



85 7TH PLACE EAST, SUITE 500
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1500 FAX: 651.539.1547
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March 16, 2015

PUBLIC DOCUMENT

Daniel P. Wolf
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 Nos. P5692/PA-15-238, P5692/RL-15-82, and P5692,6857/PA-14-817

Dear Mr. Wolf:

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 MegaPath Cloud Company for Approval to Assign a Certificate of Authority and to Transfer Certain Assets

The petition was filed on March 11, 2015 (P5692/PA-15-238) by:

Russell M. Blau
Jeffrey R. Strenkowski
Morgan, Lewis & Bockius, 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 COMMERCEDOCKET NOS. P5692/PA-15-238, P5692/RL-15-82,
and P5692,6857/PA-14-817**I. BACKGROUND**

On September 26, 2014 in Docket No. P5692,6857/PA-14-817 (14-817), the Minnesota Department of Commerce (Department) received a copy of a joint application from MegaPath Corporation (MegaPath) and GC Pivotal, LLC d/b/a Global Capacity (Global Capacity) for approval to transfer certain of MegaPath's assets to Global Capacity. The applicants also requested that MegaPath's Certificate of Authority be cancelled upon notification by Applicants that the Transaction has been consummated.

On November 6, 2014 in Docket No. 14-817, the Department filed its comments recommending approval of the transfer of certain non-regulated broadband access assets from MegaPath to Global Capacity and denial of MegaPath's request to relinquish its certificate of authority. The Department explained that MegaPath intended to continue providing fixed interconnected VoIP services to customers in Minnesota and argued that since there has been no preemption by the FCC of the Commission's authority over fixed interconnected VoIP service,¹ cancellation of MegaPath's certificate of authority was not recommended. The Department stated that it would address MegaPath's request to relinquish its authority separate from the request to transfer assets to Global Capacity in Docket No. 14-817.

On December 5, 2014, the Commission issued its order approving the asset transfer from MegaPath to Global Capacity and denying MegaPath's request to relinquish its certificate of authority. On January 9, 2015, Global Capacity notified the Commission that the Transaction was completed on December 31, 2014 and reasserted its request that the Commission cancel MegaPath's authorizations to provide local exchange and interexchange telecommunications services and rescind any and all tariffs on file with the Commission.

¹ See the Department's comments in Docket No. 14-383, Charger Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (Charter) in Docket No. 14-383 arguing that Charter violated Minnesota statutes, rules and orders by transferring customers without prior Commission approval.

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On January 20, 2015, the Department opened Docket No. P5692/RL-15-82 (15-82) to address Global Capacity's request to relinquish MegaPath's certificate of authority. MegaPath provides fixed interconnected VoIP services under its authority granted in Docket No. P5692/NA-98-1259 on February 22, 1998,² and there has been no preemption by the FCC of the Commission's authority over fixed interconnected VoIP service.³ Pending the outcome of the Department's complaint against Charter in Docket No. 6716,5615/C-14-383, the Department believed that no decision regarding MegaPath's certificate of authority should be made.

On March 6, 2015, Morgan, Lewis & Bockius, LLP, counsel for MegaPath, discussed strategies to resolve the Department's objection to relinquishing MegaPath's certificate of authority pending resolution of its Charter complaint in light of MegaPath's plans to transfer its non-regulated assets to GTT Communications, Inc. and the transfer of MegaPath's regulated assets to MegaPath Cloud Company d/b/a VoIPCo.

On March 11, 2015 in Docket No. P5692/PA-15-238 (15-238), the Department received a copy of a joint application (Application) from MegaPath and MegaPath Cloud Company d/b/a VoIPCo (VoIPCo, and together with MegaPath, the Applicants) for approval to transfer certain of MegaPath's assets including its certificate of authority to VoIPCo (the Transaction).

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 under its authority granted in Docket No. P5692/NA-98-1259 on February 22, 1999.

CCGI Holding Corporation (CCGI Holding) is the parent company of MegaPath privately held by investors, including Platinum Equity LLC (Platinum). 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.

MegaPath Cloud Company (VoIPCo) is a newly created subsidiary of MegaPath. Following the Transaction, VoIPCo will continue to be owned by CCGI Holding and will continue to be ultimately controlled by Platinum.

² Comments of the Minnesota Department of Commerce, Docket No. P5692,6857/PA-14-817, November 6, 2014, p. 1.

³ 2 *Id.* p. 4.

B. THE TRANSACTION

In February 2015, MegaPath entered into a transaction with GTT Communications, Inc. (GTT) whereby GTT intends to acquire MegaPath's non-regulated managed services business. To effectuate the Transaction, MegaPath intends to transfer its existing VoIP services business, VoIP customers (all of which are business and enterprise customers), and Minnesota certificate of authority to VoIPCo through an intra-company transfer. Once accomplished, MegaPath, as an unregulated entity providing non-regulated services, will be acquired by GTT. VoIPCo will step into MegaPath's shoes and will continue to provide VoIP services to customers in Minnesota. The Applicants intend to notify customers of the assignment of their service to VoIPCo pursuant to the terms of their service contracts as business and enterprise customers. The rates, terms and conditions of service will remain unchanged, and service is expected to continue uninterrupted (see attached Trade Secret Pre- and Post-Transaction Organizational Charts).

C. PUBLIC INTEREST

The Applicants state that the Transaction will be in the public interest because VoIPCo as a subsidiary of MegaPath will continue to have the administrative and financial capacity to provide reliable services to affected customers. Through the assignment of MegaPath's certificate of authority to VoIP, VoIPCo will become the regulated service provider in Minnesota and will be subject to the same regulatory requirements that currently apply to MegaPath. VoIPCo will be responsible for collecting and remitting TAP and TAM fees as applicable under Minnesota law and Commission rules. MegaPath does not have any interconnection agreements with any incumbent local exchange carriers in Minnesota that it intends to transfer to VoIPCo, nor does it directly access telephone numbering resources. The Transaction is expected to assure an orderly transition of business and VoIP customers from MegaPath to VoIPCo.

II. STATEMENT OF ISSUES

- A. Does the Transaction require Commission approval?
- B. Is the Transaction in the public interest?
- C. Have the Applicants complied with Minnesota law requiring prior Commission approval of the Transaction?
- D. Is there a requirement to provide Commission notice for the assignment of interconnection agreements in connection with the Transaction?
- E. Does the Transaction have any impact on 911 Plans that require regulatory approvals?

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- F. Will MegaPath retain its certificate 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, sub. 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.

IV. ANALYSIS

A. COMMISSION ACTION IS NEEDED FOR THE 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.⁴ The non-regulated assets of MegaPath will be transferred to GTT Communications, Inc. for which Commission approval is not required. No change of ultimate control of MegaPath's regulated assets occurs, but the company serving MegaPath's customers changes. The regulated assets including the certificate of authority and customers of MegaPath will transfer to VoIPCo, and the Commission should review the Transaction to determine if it is in the public interest.

⁴ *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.

B. THE TRANSACTION IS IN THE PUBLIC INTEREST

VoIPCo will have the managerial, technical and financial resources to ensure that former MegaPath customers continue to receive reliable services.

- VoIPCo will be comprised of the same personnel that currently manage MegaPath.
- Applicants state that VoIPCo will assume the regulatory obligations in Minnesota and continue to provide services to VoIP customers in the state.
 - VoIPCo will become the regulated service provider in Minnesota and will be subject to the same regulatory requirements that currently apply to MegaPath.
 - VoIPCo states that it will adopt MegaPath's tariffs on file in Minnesota, as well as its 911 plan, although MegaPath has neither (see Section IV.E and VI).
 - VoIPCo will likewise be responsible for collecting and remitting TAP and TAM fees as applicable under Minnesota law and Commission rules.
 - The Applicants intend to notify customers of the assignment of their service to VoIPCo pursuant to the terms of their service contracts as the customers being transferred are business and enterprise customers and not residential customers.
- The financial statements of MegaPath's VoIP business segment were presented as support for VoIPCo's financial fitness to continue to provide VoIP services.
 - [TRADE SECRET DATA HAS BEEN EXCISED]

The Transaction should be in the public interest. Former MegaPath fixed interconnected VoIP customers will be transferred to VoIPCo, an affiliate of MegaPath under the same management, ownership and control. VoIPCo projects successful results and a sound financial condition. VoIPCo will assume the same regulatory requirements as MegaPath.

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C. THE APPLICANTS ARE ATTEMPTING TO COMPLY WITH THE REQUIREMENT TO REQUEST PRIOR COMMISSION APPROVAL FOR THE TRANSACTION

The Application was filed on March 11, 2014, and the Transaction is intended to close by March 31, 2015. The Applicants request expedited regulatory action. The sale of non-regulatory assets to GTT is set for the end of March, and the transaction with GTT will not close unless the Commission's approval of transfer of MegaPath's regulated assets to VoIPCo has been approved. Given the tight timeline, no violation of Minn. Stat. §§237.23 or 237.74, subd. 12 is expected to occur if both the Department and Commission are able to act quickly.

D. THERE IS NO REQUIREMENT TO ASSIGN INTERCONNECTION AGREEMENTS

The Commission's 60-day notice requirement for the assignment of interconnection agreements⁵ does not currently apply to the Transaction. MegaPath does not currently have any interconnection agreements (ICAs) with any incumbent local exchange carriers in Minnesota that it intends to transfer to VoIPCo as the underlying services are provided through wholesale and other non-ICA contractual arrangements, primarily with competitive carriers.

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

Applicants generally must inform the Minnesota Department of Public Safety (DPS) and the Metropolitan Emergency Services Board (MESB) to coordinate any required changes to affected 911 Service Plans if the proposed transfers will result in a network change or any change to the county 911 Service Plan or Public Safety Answering Point (PSAP) Agreements. Applicants initially thought that VoIPCo will adopt MegaPath's 911 Plan, but MegaPath does not have a 911 Plan in Minnesota. MegaPath and VoIPCo have confirmed that VoIPCo will file a 911 plan. The DPS and MESB will be placed on the service list for this docket to keep them informed of the activity in this docket.

F. THE CERTIFICATE OF AUTHORITY FOR MEGAPATH SHOULD BE CANCELLED UPON NOTIFICATION FROM THE APPLICANTS THAT THE TRANSACTION HAS BEEN COMPLETED, AND DOCKET NOS. 14-817 AND 15-82 CAN THEN BE CLOSED

Upon approval of the Transaction, MegaPath's regulated assets will transfer to VoIPCo, and it will no longer have any need for its certificate of authority. MegaPath's certificate of authority should be cancelled, its requests to relinquish its certificate of authority in Docket Nos. 14-817 and 15-82 will have been satisfied, and both dockets can be closed.

⁵ *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.

- Customers were notified of their transfer to Global Capacity in Docket No. 14-817 at least 30 days prior to the transfer, and although rates did not change with the transfer, broadband access services are not tariffed. A closing notice was filed on January 9, 2015.
- The second request to relinquish MegaPath's certificate of authority included in MegaPath's January 9, 2015 compliance filing in Docket No. 14-817 is addressed in this docket, and Docket No. 15-82 should be closed based on the filing in Docket No. 15-238.

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 VoIPCo as provided in their existing service contracts.
- 2) MegaPath does not directly access telephone numbering resources and does not intend to transfer any such resources to VoIPCo. 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.⁶ Upon approval of the Transaction, VoIPCo will be responsible for collecting and remitting 911, TAP and TAM fees.
- 6) VoIPCo must file a tariff for its fixed interconnected VoIP services within 30 days of the Transaction's closing to reflect changes in the rates, terms and conditions of services being transferred from MegaPath to VoIPCo.

V. COMMISSION ALTERNATIVES

1. Approve the transfer of MegaPath's regulated assets including its certificate of authority to MegaPath Cloud Company, LLC (VoIPCo), and close Docket Nos. 14-817 and 15-82. VoIPCo must satisfy the following compliance items:
 - A. Customers must be notified of their transfer from MegaPath Corporation to VoIPCo.
 - B. Applicants must file a notice of closing within 20 days of completion.

⁶ 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.

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- C. VoIPCo must file a tariff 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.
 - D. VoIPCo must obtain an approved 911 plan.
- 2. Approve the Application with modifications.
 - 3. Reject the Application.

VI. RECOMMENDATION

The Department recommends Alternative 1:

Approve the transfer of MegaPath's regulated assets including its certificate of authority to MegaPath Cloud Company, LLC (VoIPCo), and close Docket Nos. 14-817 and 15-82. VoIPCo must satisfy the following compliance items:

- A. Customers must be notified of their transfer from MegaPath Corporation to VoIPCo.
- B. Applicants must file a notice of closing within 20 days of completion.
- C. VoIPCo must file a tariff 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.
- D. VoIPCo must obtain an approved 911 plan.

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