Docket No. 14-0435 — CK# 1206665/600-7269 10.3.14 $600. RB

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October 1, 2014

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DELAWARE P.S.C.

BY FEDERAL EXPRESS
Alisa Carrow Bentley, Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

RE: Joint Application of MegaPath Corporation and GC Pivotal, LLC d/b/a Global Capacity for Approval to Participate in an Asset Transfer Transaction and for GC Pivotal, LLC d/b/a Global Capacity to Participate in Certain Financing Arrangements

PSC Docket No. _____

Dear Ms. Bentley:

On behalf of MegaPath Corporation and GC Pivotal, LLC d/b/a Global Capacity, enclosed for filing with the Commission are an original plus ten (10) copies of the above-referenced Application. Also enclosed is a check in the amount of $600.00 for the requisite filing fees for this Application, which includes a request for approval of a transfer of control pursuant to 26 Del. C. § 215(a)(1) ($100), a request for approval of the incurrence of indebtedness pursuant 26 Del. C. § 215(a)(2) ($350), and request for authority to discontinue public utility service ($150).

Please date-stamp the extra copies of these filings and return them to me in the enclosed self-addressed stamped envelope. If you have any questions, please contact me by any of the means listed above. Thank you.

STEVENS & LEE

Joseph H. Huston

Joseph H. Huston, Jr. (No. 4035)

Enclosures
cc: Certificate of Service

BEFORE THE
DELAWARE PUBLIC SERVICE COMMISSION

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Joint Application of **MegaPath Corporation** and **GC Pivotal, LLC d/b/a Global Capacity** for Approval to Participate in an Asset Transfer Transaction and for GC Pivotal, LLC d/b/a Global Capacity to Participate in Certain Financing Arrangements	)	Docket No. _____

APPLICATION

I. INTRODUCTION

MegaPath Corporation ("MegaPath") and GC Pivotal, LLC d/b/a Global Capacity ("Global Capacity" and together with MegaPath, "Applicants"), by their undersigned counsel, request approval pursuant to 26 Del. C. §215, to the extent necessary, from the Delaware Public Service Commission ("Commission") to participate in a transaction whereby MegaPath will transfer certain of its network assets and customers to Global Capacity (the "Transaction"). Global Capacity also intends to enter into a financing arrangement whereby it will incur long-term debt obligations under a senior and/or subordinated loan facility and to encumber its property through the grant of a security interest in its assets, including the assets being transferred from MegaPath, in support of the financing arrangements (the "Financing").[1] Both the Transaction and the Financing are being undertaken in accordance with law and for a proper

[1] The final amounts and organization of the Financing Facilities are to be determined based upon market conditions at the time of closing.

purpose. MegaPath and Global Capacity anticipate and are working towards a closing on or before December 31, 2014, with the changes effective January 1, 2015.

Following the consummation of the Transaction, MegaPath will have no telecommunications assets or customers in Delaware, and therefore MegaPath also requests that its Certificates of Public Convenience and tariffs be cancelled upon notification by Applicants that the Transaction was completed.

In support of this Application, Applicants state:

I. DESCRIPTION OF THE APPLICANTS

A. MegaPath Corporation

MegaPath Corporation ("MegaPath") is a Virginia corporation with principal offices at 6800 Koll Center Parkway, Suite 200, Pleasanton, CA 94566. MegaPath is a leading nationwide provider of integrated voice and data communications. MegaPath offers commercial DSL, Voice over IP ("VoIP"), T1, Ethernet, Web hosting, managed security, IP and dial-up, wireless broadband, and bundled VoIP and data services to small medium-sized businesses, enterprise businesses through MegaPath's network and through Internet Service Providers, value-added resellers, telecommunications carriers and affinity groups, as well as commercial DSL, T1, Ethernet, and other data services to wholesale customers who provide their own services using the MegaPath network.

In Delaware, MegaPath is authorized to provide local exchange and interexchange telecommunications services pursuant to Commission authorization issued in Docket No. 98-292, Order No. 11280. MegaPath is also authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate telecommunications services as a non-dominant carrier.

CCGI Holding Corporation ("CCGI Holding") is a Delaware corporation with offices located at 555 Anton Blvd., Ste. 200, Costa Mesa, CA 92626. CCGI Holding is the parent company of MegaPath. CCGI Holding is privately held by investors, including Platinum Equity LLC ("Platinum"). Neither CCGI Holding nor Platinum offers any regulated telecommunications services. Platinum is a privately held Delaware limited liability company with offices located at 360 North Crescent Drive, Beverly Hills, California 90210. Platinum is a global firm specializing in the merger, acquisition, and operation of companies that provide services and solutions to customers in a broad range of business markets, including information technology, telecommunications, logistics, manufacturing, and entertainment distribution.

B. GC Pivotal, LLC

GC Pivotal, LLC, d/b/a Global Capacity ("Global Capacity") is a Delaware limited liability company with principal offices located at 180 North LaSalle Street, Suite 2430, Chicago, IL 60601. Global Capacity improves the efficiency and reduces the cost of buying access networks globally. Through its One Marketplace, Global Capacity brings together customers and suppliers in an automated platform that provides ubiquitous access network solutions that deliver on its brand promise – Connectivity Made Simple.

In Delaware, Global Capacity is authorized to provide local exchange and interexchange telecommunications services pursuant to Commission authorization issued in Case No. 11-141. Global Capacity is also authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier.

Global Capacity is a portfolio company of Pivotal Group ("Pivotal"), a leading investment corporation headquartered in Phoenix, Arizona, that concentrates on private equity and real estate investments. Pivotal does not offer any regulated telecommunications services.

II. CONTACT INFORMATION

For the purposes of this Application, contacts for the Applicants are as follows:

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With a copy to:

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and:

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F: 312.673.2422
jkissel@globalcapacity.com

III. REQUEST FOR APPROVAL FOR APPLICANTS TO PARTICIPATE IN A TRANSFER OF ASSETS AND CUSTOMERS

MegaPath and Global Capacity entered into a Membership Interest Purchase Agreement dated as of September 5, 2014 (the "Agreement") whereby Global Capacity intends to obtain certain network assets and certain customers served by those assets from MegaPath (the "Transaction"). The assets to be transferred consist of MegaPath's network, composed of equipment in the company's collocation spaces (*e.g.*, DSLAMs, routers, cable, and racks), applications used to

provide service, equipment related to the company's points of presence and transport, wholesale and certain direct access customers and their respective contracts, and other associated assets (the "Subject Assets"). MegaPath does not intend to transfer its certifications or other authority to provide telecommunications services to Global Capacity; nor will it undergo a transfer of control as a result of this Transaction. Rather, as MegaPath will no longer require its authority to provide telecommunications in Delaware following the close of the Transaction, the parties request the cancellation of MegaPath's Certificates upon notification from Applicants that the Transactions have been completed, as set forth below in Section IV.

The Applicants emphasize that the customers being transferred are data broadband service customers and not telephone voice service customers. As no voice service customers are being transferred to Global Capacity as a result of the Transaction, and since Global Capacity will not be providing voice service to any customers, the FCC and Commission anti-slamming and mass migration rules do not apply. Nonetheless, the Applicants intend to notify customers of the assignment of their service and contracts to Global Capacity as provided in their existing service contract, but no fewer 30 days prior to such transfer in any event. In the interest of assuring seamless and uninterrupted service, all of the assigned customers will continue to receive service from Global Capacity under the same rates, terms and conditions of service as were previously provided by MegaPath. Future changes in the rates, terms and conditions of service to the affected customers will be undertaken pursuant to customer contracts and any applicable federal and state notice and tariff requirements.

IV. REQUEST TO CANCEL THE CERTIFICATIONS OF MEGA PATH

Following the Transactions, MegaPath will have no telecommunications customers or assets in Delaware, and will cease doing business as a provider of local exchange and

interexchange telecommunications services in Delaware. Therefore, MegaPath requests that, upon notification from Applicants that the Transactions have been completed, the Commission cancel the Certificates of Megapath. The Applicants intend for the Transactions to be completed in the fourth quarter 2014 with an effective date of January 1, 2015 ("Effective Date"), which is the rationale for requesting that the MegaPath Certificates not be relinquished until the Applicants have notified the Commission after the Transactions are completed. The Applicants believe that use of an Effective Date will minimize customer confusion and enable consistent messaging to customers about this Transaction.

V. REQUEST FOR APPROVAL FOR GLOBAL CAPACITY TO PARTICIPATE IN CERTAIN FINANCING ARRANGEMENTS

In order to finance the acquisition of the Subject Assets and to provide funding for other permitted purposes, including working capital, financing capital expenditures, refinancing existing indebtedness, and other corporate purposes, Global Capacity intends to enter into certain the Financing. The borrower in the Financing will be Global Capacity.

In order to maintain adequate flexibility to respond to market conditions and requirements and to respond to new acquisition and other business opportunities, Global Capacity seeks authorization for financing arrangements in the aggregate amount of $85 million as described generally below:

Debt Instruments: Global Capacity seeks authorization to incur indebtedness, in the aggregate amount of up to $85 million, in the form of notes or debentures (including notes convertible into equity and private notes that may be exchanged for public notes); conventional credit facilities, such as revolving credit facilities and term loans; letters of credit; and bridge loans; or a combination thereof.

Maturity: Global Capacity expects that the financing arrangements will consist solely of long-term indebtedness with a maturity date between five and seven years after issuance

depending on the type of facility. But, to maintain flexibility, Global Capacity seeks authorization for indebtedness that matures up to ten years after issuance.

Interest: Any interest rate will likely be the market rate for similar financings and will not be determined until the financing is finalized. Global Capacity seeks authorization to incur indebtedness that, depending on the type of debt securities, facility(ies) or other arrangements, accrues interest at a rate(s) that may be fixed (typically set at signing or closing based on then current market conditions) or floating (consisting of a base rate, which will float with a rate index such as LIBOR or Federal Funds Rate, plus an applicable margin), or a combination of fixed rates and floating rates. To maintain flexibility, Global Capacity seeks authorization for financing arrangements at an interest rate(s) at the then current market conditions.

Security: Some or all of the financing arrangements will be secured facilities, which will include a grant of a security interest in the assets of Global Capacity and its current and future subsidiaries (including the Subject Assets). A portion of the financing arrangements may be unsecured facilities. For the secured facilities, the stock of Global Capacity and its subsidiaries may also be pledged as additional security. Additionally, it is expected that Global Capacity's current and future subsidiaries will provide a guaranty as security for the full amount of the financing arrangements. Global Capacity seeks authorization 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.

Purpose: The financing arrangements may be used for acquisitions, working capital requirements and general corporate purposes of the company.

Global Capacity therefore requests approval to participate in the Financing as described above, to secure the Financing with its assets, including the Subject Assets, and any other authority necessary or required for the above-referenced Financing. Global Capacity's participation in the Financing will not result in a change in its management or day-to-day operations; nor will it adversely affect their current or proposed operations in Delaware. The Financing will also be transparent to Global Capacity's customers.

VI. PUBLIC INTEREST CONSIDERATIONS

The proposed Transaction and Financing described herein are consistent with the public interest and will not impair the ability of the Applicants to perform services to the public. The Transaction will result in the assignment of certain network assets and the customers served by

those assets (*i.e.* broadband data customers) to a company with a history of providing high quality communications services. Global Capacity's operations are overseen by a well-qualified management team with substantial telecommunications experience and technical expertise.

The Transaction is structured to assure an orderly transition of customers from MegaPath to Global Capacity. In accordance with the terms of their service contracts and the rules and procedures of the Commission and applicable state(s), affected customers will be properly notified of the Transaction and the change in their telecommunications services provider from MegaPath to Global Capacity. In addition, immediately following consummation of the Transaction, Global Capacity will continue to provide service to customers with no immediate change in their rates or terms and conditions of service. The Transaction will therefore be virtually transparent and seamless to the affected customers in terms of the services they currently receive.

The Financing will enable Global Capacity to capitalize its acquisition of the Subject Assets, thereby allowing it to secure the benefits attendant to that acquisition, including operational efficiencies, management expertise, and the ability to bring services to new markets and allow more consumers to benefit from its competitive services more quickly and efficiently. In addition, the Financing will allow Global Capacity to reduce expenses and will provide capital for other permitted purposes. Furthermore, the contemplated borrowing, pledges and guarantees will be entirely transparent to consumers and will not alter the rates, terms and conditions under which the company provide services. The issuance of the notes will not cause a change in the control of Global Capacity. Approval of the proposed Financing will serve the public interest in promoting competition among telecommunications carriers by providing Global Capacity with the opportunity to strengthen its financial position. As a result, the proposed Financing is ex-

pected to yield financial benefits that ultimately inure to the benefit of Global Capacity's customers.

VII. CONCLUSION

For the reasons stated above, the Applicants submit that the public interest, convenience and necessity will be furthered by expeditious Commission approval of this Application.

Respectfully submitted,

Joseph H. Huston, Jr. (No. 4035)
STEVENS & LEE, P.C.
1105 North Market Street, Suite 700
Wilmington, DE 19801
Telephone: 302.425.3310
Email: jhh@stevenslee.com

Counsel for the Applicants

Date: October 1, 2014

VERIFICATIONS

STATE OF ARIZONA §
§
COUNTY OF MARICOPA §

VERIFICATION

I, Richard Garner, state that I am Secretary and Treasurer of GC Pivotal, LLC; that I am authorized to make this Verification on behalf of GC Pivotal, LLC; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

Richard Garner
Secretary and Treasurer
GC Pivotal, LLC

Sworn and subscribed before me this 19 day of September, 2014.

Notary Public

My commission expires May 15, 2018

JENNIFER CASEY
NOTARY PUBLIC – ARIZONA
MARICOPA COUNTY
My Commission Expires
May 15, 2018

STATE OF CALIFORNIA §
§
COUNTY OF ALAMEDA §

VERIFICATION

I, Steven B. Chisholm, state that I am the Senior Vice President, Business Development, Legal and Regulatory of MegaPath Corporation, that I am authorized to make this Verification on behalf of MegaPath Corporation; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

Steven B. Chisholm
Senior Vice President, Business Development,
Legal and Regulatory
MegaPath Corporation

Sworn and subscribed before me this 17th day of September, 2014.

Julie M. Brian
Notary Public

My commission expires March 8, 2017

NCC1
JULIE M. BRIAN
Commission No. 2010224
NOTARY PUBLIC-CALIFORNIA
SANTA CLARA COUNTY
My Comm. Expires MARCH 8, 2017
NCC1

BEFORE THE
DELAWARE PUBLIC SERVICE COMMISSION

Joint Application of	)	
	)	
MegaPath Corporation	)	Docket No. _____
and	)	
GC Pivotal, LLC d/b/a Global Capacity	)	
	)	
for Approval to Participate in an Asset Transfer Transaction and for GC Pivotal, LLC d/b/a Global Capacity to Participate in Certain Financing Arrangements	)	

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2014, a copy of the foregoing Application was served by first class mail, postage prepaid, upon the following:

Division of the Public Advocate
820 N. French St., 4th Floor
Wilmington, Delaware 19801

Joseph H. Huston, Jr. (No. 4035)

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