

ORIGINAL



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MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea *EA for SMD*
Director
Utilities Division

DATE: June 22, 2012

RE: IN THE MATTER OF THE APPLICATION OF GC PIVOTAL, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR TELEPHONE SERVICES (DOCKET NO. T-20787A-11-0095)

Attached is the Staff Report for the above referenced Application. The Applicant is applying for approval to provide the following services:

- Private Line Telecommunications Services

Staff is recommending approval of the Application with conditions.

SMO: PJG:kdh

Originator: Pamela J. Genung

Attachment: Original and thirteen copies

Arizona Corporation Commission
DOCKETED
JUN 22 2012

DOCKETED BY	<i>JM</i>
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DOCKET NO. T-20787A-11-0095

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STAFF REPORT
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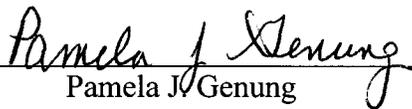
GC PIVOTAL, LLC
DOCKET NO. T-20787A-11-0095

IN THE MATTER OF THE APPLICATION OF GC PIVOTAL, LLC FOR APPROVAL OF A
CERTIFICATE OF CONVENIENCE AND NECESSITY FOR TELEPHONE SERVICES

JUNE 22, 2012

STAFF ACKNOWLEDGMENT

The Staff Report for GC Pivotal, LLC, Docket No. T-20787A-11-0095, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of the Application for a Certificate of Convenience and Necessity to provide resold intrastate private line telecommunications services.



Pamela J. Genung
Public Utilities Analyst V

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1. INTRODUCTION

On February 28, 2011, GC Pivotal, LLC (“GC Pivotal” or “Applicant” or “Company”) filed an Application for a Certificate of Convenience and Necessity (“CC&N”) to provide resold intrastate private line telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive.

On March 29, 2011, Staff issued its First Set of Data Requests to GC Pivotal. On May 11, 2011, GC Pivotal provided Responses to a portion of Staff’s First Set of Data Requests and two replacement pages to its proposed Arizona Tariff No. 1. On August 29, 2011, GC Pivotal provided eleven additional replacement pages to its proposed Tariff. On September 15, 2011, GC Pivotal provided responses to the remaining questions contained in Staff’s First Set of Data Requests.

Staff’s review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff’s analysis also considers whether the Applicant’s services should be classified as competitive and if the Applicant’s initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

GC Pivotal proposes to offer resold intrastate private line telecommunications services to business customers throughout the State of Arizona. GC Pivotal plans to provide these services by reselling the services of CenturyLink, AT&T, Verizon, Global Crossing, Level 3, and other facilities-based telecommunications carriers. GC Pivotal has indicated that it has no plans to install facilities in Arizona.

GC Pivotal was founded on May 20, 2010. GC Pivotal was formed to purchase the assets of two bankrupt companies, Global Capacity Group, Inc. (“GCG”) and Global Capacity Direct, LLC (“GCD”). A copy of the bankruptcy order approving the sale, dated January 26, 2011, was included with GC Pivotal’s Application as Exhibit E. In its Response to Staff Data Request PJG 1.2, GC Pivotal indicated that it will not operate in any state until the bankruptcy sale closes and the Company has obtained authorization to provide telecommunications services.

In its Application, GC Pivotal stated that GCG’s and GCD’s corporate officers and management team responsible for the day-to-day operations are expected to remain essentially the same immediately following the transaction close. The three members of GC Pivotal’s management team average over eighteen years experience each in the telecommunications industry.

At this time, GC Pivotal does not plan to have a customer service center or employees in Arizona. Customer service for Arizona customers will be handled through a toll-free number that connects to GC Pivotal’s customer care center located at 180 North LaSalle St., Suite 2430, Chicago, IL 60601. GC Pivotal expects to retain the technical and customer service staff of GCG and GCD, who will be available to respond to inquires regarding service, installation, and

repair requests. The Company has indicated that trained field technicians who work on an independent contractor basis handle requests for installation and repair. Post transaction, GC Pivotal expects to have an estimated 75 employees.

GC Pivotal indicated, in its responses to Staff's inquiries, that it is not currently providing telecommunications services in any state. GC Pivotal is not currently certificated to provide services in any state. GC Pivotal has an Application pending in the state of Wyoming. Staff contacted the Wyoming Public Service Commission and found that GC Pivotal has an Application pending to provide local exchange telecommunications services and that no complaints have been filed against GC Pivotal. The Application is still under review. Based on all of the above information, Staff believes GC Pivotal possesses the technical capabilities to provide the services it is requesting the authority to provide.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

On February 28, 2011, the Applicant provided unaudited financial statements of GC Pivotal, LLC for the period ending February 14, 2011. These financial statements list total assets of \$1 million; total equity of \$999,895; and a net loss of \$105. The Applicant provided notes related to the financial statements.

The Applicant stated in its proposed Tariff (reference Section 8(D) on Original Page 12 of GC Pivotal's proposed Arizona Tariff No. 1) that it will not collect advances, prepayments, or deposits. The Commission's current performance bond or irrevocable sight draft Letter of Credit ("ISDLC") requirement is \$25,000 for resold private line telecommunications services. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum performance bond or ISDLC amount. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

To that end, Staff recommends that the Applicant procure either a performance bond or an ISDLC equal to \$25,000. The minimum performance bond or ISDLC amount of \$25,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or ISDLC amount should be increased in increments of \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 of the performance bond or ISDLC amount. If the Applicant desires to discontinue service, it must file an Application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an Application to discontinue service. Failure to meet this requirement could result in forfeiture of the Applicant's performance bond or ISDLC.

Staff further recommends that proof of the above mentioned performance bond or ISDLC be docketed within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. Staff also recommends that the Company notify the Commission through a compliance filing when it begins serving customers. The original performance bond or ISDLC should be filed with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

4. ESTABLISHING RATES AND CHARGES

The Applicant would be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

In general, rates for competitive services are not set according to rate of return regulation. GC Pivotal estimated that its net book value or fair value rate base, at the end of the first twelve months of operation would be zero. The rate to be ultimately charged by the Company will be heavily influenced by the market. While Staff considered the fair value rate base information submitted by the Company, it did not accord that information substantial weight in its analysis.

The rates proposed by this filing are for highly competitive services. GC Pivotal will not provide service to residential end users. GC Pivotal intends to provide resold data services to its business customers on a contract basis. Therefore, the vast majority of its customers are expected to purchase data circuits under individual case basis ("ICB") contracts with GC Pivotal. For GC Pivotal customers that choose not to negotiate an ICB contract, those customers will be allowed to purchase services in accordance with the rates established in GC Pivotal's proposed tariff.

Both an initial rate and a maximum rate may be listed for each competitive service offered, GC Pivotal's proposed tariff contains initial rates that equal the maximum rates. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109. Staff has reviewed the proposed rates to be charged by the Applicant. GC Pivotal's proposed rates are higher than the rates

charged by other carriers, such as CenturyLink and Cox Arizona Telecom, L.L.C. operating in the State of Arizona. GC Pivotal's rates are for highly competitive services and as a new provider in the market, the rates ultimately charged by GC Pivotal will be heavily influenced by the market. Therefore, Staff believes that GC Pivotal's proposed rates are just and reasonable.

5. REVIEW OF COMPLAINT INFORMATION

The Applicant has not had an Application for authority to provide service denied in any state. The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions filed against GC Pivotal through March 11, 2011. In addition, Consumer Services reports that GC Pivotal is in Good Standing with the Corporations Division of the Commission. Further, a search of the Federal Communications Commission's ("FCC") website found that there have been no complaints filed against GC Pivotal.

The Applicant indicated that none of its officers, directors, or partners have been convicted of any criminal acts in the past ten (10) years. The Applicant also indicated that none of its officers, directors, or partners have been or are currently involved in any civil or criminal investigations, or any informal complaints.

6. COMPETITIVE SERVICES ANALYSIS FOR PRIVATE LINE SERVICES

6.1 Private Line Services

Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise. Private line service provides a means by which customers may transmit and receive messages and data among various customer locations over facilities operated and provided by the Applicant.

6.2 Description of Requested Services

GC Pivotal proposes to provide private line service. Private line service is a direct circuit or channel specifically dedicated to the use of an end user organization for the purpose of directly connecting two or more sites in a multi-site enterprise.

6.3 A description of the general economic conditions that exist that make the relevant market for the service one that is competitive.

Interexchange carriers ("IXCs") hold a substantial share of the private line service market. Also, a number of ILECs and CLECs have been authorized to provide private line service. The Applicant will be entering the market as an alternative provider of private line service and, as such, the Applicant will have to compete with several existing companies in order to obtain customers.

6.4 The number of alternative providers of the service.

IXCs are providers of private line service in the State of Arizona. In addition, ILECs and CLECs also provide private line service.

6.5 The estimated market share held by each alternative provider of the service.

IXCs and ILECs hold a substantial share of the private line market. CLECs likely have a smaller share of the private line market.

6.6 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

None.

6.7 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

IXCs and ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the CLECs offer substantially similar services.

7. RECOMMENDATIONS

Staff recommends that GC Pivotal's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be approved. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
3. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
4. That the Commission authorizes the Applicant to discount its rates and service charges to the marginal cost of providing the services; and
5. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from GC Pivotal indicating that its fair value rate base, at

the end of the first twelve months of operation would be zero. Staff has reviewed the rates to be charged by the Applicant. While GC Pivotal's proposed rates are higher than the rates charged by other competitive local carriers, Staff believes GC Pivotal's rates are just and reasonable. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application and state that the Applicant does not collect advances, deposits and/or prepayments from its customers.
2. The Applicant shall:
 - a. Procure either a performance bond or an ISDLC equal to \$25,000. The minimum performance bond or ISDLC amount of \$25,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or irrevocable sight draft Letter of Credit amount should be increased in increments of \$12,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$2,500 of the performance bond or ISDLC amount;
 - b. Docket proof of the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers; and
 - c. Notify the Commission through a compliance filing when it begins serving customers.

8. RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the private line service market where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.