

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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SERVICE DATE: December 5, 2014

DOCKET NO. P-5692,6857/PA-14-817

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

The above entitled matter has been considered by the Commission and the following disposition made:

- 1. Authorized GC Pivotal, LLC d/b/a Global Capacity to provide telecommunication services to former MegaPath Corporation customers under its local niche authority upon satisfying the following compliance items:**
 - A. Customers must be notified of their transfer from MegaPath Corporation to GC Pivotal, LLC d/b/a Global Capacity.**
 - B. Applicants must file a notice of closing within 20 days of completion.**
 - C. Global Capacity and MegaPath must both file tariff updates within 30 days of the Transactions' closing to reflect changes in the rates, terms and conditions of services being transferred from MegaPath to Global Capacity.**
- 2. Denied Megapath Corporation's request to relinquish its certificate of authority.**

The Commission agrees with and adopts the recommendations of the Department of Commerce, which are attached and hereby incorporated into the Order. This Order shall become effective immediately.



BY ORDER OF THE COMMISSION

A handwritten signature in cursive script, appearing to read "Burl W. Haar".

Burl W. Haar
Executive Secretary

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November 6, 2014

PUBLIC DOCUMENT

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **PUBLIC Comments of the Minnesota Department of Commerce**
Docket No. P5692,6857/PA-14-817

Dear Dr. Haar:

Attached are the *Public Comments* of the Minnesota Department of Commerce in the following matter:

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

The petition was filed on September 26, 2014 by:

Russell M. Blau
Jeffrey R. Strenkowski
Bingham McCutchen, LLP
2020 K Street NW
Washington, DC 20006-1806

The Department is available to answer any questions that the Commission may have.

Sincerely,

/s/ BRUCE L. LINSCHIED
Financial Analyst

BLL/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**PUBLIC COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE**

DOCKET No. P5692,6857/PA-14-817

I. BACKGROUND

On September 26, 2014, the Minnesota Department of Commerce (Department) received a copy of a joint application (Application) from MegaPath Corporation (MegaPath) and GC Pivotal, LLC d/b/a Global Capacity (Global Capacity, and together with MegaPath, the Applicants) for approval to transfer certain of MegaPath's assets to Global Capacity (the Transaction). Applicants also request that MegaPath's Certificate of Authority be cancelled upon notification by Applicants that the Transaction has been consummated. Applicants are working towards a closing by December 31, 2014.

A. APPLICANTS

Nationwide, MegaPath provides fixed interconnected Voice over Internet Protocol (VoIP) and Internet access services or integrated voice and data communications, including DSL, VoIP, T1, IP and dial-up, wireless broadband, and bundled VoIP and data services to small and medium-sized businesses and enterprise businesses through MegaPath's network and Internet Service Providers. However, in Minnesota, MegaPath provides fixed interconnected VoIP and Internet access services under its authority granted in Docket No. P5692/NA-98-1259 on February 22, 1999.

The Commission authorized Global Capacity to provide local niche services in Docket No. P6857/NA-11-159 on March 25, 2011.

B. THE TRANSACTION

MegaPath and Global Capacity entered into a Membership Interest Purchase Agreement on September 5, 2014 (the Agreement) whereby Global Capacity intends to obtain from MegaPath certain network assets (equipment in collocation spaces, applications used to provide service, and equipment related to the company's points of presence and transport) and certain wholesale and direct access customers and their contracts served with the aforementioned assets (the Transaction).

- MegaPath does not intend to transfer its certifications to provide telecommunications services to Global Capacity, and the Transaction does not represent a transfer of control of MegaPath.
- The customers being transferred are not voice service customers.
- Applicants intend to notify customers of the assignment of their service and contracts to Global Capacity at least 30 days prior to such transfer.
- All of the assigned customers will continue to receive service from Global Capacity under the same rates, terms and conditions of services as were previously provided by MegaPath.

C. *PUBLIC INTEREST*

The Applicants state that the Transaction will be in the public interest because it will result in the assignment of certain network assets and the customers served by those assets to a qualified company overseen by a well-qualified management team. Customers will be notified of the Transaction and the change in their telecommunications services provider from MegaPath to Global Capacity, and there will be no immediate change in their rates, terms and conditions of service.

II. **STATEMENT OF ISSUES**

- A. Does the proposed transfer of assets require Commission approval?
- B. Is the proposed transfer of assets in the public interest?
- C. Have the Applicants complied with Minnesota law requiring prior Commission approval of the transfer of assets?
- D. Is there a requirement to provide Commission notice for the assignment of interconnection agreements?
- E. Does the proposed transfer have any impact on 911 Plans that require regulatory approvals?
- F. Will MegaPath retain its certificates of authority?
- G. Does the Transaction require other regulatory approvals?

III. **LEGAL REFERENCES**

Minn. Stat. §237.23 states that it shall be unlawful for any telephone company, corporation, person, partnership, or association subject to the provisions of this chapter to purchase or acquire the property, capital stock, bonds, securities, or other obligations, or the franchises,

rights, privileges, and immunities of any telephone company doing business within the state without first obtaining the consent of the commission thereto.

Minn. Stat. §237.74, subd. 12 provides that no telecommunications carrier shall construct or operate any line, plant, or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the commission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition, and a new certificate of territorial authority.

The Commission's requirement that it receive notice regarding the assignment of interconnection agreements is documented in the docket, In the Matter of ASC, L.P. and U S WEST Communications, Inc. Under the Federal Telecommunications Act of 1996, Docket No. P421/EM-98-554, Order Rejecting Agreement and Directing Further Filing, June 22, 1998 at page 3.

IV. ANALYSIS

A. COMMISSION ACTION IS NEEDED FOR THIS TRANSACTION

The Commission has established a consistent precedent for requiring approval for any change of ownership affecting Minnesota telephone companies and telecommunications carriers. Commission approval is required for transactions where the ultimate ownership or control of either a telephone company or telecommunications carrier authorized to operate in Minnesota changes, or a telephone company's or a telecommunications carrier's Minnesota operations are affected by a merger or acquisition transaction. Commission approval is not required for corporate reorganizations in which ultimate ownership or control does not change, and the operating company is not impacted by the reorganization.¹ Assets and customers of MegaPath will transfer to Global Capacity, and the Commission should review the Transaction to determine if it is in the public interest.

B. THE PROPOSED TRANSFER OF ASSETS IS IN THE PUBLIC INTEREST

Global Capacity's financial statements indicate that it has the financial, managerial and technical resources to ensure that customers of MegaPath continue to receive reliable telecommunications services. Global Capacity is said to be a qualified company overseen by a well-qualified management team. **[TRADE SECRET DATA HAS BEEN EXCISED]** Customers will be properly notified of the Transaction and the change in their telecommunications services provider from MegaPath to Global Capacity, and there will be no immediate change in their rates, terms and conditions of service.

¹ In the Matter of an Application for Approval of a Corporate Reorganization by Winstar Wireless, Inc., Docket No P5246/PA-00-925, August 25, 2000.

C. THE APPLICANTS HAVE COMPLIED WITH THE REQUIREMENT TO REQUEST PRIOR COMMISSION APPROVAL FOR THE TRANSFER

The Application was filed on September 26, 2014, and the Transaction is intended to close by December 31, 2014. The Agreements provide for prior regulatory approvals,² and no violation of Minn. Stat. §§237.23 or 237.74, subd. 12 is expected to occur.

D. THERE IS NO REQUIREMENT TO ASSIGN INTERCONNECTION AGREEMENTS

The Commission's 60-day notice requirement for the assignment of interconnection agreements³ does not currently apply to the Transaction. MegaPath does not intend to transfer its certifications to provide telecommunications services to Global Capacity.

E. APPROVALS FROM THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY, METROPOLITAN EMERGENCY SERVICES BOARD AND THE COMMISSION DO NOT APPEAR TO BE NEEDED FOR A 911 PLAN

The customers being transferred are not voice service customers so there is no change in 911 requirements for either of the applicants. Since MegaPath will retain its voice service customers, only MegaPath is required to have a 911 plan.

F. THE CERTIFICATE OF AUTHORITY FOR MEGAPATH SHOULD NOT BE CANCELLED UPON NOTIFICATION FROM THE APPLICANTS THAT THE TRANSACTION HAS BEEN COMPLETED

MegaPath states that it will no longer provide telecommunications services in Minnesota, and the Applicants request that the Commission cancel its authority effective upon notification that the Transaction has been completed. However, MegaPath will continue to provide fixed interconnected VoIP services to customers in Minnesota and there has been no preemption by the FCC of the Commission's authority over fixed interconnected VoIP service.⁴ In the absence of a ruling that the jurisdiction of the Commission has been

² October 7, 2014 reply from Bingham McCutchen, Counsel for the Applicants, in response to the Department's October 3, 2014 electronic information request asking for the Agreement. Prior regulatory approval language appears in Article VI, Section 6.1(b).

³ *In the Matter of an ASC, L.P. and US WEST Communications, Inc. Under the Federal Telecommunications Act of 1996*, Docket No. P421/EM-98-554, ORDER REJECTION AGREEMENT AND DIRECTION FURTHER FILING, June 22, 1998, page 8.

⁴ See the Departments comments in Docket Nos. 14-383, 14-507 and 14-513. The Department filed a complaint against Charter Fiberlink CCO, LLC, Charter Fiberlink CC VIII, Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (Charter) in Docket No. 14-383 arguing that Charter violated MN statutes, rules and orders by transferring customers without prior Commission approval. The Department filed comments recommending that the Commission not approve the proposed certificate of authority of Midwest Cable Phone of Minnesota, LLC in Docket No. 14-507 and comments recommending that the Commission not approve the transfer of assets in Docket No. 14-513 until compliance with Commission rules and orders is completed.

preempted, cancellation of MegaPath's certificate of authority is not recommended. The Department will address MegaPath's request to relinquish its authority separate from the current docket.

G. THE FOLLOWING REGULATORY ISSUES HAVE BEEN CONSIDERED REGARDING THE PROPOSED TRANSACTION:

- 1) 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.
- 2) Customers being transferred are not voice service customers. No need to release or return NXX codes to the North American Numbering Plan Administration (NANPA) is anticipated.
- 3) USAC does not need to be notified because MegaPath does not receive Universal Service Fund payments.
- 4) Applicants must file a notice of closing within 20 days of completion.
- 5) The Commission provided for a consistent assessment of TAM, TAP, and 911 surcharges on affected carriers in Minnesota.⁵ MegaPath remits 911 charges, but does not file TAP and TAM reports because it does not believe that its fixed interconnected VoIP services are under the Commission's jurisdiction. The Department will address MegaPath's determination to not submit TAM and TAP fees when it addresses MegaPath's request to relinquish its authority.
- 6) Global Capacity and MegaPath must both file tariff updates within 30 days of the Transactions' closing to reflect changes in the rates, terms and conditions of services being transferred from MegaPath to Global Capacity.

V. COMMISSION ALTERNATIVES

1. Upon satisfying the following compliance items, GC Pivotal, LLC d/b/a Global Capacity is authorized to provide telecommunication services to former Mega Path Corporation customers under its local niche authority; and deny Megapath Corporation's request to relinquish its certificate of authority.
 - A. Customers must be notified of their transfer from MegaPath Corporation to GC Pivotal, LLC d/b/a Global Capacity.
 - B. Applicants must file a notice of closing within 20 days of completion.

⁵ In the Matter of a Commission Investigation of How Carriers Assess 911, TAP, and TAM Surcharges on Various Telecommunications Service, DOCKET NO. P999/CI-07-617, AND In the Matter of a Commission Investigation of the Applicability of 911, TAP, and TAM Surcharges to VoIP Services, Docket No. P999/CI-09-157, ORDER ASSESSING SURCHARGES TO CERTAIN SERVICES, AUTHORIZING PROCEDURE TO REQUEST WAIVERS AND EXTENSIONS, AND OPENING NEW DOCKET REGARDING VoIP SERVICES, February 20, 2009.

- C. Global Capacity and MegaPath must both file tariff updates within 30 days of the Transactions' closing to reflect changes in the rates, terms and conditions of services being transferred from MegaPath to Global Capacity.
2. Approve the Application with modifications.
 3. Reject the Application.

VI. RECOMMENDATION

The Department recommends Alternative 1.

Upon satisfying the following compliance items, GC Pivotal, LLC d/b/a Global Capacity is authorized to provide telecommunication services to former Mega Path Corporation customers under its local niche authority; and deny Megapath Corporation's request to relinquish its certificate of authority.

- A. Customers must be notified of their transfer from MegaPath Corporation to GC Pivotal, LLC d/b/a Global Capacity.
- B. Applicants must file a notice of closing within 20 days of completion.
- C. Global Capacity and MegaPath must both file tariff updates within 30 days of the Transactions' closing to reflect changes in the rates, terms and conditions of services being transferred from MegaPath to Global Capacity.

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