with separate, non-synchronized term commitments for overall BDS discount plans. These plans include automatic renewal terms and month-to-month pricing that revert all services to rates at a higher fee upon the expiration of a discount plan or agreement without sufficient compensation or negotiation. Customers cannot freely switch to another carrier when their discount plan term expires because many of the particular circuits they purchased under that plan will still be under circuit-specific term commitments. While circuit-specific term commitments are reasonable, these umbrella discount plan obligations are not; the customer should have the opportunity to re-negotiate the terms of the contract for the new term in a competitive manner.
- Other restrictive contract provisions that may appear in the future.

- Given the business model incentive for providers to invest or not invest in a market, Zayo submitted the following framework for defining the "competitive" market for special access services:
  - BDS 1 Gbps or greater should be presumed competitive in any geographic market in which there is any facilities-based carrier offering BDS, because sufficient demand exists.
  - BDS above 50 Mbps and up to 1 Gbps should be deemed competitive if there are at least three facilities-based carriers offering that level of service or if a competitive carrier is building new infrastructure into the market, because a particularly high level of demand for BDS exists and therefore lower barriers to competitive entry exist.
  - BDS below 50 Mbps should be presumed non-competitive, although there should be an opportunity for carriers to rebut this presumption based upon a demonstration of substantial competitive presence in a particular geographic area.

- The proposed NPRM reporting requirements should be significantly scaled back. Repeated mandatory collections of data from competitive carriers, even if only once every three years, impose burdens more debilitating for competitive carriers than the larger incumbents and cable companies because of the smaller scale and competitive atmosphere of competitive carriers.