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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

FEB - 6 2013

BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF GC PIVOTAL, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD INTRASTATE PRIVATE LINE TELECOMMUNICATION SERVICES IN ARIZONA.

DOCKET NO. T-20787A-11-0095

DECISION NO. 73645

OPINION AND ORDER

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

BY THE COMMISSION:

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

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

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

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

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.¹ GC Pivotal has its headquarters in Chicago, Illinois.²

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

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.

28 ¹ Applicant's application, attachment A.

² Applicant's application at A-2.

³ 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).

Technical Capability

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

38 ⁴ Staff Report at 1.

1 the bankruptcy order granting the assets of GCG and GCD to GC Pivotal.⁵ According to a bankruptcy
 2 order provided by GC Pivotal, the bankruptcy transaction was approved on January 26, 2011.⁶

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.⁷ GC Pivotal’s
 5 services will provide its resold services to business customers only.⁸

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.⁹ 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.¹⁰ All
 12 customer service issues will be handled through GC Pivotal’s toll- free customer call center located in
 13 Chicago, Illinois.¹¹

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.¹²

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

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
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24 ⁵ Applicant’s Notice of Filing docketed September 10, 2012.

25 ⁶ Applicant’s Notice of Filing docketed September 10, 2012.

26 ⁷ Application at A-15.

27 ⁸ Application at A-15.

28 ⁹ Application at A-8.

¹⁰ Application at A-8.

¹¹ Staff Report at 1.

¹² Staff Report at 2.

¹³ Staff Report at 1.

1 received any complaints filed against GC Pivotal.¹⁴

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 \$105.¹⁵

8 16. GC Pivotal's proposed tariff and application states that it will not collect advances,
9 prepayments, or deposits from its customers.¹⁶ Staff recommends that GC Pivotal procure a
10 performance bond or ISDLC in the amount of \$25,000.¹⁷ 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.¹⁸

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.¹⁹

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.²⁰ 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.²¹

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
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25 ¹⁴ Staff Report at 2.

¹⁵ Application at Attachment D.

26 ¹⁶ Application at A-9 and A-15.

¹⁷ Staff Report at 2.

27 ¹⁸ Staff Report at 2.

¹⁹ Staff Report at 3.

28 ²⁰ Application at B-4.

²¹ 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.²²

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.²³

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.²⁴

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 ²² Application at A-11 and 12.

²³ Staff Report at 4.

28 ²⁴ 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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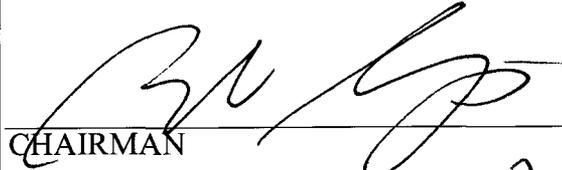
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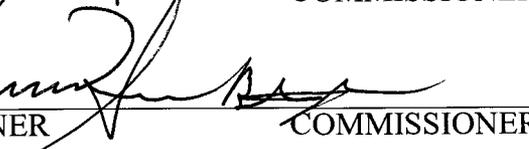
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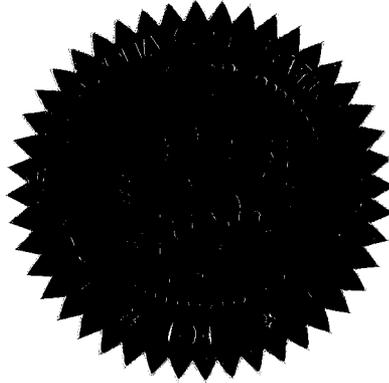
1 IT IS FURTHER ORDRED that if GC Pivotal, LLC fails to comply with Staff's conditions
2 set forth in Finding of Fact 7, the Certificate of Convenience and Necessity granted herein shall be
3 considered null and void after due process.

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

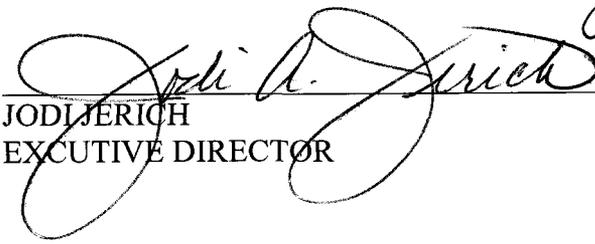
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7  CHAIRMAN  COMMISSIONER

8
9  COMMISSIONER  COMMISSIONER  COMMISSIONER



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12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 6th day of February 2013.

17 
18 JODI JERICH
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____

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1 SERVICE LIST FOR: GC PIVOTAL, LLC

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

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