



Agenda Date: 12/17/14
Agenda Item: IVD

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION)
OF MEGAPATH CORPORATION AND GC PIVOTAL,)
LLC D/B/A GLOBAL CAPACITY FOR APPROVAL TO)
PARTICIPATE IN AN ASSET TRANSFER)
TRANSACTION AND FOR GC PIVOTAL, LLC D/B/A)
GLOBAL CAPACITY TO PARTICIPATE IN CERTAIN)
FINANCING ARRANGEMENTS)

ORDER OF APPROVAL

DOCKET NO. TM14091077

Parties of Record:

Andrew M. Klein, Klein Law Group, PLLC, for GC Pivotal LLC d/b/a Global Capacity and MegaPath Corporation
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Katherine K. Mudge, V.P., for MegaPath Corporation

BY THE BOARD:

On September 30, 2014, MegaPath Corporation (“Assignor” or “MegaPath”) and GC Pivotal LLC d/b/a Global Capacity (“Assignee”) (collectively, “Petitioners”) filed a verified petition with the New Jersey Board of Public Utilities (“Board”), pursuant to N.J.S.A. 48:3-7, N.J.S.A. 48:3-9, N.J.S.A. 48:2:51.1 and N.J.S.A. 48:3-10, for approval or such authority as may be necessary to consummate a Transaction between Assignor and Assignee through which Assignor will transfer certain of its network assets and data service customers to assignee. Assignee also intends to enter into a financing arrangement whereby it will incur long-term debt obligations under a senior and/or subordinated loan facility and to encumber its property through the grant of a security interest in its assets being transferred. As a result of the transaction, Assignor’s data customers will be transferred to Assignee, which will become the service provider for those data customers. Petitioners state that in the interest of assuring seamless and uninterrupted service all data customers of Assignors will continue to receive service under the same rates, terms and conditions as were previously provided by Assignor.

BACKGROUND

GC Pivotal is a newly formed Delaware limited liability company with a principal office located at 180 North LaSalle Street, Suite 2430, Chicago, IL 60601. In New Jersey, GC Pivotal was

authorized to provide non-voice telecommunications service in New Jersey. See I/M/O the Verified Petition of GC Pivotal, LLC d/b/a Global Capacity for Authorization to Provide Non-Voice Telecommunications Service throughout the State of New Jersey, Docket No. TE14091076, Order dated November 21, 2014. According to the Petition, on September 5, 2014, Petitioners entered into a Membership Interest Purchase Agreement pursuant to which Global Capacity intends to obtain certain network assets, data customer accounts, and their respective contracts, vendor equipment and certain intellectual property from Assignors. MegaPath has 10 employees in New Jersey that will remain employees of GC Pivotal as a result of the transaction.

MegaPath Corporation is a Virginia Corporation and has a principal place of business located at 6800 Koll Center Parkway, Suite 200, Pleasanton, CA 94566. MegaPath is authorized by the Board to provide local exchange and interexchange telecommunications services in New Jersey, See Docket No. TE98060350, Order dated November 4, 1998.

DISCUSSION

According to the petition, on September 5, 2014, petitioners entered into a transaction pursuant to which Assignee will acquire certain network assets, certain customer accounts, equipment in the company's collocation spaces, applications used to provide service, wholesale and certain direct access data customers and other associated assets. According to the petition, Assignee will be acquiring approximately 1300 data broadband customers. After consummation of the transaction, Assignee will provide Assignor's customers with the same rates, terms and conditions as before. Future changes in the rates, terms and conditions of service will be undertaken pursuant to customer contracts and any applicable federal and state notice and tariff requirements.

In order to finance the acquisition of the Subject Assets and to provide funding for other permitted purposes, including working capital, capital expenditures, the refinancing of existing indebtedness, and other corporate purposes, Global Capacity intends to enter into certain financing arrangements ("Financing"). The borrower in the Financing will be Global Capacity. In order to maintain adequate flexibility to respond to market conditions and requirements and to respond to new acquisition and other business opportunities, Global Capacity seeks authorization for financing arrangements in the aggregate amount of \$85 million as described generally below.

Applicant seeks authorization to incur indebtedness, in the aggregate amount of up to \$85 million, in the form of notes or debentures (including notes convertible into equity and private notes that may be exchanged for public notes); conventional credit facilities, such as revolving credit facilities and term loans; letters of credit; and bridge loans; or a combination thereof.

Global Capacity expects that the financing arrangements will consist solely of long-term indebtedness with a maturity date between five and seven years after issuance depending on the type of facility. But, to maintain flexibility, Global Capacity seeks authorization for indebtedness that matures up to ten years after issuance.

Any interest rate will likely be the market rate for similar financings and will not be determined until the financing is finalized. Applicant seeks authorization to incur indebtedness that, depending on the type of debt securities, facility(ies) or other arrangements, accrues interest at a rate(s) that may be fixed (typically set at signing or closing based on then current market

conditions) or floating (consisting of a base rate, which will float with a rate index such as LIBOR or Federal Funds Rate, plus an applicable margin), or a combination of fixed rates and floating rates. To maintain flexibility, Global Capacity seeks authorization for financing arrangements at an interest rate(s) at the then current market conditions.

Some or all of the financing arrangements will be secured facilities, which will include a grant of a security interest in the assets of Global Capacity and its current and future subsidiaries (including the Subject Assets). A portion of the financing arrangements may be unsecured facilities. For the secured facilities, the stock of Global Capacity and its subsidiaries may also be pledged as additional security. Additionally, it is expected that Global Capacity's current and future subsidiaries will provide a guaranty as security for the full amount of the financing arrangements. Applicant seeks authorization to secure the full \$85 million of the financing arrangements with security interests in the assets of Global Capacity and its current and future subsidiaries.

The financing arrangements may be used for acquisitions, working capital requirements and general corporate purposes of the company.

Global Capacity therefore requests approval to participate in the Financing as described above, to secure the Financing with its assets, including the Subject Assets, and any other authority necessary or required for the above-referenced Financing. Global Capacity's participation in the Financing will not result in a change in its management or day-to-day operations; nor will it adversely affect their current or proposed operations in New Jersey. The Financing described above will also be transparent to Global Capacity's customers.

Petitioners had originally requested a waiver of Mass Migration guidelines at N.J.A.C. 14:10-12.1 et seq., given that no voice services are associated with the proposed transaction. However, petitioners have since filed a supplement to further address the Board's Mass Migration rules. Petitioners state that services to be transferred are non-jurisdictional data broadband services, and no voice service customers or residential customers are being transferred. All of the services being transferred are provided pursuant to contractual terms, none of the services are provided pursuant to tariff. The contractual terms in effect between MegaPath and its customers permit the assignment of the contracts to third parties through a merger or an asset or stock sale. The contract terms also specify the notice to be provided to the customers.

Petitioners, in their supplement to the original filing, request the Board to consider the Joint Petition as including a request for approval of a mass migration plan in satisfaction of any applicable mass migration guidelines in N.J.A.C. 14:10-12 et seq. The proposed plan would include notice to each customer of the assignment of its contract to Global Capacity, which would satisfy both the terms of the data customer contracts and the objectives of the mass migration guidelines. Petitioners will provide said notice at least 30 days prior to the assignment of the data customer accounts. Petitioners assert that language in the Board's Mass Migration guidelines suggesting that customers may opt for a different provider is inapplicable here given that each data customer purchases and receives such services under contract, and the terms of such contracts permit the assignment in this transaction.

Board Staff has reviewed the supplement to the original petition regarding mass migration guidelines and has determined that petitioners' general request for a waiver is justified in this particular transaction.

The New Jersey Division of Rate Counsel ("Rate Counsel") has reviewed this matter and, by letter dated October 20, 2014, stated that it did not oppose Board approval of the requests contained in the verified petition, conditioned on Petitioners' compliance with the mass migration notice requirements. After discussions with Board Staff and Petitioners, and subsequent to Petitioners' supplement to their petition addressing the mass migration issues referenced above, Rate Counsel, by way of letter dated November 19, 2014, submitted comments, stating that it does not oppose Board approval of the Petitioners' requests in their supplemental filing.

FINDINGS AND CONCLUSION

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to GC Pivotal's New Jersey data customers or the rates they pay. Nor will there be a negative impact on competition. The Board also **FINDS** that the proposed financing transaction is consistent with the applicable law and is in the public interest. The Board therefore approves the purposes thereof. The Board also concludes that the request for a general waiver of mass migration rules as proposed by Petitioners is in the best interest of the parties.

Accordingly, after careful review of this matter, the Board **FINDS** that the transaction will have no negative impact on competition, employees, or the rates to customers. The Board also **FINDS** that the asset transfer, data customer transfer and financing arrangements will have no negative impact on the provision of safe, adequate and proper service and will positively benefit competition. Furthermore, the Board **FINDS** that the transfer will likely have a net positive benefit to the customers in the State.

Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, **FINDS** that the asset transfer, customer transfer and financing arrangements are in accordance with the law and in the public interest. The Board **HEREBY APPROVES** the request by Petitioners for the transaction. The Board **HEREBY AUTHORIZES** the petitioners to enter into the proposed financing agreements in connection with the consummation of the asset transfer and to secure the financing with the assets of Global Capacity assets, including the Subject Assets.

Also, because sufficient circumstances so warrant, the Board **HEREBY GRANTS** the requested general waiver of the Board's mass migration rules. Finally, the Board **FURTHER ORDERS** that the approval in this Order shall become null and void and of no effect to the extent that the approved transaction has not been effected prior to August 30, 2015. The Board **HEREBY ORDERS** Petitioners to notify the Board of the closing of the proposed transaction within ten (10) days of consummation of the transfer. This Order shall become effective upon the service thereof, in accordance with N.J.S.A. 48:2-40.

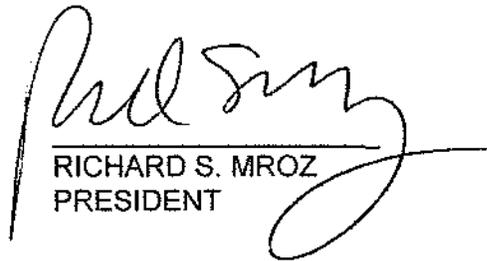
This Order is subject to the following provisions.

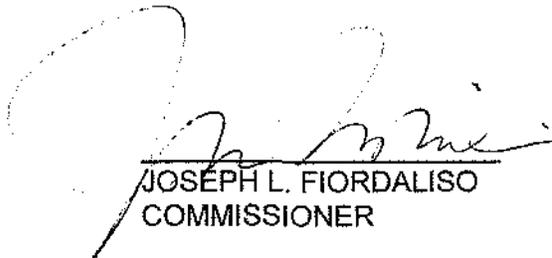
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.

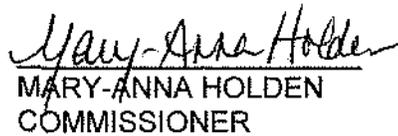
2. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
3. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by Petitioners.
4. Petitioners shall notify the Board, within five business days, of any material changes in the proposed financing, and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.

DATED: 12/17/14

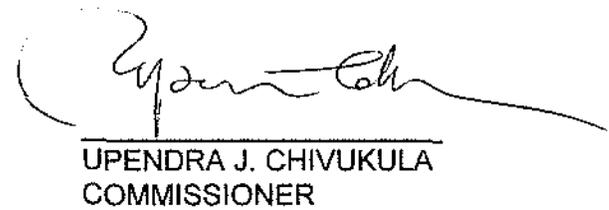
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

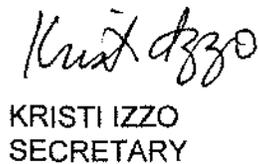

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

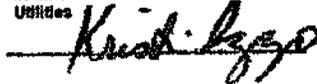

DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE VERIFIED JOINT PETITION OF MEGAPATH CORPORATION AND
GC PIVOTAL, LLC D/B/A GLOBAL CAPACITY FOR APPROVAL TO PARTICIPATE IN AN
ASSET TRANSFER TRANSACTION AND FOR GC PIVOTAL, LLC D/B/A GLOBAL CAPACITY
TO PARTICIPATE IN CERTAIN FINANCING ARRANGEMENTS
DOCKET NO. TM14091077

SERVICE LIST

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us

Chris Molner
Division of Telecommunications
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Alan.molner@bpu.state.nj.us

Alex Moreau
Deputy Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
Alex.moreau@dol.lps.state.nj.us

Andrew M. Klein
Klein Law Group PLLC
1250 Connecticut Ave., NW, Suite 200
Washington, DC 20036
AKlein@KleinLawpllc.com

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