

BINGHAM

Russell M. Blau
Jeffrey R. Strenkowski
russell.blau@bingham.com
jeffrey.strenkowski@bingham.com

September 26, 2014

Via eFiling

Burl W. Haar, Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East
Suite 350
St. Paul, MN 55101-2147

**Re: Joint Application of MegaPath Corporation and GC Pivotal, LLC d/b/a
Global Capacity for Approval to Participate in an Asset Transfer Transaction**

Dear Mr. Haar:

On behalf of the Applicants, attached for filing with the Commission is the above-referenced Joint Application.

Please acknowledge receipt and acceptance of this filing. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Russell M. Blau
Jeffrey R. Strenkowski

Counsel for Applicants

Beijing
Boston
Frankfurt
Hartford
Hong Kong
Lexington (GSC)
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

+1.202.373.6000
+1.202.373.6001
bingham.com

**BEFORE THE STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

**Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

_____)
Joint Application of)
)
MegaPath Corporation) Docket No. _____
and)
GC Pivotal, LLC d/b/a Global Capacity)
)
for Approval to Participate in an Asset)
Transfer Transaction)
_____)

APPLICATION

I. INTRODUCTION

MegaPath Corporation (“MegaPath”) and GC Pivotal, LLC d/b/a Global Capacity (“Global Capacity” and together with MegaPath, “Applicants”), by their undersigned counsel, request approval, to the extent necessary, from the Minnesota Public Utilities Commission (“Commission”) to participate in a transaction whereby MegaPath will transfer certain of its network assets and non-telephone service customers to Global Capacity (the “Transaction”). MegaPath and Global Capacity anticipate and are working towards a closing on or before December 31, 2014, with the changes effective January 1, 2015.

In support of this Application, Applicants state:

I. DESCRIPTION OF THE APPLICANTS

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 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 Minnesota, MegaPath is authorized to provide local exchange and interexchange telecommunications services pursuant to Commission authorization issued in Docket No. P5692/NA-98-1259. MegaPath is also authorized by the Federal Communications Commission (“FCC”) to provide international and domestic interstate telecommunications services as a non-dominant carrier.

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 (“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 Minnesota, Global Capacity is authorized to provide local niche services pursuant to Commission authorization issued in Docket No. P-6857/NA-11-159. 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.

II. CONTACT INFORMATION

For the purposes of this Application, contacts for the Applicants are as follows:

Russell M. Blau
Jeffrey R. Strenkowski
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20006
Tel: (202) 373-6000
Fax: (202) 373-6001
Email: russell.blau@bingham.com
jeffrey.strenkowski@bingham.com

With a copy to:

Katherine K. Mudge
Vice President – Regulatory Affairs & Litigation
MegaPath
1835-B Kramer Lane, Suite 100
Austin, Texas 78758
T 512.794.6197
F 512.794.6006
Katherine.mudge@megapath.com

and:

Jeremy M. Kissel
General Counsel
Global Capacity
180 North LaSalle Street
Suite 2430
Chicago, Illinois 60601
T: 312.673.2400
F: 312.673.2422
jkissel@globalcapacity.com

III. REQUEST FOR APPROVAL FOR APPLICANTS TO PARTICIPATE IN A TRANSFER OF 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 this Transaction. As MegaPath will no longer require its authority to provide telecommunications in the state following the close of the Transaction, MegaPath requests that the Commission cancel its authority upon notice of consummation of the Transaction.

The Applicants emphasize that the customers being transferred are data broadband service customers and not telephone voice service customers. 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 Applicants 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. 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.

IV. PUBLIC INTEREST CONSIDERATIONS

The proposed Transaction described herein is consistent with the public interest and will not impair the ability of the Applicants to perform 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.

V. CONCLUSION

For the reasons stated above, the Applicants submit that the public interest, convenience and necessity will be furthered by expeditious Commission approval of this Application.

Respectfully submitted,



Russell M. Blau
Jeffrey R. Strenkowski
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20006
Tel: (202) 373-6000
Fax: (202) 373-6001
Email: russell.blau@bingham.com
jeffrey.strenkowski@bingham.com

Counsel for the Applicants

Date: September 26, 2014

VERIFICATIONS

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

§
§
§

VERIFICATION

I, Steven B. Chisholm, state that I am the Senior Vice President, Business Development, Legal and Regulatory of MegaPath Corporation, that I am authorized to make this Verification on behalf of MegaPath Corporation; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



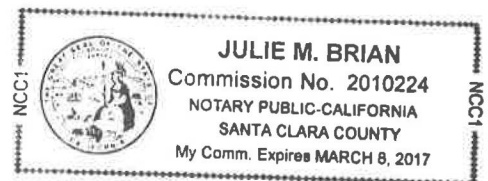
Steven B. Chisholm
Senior Vice President, Business Development,
Legal and Regulatory
MegaPath Corporation

Sworn and subscribed before me this 17th day of September, 2014.



Notary Public

My commission expires March 8, 2017

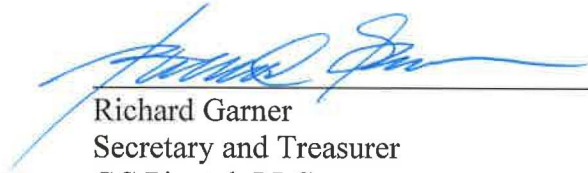


STATE OF ARIZONA
COUNTY OF MARICOPA

§
§
§

VERIFICATION

I, Richard Garner, state that I am Secretary and Treasurer of GC Pivotal, LLC; that I am authorized to make this Verification on behalf of GC Pivotal, LLC; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.


Richard Garner
Secretary and Treasurer
GC Pivotal, LLC

Sworn and subscribed before me this 19 day of September, 2014.


Notary Public

My commission expires May 15, 2018

