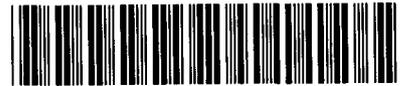


ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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2012 MAR 29 PM 3 36

T-03632A-12-0119

Application of)

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

to Encumber Its Assets)

Docket No. T-03632A-12-_____

(Expedited Approval Requested)

Arizona Corporation Commission

DOCKETED

MAR 29 2012

APPLICATION TO ENCUMBER ASSETS

DOCKETED BY

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I. INTRODUCTION

DIECA Communications, Inc. d/b/a Covad Communications Company (“DIECA” or “Applicant”), by its undersigned counsel and pursuant to A.R.S. § 40-285(A) and any other statutes or regulations deemed applicable, requests approval, to the extent necessary,¹ from the Arizona Corporation Commission (“Commission”) to participate in certain financing arrangements whereby MegaPath Group, Inc., the parent company of DIECA², will incur long-term debt

¹ Applicant did not have more than \$1 million in jurisdictional revenue in Arizona last year and therefore, is not a Class A Utility. The Commission’s Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R12-2-801 to R12-2-806 (the “Affiliated Interest Rules”) do not apply to any guaranty provided by Applicant in connection with MegaPath’s financing arrangements.

² DIECA and its affiliate, DSLnet Communications, LLC (“DSLnet”), filed a letter with the Commission on September 23, 2011 notifying the Commission of the *pro forma* intracompany merger of DIECA and DSLnet effective December 31, 2011, with DIECA as the surviving operating entity. DIECA and DSLnet have also filed to relinquish DSLnet’s competitive carrier certificate with the Commission. See Docket No. T-03727A-11-0360 (Staff recommended approval; order pending). DIECA clarifies that DSLnet’s relinquishment of its certificate is not contingent on the refinancing described herein.

obligations of up to \$245,000,000 (the "Financing Facilities"). Applicant will be a co-borrower³ or guarantor, and will encumber its property through the grant of a security interest in its assets in support of the financing arrangements, as further described in Section III below.⁴ This financing will be used, among other purposes, to refinance existing debt obligations at a lower interest rate and for other general corporate purposes. For the reasons set forth herein, DIECA submits that the proposed financing arrangements are in the public interest. In support of this Petition, DIECA states:

I. DESCRIPTION OF THE PETITIONER.

DIECA Communications, Inc. ("DIECA") is a Virginia corporation with offices located at 6800 Koll Center Parkway, Suite 200, Pleasanton, CA 94566. MegaPath Group, Inc. ("MegaPath") is a Delaware corporation with offices located at 6800 Koll Center Parkway, Suite 200, Pleasanton, CA 94566 and is the parent company of DIECA. MegaPath, through its operating companies, is one of the largest facilities-based providers of managed services in the United States, providing voice, data, and security services to small, medium, and enterprise business customers. The MegaPath network is a nationwide, MPLS-enabled, all-optical IP network that provides high Quality of Service ("QoS") to customers throughout the country. Serving over 235 metro markets throughout the United States, MegaPath, through its operating companies, offers Internet connectivity via DSL, T1, Bonded T1, high-speed Ethernet, and cable with dedicated

³ To the extent that the Applicant serves as a borrower under the financing arrangements, Applicant is exempt from the provisions of A.R.S. § 40-301 et seq. pursuant to the provisions of A.R.S. § 40-301.D. See Decision No. 70445 (Aug. 6, 2008) at Finding of Fact No. 15 (finding that DIECA is exempt under A.R.S. § 40-301.D).

⁴ While the Applicant currently expects the financing transactions described herein to be accomplished through a single transaction, the Applicant alternatively may elect to accomplish the transactions with one or more transactions as is most efficient and advantageous for tax and other reasons. The Applicant requests authority, to the extent necessary, to undertake the financing through one or more transactions as necessary. The final amounts and organization of the Financing Facilities are to be determined based upon market conditions at the time of closing.

circuits. In Arizona, DIECA is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services in Arizona pursuant to Decision 61942 issued in Docket No. T-03632A-98-0542 on September 17, 1999. DIECA is also authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate telecommunications services as a non-dominant carrier.

II. CONTACT INFORMATION.

For the purposes of this Petition, the contacts for DIECA are as follows:

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III. REQUEST FOR APPROVAL TO PARTICIPATE IN CERTAIN FINANCING ARRANGEMENTS.

DIECA and MegaPath intend to enter into the proposed financing arrangements to re-finance existing indebtedness, finance capital expenditures, and other permitted corporate purposes. The borrower in the financing arrangements will be MegaPath⁵. The proposed financing arrangements will consist of long-term debt obligations of up to \$245,000,000, including a revolving credit facility of up to \$35,000,000 which will replace, at a materially lower interest rate, the long-term debt that MegaPath currently possesses. The Financing Facilities are expected to mature on a date up to six years from the date of closing.⁶

All obligations of MegaPath and its subsidiaries under the Financing Facilities are expected to be guaranteed by DIECA, and any current or future affiliates, subject to certain exceptions to be determined. Further, the Financing Facilities are expected to be secured by substantially all the assets of MegaPath and DIECA, and any current or future affiliates, subject to certain exceptions to be determined.⁷ However, none of DIECA's Arizona deposits or pre-payments, to the extent they exist, will be encumbered. DIECA and MegaPath emphasize that none of the pledging of jurisdictional assets or guarantee obligations described herein will apply to DIECA until required regulatory approvals are received.

DIECA requests approval to act as a co-borrower or guarantor of the Financing Facilities, to grant security interests in its assets, as described above, to secure these financing arrange-

⁵ To the extent necessary, DIECA also requests authority to act as a co-borrower under the described financing arrangements.

⁶ Based on market conditions, the term of the Financing Facilities may be set to mature on the date that is 364 days after the closing date, provided that upon receipt of the requisite regulatory approvals the maturity dates for the Financing Facilities will be extended to the expected term of up to six years from the date of closing.

⁷ The interest rates under the Financing Facilities will be determined based on market conditions at the time of closing.

ments, and any other authority necessary or required for the above-referenced financing arrangements. DIECA's participation in the financing arrangements 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 Arizona. The Commission has granted similar authority to DIECA in the past on a number of occasions, most recently in Decision No. 71847 (Aug. 25, 2010). Accordingly, and to the extent required, DIECA requests that the Commission approve the participation of DIECA in the financial arrangements as described herein.

IV. PUBLIC INTEREST CONSIDERATIONS.

The proposed financing arrangements described herein are consistent with the public interest and will not impair the ability of DIECA to perform services to the public. The financing arrangements will enable MegaPath to continue to capitalize its operations, thereby allowing DIECA to continue to provide innovative competitive telecommunications services to customers in Arizona. In addition, the financing arrangements will allow DIECA to extend the maturity of existing indebtedness, lower the interest rate on its indebtedness, and reduce expenses. Furthermore, the contemplated pledges and guarantees will be entirely transparent to consumers and will not alter the rates, terms and conditions under which DIECA provides service in Arizona. The financing arrangements will not cause a change in the control of DIECA or MegaPath.

Approval of DIECA's participation in the proposed financing arrangements will serve the public interest in promoting competition among telecommunications carriers by providing MegaPath (and therefore DIECA) with the opportunity to strengthen its financial position. As a result, the proposed transaction is expected to continue to yield financial benefits that ultimately inure to the benefit of DIECA's customers. Furthermore, by increasing the breadth and scope of services made available through DIECA's ongoing operations, this financing transaction will

ultimately benefit Arizona's consumers. In sum, greater access to capital will strengthen DIE-CA's ability to bring competitive services to consumers in Arizona and is, therefore, in the public interest.

V. CONCLUSION.

For the reasons stated above, DIECA submits that the public interest, convenience and necessity will be furthered by expeditious Commission approval of DIECA's participation in the financing arrangements described herein.

Therefore, DIECA requests that the Commission approve this application by its May 22-23 Open Meeting.

RESPECTFULLY SUBMITTED this 29th day of March 2012.



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

ORIGINAL and thirteen (13) copies
of the foregoing filed
this 29th day of March, 2012, with:

Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 29th day of March, 2012, to:

Lyn Farmer, Esq.,
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Phoenix, Arizona 85007

Janice Alward, Esq.,
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Arizona Corporation Commission
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Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

By Mary Appolito

VERIFICATION

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 Group, Inc. (the "Company," which includes DIECA Communications, Inc. d/b/a Covad Communications 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.



Douglas Carlen
General Counsel and Secretary

Sworn and subscribed before me this 26 day of March, 2012.



Notary Public

My commission expires: Mar 25 2015

