



PUBLIC NOTICE

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445 12th St., S.W.
Washington, D.C. 20554

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**APPLICATIONS GRANTED FOR THE TRANSFER OF CONTROL OF
ZAYO GROUP, LLC, ELECTRIC LIGHTWAVE, LLC, AND
ALLSTREAM BUSINESS US, LLC FROM ZAYO GROUP HOLDINGS, INC.
TO FRONT RANGE TOPCO, INC.**

WC Docket No. 19-166

By this Public Notice, the Wireline Competition Bureau, International Bureau, and Wireless Telecommunications Bureau (Bureaus) grant, as conditioned, the applications filed by Zayo Group Holdings, Inc. (Zayo) and its subsidiaries, Zayo Group, LLC (ZGL), Electric Lightwave, LLC (Electric Lightwave), and Allstream Business US, LLC (Allstream) (ZGL, Electric Lightwave, and Allstream, together, Licensees), and Front Range TopCo, Inc. (Front Range) (Zayo, Licensees, and Front Range, collectively, Applicants), pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act),¹ the Cable Landing License Act of 1921,² and sections 1.767, 1.948, 63.03-04, 63.18, and 63.24 of the Commission's rules,³ requesting consent for the transfer of control of Zayo and the Licensees to Front Range.⁴ The Bureaus also grant, as conditioned, the petition for declaratory ruling (Petition) that ZGL and Front Range (together, Petitioners) filed seeking approval for foreign investment in Zayo above the 25% benchmark in section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's rules.⁵

¹ 47 U.S.C. §§ 214, 310(d).

² 47 U.S.C. §§ 34-39; *see also* Exec. Ord. No. 10530, Sec. 5(a), reprinted as amended at 3 U.S.C. § 301 (delegating the President's authority under the Cable Landing License Act to the Commission).

³ 47 CFR §§ 1.767, 1.948, 63.03-04, 63.18, 63.24.

⁴ Joint Application of Zayo Group Holdings, Inc., Allstream Business US, LLC, Electric Lightwave, LLC, and Zayo Group, LLC for Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Indirect Control of Domestic and International Section 214 Authorization Holders to Front Range TopCo, Inc., WC Docket No. 19-166 (filed June 17, 2019) (Lead Application, together with applications listed in Attachment A, Applications)). Applicants filed supplements to the Lead Application on July 10, 2019, August 21, 2019, and December 11, 2019. Letter from Danielle Burt, *et al.*, Counsel to Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-166, IB File No. SCL-T/C-20190614-00018 (July 10, 2019) (on file in WC Docket No. 19-166); Letter from Ulises R. Pin, *et al.*, Counsel to Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-166, File Nos. ITC-T/C-20190614-00121, ITC-T/C-20190614-00122, ITC-T/C-20190617-00123, SCL-T/C-20190614-00018 (Aug. 21, 2019) (on file in WC Docket No. 19-166) (Applicants' Aug. 21, 2019 *Ex Parte*); Letter from Ulises R. Pin, *et al.*, Counsel to Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-166, File Nos. ITC-T/C-20190614-00121, ITC-T/C-20190614-00122, ITC-T/C-20190617-00123, SCL-T/C-20190614-00018 (Dec. 11, 2019) (on file in WC Docket No. 19-166). Applicants also filed applications seeking Commission approval for the transfer of control of Licensees' submarine cable landing license and wireless licenses. The file numbers for the applications associated with this transaction are set out in Attachment A.

⁵ 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1); Petition for Declaratory Ruling, File No. ISP-PDR-20190620-00004 (filed June 20, 2019) (Petition); Supplement to Petition for Declaratory Ruling, ISP-PDR-20190620-00004

(continued....)

On July 5, 2019, the Bureaus released a public notice seeking comment on the Applications.⁶ The Bureaus did not receive comments or petitions in opposition to these Applications.

Applicants and Services Provided

Zayo, a publicly traded Delaware holding company, wholly owns Licensees, which are authorized to provide competitive local exchange carrier (LEC) and other services in the District of Columbia and every state except Alaska.⁷ Licensees serve primarily carrier and enterprise customers requiring bandwidth-intensive services over regional and metropolitan fiber networks.⁸ Licensees also hold international section 214 authority.⁹ ZGL is a licensee on the AmeriCan-1 submarine cable.¹⁰

Front Range, a Delaware holding company, was created for purposes of the proposed transaction to aggregate the ownership of various investment and co-investment vehicles ultimately managed by (i) affiliates of EQT AB (EQT), a Swedish investment firm, and (ii) affiliates of Digital Colony GP, LLC (Digital Colony), a Delaware investment firm.¹¹ Front Range is affiliated with two incumbent LECs, Lumos Telephone Inc. and Lumos Telephone of Botetourt Inc. (together, Lumos Networks), both Virginia entities serving rural Virginia. In addition, Front Range is affiliated with other providers of competitive telecommunications services operating in several states, all U.S. entities: Lumos Networks Inc., Lumos Networks of West Virginia Inc., Lumos Networks LLC, FiberNet of Ohio, LLC, FiberNet Telecommunications of Pennsylvania, LLC, FiberNet of Virginia, Inc., LMK Communications, LLC, South Carolina Telecommunications Group Holdings, LLC, South Carolina Net, Inc. d/b/a Spirit Telecom, PalmettoNet, Inc., and FRC, LLC.¹² Applicants state that there are no enterprise building overlaps where both the Licensees and a domestic telecommunications service provider affiliate of Front Range offer lit service, including in Virginia, where Lumos Networks provides incumbent LEC service.¹³

National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

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(filed Aug. 23, 2019) (August 23, 2019 Supplement); Supplement to Petition for Declaratory Ruling, ISP-PDR-20190620-00004 (filed Jan. 17, 2020) (January 17, 2020 Supplement); Supplement to Petition for Declaratory Ruling, ISP-PDR-20190620-00004 (filed Jan. 27, 2020) (January 27, 2020 Supplement).

⁶ *Applications Filed for the Transfer of Control of Zayo Group, LLC, Electric Lightwave, LLC, and Allstream Business US, LLC to Front Range TopCo, Inc.*, WC Docket No. 19-166, Public Notice, DA 19-629 (WCB, IB, WTB 2019).

⁷ Lead Application at 4-5, 15-16.

⁸ *Id.* at 4-5.

⁹ *Id.*

¹⁰ *Id.* at 17.

¹¹ *Id.* at 2-3, Exh. C (Ownership Structure); Applicants' Aug. 21, 2019 *Ex Parte* at 2-4 (explaining changes in the ownership structure since the filing of the Lead Application impacting the entities controlling Digital Colony GP, LLC and listing entities that will and will not hold indirect interests in Zayo and the Licensees) and Exh. A (Revised Post-Transaction Corporate Ownership Charts). *See also* August 23, 2019 Supplement (same); January 17, 2020 Supplement (adding Bark Partners AB, a Swedish entity, to the list of foreign-organized entities for which the petition for declaratory requests specific approval and providing a replacement post-closing Chart 6).

¹² Lead Application at 16.

¹³ *Id.* at Exh. B (Public Interest Statement) at 3.

On July 10, 2019, the Department of Justice (DOJ), with the concurrence of the Department of Homeland Security (DHS) and the Department of Defense (DOD) (collectively, Executive Branch agencies), filed a letter requesting that the Commission defer action on these Applications while they reviewed potential national security, law enforcement, and public safety issues.¹⁴ We deferred action in response to this request. On January 22, 2020, DOJ, with the concurrence of DHS, submitted a Petition to Adopt Conditions to Authorizations and Licenses (DOJ Petition).¹⁵ In its petition, DOJ advises the Commission that it has no objection to the Commission approving the Applications and the section 310(b)(4) petition provided that the Commission conditions its approval on the assurance of Zayo, ZGL, Electric Lightwave, and Allstream to abide by the commitments and undertakings set forth in the January 21, 2020 Letter of Agreement.¹⁶

In accordance with the request of DOJ and in the absence of any objection from the Applicants, we grant the DOJ Petition, and, accordingly, we condition grant of the Applications and section 310(b)(4) petition on compliance by Zayo, ZGL, Electric Lightwave, and Allstream with the commitments and undertakings set out in the letter from Michael Mooney, General Counsel of Zayo, ZGL, Electric Lightwave, and Allstream to the Assistant Attorney General for National Security, United States Department of Justice, National Security Division, and the Assistant Secretary for Border, Immigration and Trade Office of Policy, U.S. Department of Homeland Security (LOA).¹⁷ A failure to comply with and/or remain in compliance with any of the provisions of the LOA shall constitute a failure to meet a condition of these authorizations and the underlying authorizations and licenses and thus grounds for declaring the underlying authorizations and licenses terminated without further action on the part of the Commission. Failure to meet a condition of these authorizations may also result in monetary sanctions or other enforcement action by the Commission.

Grant of Petition for Declaratory Ruling Under Section 310(b)(4)

In connection with the proposed transaction, Petitioners filed a Petition requesting that the Commission find, pursuant to section 310(b)(4) of the Act and section 1.5000(a)(1) of the Commission's

¹⁴ Letter from Lee Licata, U.S. Department of Justice, to Marlene H. Dortch, FCC, WC Docket Nos. 19-166; File Nos. ITC-T/C-20190614-00121, ITC-T/C-20190614-00122, ITC-T/C-20190617-00123; SCL-T/C-20190614-00018; ISP-PDR-20190620-00004, ULS 0008686969 (July 10, 2019) (on file in WC Docket No. 19-166).

¹⁵ Petition to Adopt Conditions to Authorizations and Licenses, WC Docket Nos. 19-166; File Nos. ITC-T/C-20190614-00121, ITC-T/C-20190614-00122, ITC-T/C-20190617-00123; SCL-T/C-20190614-00018; ISP-PDR-20190620-00004, ULS 0008686969 (filed January 22, 2020) (DOJ Petition) (on file in WC Docket No. 19-166).

¹⁶ *Id.* at 1 and Letter from Michael Mooney, General Counsel, Zayo Group Holdings, Inc., Zayo Group, LLC, Electric Lightwave, LLC, Allstream Business US, LLC, to the Assistant Attorney General for National Security, United States Department of Justice, National Security Division, and the Assistant Secretary for Border, Immigration and Trade Office of Policy, U.S. Department of Homeland Security, WC Docket No. 19-166; File Nos. ITC-T/C-20190614-00121, *et al.* (dated Jan. 21, 2020) (LOA) (on file in WC Docket No. 19-166).

¹⁷ *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of applications for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act).

rules, that foreign ownership of ZGL's controlling U.S. parent, Zayo, above the 25% benchmark in section 310(b)(4) is in the public interest.¹⁸

The Petition states that, upon completion of the proposed transaction, Zayo would have aggregate indirect foreign equity and voting interests of 49.57% and 100%, respectively.¹⁹ As discussed above, Front Range was created for purposes of the proposed transaction to aggregate the ownership of various investment and co-investment vehicles ultimately managed by (i) affiliates of EQT, a Swedish investment firm, and (ii) affiliates of Digital Colony, a Delaware investment firm that is controlled by Colony Capital, Inc., a publicly traded, widely held U.S. corporation.²⁰ Front Range, through several intermediate U.S.-organized holding companies, is indirectly wholly owned by Front Range JV, LP (JV LP), a Delaware entity. JV LP's equity and voting interests are held by U.S. and foreign investment entities ultimately controlled by EQT and Digital Colony.²¹ The general partner of JV LP is Front Range JV GP, LLC (JV GP), a Delaware entity. According to Petitioners, EQT and Digital Colony will exercise control over Front Range through the board of directors of JV GP.²² Following consummation of the transaction, EQT Infrastructure IV Fund (EQT Fund) and Digital Colony Partners, LP fund (DCP Fund), along with their respective co-investors, will each hold approximately 45.3% of Zayo's equity, and FMR, LLC, a Delaware entity, will have approximately 7.6% of the equity.²³ The remaining equity (approximately 1.8%) will be held by current members of Zayo's management.²⁴

Pursuant to section 1.5001(i) of the rules,²⁵ Petitioners request that the Commission specifically approve the direct and/or indirect foreign equity and/or voting interests that would be held in Zayo upon completion of the proposed transaction by foreign-organized entities as follows:

EQT Saber Side Car (No. 1) EUR SCSp (6.26% equity and voting) (Luxembourg);
EQT Saber (B) Blocker SCSp (11.47% equity and voting) (Luxembourg);
EQT Infrastructure IV Co-Investment (B) SCSp (11.47% equity and voting) (Luxembourg);
EQT Infrastructure IV (GP) SCS (below 1% equity, 45% voting) (Luxembourg);
EQT Infrastructure IV (General Partner), S.à r.l. (below 1% equity, 45% voting) (Luxembourg);

¹⁸ Petition, Exh. B at 2-4. ZGL holds common carrier, fixed point-to-point microwave, and millimeter wave 70/80/90 GHZ services licenses, which are the subject of a transfer of control application filed in this proceeding under lead call sign WQOD 968 (ULS 0008686969).

¹⁹ Petition, Exh. B at 1.

²⁰ August 23, 2019 Supplement at 1-2.

²¹ Petition, Exh. A at 3-4.

²² Petition, Exh. A at 7. JV GP's board will consist of 10 members, with four directors nominated each by EQT and Digital Colony, one director nominated by FMR, LLC (a Delaware entity that will hold 7.6% of Zayo's equity post-consummation), and the tenth member, an independent non-executive Chairman, chosen by consensus between EQT and Digital Colony. *Id.*

²³ January 27 Supplement (providing, *inter alia*, a revised Exhibit D, which lists the foreign investors and their respective equity and voting interests for which the Petitioners request specific approval under section 1.5000(i) of the Commission's rules, and confirming, as stated in the Petition, Exh. A at 5, that investors and co-investors in the Digital Colony and EQT funds participating in the Front Range investment in Zayo "are limited partner passive investors with no right to exercise any control (as defined under applicable FCC Rules) regarding Zayo" and "are also insulated from active involvement in the management or operation of Front Range and Zayo, other than the small number of LP co-investors in the DCP Fund that have limited control rights that are consistent with the Commission's rules regarding the usual and customary minority shareholder protections.").

²⁴ Petition, Exh. A at 3.

²⁵ 47 CFR § 1.5001(i).

EQT Holdings Infrastructure IV Coöperatief U.A. (below 1% equity, 45% voting) (Netherlands);
EQT Fund Management S.à r.l. (below 1% equity, 45% voting) (Luxembourg);
EQT Management S.à r.l. (below 1% equity, 45% voting) (Luxembourg);
EQT Holdings B.V. (below 1% equity, 42.71% voting) (Netherlands);
EQT AB (below 1% equity, 42.71% voting) (Sweden);
Investor Investments Holding AB (below 1% equity, 10.45% voting) (Sweden);
Investor Holding AB (below 1% equity, 10.47% voting) (Sweden);
Investor AB (below 1% equity, 10.47% voting) (Sweden);
EQT Infrastructure IV Co-Investment (D) SCSp (13.48% equity and voting) (Luxembourg); and
Bark Partners AB (6.91% equity and voting) (Sweden).

We received no comments regarding foreign ownership, and, as discussed above, the DOJ has advised the Commission that it, with the concurrence of DHS and DOD, has no objection to the Commission approving the authority sought, provided that the Commission conditions its approval on the compliance by Zayo, ZGL, Electric Lightwave, and Allstream Business with the terms of the January 21, 2020 LOA.²⁶

Based on our review of the record, under section 310(b)(4) of the Act and the Commission's foreign ownership rules and policies, we find that the public interest would not be served by prohibiting foreign ownership of Zayo, the controlling U.S parent of ZGL, in excess of the 25% benchmark in section 310(b)(4) of the Act. We therefore grant the Petition subject to the conditions set out herein. This ruling authorizes, first, 100% aggregate foreign ownership of Zayo, as the controlling U.S. parent of ZGL, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules.²⁷ In addition, pursuant to section 1.5001(i) of the rules, we approve the foreign equity and voting interests that would be held in Zayo by each of the aforementioned foreign entities in the amounts specified above.

Finally, under this ruling, Petitioners have an affirmative duty to monitor their foreign equity and voting interests, calculate these interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the rules,²⁸ and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act.²⁹ A failure to comply and/or remain in compliance with a condition of this authorization shall constitute grounds for declaring it terminated without further action on the part of the Commission. Failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.

Grant of Applications and Petition for Declaratory Ruling, Subject to Condition

We find, upon consideration of the record, that the proposed transfers will serve the public interest, convenience, and necessity. The proposed transfers present no significant competitive harms and should likely result in some public interest benefits related to network investment and the increased ability of the combined company to serve customers on its own facilities.³⁰ This grant of the Applications and Petition is conditioned as set out in this Public Notice.

²⁶ See *supra* note 16.

²⁷ 47 CFR § 1.5004.

²⁸ 47 CFR §§ 1.5002-1.5003.

²⁹ 47 CFR § 1.5004, Note to paragraph (a).

³⁰ See, e.g., *Applications of Level 3 Communications, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9594, 9605, paras. 26 and 52 (2017) (finding no harm to competition in CenturyLink's incumbent LEC territory, nor outside of CenturyLink's

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Pursuant to sections 214(a), 214(c), 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214(a), 214(c), 303(r), 309, 310 (b), 310(d), the Cable Landing License Act of 1921, 47 U.S.C. §§ 34-39, and sections 1.767, 1.948, 1.5001-04, 63.03-04, 63.18, and 63.24 of the Commission's rules, 47 CFR §§ 1.767, 1.948, 1.5001-04, 63.03-04, 63.18, 63.24, and pursuant to the authority delegated under sections 0.51, 0.91, 0.131, 0.261, 0.291, and 0.331 of the Commission's rules, 47 CFR §§ 0.51, 0.91, 0.131, 0.261, 0.291, 0.331, we grant the Applications and Petition listed in Attachment A to this Public Notice as conditioned in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Gregory Kwan, Wireline Competition Bureau, (202) 418-1191; Kimberly Cook, International Bureau, (202) 418-7532; Linda Ray, Wireless Telecommunications Bureau, (202) 418-0257.

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incumbent LEC territory, where applicants operate as competitive LECs, and further finding that the transaction “will expand the on-net reach of the newly combined firm resulting in a more effective and stronger competitor against larger cable and incumbent LEC competitors, among others, particularly outside of Century Link's incumbent LEC region, where it, like Level 3, operates as a competitive LEC.”).

ATTACHMENT A

SECTION 214 AUTHORIZATIONS

A. International

<u>File Number</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20190614-00121	Allstream Business US, LLC	ITC-214-19970820-00500
ITC-T/C-20190614-00122	Electric Lightwave, LLC	ITC-214-19940415-00137
		ITC-214-19980619-00425
		ITC-214-19990729-00490
ITC-T/C-20190617-00123	Zayo Group, LLC	ITC-214-20091106-00475

B. Domestic

The Wireline Competition Bureau grants the application to transfer control of domestic section 214 authority in connection with the proposed transaction, WC Docket No. 19-166.

CABLE LANDING LICENSES

<u>File Number</u>	<u>Licensee</u>	<u>License Number</u>
SCL-T/C-20190614-00018	Zayo Group, LLC	SCL-LIC-19980123-00002
		SCL-MOD-19990901-00016

SECTION 310(d) APPLICATIONS

WIRELESS LICENSE

<u>ULS File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0008686969	Zayo Group, LLC	WQOD968

PETITION FOR DECLARATORY RULING UNDER SECTION 310(b)(4)

The International Bureau grants, as conditioned, the Petition for Declaratory Ruling, File No. ISP-PDR-20190620-00004.

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