

COMMISSIONERS  
BOB STUMP - Chairman  
BRYAN HIERCE  
BRENDA BURNETT  
BOB BURNS  
SUSAN BITTER SMITH

OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSIO..

DATE: JANUARY 14, 2013

DOCKET NO.: T-20787A-11-0095

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

GC PIVOTAL, LLC  
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JANUARY 23, 2013

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 30, 2013 AND JANUARY 31, 2013

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

DOCKETED BY *JS*

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP – Chairman  
4 GARY PIERCE  
5 BRENDA BURNS  
6 BOB BURNS  
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF GC  
9 PIVOTAL, LLC FOR APPROVAL OF A  
10 CERTIFICATE OF CONVENIENCE AND  
11 NECESSITY TO PROVIDE RESOLD  
12 INTRASTATE PRIVATE LINE  
13 TELECOMMUNICATION SERVICES IN  
14 ARIZONA.

DOCKET NO. T-20787A-11-0095

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

11 DATE OF HEARING: August 29, 2012  
12 PLACE OF HEARING: Phoenix, Arizona  
13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey  
14 APPEARANCES: Mr. Michael Hallam, LEWIS AND ROCA, on behalf of  
15 the Applicant;  
16 Mr. Brian E. Smith, Staff Attorney, Legal Division, on  
17 behalf of the Utilities Division of the Arizona  
18 Corporation Commission.

17 **BY THE COMMISSION:**

18 On February 28, 2011, GC Pivotal, LLC (“GC Pivotal” or “Applicant”) filed with the  
19 Arizona Corporation Commission (“Commission”) an application for approval of a Certificate of  
20 Convenience and Necessity (“CC&N”) to provide resold intrastate private line  
21 telecommunication services within the State of Arizona. GC Pivotal’s application also requests a  
22 determination that its proposed services are competitive in Arizona.

23 On March 29, May 11, and September 15, 2011, GC Pivotal docketed responses to the  
24 Commission’s Utilities Division’s (“Staff”) data requests.

25 On August 29, 2011, GC Pivotal filed replacement tariff pages for its application.

26 On June 22, 2012, Staff filed a Staff Report recommending approval of GC Pivotal’s application  
27 subject to certain conditions.

28

1 On July 6, 2012, by Procedural Order, the hearing on GC Pivotal's application was set to begin on  
2 August 29, 2012 and other procedural deadlines were established.

3 On August 9, 2012, the Company filed an affidavit of publication, confirming that notice of the  
4 application and hearing date was published in the Arizona Republic, a newspaper of general circulation in  
5 Arizona, on July 26, 2012.

6 On August 13, 2012, Michael T. Hallam and Alana C. Hake of Lewis and Roca LLP filed a  
7 Notice of Appearance on behalf of GC Pivotal.

8 On August 20, 2012, GC Pivotal docketed an update to its application, stating that it had obtained  
9 a certificate or had registered to provide local and/or interexchange services in all fifty states except for  
10 Alaska, Colorado, Florida, Nebraska, New Jersey, and Tennessee.

11 On August 29, 2012, a full evidentiary hearing was commenced before a duly authorized  
12 Administrative Law Judge of the Commission. Staff and the Company appeared through counsel. No  
13 members of the public were present to give public comments. At the beginning of the hearing, Counsel  
14 for Staff and the Company requested that this matter continue without an evidentiary hearing because GC  
15 Pivotal's application requests authority to provide only resold telecommunication services. The  
16 Company's request was granted and the evidentiary portion of the hearing was dismissed. A discussion  
17 was held regarding a bankruptcy involving the Company. The Company was directed to file a certified  
18 copy of the bankruptcy order and Staff was directed to file a response.

19 On September 10, 2012, GC Pivotal filed a Notice of Filing providing a certified copy of a  
20 bankruptcy order.

21 On October 22, 2012, Staff docketed a response related to the bankruptcy order.

22 Upon the filing of the late-filed exhibit and Staff's response, the matter was taken under  
23 advisement pending submission of a Recommended Opinion and Order to the Commission.

24 \* \* \* \* \*

25 Having considered the entire record herein and being fully advised in the premises, the  
26 Commission finds, concludes, and orders that:

27 **FINDINGS OF FACT**

28 1. CG Pivotal is a foreign limited liability company organized under the laws of

1 Delaware.<sup>1</sup> GC Pivotal has its headquarters in Chicago, Illinois.<sup>2</sup>

2 2. Formed on May 20, 2011, GC Pivotal is wholly owned by Pivotal Global Capacity,  
3 LLC.<sup>3</sup>

4 3. On February 28, 2011, GC Pivotal filed an application seeking authority to provide  
5 resold intrastate private line telecommunication services throughout Arizona. GC Pivotal's  
6 application also seeks a determination that its proposed services are competitive within Arizona.

7 4. Notice of the application was given in accordance with the law.

8 5. Staff recommends approval of GC Pivotal's application for a CC&N to provide its  
9 proposed services in Arizona.

10 6. Staff further recommends that:

11 a. GC Pivotal comply with all Commission Rules, Orders and other requirements  
12 relevant to the provision of intrastate telecommunications services;

13 b. GC Pivotal be required to notify the Commission immediately upon changes  
14 to the Company's name, address or telephone number;

15 c. GC Pivotal cooperate with Commission investigations including, but not  
16 limited to customer complaints;

17 d. The Commission authorize GC Pivotal to discount its rates and service charges  
18 to the marginal cost of providing the services; and

19 e. The rates proposed by this filing are for competitive services. In general, rates  
20 for competitive services are not set according to rate of return regulation. Staff  
21 obtained information from GC Pivotal and has determined that its fair value  
22 rate base at the end of the first twelve months of operation would be zero.  
23 Staff has reviewed the rates to be charged by the Company and believes they  
24 are just and reasonable. The rates to be ultimately charged by the Company  
25 will be heavily influenced by the market. Therefore, while Staff considered  
26 the fair value rate base information submitted by the Company, the fair value  
27 information provided was not given substantial weight in this analysis.

27 <sup>1</sup> Applicant's application, attachment A.

28 <sup>2</sup> Applicant's application at A-2.

<sup>3</sup> Applicant's application at attachment A.

1 7. Staff further recommends that if GC Pivotal fails to comply with the following  
 2 compliance items, that the Commission consider GC Pivotal's CC&N null and void, after due  
 3 process:

- 4 a. GC Pivotal shall docket, with the Commission's Docket Control, a conforming  
 5 tariff for each service within its CC&N within 365 days from the date of a  
 6 Decision in this matter or 30 days prior to providing service, whichever comes  
 7 first. Further, that GC Pivotal's tariffs shall coincide with its application in this  
 8 matter and state that the Company does not collect advances, deposits and/or  
 9 prepayments from its customers.
- 10 b. GC Pivotal shall:
  - 11 i. Procure a performance bond or an ISDLC equal to \$25,000.
  - 12 ii. File the original performance bond or ISDLC with the Commission's  
 13 Business Office and copies of the performance bond or ISDLC with the  
 14 Commission's Docket Control, as a compliance item in this docket,  
 15 within 90 days of the effective date of a Decision in this matter or 10  
 16 days before service to end-user customers is commenced, whichever  
 17 comes earlier. The performance bond or ISDLC must remain in effect  
 18 until further order of the Commission. The Commission may draw on  
 19 the performance bond or ISDLC, on behalf of, and for the sole benefit  
 20 of GC Pivotal's customers, if the Commission finds, in its discretion,  
 21 that the Company is in default of its obligations arising from its CC&N.  
 22 The Commission may use the performance bond or ISDLC funds, as  
 23 appropriate, to protect the Company's customers and the public interest  
 24 and take any and all actions the Commission deems necessary, in its  
 25 discretion, including, but not limited to returning prepayments or  
 26 deposits collected from Intrado's customers; and
  - 27 iii. Notify the Commission through a compliance filing within 30 days of  
 28 the first customer being served.
- 29 c. GC Pivotal shall abide by the Commission adopted rules that address  
 30 Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all  
 31 telecommunications service providers that interconnect into the public  
 32 switched network shall provide funding for the Arizona Universal Service  
 33 Fund. GC Pivotal will make the necessary monthly payments require by  
 34 A.A.C. R14-2-1204(B).

35 **Technical Capability**

36 8. GC Pivotal was formed to acquire the assets of two bankrupt companies, Global  
 37 Capacity Group, Inc. ("GCG") and Global Capacity Direct, LLC ("GCD").<sup>4</sup> GC provided a copy of

38 <sup>4</sup> Staff Report at 1.

1 the bankruptcy order granting the assets of GCG and GCD to GC Pivotal.<sup>5</sup> According to a bankruptcy  
2 order provided by GC Pivotal, the bankruptcy transaction was approved on January 26, 2011.<sup>6</sup>

3 9. GC Pivotal intends to provide its resold private line services utilizing the facilities of  
4 incumbent local exchange carriers (“LECs”) and other facilities-based carriers.<sup>7</sup> GC Pivotal’s  
5 services will provide its resold services to business customers only.<sup>8</sup>

6 10. GC Pivotal states it will rely on the expertise of the corporate officers and  
7 management team acquired through its transaction obtaining GCG and GCD and that the day-to-day  
8 operations will essentially remain the same.<sup>9</sup> GC Pivotal states that it will retain the non-management  
9 employees of GCG and GCD and therefore their technical expertise; all existing customer service  
10 numbers/operations, contacts and procedures of GCG and GCD will remain the same; and that  
11 procedures relating to billing, repair and customer complaints will also remain unchanged.<sup>10</sup> All  
12 customer service issues will be handled through GC Pivotal’s toll- free customer call center located in  
13 Chicago, Illinois.<sup>11</sup>

14 11. Staff states that the Company has indicated that trained field technicians who work as  
15 independent contractors will handle the requirements from GC Pivotal’s customers for installation  
16 and repair and that the Company plans to have an estimated 75 employees.<sup>12</sup>

17 12. Staff reports that GC Pivotal’s management team has an average of over eighteen  
18 years experience in the telecommunications industry.<sup>13</sup>

19 13. At the time Staff issued its Staff Report, GC Pivotal was not providing  
20 telecommunication serves in any state, but had a pending application requesting authority to provide  
21 local exchange telecommunication services in the State of Wyoming. Staff indicated that the  
22 Wyoming Commission confirmed GC Pivotal’s pending application and that the Commission had not  
23

24 <sup>5</sup> Applicant’s Notice of Filing docketed September 10, 2012.

25 <sup>6</sup> Applicant’s Notice of Filing docketed September 10, 2012.

26 <sup>7</sup> Application at A-15.

27 <sup>8</sup> Application at A-15.

28 <sup>9</sup> Application at A-8.

<sup>10</sup> Application at A-8.

<sup>11</sup> Staff Report at 1.

<sup>12</sup> Staff Report at 2.

<sup>13</sup> Staff Report at 1.

1 received any complaints filed against GC Pivotal.<sup>14</sup>

2 14. Based on the above information, Staff concluded that GC Pivotal has the technical  
3 expertise to provide its proposed services in Arizona.

4 **Financial Capabilities**

5 15. Based on its newly formed status, GC Pivotal provided unaudited financial statements  
6 for the period ending February 14, 2011, listing total assets of \$1 million; total equity of \$999,895;  
7 and a net loss of \$105.<sup>15</sup>

8 16. GC Pivotal's proposed tariff and application states that it will not collect advances,  
9 prepayments, or deposits from its customers.<sup>16</sup> Staff recommends that GC Pivotal procure a  
10 performance bond or IS DLC in the amount of \$25,000.<sup>17</sup> Staff also recommends that if GC Pivotal, at  
11 some future date, desires to discontinue the service it is requesting to provide, that GC Pivotal file an  
12 application in compliance A.A.C. R14-2-1107 to do so.<sup>18</sup>

13 **Rates and Charges**

14 17. Staff states that GC Pivotal will be competing with other incumbent local exchange  
15 carriers ("ILECs") and various other competitive local exchange carriers ("CLECs"), and  
16 interexchange carriers ("IXCs") in Arizona in order to obtain new customers.<sup>19</sup>

17 18. Staff states that in general rates for competitive services are not set according to rate of  
18 return regulation. GC Pivotal projects that its net book value or fair value rate base, at the end of the  
19 first twelve months of operation will be zero.<sup>20</sup> Staff states that although it considered the fair value  
20 rate base information provided by the Company, Staff did not give the information substantial weight  
21 in its analysis.<sup>21</sup>

22 19. Staff reviewed GC Pivotal's proposed tariffs and Staff believes that given the  
23 competitive environment GC Pivotal will be operating in, it will not be able to exert any market  
24

25 <sup>14</sup> Staff Report at 2.

26 <sup>15</sup> Application at Attachment D.

27 <sup>16</sup> Application at A-9 and A-15.

28 <sup>17</sup> Staff Report at 2.

<sup>18</sup> Staff Report at 2.

<sup>19</sup> Staff Report at 3.

<sup>20</sup> Application at B-4.

<sup>21</sup> Staff Report at 3.

1 power and the competitive process will result in rates that are just and reasonable. Staff indicated  
 2 that GC Pivotal's proposed rates are higher than the rates charged by other carriers providing similar  
 3 services; the market is highly competitive; GC Pivotal will be a new entrant to the market; and the  
 4 rates will heavily influenced by the market; therefore Staff believes GC Pivotal's proposed rates are  
 5 just and reasonable.

#### 6 **Complaint Information**

7 20. GC Pivotal reported that it has not had an application for authority to provide service  
 8 denied in any state; that none of its officers, directors, or partners have been convicted of any  
 9 criminal acts in the past ten years; and that none of its officers, directors, or partners have been or are  
 10 currently involved in any civil or criminal investigations, or any informal complaints.<sup>22</sup>

11 21. Staff's review of GC Pivotal's application confirmed that no complaints, inquiries, or  
 12 opinions have been filed against GC Pivotal thorough March 11, 2011; that GC Pivotal is in good  
 13 standing with the Commission's Corporations Division; and that no complaints have been filed  
 14 against the Company with the Federal Communications Commission.<sup>23</sup>

#### 15 **Competitive Analysis**

16 22. Staff recommends approval of GC Pivotal's proposed services as competitive within  
 17 Arizona.

18 23. Based on Staff's analysis that GC Pivotal will have to convince customers to purchase  
 19 its services, that GC Pivotal will be unable to adversely affect the competitive environment in which  
 20 it will be operating, and that numerous providers are available to provide the proposed services, Staff  
 21 believes GC Pivotal's proposed services should be classified as competitive.<sup>24</sup>

22 24. Staff's recommendations are reasonable and should be adopted.

### 23 **CONCLUSIONS OF LAW**

24 1. GC Pivotal is a public service corporation within the meaning of Article XV of the  
 25 Arizona Constitution and A.R.S. §40-281 and 40-282.

26 2. The Commission has jurisdiction over GC Pivotal and the subject matter of the

27 <sup>22</sup> Application at A-11 and 12.

28 <sup>23</sup> Staff Report at 4.

<sup>24</sup> Staff Report at 4.

1 amended application.

2 3. Notice of the application was given in accordance with the law.

3 4. A.R.S §§ 40-282 allows a telecommunications company to file an application for a  
4 CC&N to provide competitive telecommunications services.

5 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
6 Statutes, it is in the public interest for GC Pivotal to provide the telecommunications services set  
7 forth in its application.

8 6. GC Pivotal is a fit and proper entity to receive a CC&N authorizing it to provide  
9 competitive resold intrastate private line telecommunications services in Arizona, subject to Staff's  
10 recommendations as set forth herein.

11 7. The telecommunications services that GC Pivotal intends to provide are competitive  
12 within Arizona.

13 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,  
14 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are  
15 not less than the Applicant's total service long-run incremental costs of providing the competitive  
16 services approved herein.

17 9. Staff recommendations are reasonable and should be adopted.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the amended application of GC Pivotal, LLC. for a  
20 Certificate of Convenience and Necessity to provide competitive resold intrastate private line  
21 telecommunication services within the State of Arizona is hereby granted, subject to Staff's  
22 conditions as set forth in Findings of Facts Nos. 6 and 7.

23 IT IS FURTHER ORDERED that GC Pivotal, LLC. shall procure a performance bond or  
24 irrevocable sight draft letter of credit in the amount of \$25,000.

25 IT IS FURTHER ORDERED that GC Pivotal, LLC. shall file the original performance bond  
26 or irrevocable sight draft letter of credit with the Commission's Business Office and thirteen (13)  
27 copies of the performance bond or irrevocable sight draft letter of credit with Docket Control, as a  
28 compliance item in this docket, within 90 days of the effective date of this Decision or 10 days before

1 the first customer is served, whichever comes earlier. The performance bond or irrevocable sight  
2 draft letter of credit shall remain in effect until further order of the Commission. The Commission  
3 may draw on the performance bond or irrevocable sight draft letter of credit on behalf of and for the  
4 sole benefit of GC Pivotal's customers, if the Commission finds, in its discretion, that GC Pivotal is  
5 in default of its obligations arising from its Certificate. The Commission may use the performance  
6 bond or irrevocable sight draft letter of credit, as appropriate, to protect GC Pivotal's customers and  
7 the public interest and take any and all actions the Commission deems necessary, in its discretion,  
8 including, but not limited to returning prepayments or deposits collected from GC Pivotal's  
9 customers.

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IT IS FURTHER ORDRED that if GC Pivotal, LLC fails to comply with Staff's conditions set forth in Finding of Fact 7, the Certificate of Convenience and Necessity granted herein shall be considered null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

\_\_\_\_\_  
JODI JERICH  
EXCUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: GC PIVOTAL, LLC

2 DOCKET NO.: T-20787A-11-0095

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