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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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2010 JUN -9 P 3:49
AZ CORP COMMISSION
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T-03632A-10-0230
T-03727A-10-0230

IN THE MATTER OF THE JOINT APPLICATION)
OF DIECA COMMUNICATIONS, INC. dba)
COVAD COMMUNICATION COMPANY AND)
DSLnet COMMUNICATIONS, LLC TO)
ENCUMBER THEIR ASSETS.)
)
)
)

DOCKET NO. T-03632A-10-____
T-03727A-10-____

(Expedited Approval Requested)

DOCKETED

JUN -9 2010

JOINT APPLICATION TO ENCUMBER ASSETS

DOCKETED BY [Signature]

I. INTRODUCTION

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") and DSLnet Communications, LLC ("DSLnet" and together with Covad, "Applicants"), by their undersigned counsel and pursuant to A.R.S. § 40-285(A) and any other regulations deemed applicable, requests approval, to the extent necessary, from the Arizona Corporation Commission ("Commission") to encumber their Arizona assets as security in connection with certain financing arrangements whereby CCGI Holding Corp., ("CCGI Holding"), the parent company of Covad, and anticipated indirect parent company of DSLnet,¹ will incur long-term debt obligations under a senior and/or subordinated loan facility collectively of up to \$265,000,000 (collectively the "Note Facilities"), and a secured revolving credit facility in an aggregate principal amount of up to \$35,000,000 (the "Revolving Facility" and, together with the Note Facilities, the "Financing Facilities").² This financing will be used by CCGI Holding, among other purposes, to refinance

¹ CCGI and DSLnet have filed a notification with the Commission concerning the indirect transfer of control of DSLnet to CCGI. The Applicants clarify that the transfer of control transaction is not contingent on the financing arrangements discussed herein. The financing arrangements described herein are contingent on the consummation of the transfer of control.
² The final amounts and organization of the Financing Facilities are to be determined based upon market conditions at the time of closing.

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1 existing debt obligations. For the reasons set forth herein, the Applicants submit that the proposed
2 financing arrangements are in the public interest.³ In support of this Application, Applicants state:

3 **II. DESCRIPTION OF THE APPLICANTS**

4 **A. DIECA Communications, Inc. d/b/a Covad Communications Company**

5 CCGI Holding Corporation ("CCGI Holding") is a Delaware corporation with offices
6 located at 360 North Crescent Drive, Beverly Hills, CA 90210. CCGI Holding is the parent
7 company of Covad Communications Group, Inc. ("CCGI"), a Delaware corporation that owns
8 Covad Communications Company, a California corporation and DIECA Communications, Inc., a
9 Virginia corporation. Covad is a leading nationwide provider of integrated voice and data
10 communications. The company offers DSL, Voice Over IP, T1, Ethernet, Web hosting, managed
11 security, IP and dial-up, wireless broadband, and bundled voice and data services directly through
12 Covad's network and through Internet Service Providers, value-added resellers,
13 telecommunications carriers and affinity groups to small and medium-sized businesses and home
14 users. Covad broadband services are currently available across the nation in 44 states and 235
15 Metropolitan Statistical Areas ("MSAs") and can be purchased by more than 57 million homes and
16 businesses, which represent over 50 percent of all US homes and businesses. In Arizona, DIECA
17 Communications, Inc. is authorized to provide resold and facilities-based local exchange and
18 interexchange telecommunications services in Arizona pursuant to Decision 61942 issued in
19 Docket No. T-03632A-98-0542 on September 17, 1999. Covad is also authorized by the Federal
20 Communications Commission ("FCC") to provide international and domestic interstate
21 telecommunications services as a non-dominant carrier.

22 CCGI Holding is ultimately controlled by Platinum Equity LLC ("Platinum"). Neither CCGI
23 Holding nor Platinum offer any regulated telecommunications services. Platinum is a privately

24
25 ³ The Applicants each had less than \$1 million in jurisdictional revenues in 2009 and are not
26 Class A investor-owned utilities under A.A.C. R14-2-103.A.1.q; therefore, the Arizona Public
27 Utility Holding Company and Affiliated Interest Rules, A.A.C. R12-2-801 to R12-2-806, do not
apply. A.A.C. R14-2-801(8). Applicants are also exempt from the provisions of A.R.S. § 40-301
et seq. pursuant to the provisions of A.R.S. § 40-301.D, because their physical facilities are used in
providing communications services in interstate commerce.

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1 held Delaware limited liability company with offices located at 360 North Crescent Drive, Beverly
2 Hills, California 90210. Platinum is a global firm specializing in the merger, acquisition and
3 operation of companies that provide services and solutions to customers in a broad range of
4 business markets, including information technology, telecommunications, logistics,
5 manufacturing, and entertainment distribution.

6 Further information concerning Covad's legal, technical, managerial and financial
7 qualifications to provide service was submitted with its application for certification with the
8 Commission as noted above and is, therefore, a matter of public record. Covad respectfully
9 requests that the Commission take official notice of that information and incorporate it herein by
10 reference.

11 **B. DSLnet Communications, LLC.**

12 DSLnet Communications, LLC ("DSLnet") is a Delaware limited liability company with
13 principal offices located at 50 Barnes Park North, Suite 104, Wallingford, Connecticut 06492.⁴
14 DSLnet provides highspeed access to the Internet services. DSLnet is authorized to provide
15 intrastate telecommunications services in forty-seven (47) states and the District of Columbia, and
16 DSLnet's affiliate DSLnet Communications VA, Inc. is authorized to provide intrastate
17 telecommunications services in Virginia. In Arizona, DSLnet is authorized to provide resold and
18 facilities-based local exchange, interexchange, and exchange access pursuant to Decision No.
19 62409 issued in Docket No. T-03727A-99-0193 on April 3, 2000. DSLnet is also authorized by
20 the Federal Communications Commission ("FCC") to provide international and domestic
21 interstate telecommunications services as a non-dominant carrier. Further information concerning
22 DSLnet's legal, technical, managerial and financial qualifications to provide service was submitted
23

24 ⁴ DSLnet's parent company is MegaPath Inc. ("MegaPath"), a Delaware corporation with its
25 principal office located at 555 Anton Boulevard, Suite 200, Costa Mesa, CA 92626. Megapath is
26 the parent company of DSLnet Communications, LLC. MegaPath is a provider of a variety of
27 managed Internet Protocol ("IP") services including cable and satellite system broadband Internet
access, mobility services such as digital certificates, global remote access, personal firewalls,
and remote access virtual private networks ("VPN"), and security services. MegaPath does not
currently offer any regulated telecommunications services and therefore does not hold any
telecommunications authorizations from the FCC or any state regulatory authority.

1 with its application for certification and other documents filed with the Commission and is,
2 therefore, a matter of public record. DSLnet respectfully requests that the Commission take
3 official notice of that information and incorporate it herein by reference.

4 **II. CONTACT INFORMATION**

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

6
7 Russell M. Blau
8 Brett P. Ferenchak
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10 Bingham McCutchen LLP
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25 With a copy to:

26 Jason Wakefield
27 Vice President, Governmental and External
28 Affairs
29 Covad Communications Company
30 2220 O'Toole Avenue
31 San Jose, California 95131
32 Tel. (408) 952-7440
33 Email: jwakefie@covad.com

34 Steven B. Chisholm, Esq.
35 MegaPath Inc.
36 555 Anton Boulevard, Suite 200
37 Costa Mesa, California 92626
38 Fax. 714-327-2041
39 Email: Steve.Chisholm@megapath.com

40 Schula Hobbs
41 Regulatory Affairs
42 DSLnet Communications, LLC
43 50 Barnes Park North, Suite # 104
44 Wallingford, CT 06492
45 Fax. 203-284-6205
46 Email: shobbs@megapath.com

1 **III. REQUEST FOR APPROVAL TO PARTICIPATE IN CERTAIN FINANCING**
2 **ARRANGEMENTS**

3 CCGI Holding and MegaPath entered into an Agreement and Plan of Merger dated as of
4 March 26, 2010 (the "Agreement"). As a result of that transaction, MegaPath will become a
5 wholly owned, direct subsidiary of CCGI Holding and CCGI Holding will acquire indirect control
6 of DSLnet.⁵ Upon the consummation of that transaction, CCGI Holding intends to enter into the
7 proposed financing arrangements to fund strategic acquisitions and for other permitted purposes,
8 including providing working capital, financing capital expenditures, refinancing existing
9 indebtedness, and other general corporate purposes. The proposed financing is contingent upon
10 closing the contemplated merger transaction.

11 The borrower in the financing arrangements will be CCGI Holding, a Delaware corporation.
12 The proposed financing arrangements will consist of the following:

13 1) A senior and/or subordinated loan facility in an aggregate principal amount
14 expected to be collectively up to \$265,000,000 to be determined based on market conditions (the
15 "Note Facilities").⁶ The proceeds of the Note Facilities will be used by CCGI Holding, on the date
16 of the initial borrowing (the "Closing Date"), to refinance the existing debt of the Applicants, to
17 fund strategic acquisitions and for other permitted purposes, including providing working capital,
18 financing capital expenditures, and other general corporate purposes.

19 2) A secured revolving credit facility in an aggregate principal amount to be
20 determined based on market conditions, currently expected to be up to \$35,000,000 (the
21 "Revolving Facility" and, together with the Note Facilities, the "Financing Facilities"). The
22

23 ⁵ See Notification of MegaPath Inc., DSLnet Communications and CCGI Holding
24 Corporation Regarding the Indirect Change of Control of DSLnet Communications, LLC (filed
25 May 9, 2010). Because no affiliate or subsidiary of CCGI Holding or Megapath are Class A
26 utilities under the Commission's rules, approval of the merger and change control is not required
27 under the Public Utility Holding Company and Affiliated Interest Rules. Any issuance of stock
28 related to the merger also does not require Commission approval, as provided by A.R.S. § 40-
29 301.D.

30 ⁶ The Note Facilities may be subdivided into first, second, and/or other priority liens,
31 depending on market conditions at the time of closing, or may consist of new lending and
32 modification or retention of existing facilities. The total amount of all such facilities is expected
33 to be up to \$265,000,000, as described herein.

1 proceeds of loans under the Revolving Facility will be used by CCGI Holding from time to time
2 for general corporate purposes.

3 The Note Facilities are expected to mature on or after the fourth anniversary of the Closing
4 Date for the Financing Facilities, subject to certain exceptions to be determined.⁷ All obligations
5 of CCGI Holding and its subsidiaries under the Financing Facilities are expected to be guaranteed
6 by CCGI Holding, CCGI, Megapath, Covad Communications Company, DIECA
7 Communications, Inc., and DSLnet, and any current or future affiliates, subject to certain
8 exceptions to be determined.⁸ Further, the Financing Facilities are expected to be secured by
9 substantially all the assets of CCGI Holding, CCGI, Megapath, Covad Communications Company,
10 DIECA Communications, Inc., and DSLnet, and any current or future affiliates, subject to certain
11 exceptions to be determined.²

12 Covad's Arizona assets are already fully encumbered as security for the current CCGI debt.
13 See Decision No. 70445 (August 6, 2008). Any deposits or performance bonds held by Covad or
14 DSLnet will continue to be excluded from the encumbrance. Covad and DSLnet further
15 emphasize that none of the pledging of jurisdictional assets or guarantee obligations described
16 herein will apply to Covad or DSLnet until required regulatory approvals are received.

17 Covad and DSLnet request approval to grant security interests in their assets, as described
18 above, to secure these financing arrangements, and any other authority necessary or required for
19 the above-referenced financing arrangements. Further, Covad's and DSLnet's participation in the
20 financing arrangements will not result in a change in their management or day-to-day operations;
21 nor will it adversely affect their current or proposed operations in Arizona. Accordingly, and to the
22

23
24 ⁷ Based on market conditions, the term of the Financing Facilities may be set to mature on the
25 date that is 364 days after the Closing Date, provided that upon receipt of the requisite regulatory
26 approvals the maturity date for the Financing Facilities will be extended to a term of at least four
27 years.

⁸ As stated above, CCGI Holding, CCGI and Megapath do not hold competitive service
providers' certificates issued by this Commission. Further, Covad Communications Company
does not hold a certificate issued by this Commission.

⁹ The interest rates under the Financing Facilities will be determined based on market conditions
at the time of closing.

1 extent required, Covad and DSLnet request that the Commission approve the participation of
2 Covad and DSLnet in the financial arrangements as described herein.

3 **IV. PUBLIC INTEREST CONSIDERATIONS**

4 The proposed financing arrangements described herein are consistent with the public
5 interest and will not impair the ability of Covad or DSLnet to perform services to the public. The
6 financing arrangements will enable CCGI Holding to capitalize its acquisition of Megapath and
7 DSLnet, thereby allowing Covad and DSLnet to secure the benefits attendant to that acquisition,
8 including operational efficiencies, management expertise, and the ability to bring services to new
9 markets and allow more consumers to benefit from its competitive services more quickly and
10 efficiently. In addition, the financing arrangements will allow CCGI Holding to extend the
11 maturity of existing indebtedness and reduce expenses. Furthermore, the contemplated pledges and
12 guarantees will be entirely transparent to consumers and will not alter the rates, terms and
13 conditions under which Covad or DSLnet provide service in Arizona. The issuance of the notes
14 will not cause a change in the control of Covad or DSLnet.

15 Approval of Covad's and DSLnet's participation in the proposed financing arrangements
16 will serve the public interest in promoting competition among telecommunications carriers by
17 providing CCGI Holding (and therefore Covad and DSLnet) with the opportunity to strengthen its
18 financial position. The Applicants believe that the financial arrangements described herein provide
19 important financial benefits to the companies. As a result, the proposed transaction is expected to
20 continue to yield financial benefits that ultimately inure to the benefit of Covad's and DSLnet's
21 customers. Furthermore, by increasing the breadth and scope of telecommunications services made
22 available through the Applicants' ongoing operations, this financing transaction will ultimately
23 benefit Arizona consumers. In sum, greater access to capital will strengthen the Applicants' ability
24 to bring competitive telecommunications services to consumers in Arizona and is, therefore, in the
25 public interest.

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1 **V. REQUEST FOR EXPEDITED REVIEW**

2 Applicants are seeking to complete the proposed financing as expeditiously as possible in
3 order to minimize customer confusion and realize the benefits of the proposed Transaction.
4 Accordingly, Applicants respectfully request that the Commission expedite the processing of this
5 application and grant the requested authority as soon as possible, to permit Applicants to
6 consummate the Transaction as soon as the CCGI/Megapath merger is completed, which may
7 occur as soon as July 31, 2010. If such expedited approval is not possible, Applicants request that
8 the encumbrances be approved retroactive to July 31, 2010.

9 **VI. CONCLUSION**

10 For the reasons stated above, the Applicants submit that the public interest, convenience
11 and necessity will be furthered by expeditious Commission approval of the Applicants'
12 participation in the financing arrangements described herein.

13 RESPECTFULLY SUBMITTED this 9th day of June 2010.

14 ROSHKA DEWULF & PATTEN, PLC

15
16 By 

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18 One Arizona Center
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21 And

22 Russell M. Blau
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1 Original and 15 copies of the foregoing
2 filed this 9th day of June 2010 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered/mailed
8 this 9th day of June 2010 to:

9 Lyn Farmer, Esq.
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Janice M. Alward, Esq.
16 Chief Counsel, Legal Division
17 Arizona Corporation Commission
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20 Steve Olea
21 Director, Utilities Division
22 Arizona Corporation Commission
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24 Phoenix, Arizona 85007

25
26
27
By Mary Sepolits

VERIFICATIONS

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STATE OF CALIFORNIA
COUNTY OF ORANGE

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§
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SS:

VERIFICATION

I, Brooke Mastin, being duly sworn, deposes and say that I am the Vice President of Finance for DSLnet Communications, LLC (the "Company"); that I am authorized to make this Verification on behalf of the Company; 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.



Brooke Mastin
Vice President of Finance
DSLnet Communications, LLC

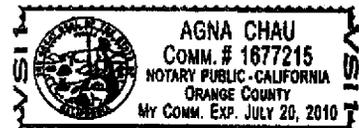
ACKNOWLEDGMENT

State of California
County of Orange

On 5/20/10 before me, Agna Chau personally appeared Brooke Mastin, Vice President of Finance of DSLnet Communications, LLC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

§
§ SS:
§

VERIFICATION

Patrick Bennett, being duly sworn, deposes and says that I am the President and Chief Executive Officer of Covad Communications Company (the "Company," which includes Covad Communications Company and DIECA Communications, Inc.); that I am authorized to make this Verification on behalf of the Company; 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.



Patrick Bennett
President and Chief Executive Officer
Covad Communications Company

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

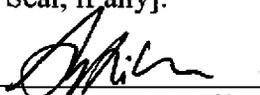
STATE OF CALIFORNIA
COUNTY OF Santa Clara

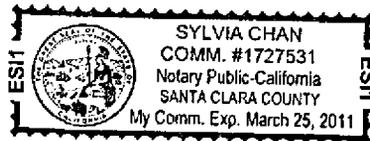
On June 4 2010, before me, ^{Sylvia Chan} ~~the undersigned~~ notary public, personally appeared Patrick Bennett, personally know to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Notary Seal, if any]:


(Signature of Notarial Officer)



Notary Public for the State of California

My commission expires: Mar 25 2011