

ORIGINAL NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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2011 SEP 23 A 11: 47

AZ CORP COMMISSION
DOCKET CONTROL

T-03727A-11-0360

IN THE MATTER OF THE APPLICATION OF)
DSLNET COMMUNICATIONS, LLC TO)
CANCEL ITS CERTIFICATE OF CONVENIENCE)
AND NECESSITY)

DOCKET NO. T-03727A-11-
Arizona Corporation Commission

~~APPROVED~~
DOCKETED

SEP 23 2011

DOCKETED BY

DSLnet Communications, LLC (“DSLnet” or “Applicant”) and (, pursuant to A.A.C. R14-2-1107, requests that the Arizona Corporation Commission (“Commission”) cancel its Certificate of Convenience and Necessity (CC&N).

This request arises from certain intra-corporate transactions to take place among wholly-owned subsidiaries of CCGI Holding Corporation, including DSLnet, specifically:

1. The merger of DSLnet into DIECA Communications, Inc. (“DIECA”), which also holds an Arizona CC&N, and:
2. The merger of DSLnet’s unregulated affiliate MegaPath, Inc. (“MegaPath”), and Covad Communications Company (“CCC”) and DSLnet Communications VA, Inc. (“DSLnet-VA”),¹ (DIECA, DSLnet, DSLnet-VA, CCC and MegaPath, collectively, the “MegaPath Group”) into DIECA with DIECA being the surviving entity (the “Transactions”).² The Transactions are being undertaken merely as an internal *pro forma*

¹ CCC and DSLnet-VA hold authorizations to provide telecommunications services in other jurisdictions, but do not hold such authorizations in Arizona.

² While the Applicant currently expect the transactions described herein to be accomplished through *pro forma* corporate mergers, given the tax and operational consequences of the proposed Transfer transactions, the consolidation may be done through a sale of assets rather than through mergers, or through a combination of both. As discussed below, however, DSLnet is not currently providing jurisdictional intrastate service in Arizona does not hold any jurisdictional assets in Arizona.

Therefore, A.R.S 40-285.A would not apply to any intracorporate asset transfers.

1 under a single “MegaPath” branded company and combining the individual operations of the
2 various affiliated entities.³ At the end of the reorganization, DSLnet will no longer exist and
3 will no longer require an Arizona CC&N.

4 In Arizona, neither DSLnet nor DEICA are Class A utilities. Therefore, the
5 Commission’s Public Utility Holding Companies and Affiliated Interests rules (A.A.C. R14-2-
6 801 et seq.) do not apply to the internal reorganization. Moreover, the Transactions also result
7 in no jurisdictional impact on Arizona customers because DSLnet: (i) does not currently
8 provide intrastate jurisdictional services in Arizona and has no intrastate jurisdictional
9 customers in Arizona and (ii) does not own assets in Arizona that are currently being used to
10 provide intrastate jurisdictional service. Further, because DIECA already holds a CC&N, the
11 CC&N of DSLnet is not being transferred to DIECA. Therefore, A.R.S. 40-281, A.R.S 40-
12 285.A and A.A.C. R14-2-1901 do not apply to the internal corporate reorganization.⁴ As a
13 result, DSLnet requests that its CC&N and tariffs be cancelled upon notification that the
14 Transactions were completed.⁵

15 In support of this filing, Applicants provide the following information:
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23 ³ DIECA expects to undertake a name change to effectuate the “MegaPath” brand name. A separate
24 filing with the Commission will be made with respect to that name change.

25 ⁴ Although DSLnet believes no Commission approval is necessary for the internal reorganization
26 itself, DSLnet requests that the Commission grant any approvals it believes are necessary to engage
27 in the Transactions.

⁵ The Transactions are anticipated to be completed in the fourth quarter 2011 with an effective date
of December 31, 2011 (“Effective Date”), which is the rationale for requesting that the DSLnet
certificate not be cancelled until the Parties have notified the Commission that the Transactions are
completed.

1 **I. DESCRIPTION OF THE TRANSACTIONS.**

2 **A. Parties.**

3 **1. MegaPath, Inc. and DSLnet Communications, LLC.**

4 MegaPath Inc. is a Delaware corporation, and is the parent company of DSLnet
5 Communications, LLC. MegaPath Inc. is a wholly-owned subsidiary of CCGI Holding
6 Corporation. MegaPath is a provider of a variety of managed Internet Protocol (“IP”)
7 services including cable and satellite system broadband Internet access, mobility services
8 such as digital certificates, global remote access, personal firewalls, and remote access
9 virtual private networks (“VPN”), and security services. MegaPath does not currently offer
10 any regulated telecommunications services and therefore does not hold any
11 telecommunications authorizations from the Federal Communications Commission (“FCC”)
12 or any state regulatory authority.

13 DSLnet Communications, LLC is a Delaware limited liability company. DSLnet
14 provides highspeed Internet access services. DSLnet is authorized to provide intrastate
15 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
18 and facilities-based local exchange, interexchange, and exchange access pursuant to
19 Decision No. 62409 issued in Docket No. T-03727A-99-0193 on April 3, 2000. DSLnet is
20 also authorized by the FCC to provide international and domestic interstate
21 telecommunications services as a non-dominant carrier. DSLnet presently does not provide
22 any regulated intrastate service to customers in Arizona.

23 **2. Covad Communications Company and DIECA Communications,**
24 **Inc.**

25 Covad Communications Group, Inc. (“Covad”) is a Delaware corporation that owns
26 Covad Communications Company (“CCC”), a California corporation, and DIECA
27 Communications, Inc. (“DIECA”), a Virginia corporation. Covad, in turn, is a wholly-

1 owned subsidiary of CCGI Holding Corporation. Covad is a leading nationwide provider of
2 integrated voice and data communications. Through its operating companies (CCC and
3 DIECA), the company offers DSL, Voice Over IP, T1, Ethernet, Web hosting, managed
4 security, IP and dial-up, wireless broadband, and bundled voice and data services directly
5 through Covad's network and through Internet Service Providers, value-added resellers,
6 telecommunications carriers and affinity groups to small and medium-sized businesses and
7 home users. Covad broadband services are currently available across the nation in 44 states
8 and 235 Metropolitan Statistical Areas ("MSAs") and can be purchased by more than 57
9 million homes and businesses, which represent over 50 percent of all US homes and
10 businesses.

11 In Arizona, DIECA is authorized to provide resold and facilities-based local
12 exchange and interexchange telecommunications services in Arizona pursuant to Decision
13 61942 issued in Docket No. T-03632A-98-0542 on September 17, 1999. DIECA is also
14 authorized by the FCC to provide international and domestic interstate telecommunications
15 services as a non-dominant carrier. CCC does not currently offer any regulated
16 telecommunications services in Arizona and therefore does not hold any
17 telecommunications authorizations from the Commission.

18 **B. Internal Reorganization.**

19 All of the entities involved in this Application are indirect, wholly-owned subsidiaries
20 of CCGI Holding Corporation, and are already operating under a common management
21 structure. Applicants propose to complete a series of *pro forma* internal restructuring merger
22 transactions through which DIECA will acquire the assets of MegaPath, DSLnet, DSLnet-VA,
23 and CCC, including their respective customer bases and substantially all of their assets used in
24 the provision of telecommunications services.⁶ Upon consummation of the proposed
25

26 ⁶ As discussed above in note 4, the Applicants request authority, to the extent necessary, to
27 undertake the Transactions through either transfers of assets between parties as discussed herein,
mergers of the relevant entities, or both.

1 organizational chart demonstrating the proposed Transactions is attached hereto as Exhibit A.
2 DIECA is well-qualified to provide service to MegaPath, DSLnet and CCC customers.
3 DIECA currently provides local and long distances telecommunications services in 37 states
4 and the District of Columbia. DIECA's operations will continue to be overseen by the same
5 well-qualified management team with substantial telecommunications experience and
6 technical expertise.

7 In Arizona, there will be no impact on customers who receive regulated intrastate
8 services. DSLnet does not currently provide intrastate telecommunications services to its
9 Arizona customers, and provides most of its jurisdictionally interstate services under contract.
10 As such, Applicants do not believe that the Commission's slamming rules are applicable with
11 respect to the Transactions. Nonetheless, the parties have already begun to inform customers
12 of the pending change pursuant to their contractual notification requirements. A sample of the
13 notice that will be sent to customers is attached hereto as Exhibit B.

14 Finally, in Arizona, DSLnet is not transferring any assets used to provide jurisdictional
15 regulated service. Therefore, A.R.S. § 40-285.A does not apply to the transaction.

16 **II. CONTACTS.**

17 Questions or any correspondence, orders, or other materials pertaining to this filing
18 should be directed to the following.

19 Michael W. Patten
20 Roshka DeWulf & Patten
21 One Arizona Center
22 400 East Van Buren Street, Suite 800
23 Phoenix, AZ 85004
24 Tel: 602-256-6100
25 Fax: 602-256-6800
26 Email: mpatten@rdp-law.com

27 Russell M. Blau, Esq.
Jeffrey R. Strenkowski, Esq.
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20006
202-373-6000 (Tel)
202-373-6001 (Fax)
russell.blau@bingham.com

1 jeffrey.strenkowski@bingham.com

2 and

3 Katherine K. Mudge
4 Director, State Affairs & ILEC Relations
5 MegaPath, Inc.
6 2111 W. Braker Ln., Suite 100
7 Austin, Texas 78758
8 512-794-6197 (Tel)
9 512-794-6006 (Fax)
10 katherine.mudge@megapath.com

11 **III. REQUEST FOR WAIVER OF DISCONTINUANCE RULES.**

12 DSLnet respectfully requests that the Commission grant a waiver of AAC R14-2-
13 1107, which governs a telecommunications company's discontinuance of competitive local
14 exchange or interexchange services in the state. DSLnet is not providing jurisdictional
15 services to any customers in Arizona. Moreover, DSLnet does not believe that the
16 discontinuance rule applies to this proceeding because it involves a *pro forma* merger that
17 will not result in telecommunications services being discontinued to any Arizona
18 customers.⁷ Current DSLnet interstate customers in Arizona will receive at least 30 days
19 notice of the transaction. It would be confusing for customers to *also* receive a notice
20 regarding a DSLnet discontinuance of service for the proposed merger with DIECA or for
21 the planned customer transfer notice to include a discussion regarding a discontinuance
22 since no affected customer will be discontinued as a result of the Transactions. *See* Decision
23 No. 70706 (waiving discontinuance rules in transfer of control case).

24 In the event that the Commission does not believe that a waiver of the rule in its
25 entirety is appropriate, Applicants respectfully request that the Commission grant a waiver
26 of AAC R14-2-1107(B) which requires a telecommunications company providing
27 competitive local exchange or interexchange service to publish legal notice of an

⁷ Commission Staff has previously come to this same conclusion. *See* Docket No. T-03761A-04-0710, Addendum to Staff Report (Dec. 27, 2004) (stating "Staff does not believe that the transfer of certain customers qualifies as a discontinuance of service or an abandonment of any portion of its service area. Therefore, Staff does not believe that AAC R14-2-1107 applies").

1 application to discontinue or abandon services in counties affected by the application within
2 20 days of the Application. As stated herein, DSLnet is not providing service to customers
3 under its Arizona CC&N at this time. Moreover, written notice of this transaction and of
4 the customer base transfer will be provided to each DSLnet Arizona customer currently
5 receiving interstate service. Published notice to the entire community is therefore
6 unnecessary. The Commission's waiver of R14-2-1107(B) will serve the public interest and
7 Applicants will provide the affected customers with ample notice of the transaction.

8 **IV. REQUEST TO CANCEL THE CC&N AND ASSOCIATED TARIFFS OF**
9 **DSLNET.**

10 Following the Transactions, DSLnet will no longer exist as a corporate entity.
11 Therefore, DSLnet request that, upon notification that the Transactions have been
12 completed, the Commission cancel the CC&N of DSLnet.

13 **V. CONCLUSION.**

14 WHEREFORE, for the reasons set forth above, Applicants request the Commission
15 grant DSLnet a waiver of A.A.C. R14-2-1107 and cancel the CC&N of DSLnet effective
16 upon notice that the Transactions have been completed.

17 RESPECTFULLY SUBMITTED this 23rd day of September, 2011.

18 ROSHKA DEWULF & PATTEN, PLC

19
20
21 By 
22 Michael W. Patten
23 One Arizona Center
24 400 East Van Buren Street, Suite 800
25 Phoenix, AZ 85004
26 Tel: (602) 256-6100
27 Fax: (602) 256-6800
Email: mpatten@rdp-law.com

Attorneys for Applicant

1 ORIGINAL and thirteen (13) copies
2 of the foregoing filed
3 this 23rd day of September, 2011, with:

3 Docket Control
4 1200 W. Washington Street
5 Phoenix, Arizona 85007

5 Copy of the foregoing hand-delivered
6 this 23rd day of September, 2011, to:

6 Lyn Farmer, Esq.,
7 Chief Administrative Law Judge
8 Hearing Division
9 Arizona Corporation Commission
10 1200 W. Washington Street
11 Phoenix, Arizona 85007

10 Janice Alward, Esq.,
11 Chief Counsel, Legal Division
12 Arizona Corporation Commission
13 1200 W. Washington Street
14 Phoenix, Arizona 85007

13 Steve Olea, Director
14 Utilities Division
15 Arizona Corporation Commission
16 1200 W. Washington Street
17 Phoenix, Arizona 85007

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By Mary Appolito

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STATE OF CALIFORNIA §
 §
COUNTY OF SANTA CLARA §

VERIFICATION

I, Douglas Carlen, being duly sworn, deposes and say that I am the General Counsel and Secretary of MegaPath Inc., DSLnet Communications, LLC, DSLnet Communications VA, Inc., Covad Communications Company and DIECA Communications, Inc. (collectively, the “Companies”); that I am authorized to make this Verification on behalf of the Companies; 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.



Douglas Carlen
General Counsel and Secretary
MegaPath Inc.
DSLnet Communications, LLC
DSLnet Communications VA, Inc.
Covad Communications Company
DIECA Communications, Inc.

Sworn and subscribed before me this 19 day of September, 2011.



Notary Public

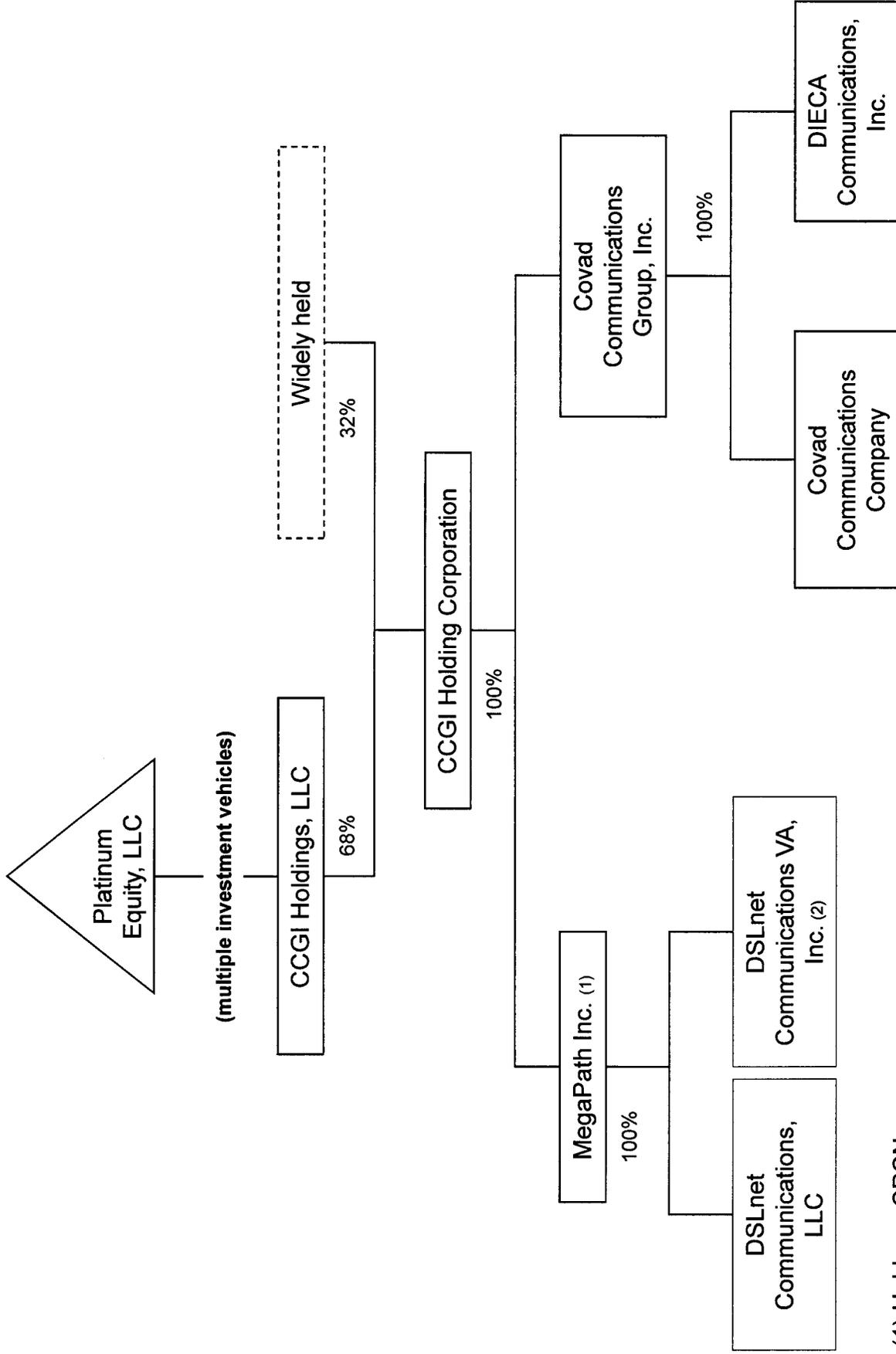
My commission expires: Mar 25 2015.



EXHIBIT

"A"

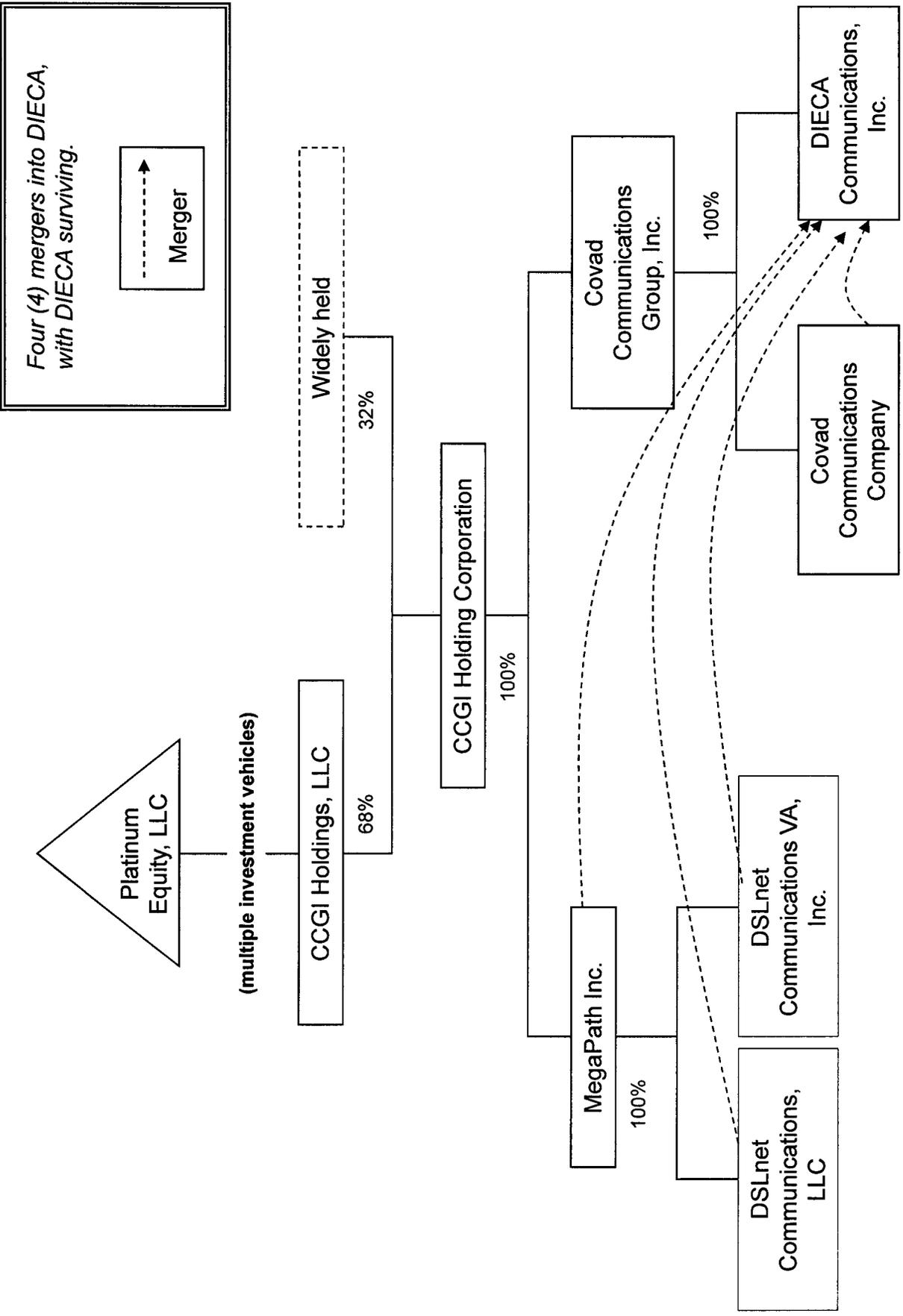
Current Organizational Chart



(1) Holds no CPCNs

(2) Holds a CPCN in Virginia only

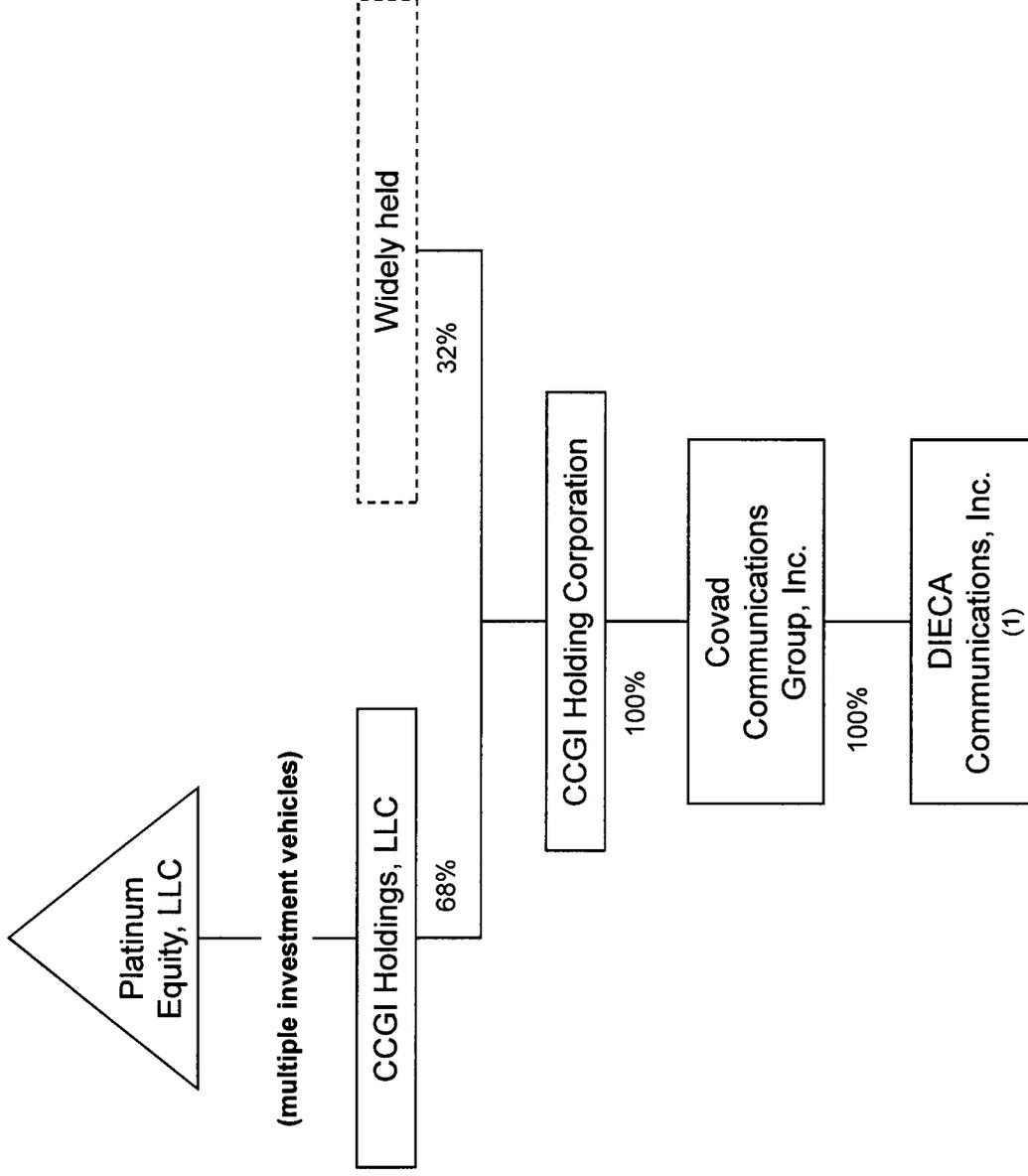
Depiction of Mergers



Four (4) mergers into DIECA, with DIECA surviving.



Post-Transactions Organizational Chart



(1) Will ultimately change its corporate name or dba to the "MegaPath" brand name

EXHIBIT

"B"

Form of Customer Notice

From:

To:

Reply to:

Subject: Notice of MegaPath Reorganization/Consolidation – No change to service, fees, etc.

[Logo]

Account Number:

Dear Customer,

In [month], the MegaPath Group of companies will undertake an internal corporate reorganization and consolidation. After the reorganization your telecommunications services will be provided by DIECA Communications (DIECA), a wholly-owned MegaPath Group subsidiary. DIECA will then change its name to MegaPath. Your services, pricing, terms and conditions of service will not change as a result of this intra-corporate consolidation. There is no charge associated with this change, any preferred carrier freeze you have will remain in place and we will continue to resolve any issues you may have with your account or service using the customer service number: 1-877-611-MEGA.

The companies included in the MegaPath Group of companies are MegaPath, Inc. (MegaPath), DSLnet Communications, LLC (DSLnet), DSLnet Communications VA, Inc. (DSLnet VA), Covad Communications Company (CCC), and DIECA Communications, Inc. (DIECA).

We recognize that you always have a choice in telecommunications carrier and believe that this intra-corporate consolidation will enhance our ability to serve you. We look forward to continuing to provide you with superior service.

[Signature]