

1 BEFORE THE
2 STATE OF ALABAMA
3 PUBLIC SERVICE COMMISSION
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6

7 IN RE: ZAYO GROUP, LLC
8 DOCKET NO. 31673
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13 TESTIMONY AND PROCEEDINGS, taken before
14 the Honorable John Garner, Administrative Law
15 Judge, in the Carl L. Evans Chief
16 Administration Law Judge Hearing Complex, 100
17 North Union Street, Suite 900, Montgomery,
18 Alabama, on Wednesday, August 10, 2011,
19 commencing at approximately 10:40 a.m. and
20 reported by Gwendolyn P. Timbie, Court Reporter
21 and Commissioner for the State of Alabama at
22 Large.

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1 APPEARANCES

2 ADMINISTRATIVE LAW JUDGE:

3 Mr. John Garner
4 Administrative Law Judge
5 ALABAMA PUBLIC SERVICE COMMISSION
6 100 North Union Street
7 Montgomery, Alabama 36130

8 FOR ZAYO GROUP:

9 Mr. Paul Brantley
10 Attorney at Law
11 405 South Hull Street
12 Montgomery, Alabama 36104

13 FOR THE PUBLIC SERVICE COMMISSION:

14 Mr. William C. Cook
15 ALABAMA PUBLIC SERVICE COMMISSION
16 100 North Union Street
17 Montgomery, Alabama 36130

18 ALSO PRESENT:

19 Mr. Gregg Strumberger

20 * * * * *

21 ALJ GARNER: For the record, we're
22 here this morning on August the 10th,
23 2011 in the matter of Docket 31673,
which concerns the application of Zayo
Group, LLC, for approval of a
certificate of public convenience and
necessity to provide resold and
facilities-based local exchange and

1 interexchange telecommunications
2 services in the state of Alabama.

3 The application was filed with
4 the Commission on or about July 15th of
5 2011. Interested parties were made
6 aware of today's hearing pursuant to
7 Commission notice dated July 19, 2011.

8 Let the record reflect that the
9 Commission did not receive any petitions
10 to intervene in this matter.

11 For the record, let's go ahead
12 and take appearances at this time. Who
13 will be appearing on behalf of the
14 applicant?

15 MR. BRANTLEY: I'm Paul Brantley, at
16 405 South Hull Street, Montgomery,
17 Alabama. With me today is Gregg
18 Strumberger, general counsel. His
19 address is 400 Centennial Parkway, Suite
20 200, Louisville, Colorado 80027.

21 ALJ GARNER: Thank you, sir. Other
22 appearances?

23 MR. COOK: Bill Cook,

1 Telecommunications Division, commission
2 staff.

3 ALJ GARNER: Is there anyone else
4 that needs to enter an appearance?

5 (No response)

6 ALJ GARNER: Let the record reflect
7 that no one has come forward.

8 MR. Brantley, any preliminary
9 matters that we need to address?

10 MR. BRANTLEY: No, sir.

11 ALJ GARNER: Okay. With that, we
12 will go ahead and swear Mr. Strumberger
13 in and you may proceed with the
14 presentation of your case.

15 GREGG STRUMBERGER

16 The witness, having first been duly
17 sworn or affirmed to speak the truth, the whole
18 truth and nothing but the truth, testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. BRANTLEY:

22 Q. Would you state your name, please.

23 A. Gregg Strumberger.

1 Q. Gregg, was the address I read in the record
2 your correct business address?

3 A. That is correct.

4 Q. State your education and work experience
5 principally in the telecommunications
6 industry.

7 A. I have an undergrad degree from Eastern
8 Michigan University, a law degree from
9 Boston University School of Law,
10 experienced in telecom industry about 20
11 years with Ameritech Cellular, the
12 Massachusetts Department of
13 Telecommunications and Energy, Bingham
14 McCutchen, and Level 3 prior to coming to
15 Zayo.

16 Q. All right. And what is your current
17 position with the applicant?

18 A. I am general counsel of the division of air
19 fiber solutions.

20 Q. How long have you been in that position?

21 A. One year.

22 Q. Gregg, have you or someone under your
23 control prepared prefilled testimony which I

1 previously filed with this Commission?

2 A. I did.

3 Q. If I ask you the same or similar question
4 under oath this morning, would you give the
5 same or similar answers?

6 A. Yes.

7 MR. BRANTLEY: Judge Garner, we
8 would offer his prefiled testimony into
9 the record at this time.

10 ALJ GARNER: Mr. Strumberger's
11 prefiled testimony will be entered into
12 the record and subject to cross-
13 examination.

14 Q. Gregg, describe this company, when you
15 started and a little bit about its
16 affiliations and the officers of record --
17 the experienced officers of record.

18 A. Zayo Group was launched in 2006. Dan
19 Caruso is our preliminary -- is our CEO and
20 preliminary investor.

21 We've grown throughout that time
22 through a series of 17 acquisitions. The
23 last two were Atlanta, Georgia -- networks

1 and general networks and AFS, which is
2 American Fiber Systems. Those were
3 completed a little over a year ago. Since
4 then, we've been basically growing in the
5 business through organic growth.

6 Dan is, like I said, the primary
7 starter of the company. Dan has a
8 25-plus-year career in telecommunications
9 with Ameritech, also MFS, Level 3, ICG.

10 Q. About how many employees does your company
11 have?

12 A. Approximately 400.

13 Q. And of those 400, how many are in sales?

14 A. Approximately 40.

15 Q. All right. As I understand it, you've
16 already been certificated to offer your
17 service in 30 states and the District of
18 Columbia; is that correct?

19 A. Right.

20 Q. And those include the southern states of
21 Kentucky, Mississippi, North Carolina,
22 Tennessee, and Virginia; is that right?

23 A. That's correct.

1 Q. And, Gregg, is it true that you've never
2 been denied certification in any state that
3 you've sought it?

4 A. That's correct.

5 Q. And you've never lost certification that
6 you've received?

7 A. Correct.

8 Q. All right. Describe the services that you
9 pose to offer the citizens of Alabama.

10 A. We provide mostly transport and data
11 services to midsize and large enterprise
12 customers.

13 Q. Will that be resold or facilities based
14 local and interexchange --

15 A. Correct.

16 Q. -- overall?

17 And, now, go ahead with the services
18 you propose to -- your customer base. Go
19 over that, please.

20 A. Our customer base is large or midsize
21 businesses and other carriers, Internet
22 providers, wireless providers.

23 Q. And your customer question complaint number

1 is 1-800-390-6094; is that correct?

2 A. That's correct.

3 Q. All right. Now, how do you plan to market
4 your services to the citizens of Alabama?

5 A. Our marketing -- we don't do any mass
6 marketing or telemarketing. All of our
7 marketing is done by direct sales. The
8 customer base that we have are typically
9 pretty savvy users of telecommunication
10 services. So we have a direct sales force
11 or account director that would work with
12 each customer or potential customer.

13 Q. Does this direct sales force receive
14 training before they start making
15 contacts?

16 A. Correct. The majority of our sales force
17 has ten-plus years' telecommunications
18 experience. Many of them have 15, 20
19 years' experience in telecommunications.
20 And they're specifically trained on our
21 practices in our company.

22 Q. Are you familiar with the telephone rules
23 of the Alabama Public Service Commission?

1 A. I am.

2 Q. Now, your financials of your faxed
3 application shows a very strong financial
4 company, correct?

5 A. Yes.

6 Q. You've shown total assets in excess of 770
7 million; is that correct?

8 A. That's correct.

9 Q. Of that amount, you've shown a total of
10 member equity in excess of 238 million,
11 correct?

12 A. Right.

13 Q. So you have sufficient resources obviously
14 to provide your services?

15 A. We do.

16 Q. All right. Gregg, would the public
17 convenience and necessity of the public
18 interest of Alabama citizens be served by
19 your proposed services? And if so, how so?

20 A. It will by increasing the options for
21 consumers in the state and providing
22 additional net worth that we'll be doing in
23 the state and by providing high-tech and

1 cutting-edge services within the state.

2 Q. And you show to this Commission a strong
3 corporation in terms of financial resources
4 and managerial expertise; is that correct?

5 A. Correct.

6 Q. And you have a proven track record since
7 2006, and you're now certificated in 30
8 states, right, and the District of
9 Columbia?

10 A. That's correct.

11 MR. BRANTLEY: Judge, Garner, that's
12 all I have. Thank you.

13 ALJ GARNER: Mr. Cook?

14 MR. COOK: Yes, sir. I've got a few
15 questions.

16 CROSS-EXAMINATION

17 BY MR. COOK:

18 Q. Will you explain again exactly the
19 authority that you are seeking?

20 A. The authority that we're seeking is for
21 facilities-based and resold interexchange
22 and intraexchange telecommunication
23 services.

1 Q. And do you plan on putting a switch in
2 Alabama?

3 A. What we use is a soft switch technology.
4 So probably not a hard DSE switch that they
5 typically used with the old Bell
6 companies. But what they're moving toward
7 as electronic switching.

8 Q. Are you going to use UNE-P?

9 A. We will not.

10 Q. Will not?

11 A. No. Our network will be constructed from
12 the ground up for the majority of it.

13 Q. Where do you plan on placing those -- your
14 facility?

15 A. Okay. The initial build is a -- I believe
16 it's approximately a 15-mile ring. It's
17 going to be in the Birmingham central
18 business district and going down into
19 Homewood. And that will be fiber optic
20 cable, and I believe we're going with
21 144-count fiber.

22 Q. And your target customers are businesses --
23 small businesses?

1 A. Typically. And other carriers. We
2 provide -- some of the business segments
3 that we provide a lot of services to are
4 educational institutions, government,
5 banks. A lot of those types of
6 businesses. We also sell to other
7 telecommunication carriers. Some of the
8 wireless carriers use our services to
9 expand service throughout the state.

10 Q. That's the reason you needed the poles --

11 A. Yes, sir.

12 Q. -- with the power company?

13 A. Exactly.

14 Q. Where would your books and records be
15 maintained?

16 A. In Louisville, Colorado.

17 Q. Do you agree to make those records
18 available to us if we need them?

19 A. We do.

20 Q. In your financial reports that you've
21 provided, are those the latest that you
22 have?

23 A. Those are.

1 Q. Does your company plan to use a d/b/a?

2 A. No. We're doing business as Zayo Group,
3 LLC.

4 Q. Okay. So you're not going to have
5 nothing.

6 Has your company ever been indicted or
7 under investigation in any state?

8 A. No, we have not.

9 Q. Have any of the officers of the company?

10 A. No.

11 Q. Ever had any slamming or cramming
12 complaints?

13 A. We have not.

14 Q. The company ever or presently filed any
15 bankruptcy proceedings?

16 A. We have not.

17 Q. Now, you marketing staff, where will --
18 will they be located all throughout the
19 state or --

20 A. Our sales staff is located across the
21 country. We currently have technical
22 personnel here in Alabama. We don't yet
23 have a salesperson on the ground. We would

1 be working from a sales location out of
2 Atlanta. And as I mentioned, it's mostly a
3 one-on-one relationship. So there's not a
4 lot of broad telemarketing or news brand or
5 anything like that that we use.

6 Q. And you're going to have -- for customer
7 complaints, you've got a 800 number that's
8 manned -- how is that manned?

9 A. It's manned by a staff in Louisville,
10 Colorado. And there's also a technical
11 number that we give our customers to
12 contact for our network operations center
13 for any technical issues that's available
14 24 hours a day.

15 Q. Briefly explain your billing procedures.

16 A. We have a billing system that we have
17 purchased basically from a third party.
18 And we send out the individual bills to
19 most of our customers on a monthly basis.
20 We do have some customers that prefer to be
21 billed on a quarterly basis. So we'll send
22 them bills on a quarterly basis then.

23 Q. And will your company name appear on the

1 bill?

2 A. Yes, it will.

3 Q. Are you familiar with the rules and
4 regulations that pertain to this
5 Commission?

6 A. I am.

7 Q. Are you familiar with the rules regarding
8 the inspection and supervision fees?

9 A. Yes.

10 Q. Do you agree to pay those fees?

11 A. We do.

12 Q. Are you aware that all rate changes,
13 increases, decreases, introduction of new
14 services must receive prior approval from
15 this Commission before initializing?

16 A. We do.

17 Q. Are you also aware that this Commission
18 must be notified if there are any changes
19 in key contact personnel, company ownership
20 via merger, transfers, acquisitions, and/or
21 mailing address?

22 A. Yes.

23 MR. COOK: I have no further

1 questions, Your Honor.

2 ALJ GARNER: I have just a couple of
3 clarifying questions, Mr. Strumberger.

4 You talked a little bit about your
5 sales force. Do I understand that that
6 sales force consists of full-time
7 employees of the applicant?

8 MR. STRUMBERGER: Yes, they are.

9 ALJ GARNER: Do you use independent
10 agents for sales purposes on any
11 occasion?

12 MR. STRUMBERGER: We seldom do. I
13 believe we have one in the United States
14 right now that works in the Northwest.

15 ALJ GARNER: So it's not a regular
16 practice?

17 MR. STRUMBERGER: No, it's not.

18 ALJ GARNER: Do you provide training
19 for that independent sales agent?

20 MR. STRUMBERGER: Same training and
21 standards that we use for our own sales
22 people.

23 ALJ GARNER: And is it a contractual

1 obligation that independent sales agents
2 to comply with all applicable rules and
3 regulations?

4 MR. STRUMBERGER: Yes, it is.

5 ALJ GARNER: And do you terminate
6 the independent agents and, for that
7 matter, your in-house sales staff if
8 they're in violation with rules and
9 regulations?

10 MR. STRUMBERGER: We do.

11 ALJ GARNER: Regarding your
12 company's financial situation, you are
13 in a position of a net loss, albeit not
14 that significant compared to your
15 assets. Do you attribute that to the
16 fact that you're still building the
17 business?

18 MR. STRUMBERGER: Yes. It's --
19 there are two factors, especially this
20 quarter that we went into. One was a
21 \$20 million expense given to employee
22 stock compensation. So many of our
23 upper executive staff, myself included,

1 are compensated in -- a large portion in
2 stock. We're looking at a future public
3 offering of our company. And so that's
4 part of the incentive plan.

5 We also reinvested close to 30
6 million back into our network. And at
7 this point, a lot of what we're doing is
8 we're taking profits and reinvesting
9 those back into network construction
10 like what we're doing in Birmingham and
11 Homewood.

12 MR. BRANTLEY: And just for
13 clarification, you're actually showing
14 an operating gain as a net loss,
15 correct?

16 MR. STRUMBERGER: Correct. It's a
17 net loss. Our revenues went up to 79.7
18 million for this quarter.

19 MR. BRANTLEY: So the operating
20 income was over 17 million positive.
21 But these other factors listed showed
22 just a net loss?

23 MR. STRUMBERGER: Correct.

1 ALJ GARNER: Those are all the
2 questions I have.

3 Anything you want to clarify on
4 redirect, Mr. Brantley?

5 MR. BRANTLEY: No, sir.

6 ALJ GARNER: Anything further,
7 Mr. Cook?

8 MR. COOK: No, sir.

9 ALJ GARNER: If not, the matter will
10 be taken under advisement, and that will
11 conclude the hearing.

12 (Hearing concluded at
13 10:55 a.m.)

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REPORTER'S CERTIFICATE

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STATE OF ALABAMA

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MONTGOMERY COUNTY

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I, Gwendolyn P. Timbie, Certified
Court Reporter and Commissioner for the State
of Alabama at Large, hereby certify that on
Wednesday, August 10, 2011, I reported the
PROCEEDINGS in the matter of the foregoing
cause, and that pages 2 through 20 contain a
true and accurate transcription of said
proceedings.

13

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16

I further certify that I am neither kin
nor of counsel to the parties to said cause,
nor in any manner interested in the results
thereof.

17

This 19th day of August, 2011.

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21

/s/Gwendolyn P. Timbie
GWENDOLYN P. TIMBIE, Court
Reporter and Commissioner for the
State of Alabama at Large
CCR 172, Expires 09/30/11

22

MY COMMISSION EXPIRES: 3/10/2013

23

WORD INDEX

< 0 >

09 21:21

< 1 >

1 9:1**10** 1:11, 11

20:13 21:8, 22

100 1:11 2:4, 11**10th** 2:17**11** 21:21**144** 12:21**15** 9:18 12:16**15th** 3:4**17** 6:22 19:20**172** 21:21**19** 3:7**19th** 21:17

< 2 >

2 21:10**20** 5:10 9:18

18:21 21:10

200 3:20**2006** 6:18 11:7**2011** 1:11 2:18

3:5, 7 21:8, 17

2013 21:22**238** 10:10**24** 15:14**25** 7:8

< 3 >

3 5:14 7:9 21:22**30** 7:17 11:7

19:5 21:21

31673 1:8 2:18**36104** 2:8**36130** 2:5, 12**390** 9:1

< 4 >

40 1:11 7:14**400** 3:19 7:12, 13**405** 2:8 3:16

< 5 >

55 20:13

< 6 >

6094 9:1

< 7 >

770 10:6**79.7** 19:17

< 8 >

800 9:1 15:7**80027** 3:20

< 9 >

900 1:11

< A >

a.m 1:11 20:13**account** 9:11**accurate** 21:11**acquisitions** 6:22
16:20**additional** 10:22**address** 3:19

4:9 5:1, 2 16:21

Administration

1:11

Administrative

1:11 2:2, 3

advisement 20:10**affiliations** 6:16**affirmed** 4:17**AFS** 7:1**agent** 17:19**agents** 17:10

18:1, 6

ago 7:3**agree** 13:17

16:10

ahead 3:11 4:12

8:17

air 5:18**ALABAMA** 1:2,

11, 11 2:4, 5, 8,

11, 12 3:2, 17

8:9 9:4, 23

10:18 12:2

14:22 21:3, 7, 20

albeit 18:13**ALJ** 2:16 3:21

4:3, 6, 11 6:10

11:13 17:2, 9, 15,
18, 23 18:5, 11

20:1, 6, 9

American 7:2**Ameritech** 5:11

7:9

amount 10:9**answers** 6:5**appear** 15:23**appearance** 4:4**APPEARANCES**

2:1 3:12, 22

appearing 3:13**applicable** 18:2**applicant** 3:14

5:17 17:7

application 2:19

3:3 10:3

approval 2:20

16:14

approximately

1:11 7:12, 14

12:16

assets 10:6

18:15

Atlanta 6:23 15:2**Attorney** 2:7**attribute** 18:15**August** 1:11

2:17 21:8, 17

authority 11:19,
20**available** 13:18

15:13

aware 3:6 16:12,
17

< B >

back 19:6, 9**bankruptcy** 14:15**banks** 13:5**base** 8:18, 20 9:8**based** 2:23 8:13

11:21

basically 7:4

15:17

basis 15:19, 21,

22

behalf 3:13**believe** 12:15, 20
17:13**Bell** 12:5**Bill** 3:23 16:1**billed** 15:21**billing** 15:15, 16**bills** 15:18, 22**Bingham** 5:13**Birmingham**

12:17 19:10

bit 6:15 17:4**books** 13:14**Boston** 5:9**brand** 15:4**Brantley** 2:7

3:15, 15 4:8, 10,

21 6:7 11:11

19:12, 19 20:4, 5

Briefly 15:15**broad** 15:4**build** 12:15**building** 18:16**business** 5:2

7:5 12:18 13:2

14:2 18:17

businesses 8:21

12:22, 23 13:6

< C >

cable 12:20**career** 7:8**Carl** 1:11**Carolina** 7:21**carriers** 8:21

13:1, 7, 8

Caruso 6:19**case** 4:14**cause** 21:10, 14**CCR** 21:21**Cellular** 5:11**Centennial** 3:19**center** 15:12**central** 12:17**CEO** 6:19**certificate** 2:21

21:2

certificated 7:16

11:7

certification 8:2,

5 Certified 21:5 certify 21:7, 13 changes 16:12, 18 Chief 1:11 citizens 8:9 9:4 10:18 clarification 19:13 clarify 20:3 clarifying 17:3 close 19:5 Colorado 3:20 13:16 15:10 Columbia 7:18 11:9 come 4:7 coming 5:14 commencing 1:11 COMMISSION 1:3 2:4, 8, 11 3:4, 7, 9 4:1 6:1 9:23 11:2 16:5, 15, 17 21:22 Commissioner 1:11 21:6, 20 companies 12:6 company 6:14 7:7, 10 9:21 10:4 13:12 14:1, 6, 9, 14 15:23 16:19 19:3 company's 18:12 compared 18:14 compensated 19:1 compensation 18:22 complaint 8:23 complaints 14:12 15:7 completed 7:3 Complex 1:11 comply 18:2 concerns 2:19 conclude 20:11 concluded 20:12 consists 17:6 constructed	12:11 construction 19:9 consumers 10:21 contact 15:12 16:19 contacts 9:15 contain 21:10 contractual 17:23 control 5:23 convenience 2:21 10:17 Cook 2:8 3:23, 23 11:13, 14, 17 16:23 20:7, 8 corporation 11:3 correct 5:2, 3 7:18, 23 8:4, 7, 15 9:1, 2, 16 10:4, 7, 8, 11 11:4, 5, 10 19:15, 16, 23 counsel 3:18 5:18 21:14 count 12:21 country 14:21 COUNTY 21:4 couple 17:2 Court 1:11 21:6, 19 cramming 14:11 cross 6:12 11:16 current 5:16 currently 14:21 customer 8:18, 20, 23 9:8, 12, 12 15:6 customers 8:12 12:22 15:11, 19, 20 cutting 11:1 < D > Dan 6:18 7:6, 7 data 8:10 dated 3:7 day 15:14 21:17 decreases 16:13 degree 5:7, 8 denied 8:2 Department 5:12	describe 6:14 8:8 DIRECT 4:20 9:7, 10, 13 director 9:11 District 7:17 11:8 12:18 Division 4:1 5:18 DOCKET 1:8 2:18 doing 10:22 14:2 19:7, 10 DSE 12:4 duly 4:16 < E > Eastern 5:7 edge 11:1 education 5:4 educational 13:4 electronic 12:7 employee 18:21 employees 7:10 17:7 Energy 5:13 enter 4:4 entered 6:11 enterprise 8:11 equity 10:10 especially 18:19 Evans 1:11 exactly 11:18 13:13 EXAMINATION 4:20 6:13 11:16 excess 10:6, 10 exchange 2:23 executive 18:23 expand 13:9 expense 18:21 experience 5:4 9:18, 19 experienced 5:10 6:17 expertise 11:4 Expires 21:21, 22 explain 11:18 15:15 < F >	facilities 2:23 8:13 11:21 facility 12:14 fact 18:16 factors 18:19 19:21 familiar 9:22 16:3, 7 faxed 10:2 fees 16:8, 10 fiber 5:19 7:2 12:19, 21 filed 3:3 6:1 14:14 financial 10:3 11:3 13:20 18:12 financials 10:2 first 4:16 follows 4:19 force 9:10, 13, 16 17:5, 6 foregoing 21:9 forward 4:7 full 17:6 further 16:23 20:6 21:13 future 19:2 < G > gain 19:14 Garner 1:11 2:3, 16 3:21 4:3, 6, 11 6:7, 10 11:11, 13 17:2, 9, 15, 18, 23 18:5, 11 20:1, 6, 9 general 3:18 5:18 7:1 Georgia 6:23 give 6:4 15:11 given 18:21 go 3:11 4:12 8:17, 18 going 12:8, 17, 18, 20 14:4 15:6 government 13:4 Gregg 2:14 3:17 4:15, 23 5:1, 22 6:14 8:1 10:16
--	---	--	---

ground 12:12
14:23
GROUP 1:7 2:6,
20 6:18 14:2
growing 7:4
grown 6:21
growth 7:5
Gwendolyn 1:11
21:5, 19, 19

< H >
hard 12:4
Hearing 1:11
3:6 20:11, 12
high 10:23
Homewood
12:19 19:11
Honor 17:1
Honorable 1:11
hours 15:14
house 18:7
Hull 2:8 3:16

< I >
ICG 7:9
incentive 19:4
include 7:20
included 18:23
income 19:20
increases 16:13
increasing 10:20
independent
17:9, 19 18:1, 6
indicted 14:6
individual 15:18
industry 5:6, 10
initial 12:15
initializing 16:15
inspection 16:8
institutions 13:4
interest 10:18
Interested 3:5
21:15
interexchange
3:1 8:14 11:21
Internet 8:21
intervene 3:10
intraexchange
11:22

introduction
16:13
investigation 14:7
investor 6:20
issues 15:13
its 6:15

< J >
John 1:11 2:3
Judge 1:11, 11
2:2, 3 6:7 11:11
July 3:4, 7

< K >
Kentucky 7:21
key 16:19
kin 21:13

< L >
Large 1:11 8:11,
20 19:1 21:7, 20
latest 13:21
launched 6:18
Law 1:11, 11 2:2,
3, 7 5:8, 9
Level 5:14 7:9
listed 19:21
little 6:15 7:3
17:4
LLC 1:7 2:20
14:3
local 2:23 8:14
located 14:18, 20
location 15:1
long 5:20
looking 19:2
loss 18:13 19:14,
17, 22
lost 8:5
lot 13:3, 5 15:4
19:7
Louisville 3:20
13:16 15:9

< M >
mailing 16:21
maintained 13:15
majority 9:16
12:12

making 9:14
managerial 11:4
manned 15:8, 8, 9
manner 21:15
market 9:3
marketing 9:5, 6,
7 14:17
mass 9:5
Massachusetts
5:12
matter 2:18 3:10
18:7 20:9 21:9
matters 4:9
McCutchen 5:14
member 10:10
mentioned 15:2
merger 16:20
MFS 7:9
Michigan 5:8
midsize 8:11, 20
mile 12:16
million 10:7, 10
18:21 19:6, 18, 20
Mississippi 7:21
Montgomery
1:11 2:5, 8, 12
3:16 21:4
monthly 15:19
morning 2:17
6:4
moving 12:6

< N >
name 4:22 15:23
necessity 2:22
10:17
need 4:9 13:18
needed 13:10
needs 4:4
neither 21:13
net 10:22 18:13
19:14, 17, 22
network 12:11
15:12 19:6, 9
networks 6:23
7:1
never 8:1, 5
new 16:13
news 15:4

North 1:11 2:4,
11 7:21
Northwest 17:14
notice 3:7
notified 16:18
number 8:23
15:7, 11

< O >
oath 6:4
obligation 18:1
obviously 10:13
occasion 17:11
offer 6:8 7:16
8:9
offering 19:3
officers 6:16, 17
14:9
Okay 4:11 12:15
14:4
old 12:5
operating 19:14,
19
operations 15:12
optic 12:19
options 10:20
organic 7:5
overall 8:16
ownership 16:19

< P >
pages 21:10
Parkway 3:19
part 19:4
parties 3:5 21:14
party 15:17
Paul 2:7 3:15
pay 16:10
people 17:22
personnel 14:22
16:19
pertain 16:4
petitions 3:9
placing 12:13
plan 9:3 12:1,
13 14:1 19:4
please 4:22 8:19
plus 7:8 9:17
point 19:7

poles 13:10 portion 19:1 pose 8:9 position 5:17, 20 18:13 positive 19:20 potential 9:12 power 13:12 practice 17:16 practices 9:21 prefer 15:20 prefiled 5:23 6:8, 11 preliminary 4:8 6:19, 20 prepared 5:23 PRESENT 2:13 presentation 4:14 presently 14:14 pretty 9:9 previously 6:1 primary 7:6 principally 5:5 prior 5:14 16:14 probably 12:4 procedures 15:15 proceed 4:13 PROCEEDINGS 1:11 14:15 21:9, 12 profits 19:8 propose 8:18 proposed 10:19 proven 11:6 provide 2:22 8:10 10:14 13:2, 3 17:18 provided 13:21 providers 8:22, 22 providing 10:21, 23 PUBLIC 1:3 2:4, 8, 11, 21 9:23 10:16, 17 19:2 purchased 15:17 purposes 17:10 pursuant 3:6 putting 12:1	< Q > quarter 18:20 19:18 quarterly 15:21, 22 question 6:3 8:23 questions 11:15 17:1, 3 20:2 < R > rate 16:12 read 5:1 reason 13:10 receive 3:9 9:13 16:14 received 8:6 record 2:16 3:8, 11 4:6 5:1 6:9, 12, 16, 17 11:6 records 13:14, 17 redirect 20:4 reflect 3:8 4:6 regarding 16:7 18:11 regular 17:15 regulations 16:4 18:3, 9 reinvested 19:5 reinvesting 19:8 relationship 15:3 reported 1:11 21:8 Reporter 1:11 21:6, 20 REPORTER'S 21:2 reports 13:20 resold 2:22 8:13 11:21 resources 10:13 11:3 response 4:5 results 21:15 revenues 19:17 right 5:16 7:15, 19, 22 8:8 9:3 10:12, 16 11:8	17:14 ring 12:16 rules 9:22 16:3, 7 18:2, 8 < S > sales 7:13 9:7, 10, 13, 16 14:20 15:1 17:5, 6, 10, 19, 21 18:1, 7 salesperson 14:23 savvy 9:9 School 5:9 seeking 11:19, 20 segments 13:2 seldom 17:12 sell 13:6 send 15:18, 21 series 6:22 served 10:18 SERVICE 1:3 2:4, 8, 11 7:17 9:23 13:9 services 3:2 8:8, 11, 17 9:4, 10 10:14, 19 11:1, 23 13:3, 8 16:14 show 11:2 showed 19:21 showing 19:13 shown 10:6, 9 shows 10:3 significant 18:14 similar 6:3, 5 sir 3:21 4:10 11:14 13:11 20:5, 8 situation 18:12 slamming 14:11 small 12:23 soft 12:3 solutions 5:19 sought 8:3 South 2:8 3:16 southern 7:20 speak 4:17 specifically 9:20 staff 4:2 14:17,	20 15:9 18:7, 23 standards 17:21 start 9:14 started 6:15 starter 7:7 STATE 1:2, 11 3:2 4:22 5:4 8:2 10:21, 23 11:1 13:9 14:7, 19 21:3, 6, 20 states 7:17, 20 11:8 17:13 stock 18:22 19:2 Street 1:11 2:4, 8, 11 3:16 strong 10:3 11:2 Strumberger 2:14 3:18 4:12, 15, 23 17:3, 8, 12, 17, 20 18:4, 10, 18 19:16, 23 Strumberger's 6:10 subject 6:12 sufficient 10:13 Suite 1:11 3:19 supervision 16:8 swear 4:12 switch 12:1, 3, 4 switching 12:7 sworn 4:17 system 15:16 Systems 7:2 < T > take 3:12 taken 1:11 20:10 talked 17:4 target 12:22 tech 10:23 technical 14:21 15:10, 13 technology 12:3 telecom 5:10 telecommunicatio n 9:9 11:22 13:7 telecommunicatio ns 3:1 4:1 5:5, 13 7:8 9:17, 19
--	---	--	--

telemarketing 9:6 15:4
 telephone 9:22
 ten 9:17
 Tennessee 7:22
 terminate 18:5
 terms 11:3
 testified 4:18
 TESTIMONY 1:11
 5:23 6:8, 11
 Thank 3:21
 11:12
 thereof 21:16
 third 15:17
 Timbie 1:11
 21:5, 19, 19
 time 3:12 6:9,
 21 17:6
 today 3:17
 today's 3:6
 total 10:6, 9
 track 11:6
 trained 9:20
 training 9:14
 17:18, 20
 transcription
 21:11
 transfers 16:20
 transport 8:10
 true 8:1 21:11
 truth 4:17, 18, 18
 two 6:23 18:19
 types 13:5
 typically 9:8
 12:5 13:1

< U >

undergrad 5:7
 understand 7:15
 17:5
 UNE 12:8
 Union 1:11 2:4,
 11
 United 17:13
 University 5:8, 9
 upper 18:23
 use 12:3, 8 13:8
 14:1 15:5 17:9,
 21

users 9:9

< V >

violation 18:8
 Virginia 7:22

< W >

want 20:3
 Wednesday 1:11
 21:8
 went 18:20 19:17
 we're 2:16 11:20
 12:20 14:2 19:2,
 7, 8, 10
 We've 6:21 7:4
 William 2:8
 wireless 8:22
 13:8
 witness 4:16
 work 5:4 9:11
 working 15:1
 works 17:14
 worth 10:22

< Y >

year 5:21 7:3, 8
 years 5:11 9:17,
 19

< Z >

ZAYO 1:7 2:6,
 19 5:15 6:18
 14:2