

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Zayo Group, LLC (U-6102-C) for
Modification of Its Existing Certificate of Public
Convenience and Necessity

A. 20-10-008
(Filed October 1, 2020)

**MOTION OF ZAYO GROUP LLC (U-6102-C) TO AMEND THE ASSIGNED
COMMISSIONER'S SCOPING MEMO AND RULING AND FIND PROJECT
EXEMPTED FROM CEQA UNDER PUB. RES. CODE §21080.51**

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I. INTRODUCTION

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure (Rules), Zayo Group, LLC (Zayo) submits this motion to both amend the *Assigned Commissioner’s Scoping Memo and Ruling* (Scoping Memo), issued July 23, 2021, and to enter a finding that the project that is the subject of the pending Application is exempt from the California Environmental Quality Act.

The Scoping Memo sets forth the issues in the resolution of Zayo’s application to modify its Certificate of Public Convenience and Necessity (CPCN) in connection with its proposed construction of a fiber optics cable and specified telecommunication network facilities along a 193 mile route in the northeast corner of the State (the Project). Among the issues identified in the Scoping Memo to be determined is “whether Zayo Group, LLC’s application complies with the California Environmental Quality Act (CEQA).” Scoping Memo at 2 (Issue No. 2). For the reasons detailed below, Zayo requests that the revised the Scoping Memo be amended to make a formal finding that the Project is exempt from CEQA.

Last summer, California enacted SB 156 into law. Among other things, it exempts from CEQA certain linear broadband projects that are built in areas of the State identified by the Commission where installation of open-access middle-mile broadband infrastructure should be prioritized. *See* AB 156, Sec. 3 (codified at Cal Gov. Code § 11549.54(e)) & Sec. 6 (codified at Cal. Pub. Res. Code 21080.51). As a result of recent developments the Project now meets all the

requirements for the CEQA exemption contained in SB 156. Thus, Zayo's application complies with CEQA as a matter of law.

Based on this motion, the declaration and supporting exhibits filed in conjunction herewith, Zayo respectfully requests that the Assigned Commissioner take the following actions:

1. Find that Zayo's proposed broadband project is exempt from CEQA pursuant to Cal. Pub. Resources Code 21080.51.
2. Amend the Scoping Memo to remove Issue No. 2 from the list of issues to be determined or otherwise considered in approving Zayo's Application.
3. Grant a previously filed motion to Amend and Clarify the Assigned Commissioner's Scoping Memo and Ruling to remove Issue No. 4.¹

Zayo further requests that the Assigned Commissioner act on this motion as soon as possible. The Environmental Impact Report (EIR) that the Commission is currently preparing pursuant to CEQA is nearing completion. By granting this motion, the Commission can eliminate a three to four month delay that completion of the CEQA process requires for the Commission to publish the EIR and then respond to comments filed after a statutorily prescribed comment period.

As discussed below, this delay would needlessly threaten the already delayed Project. To meet certain development milestones, Zayo is obliged to commence construction of the Project by July although it now appears the EIR being developed will not be completed until sometime in July, making Commission approval of Zayo's Application unlikely before August. This will put increasing pressure on Zayo's ability to complete the Project. That timetable, however, assumes the Project is exempt from CEQA and will require the three to four month comment period that CEQA requires. If the Project is not exempt and that three to four month period cannot be dropped, the Project may not be unable to commence construction until November or December. Making the requested finding that the Project is exempt, therefore, is of critical importance.

As detailed in this motion, such a finding is both legally proper and consistent with the State's objective of advancing broadband access in underserved areas of the State. The Project will bring much needed jobs and investment to a historically underfunded area of the State while

¹ As later discussed in this motion, Zayo filed a motion last year seeking the removal of Issue 4, arguing this issue – whether Zayo's CPCN should be expanded from “limited facilities-based CPCN to a full facilities-based CPCN” – did not need to be decided because Zayo already had a full facilities-based CPCN. *See* Motion of Zayo Group to Amend and Clarify the Assigned Commissioner's Scoping Memo and Ruling at 5-7 (filed August 23, 2021), *available at* <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=402289476>.

putting in place broadband infrastructure that help to advance the State's policy goals. For these and other reasons, the Assigned Commissioner should grant this motion.

II. PROCEDURAL HISTORY AND BACKGROUND

A. The Project, Zayo's Application to Modify its CPCN and CEQA

In 1998, the Commission granted Zayo's predecessor, Highspeed.com, a CPCN to provide interLATA and intraLATA interexchange services and competitive local exchange services as a facilities-based carrier and reseller. Decision (D.) 98-12-083. Among the rights granted by the CPCN was the right to install fiber optic cable, subject to certain limitations, within utility rights-of-way without need for further Commission approval.² In approving the CPCN, the Commission satisfied CEQA's requirements through the certification of a Mitigated Negative Declaration (MND), referred to as "Negative Declaration 12." See D.98-12-083, Appendix D, starting at *49.

Among the MND's findings is the requirement that "if a proposed project extends beyond the utility right-of-way into undisturbed areas or other right-of-way [such as a public roadway right-of-way], the petitioner shall file a Petition to Modify its [CPCN]."³ Negative Declaration 12 further specifies that where a proposed project does extend beyond the utility right-of-way, an "appropriate environmental analysis of the impacts of the[] site specific activities shall be done." *Id.*

Zayo first began planning development of the 193-mile fiber optic broadband line that is the subject of the Application more than four years ago.⁴ The Project Zayo proposes to construct cuts through the northeast corner of California and is part of a much longer line that stretches more than 600 miles from Umatilla Oregon on the Oregon/Washington border, to Prineville, in Central Oregon, to the California border and then through California to Reno Nevada. The Prineville to Reno section of the line will be built in California almost entirely along Caltrans right-of-way on US 395, with a few segments along other public rights of way.

² *Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, 1998 Cal. PUC LEXIS 1010 *98; 84 CPUC 2d 468 (D.98-12-083).

³ See D.98-12-083, Appendix D, Mitigation Measure A at *60 and compare to "Project Description" section identifying "other right-of-way" to include roads, at *55.

⁴ Declaration of Dan Barcomb in Support of Motion of Zayo Group LLC (U-6102-C) to Amend the Assigned Commissioner's Scoping Memo and Ruling and Find Project Exempted from CEQA Pursuant to Pub. Res. Code §21080.51, ¶ 3 (hereinafter "Barcomb Dec.").

Zayo's CPCN does not consider public roadway rights-of-way to be utility rights-of-way. Consequently Zayo filed the instant application to modify its CPCN. *See Application of Zayo Group LLC (U-6102-C) For Modification of Its Existing Certificate of Public Convenience and Necessity*, A.20-10-008 ("Application") (filed October 1, 2020). No protests were filed, and no individuals or entities have sought party status in the proceeding. That remains true today; the application is unopposed.

To assist with the required environmental analysis identified in Negative Declaration 12, Zayo filed a Proponent's Environmental Assessment (PEA) as an exhibit to its Application. *See Application*, Ex. B. On March 8, 2021, Connie Chen, the CPUC Project Manager, issued a Notice of Preparation of an EIR for the Project. A copy of that letter is attached as an exhibit to the Declaration of Dan Barcomb in support this motion.⁵

Now, almost fourteen months later, that EIR is nearing completion, and it is Zayo's understanding that the EIR will both find that to the extent practicable, all potential impacts to environmental and cultural resources can be mitigated and identifies the required actions necessary to do so. Zayo's best estimate is the EIR will be ready for release sometime in July.

Under CEQA, before the Commission can act on the Application, CEQA requires the Commission as the lead agency to make a draft Environmental Impact Report available for public comment, for a minimum of 45 days when, as here, there are multiple state agencies involved in the approval process. 14 CCR §§15087 & 15105. The Commission must then prepare written responses to those comments and prepare a final EIR that includes responses to those comments and any necessary revisions. 14 CCR §§15089 & 15132. That process typically requires three to four months following publication of the draft EIR, and, if required here, would put greater pressure on the Project by delaying the start of construction months even later in time.

B. SB 156 and its CEQA Exemption

Last summer, Governor Newsom signed into law SB 156, which aims to create an open-access middle-mile network to bring equitable high-speed broadband service to all Californians. As part of the legislation, SB 156 established the Office of Broadband and Digital Literacy within the Department of Technology, and directed the Commission to "provide to [that] office the locations for the statewide open-access middle-mile broadband network in a commission

⁵ *See Barcomb Dec.*, Ex. 1.

staff report.” Cal. Gov’t Code § 11549.54. Also as part of the legislation, SB 156 expedites the delivery and permitting of the broadband network by exempting from CEQA review projects “located in an area identified by the Public Utilities Commission as a component of the statewide open access middle mile broadband network pursuant to Section 11549.54 of the Government Code” and which meet other specified requirements under SB 156. *See* Cal. Pub. Res. Code §21080.51.

On March 15, 2022, President Reynolds wrote to the Acting Director and State Chief Information Officer at the California Department of Technology advising him that the Commission had completed its comprehensive analysis of the middle mile locations and provided a link to a website that identifies the Middle-Mile Network locations.⁶ As discussed below, Zayo’s proposed Project tracks one of the Middle-Mile Network routes and satisfies the other requirements required by Section 21080.51 of the Public Resources Code for the CEQA exemption.

C. Timing Considerations and Delays

Zayo began planning work on the Prineville to Reno Fiber Optic Project in 2018. Barcomb Dec. ¶ 3. Thus, although Zayo filed the Application on October 1, 2020, it first consulted with the Commission and Caltrans years before that. *Id.* When Zayo filed the Application, a great deal of consultation had already occurred and Zayo has subsequently continued to work closely with the Commission’s consultant ECORP Consulting (ECORP) to provide it with the data it requires to complete its assessment of any potential impacts on environmental or cultural resources.

At the June 11, 2021 Prehearing Conference before Administrative Law Judge (ALJ) Mathews, counsel for Zayo detailed the tight timetable the Project was under to meet its construction commencement deadlines. In particular, he noted Zayo needed “to commence construction on this project beginning in July of next summer [i.e., July 2022].”⁷ Given the three to four month period required for CEQA’s public comment and response, the plan was to

⁶ See Commissioner Alice Reynolds Letter to Russ Nichols, Acting Director and State Chief Information Officer, California Department of Technology, dated March 15, 2022, *available at*, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/broadband-implementation-for-california/cpuc-middle-mile-analysis-transmittal-letter---3-15-22.pdf>.)

⁷ Reporter’s Transcript (RT) at 19:12-17 (June 11, 2021), *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M387/K951/387951349.PDF>.

ensure completion of the EIR by March 1, 2022, with “our worst case . . . April 11, 2022.”⁸ To that end, counsel noted Zayo was “moving heaven and earth to complete the field work so that ECORP will be able to complete the EIR and public comment on it by April 20, 2022 [*sic*].”⁹

Unfortunately, Zayo’s completion of the field work has been significantly delayed by a combination of the impacts from the pandemic and wildfires as well as delays in obtaining permits from various state and federal agencies necessary to conduct the field work. Barcomb Dec. ¶ 5. As a result, ECORP is not expected to complete the EIR until July, making a July construction start impossible under any circumstance, and an even more severely delayed construction start inevitable if the Project is not found to be exempt from CEQA’s requirements. *Id.*

III. DISCUSSION

Zayo respectfully requests that the Commission find that the Project meets all the requirements of section 21080.51 of the Public Resources Code and, as a result, is exempt from the CEQA process. Granting this motion will not terminate the environmental studies that CEQA requires because, as discussed below, the statute still requires that the project approval include measures to mitigate potential impacts to the environment and cultural resources. As a result, the CPUC will be able to rely on the draft EIR to fulfill its obligations to require mitigation to address potential impacts.

While granting the exemption will not foreclose consideration of environmental impacts, it will result in an extremely significant reduction in the time that the project approval will take by obviating the need for the public review and response timeframes necessitated by CEQA. This is not only consistent with the law but also good public policy as discussed below, particularly on a matter that is uncontested. The Assigned Commissioner should therefore find that the Project is exempt from CEQA and make the corresponding change to the Scoping Memo by deleting Scoping Memo Issue No. 2. As discussed below, it should also grant Zayo’s pending motion to amend and clarify the Assigned Commissioner’s Scoping Memo and Ruling by also dropping Issue No. 4 in the Scoping Memo as this issue is not necessary to the Commission’s decision on the Application.

⁸ *Id.* at 17:9-14; *see also* Barcomb Dec. ¶ 5.

⁹ *Id.* at 15:4-10.

A. The Project Meets All the Requirements of Pub. Res. Code § 21080.51

Public Resources Code Section 21080.51, which was added by SB 156, exempts from CEQA any linear broadband deployment projects that meet the following requirements:

- (1) The project is located in an area identified by the Public Utilities Commission as a component of the statewide open-access middle-mile broadband network pursuant to Section 11549.54 of the Government Code.
- (2) The project is constructed along, or within 30-feet of, the right-of-way of any public road or highway.
- (3) The project is either deployed underground where the surface area is restored to a condition existing before the project or placed aerially along an existing utility pole right-of-way.
- (4) The project incorporates, as a condition of project approval, measures developed by the Public Utilities Commission or the Department of Transportation to address potential environmental impacts. At minimum, the project shall be required to include monitors during construction activities and measures to avoid or address impacts to cultural and biological resources.
- (5) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the planning department of a city or county as part of a local agency permit process, that are required to mitigate potential impacts of the proposed project, and to comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), as applicable, other applicable state laws, and all applicable federal laws.

Cal. Pub. Res. Code, § 21080.51(a). In addition, if the proposed project meets these conditions, the person undertaking the project must also meet a series of additional requirements relating to the provision of public notice as well as compliance with all applicable law including local planning agencies to mitigate potential impacts as well as state laws related to the protection of endangered species, wetlands and all other applicable state and federal laws. Cal. Pub. Res. Code § 21080.51(b).¹⁰ Below, Zayo demonstrates that the Proposed Project satisfies each of these requirements.

¹⁰ Cal. Pub. Res. Code § 21080.51(b) provides as follows:

(b) If a project meets all of the requirements of subdivision (a), the person undertaking the project shall do all of the following:

- (1) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority, of the exemption of the project pursuant to this section.

1. Zayo’s proposed Project is located in an area identified by the Commission as a component of the statewide open-access middle-mile broadband network pursuant to Section 11549.54 of the Government Code.

Shortly after issuance of the Scoping Memo, Zayo filed a motion to amend and clarify the Scoping Memo in which it noted the passage of SB 156 and observed that the Project’s route was one of many that were then being considered by the Commission as a component of the network.¹¹ On March 15, 2022, President Alice Reynolds’ letter to the California Department of Technology made that designation official. In her letter, she spells out that the website link referred to in her letter (<https://middle-mile-broadband-initiative.cdt.ca.gov/pages/data-and-analysis>) reflected the Commission’s comprehensive analysis of Middle Mile locations, as specified in Government Code section 11549.54.

That link leads to the State of California’s webpage for the Middle-Mile Broadband Initiative. Under the heading “Data & Analysis” is a button for “Middle-Mile Network Locations” which, in turn, brings up a map entitled “Statewide Middle Mile Analysis” showing the designated routes. In the upper right hand corner of the State is clearly marked the route along US 395, from the Oregon border to the Nevada border, which is precisely the route travelled by Zayo’s proposed Project. Barcomb Dec. ¶ 6; *see also* Application Ex. C (map showing route of the proposed Project). Thus, the line “is located in an area identified by the Commission as a component of the statewide open-access middle-mile broadband network.”¹²

(2) Provide notice to the public in the area affected by the project in a manner consistent with subdivision (b) of Section 21108.

(3) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.

(4) Comply with all conditions authorized by law imposed by the planning department of a city or county as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), as applicable, other applicable state laws, and all applicable federal laws.

¹¹ See Motion of Zayo Group to Amend and Clarify the Assigned Commissioner’s Scoping Memo and Ruling at 7-8, *citing* Assigned Commission’s Ruling in Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California, R.20-09-001 (dated 8/6/21) (including Route 395 in Lassen and Modoc Counties as being under consideration as routes meeting the requirements of SB 156), *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M397/K312/397312171.PDF>.

¹² It is worth noting that the fiber optic line Zayo is proposing to construct is neither a component of the statewide open access middle-mile broadband network nor funded by the State. The applicability of the CEQA exemption does not require either of these conditions. In particular, the statute makes plain that a Project need not itself be a component of the statewide open access middle-mile broadband network. What matters is that the Project “is located **in an area identified by the Commission** as a component of the statewide open-access middle-mile broadband network.” Cal.

2. Zayo’s proposed Project will be constructed along, or within 30-feet of, the right-of-way of any public road or highway.

The Project will be constructed along or within 30 feet of the right of way of a public road or highway for its entire length. Barcomb Dec. ¶ 7. Indeed, over the 193 mile stretch in California, the *only* time the Project will go outside the roadway right-of-way itself is along one 3000 linear foot segment that is on private property. For that one segment, the running line will be within five feet of the Caltrans right-of-way. *Id.*

3. Zayo’s proposed project will be deployed underground where the surface area is restored to a condition existing before the project.

The Project will be underground for its entire length with the surface area restored back to its condition existing before the Project. Barcomb Dec. ¶ 8.

4. Zayo’s proposed Project will incorporate, as a condition of project approval, measures developed by the Public Utilities Commission or the Department of Transportation to address potential environmental impacts. At minimum, the Project shall be required to include monitors during construction activities and measures to avoid or address impacts to cultural and biological resources.

Zayo is working closely with Caltrans to meet the requirements of the encroachment permit that it must issue for the Project to go forward. The draft EIR under preparation will specifically address the potential environmental impacts as well as any potential cultural resource impacts of the Project both during and after construction and identify those actions necessary to mitigate any such impacts. Barcomb Dec. ¶ 9. Invariably, should the Commission approve the application, it will make as a condition of approval the requirement that Zayo implement those measures. That is almost certain to be the case with the encroachment permit required of Caltrans.

Moreover, Zayo has already met the minimum standard provided in the statute by having made arrangements to utilize monitors during construction activities to avoid or address impacts to cultural and biological resources. Barcomb Dec. ¶ 10. To that end, Zayo has retained Stantec Inc. to provide monitors to ensure avoidance of impacts to cultural and environmental resources;

Pub. Res. Code § 21080.51(a)(1) (emphasis added). The Project is in such an area, as evidenced by President Reynolds’ March 15, 2022 letter and associated website. Similarly, the Project need not be funded by the State to be eligible for the CEQA exemption, as it makes clear a project funded by a private corporation is equally eligible. Cal. Pub. Res. Code § 21080.51(a) (CEQA does not apply to a project funded by any entity, “including a public entity or private or nonprofit corporation”).

Caltrans will also have monitors on site throughout the construction process. In addition to these monitors, Zayo has committed to having the tribes provide their own monitors. Finally, on the portions of the route that traverse federal lands, the United States Bureau of Land Management will be providing its own monitors. *Id.*

5. **Zayo agrees to comply with all conditions otherwise authorized by law, imposed by the planning department of a city or county as part of a local agency permit process, that are required to mitigate potential impacts of the proposed project, and to comply with the Keene-Nejedly California Wetlands Preservation Act, the California Endangered Species Act, as applicable, all other applicable state and federal laws.**

Zayo is a leading provider of broadband infrastructure in every major market in North America, with 133,000 route miles of fiber optic network across the United States, Canada and Europe. Zayo's domestic business includes substantial operations in California. Across its business enterprise, Zayo prides itself in meeting all local, state and federal law requirements and will do so on this Project as well. Barcomb Dec. ¶ 11. Evidence in support of this assertion can be seen from Zayo's operations in California. It has held a CPCN with the Commission since 2008¹³ and in that time has had an unblemished record. Barcomb Dec. ¶ 12. It fully intends and commits to keeping the same high standards in meeting its legal obligations on this Project. *Id.*

6. **Zayo will undertake the required notice requirements and otherwise comply with all conditions authorized by law imposed by local planning agencies to mitigate potential impact of the Project and otherwise applicable law as required by Pub. Res. Code § 21080.51(b).**

Zayo will undertake the required notice requirements set forth in Public Resources Code Section 21080.51(b) if this motion is granted and the Assigned Commissioner concludes that the Project meets all the requirements set forth above. To that end, it will send the required notice upon the grant of this motion to all affected public agencies as well as the notice of determination of exemption that will be filed with the Office of Planning and Research. Barcomb Dec. ¶ 13. Zayo is also requesting and will provide acknowledgment from the fee owner of the private land impacted by the Project. Barcomb Dec. ¶ 14. In addition, as required by this provision and detailed in response to item 5 above, Zayo will comply with all conditions

¹³ As noted previously, the underlying CPCN was issued in 1998. Zayo later acquired the CPCN after merging with and acquiring NTI. See D.08-08-013 (decision approving the joint unopposed application of NTI and Zayo Group, LLC for transfer of control of NTI to Zayo).

authorized by law imposed by the planning department of a city or county as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act, the California Endangered Species Act, as applicable, other applicable state laws, and all applicable federal laws. Barcomb Dec. ¶ 15.

B. Because the Project Meets All the Requirements of Pub. Res. Code § 21080.51, the Assigned Commissioner Should Rule that the Project is Exempt from CEQA.

For the reasons noted, the Project meets the requirements of the statute and is therefore eligible for the CEQA exemption. Zayo respectfully requests that the Assigned Commissioner make that ruling as soon as possible. If this motion is not swiftly granted, Commission staff will continue to proceed as if CEQA does apply, including circulating the draft EIR for public comment and then reviewing and responding to public comments received. As discussed, that effort, if undertaken, will add an additional three to four months to the already delayed timeline of the Project, likely pushing the start of construction into November or later. If that were to happen, it would put considerable added pressure on the Project and further delay it.

Such an outcome would be precisely the outcome that SB 156 was designed to avoid in creating an exemption from CEQA. SB 156 was designed to speed the installation of broadband across the state. To that end, it requires “that all state agencies shall work in cooperation to expedite the delivery and permitting of the statewide open-access middle-mile broadband network.” Cal. Gov’t Code § 11549.56. Zayo’s proposed Project will not be a part of that statewide broadband network, but it will put in place infrastructure that will hasten the ability of internet service providers to bring broadband service to an area of the State that is dramatically underserved, as evidenced by the inclusion of the route that the Project will track as one of the designated areas requiring improved broadband service. The Project will also bring much needed investment and employment to an area of the State that has long lagged behind other areas of the State on both counts.

Against that backdrop, there is every reason to grant the motion and find that the Project is exempt. Not only will this meaningfully reduce the already lengthy proceeding, but it will also enable the Assigned Commissioner and the ALJ to dispense with CEQA’s three to four month comment and response delay and enable them to proceed directly to formal consideration of the pending Application and whether the Commission should approve it.

That is the appropriate next step in this unopposed proceeding. Given the absence of opposition, there is no reason to believe that the time associated with soliciting and then responding to public comments will add value, whereas delaying the project for such comment increases the likelihood of it not going forward at all. Good public policy fully supports what the law requires here. The Project should be found to be exempt from CEQA.

C. The Assigned Commissioner Should Also Grant Zayo's Pending Motion to Amend and Clarify the Assigned Commissioner's Scoping Memo and Ruling.

On August 23, 2021, Zayo filed a motion to amend and clarify the Assigned Commissioner's Scoping Memo and Ruling so as to remove Issue No. 4 in the Scoping Memo. Issue No. 4 identified among the issues to be determined whether Zayo should be granted an expansion of its current CPCN from a "limited facilities-based CPCN to a full facilities-based CPCN." The motion detailed why Zayo's current CPCN already is a full facilities-based CPCN and, therefore, why there is no need to expand the authority of the current CPCN. Zayo requested that the Assigned Commissioner grant that motion in order to expedite the proceeding. Noting the need for the Project to be under construction by July 2022 and that it was not seeking expanded authority in its Application, Zayo argued that removing Issue No. 4 would avoid any delay that might be associated with addressing an issue not raised in the proceeding.

There was no urgent need for the Assigned Commissioner to act on this motion when it was first filed. Now, however, for the reasons noted, there is and Zayo respectfully requests that this motion also be granted so that the issues that must ultimately be decided by the Commission are streamlined to include only those that are specifically at issue.¹⁴

IV. CONCLUSION

For the foregoing reasons, Zayo respectfully requests that the Assigned Commissioner find that the proposed Project is exempt from CEQA review pursuant Pub. Res. Code § 21080.51 and amend the Scoping Memo to remove Issue No. 2 from the list of issues for the Commission to determine. It also requests the Assigned Commissioner grant the previously filed motion to amend and clarify the Assigned Commissioner's Scoping Memo and remove Issue No. 4 from the Scoping Memo as one of the issues to be determined in this proceeding.

¹⁴ See Motion of Zayo Group to Amend and Clarify the Assigned Commissioner's Scoping Memo and Ruling, at 5-7, available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M402/K289/402289476.PDF>.

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Respectfully submitted,

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