

Decision No. C14-1492

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-1041T

IN THE MATTER OF THE JOINT APPLICATION OF MEGAPATH CORPORATION AND
GC PIVOTAL LLC TO EXECUTE A TRANSFER AND ENCUMBRANCE.

DECISION GRANTING APPLICATION

Mailed Date: December 18, 2014

Adopted Date: December 3, 2014

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a joint application filed by MegaPath Corporation (MegaPath), GC Pivotal, LLC, doing business as Global Capacity (Global Capacity), and Compass Bank (Compass) on October 24, 2014. The applicants request Commission authorization for two transactions where MegaPath will transfer certain network assets with non-telephone service customers to GC Pivotal, and GC Pivotal will enter into an encumbrance agreement with Compass for the financing of the transfer transaction. We will construe this filing as an application for approval of the transfer of the MegaPath company assets and the related encumbrance financing between Global Capacity as the borrower, with Compass pursuant to 4 *Code of Colorado Regulations* (CCR) 723-2109 of the Commission's Rules Regulating Telecommunications Providers, Services, and Products.

2. By Decision No. C98-857, Proceeding No. 98A-300T, issued September 15, 1998, the Commission granted MegaPath a Certificate of Public Convenience and Necessity (CPCN) to provide competitive local exchange telecommunications services and authority to

provide emerging competitive services. Commission Decision No. C98-1110, issued on November 18, 1998, modified Decision No. C98-857.

3. Global Capacity owns a CPCN that authorizes it to provide local exchange and emerging services, granted by Decision No. C14-1334, Proceeding No. 14A-0995T, issued November 7, 2014. Global Capacity is the borrower of funds from Compass.

4. Compass is serving as the lender to Global Capacity. The applicants represent Compass will enter into financing arrangements with Global Capacity that grant Compass a security agreement in the assets of Pivotal Global Capacity, LLC, the direct parent of Global Capacity.

5. The applicants state that the assets to be transferred are part of the MegaPath network and includes equipment enclosed in collocation spaces, equipment related to MegaPath's point of presence and transport, and non-telephone voice data broadband customers.

6. The filing represents that transferred customers will be timely notified of their assignment of service with seamless and uninterrupted service provided under their existing service contracts.

7. MegaPath requests that its Commission issued telecommunications authorities be cancelled following notice of the consummation of the contemplated transfer of assets to Global Capacity.

8. In response to a letter from Commission Staff, the representative of the applicants stated that Global Capacity's certificates of public convenience and necessity (CPCN) will likely be included in the proposed encumbrance transaction with Compass.

9. With the represented transfer of telecommunications assets from MegaPath to Global Capacity and the encumbrance of Global Capacity's assets, including its CPCN to Compass for financing, we find that the Commission has jurisdiction in this matter.

10. On October 27, 2014, notice of the application was provided to all persons, firms, or corporations interested in or affected by the grant or denial of the requested relief. Interventions were due on or before November 26, 2014. No interventions were filed.

B. Discussion

11. The application contains all information required by the applicable Commission Rules and is therefore deemed complete.

12. The application represents that the customers of the MegaPath that receive unregulated data broadband offerings will continue to receive services following the transfer at their existing contract rates, terms and conditions that currently exist prior to the transaction.

13. The application is unopposed and therefore may be considered without a formal hearing, pursuant to § 40-6-109(5), C.R.S.

14. We find that the proposed transfer of residential customers is not contrary to the public interest and therefore grant the joint application for the described transfer of assets and encumbrance.

II. ORDER

A. The Commission Orders That:

1. The joint application to transfer filed by MegaPath Corporation (MegaPath), GC Pivotal, LLC, doing business as Global Capacity (Global Capacity) and Compass Bank (Compass) is deemed complete and is granted with certain conditions as noted below.

2. The joint application to encumber telecommunications authorities held by Global Capacity is deemed complete and granted with certain conditions as noted below.

3. If MegaPath has a tariff on file with the Commission that serves no customers, and it wishes to cancel or relinquish its Commission issued telecommunications authorities, the company may file to discontinue the offering of these services with a Notification of Discontinuance of Regulated Telecommunications Services Where No Customers are Affected pursuant to Rule 4 CCR 723-2-2108(f).

4. Applicants MegaPath and Global Capacity shall jointly notify the Commission if the transfer transaction has been terminated, is not completed, or if the proposed transfer terms are changed. The notice shall include the proceeding and decision numbers which granted the authority to transfer.

5. Applicants Global Capacity and Compass shall jointly notify the Commission when the encumbrance has been terminated or is not completed within 60 days of the proposed effective date stated in the application or if the proposed encumbrance terms are changed prior to the consummation date. This notice shall include the proceeding and decision numbers which granted the authority to execute the encumbrance.

6. In the event that the encumbrance held by Compass is exercised or is transferred to another entity or entities, Global Capacity and Compass shall jointly file a transfer application to transfer encumbered telecommunications authorities and obtain specific approval for this subsequent transfer from the Commission.

7. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

8. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 3, 2014.**

(S E A L)



ATTEST: A TRUE COPY



Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

PAMELA J. PATTON

GLENN A. VAAD

Commissioners

CHAIRMAN JOSHUA B. EPEL
ABSENT.