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Arizona Corporation Commission
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Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL



T-03632A-14-0368

T-20787A-14-0368

- Re:**
- 1. Notification of Transfer of Customers and Assets from MegaPath Corporation to GC Pivotal, LLC d/b/a Global Capacity**
 - 2. Application for Waiver of Slamming Rules, A.A.C. R14-2-1901 et seq.**
 - 3. Application for Cancellation of MegaPath Corporation CC&N and Related Waiver of A.A.C. R14-2-1107**

Dear Mr. Olea:

MegaPath Corporation ("MegaPath") and GC Pivotal, LLC d/b/a Global Capacity ("Global Capacity" and together with MegaPath, "the Parties") hereby notify the Arizona Corporations Commission ("Commission") of their intention to participate in a transaction whereby MegaPath will transfer certain of its network assets and non-telephone voice service customers to Global Capacity (the "Transaction"). In Arizona, this transaction involves all of MegaPath's jurisdictional assets and customers. Therefore, upon close of the Transaction, MegaPath will no longer need its competitive telecommunications certificate of convenience and necessity ("CC&N"). Moreover, in order to provide services to the acquired customers and to enable Global Capacity to have the full set of rights as a facilities-based competitive exchange company, Global Capacity is separately filing an application for facilities-based local exchange and interexchange authority ("Certification Application"), and requests that the Commission process the relief requested in this letter in parallel with the Certification Application.

MegaPath and Global Capacity anticipate and are working towards a closing of the Transaction on or before December 31, 2014, with the changes effective January 1, 2015.

Description of the Parties

A. MegaPath Corporation

MegaPath Corporation ("MegaPath") is a Virginia corporation with principal offices at 6800 Koll Center Parkway, Suite 200, Pleasanton, CA 94566. MegaPath is a leading nationwide provider of integrated voice and data communications. MegaPath offers commercial DSL, Voice over IP ("VoIP"), T1, Ethernet, Web hosting, managed security, IP and dial-up, wireless broadband, and bundled VoIP and data services to small and medium-sized businesses, enterprise businesses through MegaPath's network and through Internet Service Providers, value-added resellers,

telecommunications carriers and affinity groups, as well as commercial DSL, T1, Ethernet, and other data services to wholesale customers who provide their own services using the MegaPath network.

In Arizona, MegaPath is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services pursuant to Commission Decision No. 61942 issued in Docket No. T-03632A-98-0542 on September 17, 1999. MegaPath is also authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate telecommunications services as a non-dominant carrier. Currently, MegaPath provides non-voice data services to approximately 1350 business customers in Arizona.

CCGI Holding Corporation ("CCGI Holding") is a Delaware corporation with offices located at 555 Anton Blvd., Ste. 200, Costa Mesa, CA 92626. CCGI Holding is the parent company of MegaPath. CCGI is privately held by investors, including Platinum Equity LLC ("Platinum"). Neither CCGI Holding nor Platinum offer any regulated telecommunications services. Platinum is a privately held Delaware limited liability company with offices located at 360 North Crescent Drive, Beverly Hills, California 90210. Platinum is a global firm specializing in the merger, acquisition, and operation of companies that provide services and solutions to customers in a broad range of business markets, including information technology, telecommunications, logistics, manufacturing, and entertainment distribution.

B. GC Pivotal, LLC

GC Pivotal, LLC, d/b/a Global Capacity is a Delaware limited liability company with principal offices located at 180 North LaSalle Street, Suite 2430, Chicago, IL 60601. Global Capacity improves the efficiency and reduces the cost of buying access networks globally. Through its One Marketplace, Global Capacity brings together customers and suppliers in an automated platform that provides ubiquitous access network solutions that deliver on its brand promise – Connectivity Made Simple.

In Arizona, Global Capacity is authorized to provide Resold Intrastate Private Line Telecommunication Services pursuant to Commission No. 74152 issued in Docket No. T-20787A on February 6, 2013. Global Capacity is also authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier.

Global Capacity is a portfolio company of Pivotal Group ("Pivotal"), a leading investment corporation headquartered in Phoenix, Arizona, that concentrates on private equity and real estate investments. Pivotal does not offer any regulated telecommunications services.

Description of Transfer of Certain Assets and Customers

MegaPath and Global Capacity entered into a Membership Interest Purchase Agreement dated as of September 5, 2014 (the "Agreement") whereby Global Capacity intends to obtain certain network assets and certain customers served by those assets from MegaPath (the "Transaction"). The assets to be transferred consist of MegaPath's network, composed of equipment in the company's collocation spaces (*e.g.*, DSLAMs, routers, cable, and racks), applications used to provide service, equipment related to the company's points of presence and transport, wholesale and certain direct access customers and their respective contracts, and other associated assets (the "Subject Assets"). MegaPath does not intend to transfer its certifications and other authority to provide

telecommunications services to Global Capacity; nor will it undergo a transfer of control as a result of the Transaction.

Request for Waiver of Slamming Rules

The Parties emphasize that the customers being transferred as part of the Transaction are data broadband service customers and not telephone voice service customers. Moreover, all of MegaPath's Arizona jurisdictional customers will be transferred to Global Capacity. As no voice service customers are being transferred to Global Capacity as a result of the Transaction, and since Global Capacity will not be providing voice service to any customers, the FCC and Commission anti-slamming and/or mass migration rules do not apply to the customer transfer taking place as part of the Transaction. Nonetheless, the Parties intend to notify customers of the assignment of their service and contracts to Global Capacity as provided in their existing service contract, or at least 30 days prior to such transfer. In the interest of assuring seamless and uninterrupted service, all of the assigned customers will continue to receive service from Global Capacity under the same rates, terms and conditions of service as were previously provided by MegaPath. Moreover, there will be no charge assessed on the customers for the transfer. Future changes in the rates, terms and conditions of service to the affected customers will be undertaken pursuant to customer contracts and any applicable federal and state notice and tariff requirements.

Based on the notice to MegaPath's customers and the nature of those customers, MegaPath requests a waiver of A.A.C. R14-2-1901 to -1913 to the extent those provisions are applicable to the customer transfers. Such a waiver is appropriate and consistent with past Commission decisions.

Request for Discontinuance of Service and Cancellation of CC&N

Because all of MegaPath's Arizona customers are being transferred to Global Capacity, MegaPath will no longer require its authority to provide telecommunications in Arizona following the close of the Transaction. Therefore, MegaPath requests that the Commission approve MegaPath's discontinuance of service in Arizona under A.A.C. R14-2-1107 to the extent necessary and cancel MegaPath's CC&N upon notice of consummation of the Transaction. In connection with this discontinuance, MegaPath requests that the Commission waive any further notice requirements that may be required under A.A.C. R14-2-1107.

Public Interest Considerations

The proposed Transaction described herein is consistent with the public interest and will not impair the ability of the Parties to provide services to the public. The Transaction will result in the assignment of certain network assets and the customers served by those assets (*i.e.*, broadband data customers) to a company with a history of providing high quality communications services. Global Capacity's operations are overseen by a well-qualified management team with substantial telecommunications experience and technical expertise.

The Transaction is structured to assure an orderly transition of customers from MegaPath to Global Capacity. In accordance with the terms of their service contracts and the rules and procedures of the Commission and applicable state(s), affected customers will be properly notified of the Transaction and the change in their telecommunications services provider from MegaPath to Global Capacity. In addition, immediately following consummation of the Transaction, Global Capacity

will continue to provide service to customers with no immediate change in their rates or terms and conditions of service. The Transaction will therefore be virtually transparent and seamless to the affected customers in terms of the services they currently receive.

Conclusion

MegaPath requests that the Commission: 1. Waive A.A.C R14-2-1901 et seq. to the extent it applies to the Transaction; 2. Grant MegaPath's request to discontinue service under A.A.C. R14-2-1107 in Arizona upon notice of consummation of the Transaction and waive any further notice requirements thereunder; and 3. Cancel MegaPath's CC&N upon notice of consummation of the Transaction.

Respectfully submitted,



Katherine K. Mudge
Vice President – Regulatory Affairs & Litigation

Original and 13 Copies filed with Docket Control

cc: Jeremy Kissel
Jeffrey Strenkowski