

ORIGINAL OPEN MEETING



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MEMORANDUM

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Arizona Corporation Commission

DOCKETED

2010 JUL 27 P 2:50

TO: THE COMMISSION

FROM: Utilities Division

JUL 27 2010

DATE: July 27, 2010

DOCKETED BY

RE: IN THE MATTER OF THE APPLICATION OF DIECA COMMUNICATIONS, INC. DBA COVAD COMMUNICATIONS COMPANY AND DSLNET COMMUNICATIONS, LLC TO ENCUMBER THEIR ASSETS (DOCKET NOS. T-03632A-10-0230 AND T-03727A-10-0230)

Introduction

On June 9, 2010, DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") and DSLnet Communications, LLC ("DSLnet") filed an application with the Arizona Corporation Commission ("Commission") requesting approval pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285(A) and any other regulations deemed applicable to encumber their Arizona assets as security in connection with financing arrangements whereby CCGI Holding Corp.¹ ("CCGI Holding") will incur long-term debt obligations, collectively, up to \$265,000,000 and revolving credit of up to \$35,000,000.

Background

DIECA Communications, Inc. d/b/a Covad Communications Company

CCGI Holding Corporation ("CCGI Holding") is a Delaware corporation with offices located at 360 North Crescent Drive, Beverly Hills, CA 90210. CCGI Holding is the parent company of Covad Communications Group, Inc. ("CCGI"), a Delaware corporation that owns Covad Communications Company, a California corporation and DIECA Communications, Inc., a Virginia corporation.

Covad offers DSL, Voice over the Internet Protocol ("VoIP"), T1, Ethernet, Web hosting, managed security, Internet Protocol ("IP") and dial-up, wireless broadband, and bundled voice and data services directly through Covad's network and through Internet Service Providers ("ISPs"), value-added resellers, telecommunications carriers and affinity groups to small and medium-sized businesses and home users. In Arizona, Covad is authorized to provide resold and

¹ CCGI and DSLnet notified the Commission on June 9, 2010 that indirect control of DSLnet would be acquired by CCGI. DSLnet reported less than \$1 million in jurisdictional revenues in 2009. Pursuant to the Commission's Affiliated Interest Rules, R14-2-801 to R14-2-806, requiring utilities with greater than \$1 million in jurisdictional revenues to obtain prior approval for a transfer of control transaction, DSLnet did not qualify as a Class A company and the docket (T-03727A-10-0231) was closed by procedural order dated July 6, 2010.

facilities-based local exchange and interexchange telecommunications services pursuant to Decision No. 61942, dated September 17, 1999.

CCGI Holding is ultimately controlled by Platinum Equity LLC ("Platinum"). Neither CCGI Holding nor Platinum offer 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.

DSLnet Communications, LLC

DSLnet Communications, LLC ("DSLnet") is a Delaware limited liability company with principal offices located at 50 Barnes Park North, Suite 104, Wallingford, Connecticut 06492. In Arizona, DSLnet is authorized to provide resold and facilities based local exchange, interexchange, and exchange access services pursuant to Decision No. 62409, dated April 3, 2000.

The Proposed Transaction

CCGI Holding intends to enter into the proposed financing arrangements to fund strategic acquisitions and for other permitted purposes, including providing working capital, financing capital expenditures, refinancing existing indebtedness, and other general corporate purposes. The borrower in the financing arrangements will be CCGI Holding. The proposed financing arrangements will consist of the following:

- (1) A senior and/or subordinated loan facility in an aggregate principal amount expected to be collectively up to \$265,000,000 to be determined based on market conditions. The proceeds will be used by CCGI Holding to refinance the existing debt of the Applicants, to fund strategic acquisitions and for other permitted purposes, including providing working capital, financing capital expenditures, and other general corporate purposes.
- (2) A secured revolving credit facility in an aggregate principal amount to be determined based on market conditions, currently expected to be up to \$35,000,000. The proceeds of loans under the revolving facility will be used by CCGI Holding from time to time for general corporate purposes.

The applicant states that all obligations of CCGI Holding and its subsidiaries are expected to be guaranteed by CCGI Holding, CCGI, Megapath, Covad Communications Company, DIECA Communications, Inc., and DSLnet, and any current or future affiliates, subject to certain exceptions to be determined. The applicant also states that the obligations are expected to be secured by substantially all the assets of CCGI Holding, CCGI, Megapath, Covad Communications Company, DIECA Communications, Inc., and DSLnet, and any current or future affiliates, subject to certain exceptions to be determined.

Covad's Arizona assets are already fully encumbered as security for the current CCGI debt². Any deposits or performance bonds held by Covad or DSLnet will continue to be excluded from the encumbrance. Covad and DSLnet further emphasize that none of the pledges of jurisdictional assets or guarantee obligations described will apply to Covad or DSLnet until required regulatory approvals are received.

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

Staff's Analysis

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service.

A pledge of the Applicants' Arizona assets should not impair the availability of service to customers since the Applicants provide competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, any authorization for encumbrance should continue to provide the customer protection for prepayments and deposits intended by the conditions in Decision No. 70445.

The Company published notice of its financing application in The Arizona Business Gazette, on June 17, 2010. The affidavit of publication was filed with the Commission's Docket Control on June 30, 2010. The Applicants were found to be in Good Standing and in Compliance by the Consumer Service and Compliance Sections of the Commission.

Staff's Recommendations

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission authorize the Applicants to encumber their Arizona assets as described in their application.

Staff concludes that a pledge of the Applicants' assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from

² Decision No. 70445, dated August 6, 2008.

THE COMMISSION

July 27, 2010

Page 4

alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants. Staff further recommends that one copy of executed security documents be filed with Docket Control, as a compliance item in this docket, within 90 days of the decision in this matter.

for 
Steven M. Olea
Director
Utilities Division

SMO:AFF:lh\MAS

ORIGINATOR: Armando F. Fimbres

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BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES
Chairman

GARY PIERCE
Commissioner

PAUL NEWMAN
Commissioner

SANDRA D. KENNEDY
Commissioner

BOB STUMP
Commissioner

IN THE MATTER OF THE APPLICATION)
OF DIECA COMMUNICATIONS, INC.)
DBA COVAD COMMUNICATIONS)
COMPANY AND DSLNET)
COMMUNICATIONS, LLC TO)
ENCUMBER THEIR ASSETS)
_____)

DOCKET NOS. T-03632A-10-0230
T-03727A-10-0230

DECISION NO. _____

ORDER

Open Meeting
August 12, 2010
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On June 9, 2010, DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") and DSLnet Communications, LLC ("DSLnet") filed an application with the Arizona Corporation Commission ("Commission") requesting approval pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285(A) and any other regulations deemed applicable to encumber their Arizona assets as security in connection with financing arrangements whereby CCGI Holding Corp.¹ ("CCGI Holding") will incur long-term debt obligations collectively up to \$265,000,000 and revolving credit of up to \$35,000,000.

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¹ CCGI and DSLnet notified the Commission on June 9, 2010 that indirect control of DSLnet would be acquired by CCGI. DSLnet reported less than \$1 million in jurisdictional revenues in 2009. Per the Commission's Affiliated Interest Rules, R14-2-801 to R14-2-806, requiring utilities with greater than \$1 million in jurisdictional revenues to obtain prior approval for a transfer of control transaction, DSLnet did not qualified as a Class A company and the docket (T-03727A-10-0231) was closed by procedural order dated July 6, 2010.

1 Background of Applicants

2 2. CCGI Holding Corporation (“CCGI Holding”) is a Delaware corporation with
3 offices located at 360 North Crescent Drive, Beverly Hills, CA 90210. CCGI Holding is the
4 parent company of Covad Communications Group, Inc. (“CCGI”), a Delaware corporation that
5 owns Covad Communications Company, a California corporation and DIECA Communications,
6 Inc., a Virginia corporation.

7 3. Covad offers DSL, Voice over the Internet Protocol (“VoIP”), T1, Ethernet, Web
8 hosting, managed security, Internet Protocol (“IP”) and dial-up, wireless broadband, and bundled
9 voice and data services directly through Covad's network and through Internet Service Providers
10 (“ISPs”), value-added resellers, telecommunications carriers and affinity groups to small and
11 medium-sized businesses and home users. In Arizona, Covad is authorized to provide resold and
12 facilities-based local exchange and interexchange telecommunications services pursuant to
13 Decision No. 61942, dated September 17, 1999.

14 4. CCGI Holding is ultimately controlled by Platinum Equity LLC (“Platinum”).
15 Neither CCGI Holding nor Platinum offer any regulated telecommunications services. Platinum is
16 a privately held Delaware limited liability company with offices located at 360 North Crescent
17 Drive, Beverly Hills, California 90210.

18 5. DSLnet Communications, LLC (“DSLnet”) is a Delaware limited liability company
19 with principal offices located at 50 Barnes Park North, Suite 104, Wallingford, Connecticut 06492.
20 In Arizona, DSLnet is authorized to provide resold and facilities based local exchange,
21 interexchange, and exchange access services pursuant to Decision No. No. 62409, dated April 3,
22 2000.

23 The Proposed Transaction

24 6. CCGI Holding intends to enter into the proposed financing arrangements to fund
25 strategic acquisitions and for other permitted purposes, including providing working capital,
26 financing capital expenditures, refinancing existing indebtedness, and other general corporate
27 purposes. The borrower in the financing arrangements will be CCGI Holding. The proposed
28 financing arrangements will consist of the following:

1 (a) A senior and/or subordinated loan facility in an aggregate principal amount
2 expected to be collectively up to \$265,000,000 to be determined based on
3 market conditions. The proceeds will be used by CCGI Holding to refinance
4 the existing debt of the Applicants, to fund strategic acquisitions and for other
permitted purposes, including providing working capital, financing capital
expenditures, and other general corporate purposes.

5 (b) A secured revolving credit facility in an aggregate principal amount to be
6 determined based on market conditions, currently expected to be up to
7 \$35,000,000. The proceeds of loans under the revolving facility will be used
by CCGI Holding from time to time for general corporate purposes.

8 7. The applicant states that all obligations of CCGI Holding and its subsidiaries are
9 expected to be guaranteed by CCGI Holding, CCGI, Megapath, Covad Communications
10 Company, DIECA Communications, Inc., and DSLnet, and any current or future affiliates,
11 subject to certain exceptions to be determined. The Applicant also states that the obligations are
12 expected to be secured by substantially all the assets of CCGI Holding, CCGI, Megapath, Covad
13 Communications Company, DIECA Communications, Inc., and DSLnet, and any current or
14 future affiliates, subject to certain exceptions to be determined.

15 8. Covad's Arizona assets are already fully encumbered as security for the current
16 CCGI debt². Any deposits or performance bonds held by Covad or DSLnet will continue to be
17 excluded from the encumbrance. Covad and DSLnet further emphasize that none of the pledging
18 of jurisdictional assets or guarantee obligations described will apply to Covad or DSLnet until
19 required regulatory approvals are received.

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

25 Staff's Analysis and Recommendations

26 10. A.R.S. § 40-285 requires public service corporations to obtain Commission
27 authorization to encumber certain utility assets. The statute serves to protect captive customers

28 ² Decision No. 70445, August 6, 2008

1 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
2 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
3 service.

4 11. A pledge of the Applicants' Arizona assets should not impair the availability of
5 service to customers since the Applicants provide competitive services that are available from
6 alternative service providers. Customers may still have exposure to losses to the extent they have
7 prepaid for service or made deposits, therefore, any authorization for encumbrance should
8 continue to provide the customer protection for prepayments and deposits intended by the
9 conditions in Decision No. 70445.

10 12. The Company published notice of its financing application in The Arizona Business
11 Gazette, on June 17, 2010. The affidavit of publication was filed with the Commission's Docket
12 Control on June 30, 2010.

13 13. The Applicants were found to be in Good Standing and in Compliance by the
14 Consumer Service and Compliance Sections of the Commission.

15 14. Based on its analysis of the proposed transaction, Staff concludes that the
16 transaction would not impair the financial status of the Company, would not impair its ability to
17 attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and
18 adequate service. Staff, therefore, recommends that the Commission authorize the Applicants'
19 request to encumber their Arizona assets as described in their application.

20 15. Staff concludes that a pledge of the Applicants' assets would not impair the
21 availability of service to customers since the Applicant provides competitive services that are
22 available from alternative service providers. Customers may still have exposure to losses to the
23 extent they have prepaid for service or made deposits, therefore, Staff recommends approval of
24 the application subject to the condition that all customer deposits and prepayments be excluded
25 from encumbrance and equivalent amounts be retained by the Applicants.

26 16. Staff further recommends that one copy of executed security documents be filed
27 with Docket Control, as a compliance item in this docket, within 90 days of the decision in this
28 matter.

CONCLUSIONS OF LAW

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1. DIECA Communications, Inc. d/b/a Covad Communications Company and DSLnet Communications, LLC are public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

2. The Commission has jurisdiction over DIECA Communications, Inc. d/b/a Covad Communications Company and DSLnet Communications, LLC and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated July 27, 2010, concludes that it is in the public interest to approve the DIECA Communications, Inc. d/b/a Covad Communications Company and DSLnet Communications, LLC application to encumber assets as proposed in financing arrangement discussed herein.

ORDER

IT IS THEREFORE ORDERED that the application of DIECA Communications, Inc. d/b/a Covad Communications Company and DSLnet Communications, LLC requesting approval to encumber assets as described and discussed herein, be and hereby is approved.

IT IS FURTHER ORDERED that DIECA Communications, Inc. d/b/a Covad Communications Company and DSLnet Communications, LLC be authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that approval is subject to the condition that all customer deposits and prepayments be excluded from encumbrance and that equivalent amounts be retained by DIECA Communications, Inc. d/b/a Covad Communications Company and DSLnet Communications, LLC.

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1 IT IS FURTHER ORDERED that one copy of executed security documents be filed with
2 Docket Control, as a compliance item in this docket, within 90 days of the decision in this matter.

3 IT IS FURTHER ORDERED that this Decision become effective immediately.
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5 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto, set my hand and caused the official seal of
this Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2010.

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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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DISSENT: _____

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DISSENT: _____

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SMO:AFF:lhM\MAS

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1 SERVICE LIST FOR: DIECA Communications, Inc. d/b/a Covad Communications Company
and DSLnet Communications, LLC

2 DOCKET NOS. T-03632A-10-0230 and T-03727A-10-0230

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