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BEFORE THE ARIZONA CORPORATION COMMISSION

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SUSAN BITTER SMITH  
Chairman  
BOB STUMP  
Commissioner  
BOB BURNS  
Commissioner  
DOUG LITTLE  
Commissioner  
TOM FORESE  
Commissioner

Arizona Corporation Commission  
**DOCKETED**

JAN 22 2015

DOCKETED BY nr

IN THE MATTER OF THE APPLICATION )  
OF MEGAPATH CORPORATION FOR )  
APPROVAL OF TRANSFER OF )  
CUSTOMERS AND ASSETS TO GC )  
PIVOTAL, LLC D/B/A GLOBAL )  
CAPACITY AND FOR CANCELLATION )  
OF CONVENIENCE AND NECESSITY. )

DOCKET NOS. T-20787A-14-0368  
T-03632A-14-0368

DECISION NO. 74912

ORDER

Open Meeting  
January 13 and 14, 2015  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On October 7, 2014, MegaPath Corporation ("MegaPath") and GC Pivotal d/b/a Global Capacity ("GC Pivotal") (together, "Applicants"), filed a joint notification with the Arizona Corporation Commission ("Commission") of the transfer of MegaPath customers and assets in Arizona to GC Pivotal. In addition, the Applicants seek approval to cancel the Certificate of Convenience and Necessity ("CC&N") of MegaPath, a waiver of Arizona Administrative Code ("A.A.C.") R14-2-1901 et seq. (the "Slamming" Rules) and a waiver of any notice requirements under A.A.C. R14-2-1107.

2. In support of this filing, Applicants provide the following information.

Introduction

3. The Applicants submit this filing as a result of their intention to participate in a transaction whereby MegaPath will transfer certain of its network assets and customers to GC Pivotal

1 (the "Transaction"). In Arizona, this Transaction involves all of MegaPath's jurisdictional assets and  
2 customers. Upon closure of the Transaction, MegaPath will no longer need its Arizona CC&N.

3 4. In order that GC Pivotal may provide services to the acquired customers, GC Pivotal  
4 separately filed a CC&N application in Docket No. T-20787A-14-0367 for authority to provide  
5 facilities-based and resold local exchange, facilities based and resold long distance and facilities-based  
6 private line. GC Pivotal requests that the Commission process the relief requested in this Application  
7 in parallel with the CC&N application, and together the Applicants are working towards a closing of  
8 the Transaction on or before December 31, 2014.

9 **Description of the Applicants**

10 **MegaPath Corporation**

11 5. MegaPath is a Virginia corporation with principal offices at 6800 Koll Center Parkway,  
12 Suite 200, Pleasanton, CA 94566. The Applicants state MegaPath is a leading nationwide provider of  
13 integrated voice and data communications. MegaPath offers commercial Digital Subscriber Line  
14 ("DSL"), Voice over Internet Protocol ("VoIP"), T1, Ethernet, Web hosting, manages security, IP and  
15 dial-up, wireless broadband and bundled VoIP and data services to small and medium-sized business,  
16 enterprise businesses through MegaPath's network and through Internet Service Providers, value-  
17 added resellers, telecommunications carriers and affinity groups as well as commercial DSL, T1,  
18 Ethernet and other data services to wholesale customers who provide their own services using the  
19 MegaPath network.

20 6. MegaPath is authorized to provide competitive resold and facilities-based local exchange  
21 and interexchange services in Arizona pursuant to the granting of a CC&N in Decision No. 61942  
22 dated September 17, 1999. MegaPath is also authorized by the Federal Communications Commission  
23 ("FCC") to provide international and domestic interstate services as a non-dominant carrier.  
24 Currently, in Arizona, MegaPath provides Voice over Internet Protocol ("VoIP") service to  
25 approximately 1,350 business customers, approximately 300 direct access customers (small or medium  
26 sized businesses that obtain internet access from MegaPath) and approximately 34 wholesale  
27 customers (carriers or partners that utilize MegaPath's network to provide service to the carrier's or  
28 partner's end users).

1           GC Pivotal, LLC d/b/a Global Capacity

2           7. GC Pivotal is a Delaware limited liability company with principal offices located at 180  
3 North LaSalle Street, Suite 2430, Chicago, IL 60601. GC Pivotal is a portfolio company of Pivotal  
4 Group, an investment corporation headquartered in Phoenix, Arizona, that concentrates on private  
5 equity and real estate investments but does not offer any regulated telecommunications services. The  
6 Applicants state GC Pivotal improves the efficiency and reduces the cost of buying access networks  
7 globally through its One Marketplace, an automated platform that brings together customers and  
8 suppliers and provides ubiquitous access network solutions that deliver on a brand promise of  
9 Connectivity made Simple.

10           8. In Arizona GC Pivotal is authorized to provide competitive resold intrastate private line  
11 service pursuant to Commission Decision No. 73645 dated February 6, 2013. GC Pivotal is also  
12 authorized by the FCC to provide international and domestic interstate services as a non-dominant  
13 carrier.

14           Description of the Transaction

15           9. The Applicants state that MegaPath and GC Pivotal entered into a Membership Interest  
16 Purchase Agreement dated September 5, 2014 whereby GC Pivotal intends to obtain certain network  
17 assets and certain customers served by those assets from MegaPath. The assets to be transferred  
18 consist of MegaPath's network, composed of equipment in Megapath's collocation spaces (e.g. Digital  
19 Subscriber Line Access Multiplexers ["DSLAMS"], routers, cable and racks), software applications  
20 used to provide service, equipment related to MegaPath's points of presence and transport, wholesale  
21 and direct access customers and their respective contracts and other associated assets. MegaPath does  
22 not intend to transfer to GC Pivotal its certifications and other authority to provide  
23 telecommunications services; nor will it undergo a transfer of control as a result of the Transaction.

24           10. The Applicants hold that the proposed Transaction is in the public interest and will not  
25 impair the ability of the Applicants to provide services to the public. The Transaction will be virtually  
26 transparent and seamless to the affected customers and is structured to assure an orderly transition of  
27 customers to a company whose operations are overseen by a well-qualified management team with  
28 substantial telecommunications experience and technical expertise.

1           11. The Applicants further state that in the interests of assuring seamless and uninterrupted  
2 service, all of the assigned customers will continue to receive service from GC Pivotal under the same  
3 rates, terms and conditions of service as were previously provided by MegaPath. Moreover, there will  
4 be no charge assessed on the customers for the transfer. Future changes in the rates, terms and  
5 conditions of service to the affected customers will be undertaken pursuant to customer contracts and  
6 any applicable federal and state notice and tariff requirements.

7 **Request for Waiver of Slamming Rules**

8           12. In the application MegaPath states that as no voice service customers are being  
9 transferred to GC Pivotal and since GC Pivotal will not be providing voice service to any customers,  
10 the FCC and Commission anti-slamming and/or mass migration rules do not apply to the customer  
11 transfer taking place as a result of the Transaction. However, the Applicants also state that in  
12 accordance with the terms of the customer service contracts and the rules and procedures of the  
13 Commission, affected customers will be properly notified of the Transaction and the change in their  
14 telecommunications services provider from MegaPath to GC Pivotal. MegaPath requests, based on  
15 the notice MegaPath will deliver to its customers and the nature of the customers, a waiver of A.A.C.  
16 R14-2-1901 to -1913, the Slamming Rules, to the extent those provisions are applicable to the  
17 customer transfers.

18           13. Staff disagrees that the Commission's Slamming Rules do not apply to the customer  
19 transfer. The Applicants are, by A.A.C. definition, telecommunications companies providing  
20 telecommunications service in the State of Arizona. Staff has reviewed the notice that will be sent to  
21 those affected customers. Because the notice informs customers that the rates, terms and conditions  
22 of service will not change as a result of the proposed transactions and informs customers that they  
23 may subscribe to the telecommunications service provider of their choice, Staff believes the  
24 Commission's Slamming Rules should be waived in this matter.

25 **Request for Waivers of A.A.C. R14-2-1107 (A)(2) and (B)**

26           14. In connection with the request for discontinuance, MegaPath requests the Commission  
27 waive any further notice requirements that may be required under A.A.C. R14-2-1107. There are two  
28 ...

1 notice requirements in A.A.C. R14-2-1107: a customer notice section in A.A.C. R14-2-1107 (A)(2) and  
2 a publication requirement in A.A.C. R14-2-1107 (B).

3 15. As previously mentioned, MegaPath stated customers received a notice of the transfer  
4 from MegaPath in accordance with the rules and procedures of the Commission. Staff has examined  
5 the customer notice and believes it meets the notice requirement of A.A.C. R14-2-1107 (A)(2).  
6 Therefore, the granting of a waiver request for A.A.C. R14-2-1107 (A)(2) would not be appropriate.

7 16. Staff believes that a waiver of A.A.C. R14-2-1107 (B) is appropriate in this circumstance  
8 as service to MegaPath's customers will not be abandoned or discontinued and MegaPath's customers  
9 will continue to receive service under the same rates, terms and conditions.

#### 10 Cancellation of CC&N

11 17. MegaPath states that because all of MegaPath's Arizona customers who purchase services  
12 over which the Commission has jurisdiction are being transferred to GC Pivotal, MegaPath will no  
13 longer require its authority to provide telecommunications in Arizona following the close of the  
14 Transaction. Therefore, MegaPath requests that the Commission approve MegaPath's discontinuance  
15 of service in Arizona under A.A.C. R14-2-1107 to the extent necessary and cancel MegaPath's CC&N  
16 upon notice of consummation of the Transaction.

17 18. MegaPath has ten (10) employees in Arizona; four (4) of whom will move over to GC  
18 Pivotal in this Transaction. The remaining six (6) will continue as MegaPath employees as MegaPath  
19 will continue to exist as an entity providing service to its VoIP customers. MegaPath does not collect  
20 advances, deposits and/or prepayments from customers in Arizona, does not have a performance  
21 bond on file with the Commission and was not required to obtain a Performance Bond or Irrevocable  
22 Sight Letter of Credit.

#### 22 Complaints and Compliance

23 19. The Consumer Services Section of the Utilities Division reports that from January 1, 2011  
24 to October 20, 2014 there have been no complaints or opinions about MegaPath and GC Pivotal.  
25 According to the Corporations Division, both MegaPath and GC Pivotal are in good standing.  
26 MegaPath filed its 2013 Utilities Annual Report. The Compliance Section of the Utilities Division  
27 reports both MegaPath and GC Pivotal are in compliance.

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1 **Staff Recommendations**

2           20. Staff recommends approval of GC Pivotal's Application to acquire the Arizona  
3 customers of MegaPath. Staff also recommends, upon notification from the Applicants that the  
4 proposed transaction has been completed, the CC&N and tariffs of MegaPath be cancelled. Upon  
5 cancellation of its CC&N, MegaPath will no longer be authorized to provide telecommunications  
6 services in Arizona. Therefore, MegaPath will no longer be subject to the requirements of Decision  
7 No. 61942.

8           21. Staff further recommends that approval be conditioned on the following:

- 9                           • The transfer of customers and assets described herein not become effective  
10 until the Commission approves the GC Pivotal application for a Certificate of  
11 Convenience and Necessity in Docket No. T-20787A-14-0367;
- 12                           • The Applicants provide notice to Docket Control within thirty (30) days  
13 following completion of the proposed transactions in this Application;
- 14                           • That MegaPath notify its customers of the proposed transfer through a direct  
15 mailing allowing those customers to continue or discontinue service with  
16 MegaPath, without prejudice. Verification of the notice should be filed with  
17 Docket Control within thirty (30) days of the notice being sent; and
- 18                           • That GC Pivotal file an updated tariff, within thirty (30) days of the effective  
19 date of a Decision in this matter, to incorporate the rates, terms and conditions  
20 of service that were included in the MegaPath's tariff.

21           22. Staff believes the Commission's Slamming and Discontinuance Rules apply to this  
22 transaction. However, based on the above, Staff recommends the following:

- 23                           • A waiver of A.A.C. R14-2-1904, et seq. and any other applicable anti-slamming  
24 regulations that may be inconsistent with the FCC's rules regarding the transfer  
25 of customer bases because the notice informs customers that the rates, terms  
26 and conditions of service will not change as a result of this proposed transfer  
27 and informs customers that they may subscribe to the telecommunications  
28 service provider of their choice;
- A waiver of A.A.C. R14-2-1107(B), which requires that MegaPath publish legal  
notice of the application in all counties affected by the application, not be  
granted and that the Applicant be required to file notice of such publication in  
this docket; and
- A waiver of A.A.C. R14-2-1107(A)(2), which governs a telecommunications  
company's verification that all affected customers have been notified of the

1 proposed discontinuance of service and that all affected customers will have  
2 access to an alternative interexchange service provider.

3 CONCLUSIONS OF LAW

4 1. MegaPath Corporation and GC Pivotal, LLC d/b/a Global Capacity are public service  
5 corporations within the meaning of Article XV of the Arizona Constitution.

6 2. The Commission has jurisdiction over MegaPath Corporation and GC Pivotal, LLC  
7 d/b/a Global Capacity and the subject matter in this filing.

8 3. The Commission, having reviewed the filing and Staff's Memorandum dated  
9 December 17, 2014, concludes that it is in the public interest to grant approval as proposed and  
10 discussed herein.

11 ORDER

12 IT IS THEREFORE ORDERED that the Application of MegaPath Corporation and GC  
13 Pivotal, LLC d/b/a Global Capacity for GC Pivotal, LLC to acquire the customers (including the  
14 customers' contracts) of MegaPath Corporation be and hereby is approved, effective upon  
15 Commission approval of the GC Pivotal, LLC d/b/a Global Capacity application for a Certificate of  
16 Convenience and Necessity in Docket No. T-20787A-14-0367, and as discussed herein.

17 IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1904 et seq. and  
18 any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding  
19 the transfer of customer bases be and hereby is approved.

20 IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1107 (B), which  
21 requires that MegaPath publish legal notice of the application in all counties affected by the  
22 application is approved.

23 IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1107 (A)(2),  
24 governing a telecommunications company's verification that all affected customers have been notified  
25 of the proposed transfer is approved .

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1           IT IS FURTHER ORDERED that within thirty (30) days following the closing of the  
2 proposed transaction, MegaPath Corporation and GC Pivotal, LLC d/b/a Global Capacity inform the  
3 Commission by filing an affidavit with Docket Control that transaction-related activities are  
4 completed.

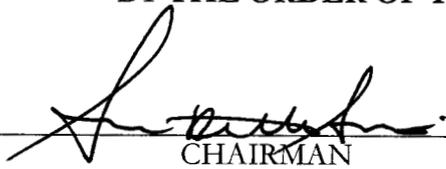
5           IT IS FURTHER ORDERED that within thirty (30) days following the closing of the  
6 proposed transaction, MegaPath Corporation and GC Pivotal, LLC d/b/a Global Capacity inform the  
7 Commission by filing an affidavit with Docket Control that verifies the customer notice has been  
8 delivered to all affected customers.

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1 IT IS FURTHER ORDERED upon notification from MegaPath Corporation and GC  
 2 Pivotal, LLC d/b/a Global Capacity that the proposed transaction has been completed, the CC&N  
 3 and tariff of MegaPath Corporation be cancelled. Upon cancellation of its CC&N, MegaPath  
 4 Corporation will no longer be authorized to provide telecommunications services in Arizona nor be  
 5 subject to the requirements of Decision No. 61942.

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

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 8 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

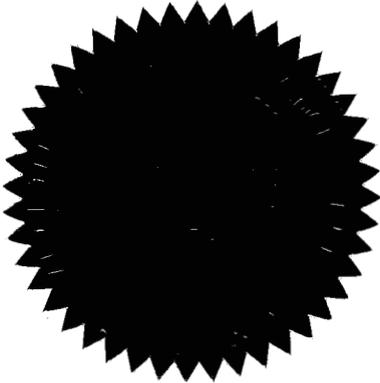
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 10   
 CHAIRMAN

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 COMMISSIONER

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IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 21<sup>st</sup> day of January, 2015.

22   
 JODI JERICH  
 EXECUTIVE DIRECTOR

23 DISSENT: \_\_\_\_\_

24 DISSENT: \_\_\_\_\_

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1 SERVICE LIST FOR: MEGAPATH CORPORATION AND GC PIVOTAL, LLC D/B/A  
GLOBAL CAPACITY

2 DOCKET NO. T-20787A-14-0368 and T-03632A-14-0368

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