



STATE OF DELAWARE

**PUBLIC SERVICE COMMISSION**  
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MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Connie S. McDowell, Senior Regulatory Policy Administrator

DATE: October 8, 2014

SUBJECT: IN THE MATTER OF THE APPLICATION OF MEGAPATH CORPORATION AND GC PIVOTAL, LLC D/B/A GLOBAL CAPACITY FOR APPROVAL TO PARTICIPATE IN AN ASSET TRANSFER TRANSACTION, FOR GC PIVOTAL, LLC D/B/A GLOBAL CAPACITY TO PARTICIPATE IN CERTAIN FINANCING ARRANGEMENTS AND FOR MEGAPATH CORPORATION TO ABANDON SERVICE IN THE STATE OF DELAWARE (FILED OCTOBER 3, 2014) - PSC DOCKET NO. 14-0435

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APPLICATION

On October 3, 2015, MegaPath Corporation ("MegaPath") and GC Pivotal, LLC d/b/a Global Capacity ("Global Capacity") filed an Application with the Delaware Public Commission ("Commission") requesting approval to participate in a transaction in which MegaPath will transfer certain network assets and customers to Global Capacity, approval for Global Capacity to enter into a financing arrangement and approval for MegaPath to abandon its telecommunications services within the State of Delaware.

PARTIES

MEGAPATH

MegaPath is a subsidiary of CCGI Holding Corporation with its principal offices located at 6800 Koll Center Parkway, Pleasanton, California. MegaPath was granted a Certification of Public Convenience and Necessity in Delaware to provide both local and

intrastate long distance telecommunications services in P.S.C. Docket 02-175 Order No. 6008 on August 6, 2002. MegaPath is also authorized by the Federal Communications Commission to provide international and domestic interstate telecommunications services as a non-dominant carrier.

GC PIVOTAL, LLC d/b/a GLOBAL CAPACITY

GC Pivotal, LLC d/b/a Global Capacity is a portfolio company of Pivotal Group, a leading investment corporation, with its principal offices located at 180 North LaSalle Street, Chicago, Illinois. Global Capacity was granted a Certification of Public Convenience and Necessity in Delaware to provide both local and intrastate long distance telecommunications services in P.S.C. Docket 11-141 Order No. 7957 on May 10, 2011. Global Capacity is also authorized by the Federal Communications Commission to provide international and domestic interstate telecommunications services as a non-dominant carrier.

TRANSACTION

MegaPath and Global Capacity have entered into a Membership Interest Purchase Agreement, whereby Global Capacity intends to acquire certain network assets and certain customers of MegaPath. The assets to be transferred include MegaPath's network, composed of equipment in its collocation spaces, applications to provide its telecommunications services, equipment related to its points of presence and transport, wholesale and certain direct access customers and their respective contracts, and other associated assets. After this transaction has been completed, MegaPath will cease providing telecommunications services in Delaware and has requested approval to abandon service. MegaPath and Global Capacity intend for the Transaction to be completed in the fourth quarter 2014 with an effective date of January 1, 2015.

FINANCING ARRANGEMENT

Global Capacity is seeking approval to incur indebtedness, in the aggregate amount of up to \$85 million, in the form of notes or debentures, conventional credit facilities, such as revolving credit facilities and term loans, letters of credit, and bridge loans or a

combination of all of these. Global Capacity expects the financing to be long-term with a maturity date between five and seven years, but is requesting approval for a maturity date of up to ten years after issuance; requesting approval for financing arrangements at an interest rate(s) at the then current market conditions; and approval to secure the full \$85 million of the financing arrangements with security interests in the assets of Global Capacity and its current and future subsidiaries. Global Capacity has stated that the financing arrangement will be used for acquisitions, working capital requirements and general corporate purposes.

PUBLIC INTEREST, PROPER PURPOSE AND IN ACCORDANCE WITH LAW

Global Capacity asserts that the public interest will be served. Global Capacity states that the transfer of Assets and Customers from MegaPath to Global Capacity will benefit those customers because it is a company with a history of providing high quality communications services and with a well-qualified management team with substantial telecommunications experience and technical expertise. The customers are being notified of the change in ownership and their rates, terms and conditions will remain the same with no immediate change. The Financing will enable Global Capacity to capitalize its acquisition of MegaPath and to provide funding for other permitted purposes, including working capital, financing capital expenditures and refinancing existing indebtedness. In addition, Global Capacity has shown that the Transaction and the Financing are for a proper purpose and is seeking the approvals of the regulatory authorities which are necessary for the Transaction and the Financing to demonstrate that it is in accordance with law.

STAFF RECOMMENDATION

Applications seeking approval of transfer of assets and financing by multi-state telecommunications service providers technically come under the provisions of 26 Del. C. §215 because these providers are deemed to be public utilities. Global Capacity has represented that the financial proposal is in accordance with law, for a proper purpose, and consistent with the public interest. The Commission has previously permitted such applications to become effective by statutory approval with Commission action. The same result here seems

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appropriate under the circumstances. Therefore, Staff recommends that the Commission not act on this Application. Under 26 *Del. C.* §215, the Application is deemed approved, if no action by the Commission is taken within 30 days after the filing of the Application. Within 30 days after the Transaction and Financing has been completed, Global Capacity will send Staff verification the Transaction and Financing has been completed and that MegaPath has ceased operations as a telecommunications service provider in the State of Delaware.