

sufficiently alleges that Zayo misrepresented what was being provided under the contract so as to support a fraud in the performance claim.¹ Accordingly, Zayo's Motion to Dismiss (Doc. 12) is **DENIED**.

SO ORDERED, this the 25th day of Sep, 2017.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

¹ In its Motion to Dismiss, Zayo alleged that ComSouth failed to allege intent and knowledge as to ComSouth's fraud in the inducement claim. Doc. 13 at 7. In its Reply to ComSouth's Response, Zayo concedes that Zayo alleges intent and knowledge as to the fraud in the inducement claim in its amended counterclaim. Doc. 26 at 1. Thus, the Court does not address that argument.