

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

Counsel for DSLnet Communications,
LLC and DIECA Communications, Inc.

**BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH**

Joint Application of

***DSLnet Communications, LLC,
and
DIECA Communications, Inc.***

*For Authority to Complete Certain Pro Forma
Intra-Corporate Transactions*

JOINT APPLICATION

Docket No. _____

JOINT APPLICATION

DSLnet Communications, LLC (“DSLnet”) and DIECA Communications, Inc. d/b/a Covad Communications Company (“DIECA” and together with DSLnet, the “Applicants”), pursuant to Utah Code Ann. § 54-4-28 and the rules of the Public Service Commission of Utah (“Commission”), respectfully request authority from the (“Commission”), to the extent required, for DSLnet to merge into DIECA. In the same transaction the Applicants unregulated affiliates MegaPath, Inc. (“MegaPath”), Covad Communications Company (“CCC”) and DSLnet Communications VA, Inc. (“DSLnet-VA”),¹ (DIECA, DSLnet, DSLnet-VA, CCC and MegaPath, collectively, the “MegaPath Group”) will also be merged into DIECA with DIECA

¹ CCC and DSLnet-VA hold authorizations to provide telecommunications services in other jurisdictions, but do not hold such authorizations in Utah. MegaPath does not provided regulated telecommunications services in any jurisdiction.

surviving (the “Transactions”).² The Transactions are being undertaken merely as an internal *pro forma* reorganization of the companies into DIECA in order to streamline operations under a single “MegaPath” branded company combining the individual operations of the various affiliated entities.³ As a result of the Transfer, DSLnet’s, DSLnet-VA’s, MegaPath’s, and CCC’s customers and the assets to support the provision of services to those customers will be transferred to DIECA, which will become the service provider for those customers. As described below, because the rates, terms or conditions of the services being received by customers will not change as a result of the assignment, the proposed Transactions will be virtually transparent to customers of DSLnet in terms of the services that those customers receive. Since DIECA already holds a certificate of public convenience and necessity (“Certificate”), the Certificate of DSLnet is not being transferred to DIECA and, therefore, DSLnet requests that its Certificate and tariffs be cancelled upon notification by Applicants that the Transactions were completed.⁴

The Applicants request that the Commission act expeditiously to grant the authority requested herein as soon as possible, so that the Applicants can timely consummate the proposed Transactions to meet important business objectives.

In support of this filing, Applicants provide the following information:

² While the Applicants currently expect the transactions described herein to be accomplished through *pro forma* corporate mergers, given the tax and operational consequences of the proposed Transfer transactions, the Applicants may alternatively elect to accomplish the transactions through a sale of assets rather than through mergers, or through a combination of both. As such, the Applicants request authority, to the extent necessary, to undertake the Transfer through either manner.

³ DIECA expects to undertake a name change to effectuate the “MegaPath” brand name. A separate filing with the Commission will be made with respect to that name change.

⁴ The Parties intend for the Transactions to be completed in the fourth quarter 2011 with an effective date of December 31, 2011 (“Effective Date”), which is the rationale for requesting that the DSLnet certificate not be relinquished until the Parties have notified the Commission after the Transactions are completed. The Parties believe that use of an Effective Date will minimize customer confusion and enable consistent messaging to customers about this *pro forma* event.

I. DESCRIPTION OF THE APPLICANTS

A. MegaPath, Inc. and DSLnet Communications, LLC

MegaPath Inc. is a Delaware corporation, and is the parent company of DSLnet Communications, LLC. MegaPath Inc. is a wholly-owned subsidiary of CCGI Holding Corporation. MegaPath is a provider of a variety of managed Internet Protocol (“IP”) services including cable and satellite system broadband Internet access, mobility services such as digital certificates, global remote access, personal firewalls, and remote access virtual private networks (“VPN”), and security services. MegaPath does not currently offer any regulated telecommunications services and therefore does not hold any telecommunications authorizations from the Federal Communications Commission (“FCC”) or any state regulatory authority.

DSLnet Communications, LLC is a Delaware limited liability company. DSLnet provides highspeed Internet access services. DSLnet is authorized to provide intrastate telecommunications services in forty-seven (47) states and the District of Columbia, and DSLnet’s affiliate DSLnet Communications VA, Inc. is authorized to provide intrastate telecommunications services in Virginia. In Utah, DSLnet is authorized to provide competitive local exchange service and interexchange service pursuant to a Certificate issued by the Commission in Docket No. 99-2275-01 on July 14, 1999. DSLnet is also authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier.

B. Covad Communications Company and DIECA Communications, Inc.

Covad Communications Group, Inc. (“Covad”) is a Delaware corporation that owns Covad Communications Company (“CCC”), a California corporation, and DIECA Communications, Inc. (“DIECA”), a Virginia corporation. Covad, in turn, is a wholly-owned subsidiary

of CCGI Holding Corporation. Covad is a leading nationwide provider of integrated voice and data communications. Through its operating companies (CCC and DIECA), the company offers DSL, Voice Over IP, T1, Ethernet, Web hosting, managed security, IP and dial-up, wireless broadband, and bundled voice and data services directly through Covad's network and through Internet Service Providers, value-added resellers, telecommunications carriers and affinity groups to small and medium-sized businesses and home users. Covad broadband services are currently available across the nation in 44 states and 235 Metropolitan Statistical Areas ("MSAs") and can be purchased by more than 57 million homes and businesses, which represent over 50 percent of all US homes and businesses.

In Utah, DIECA is authorized to provide local intraexchange and interexchange services in the state. DIECA is also authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier. CCC does not currently offer any regulated telecommunications services in Utah and therefore does not hold any telecommunications authorizations from the Commission.

II. CONTACTS

Questions or any correspondence, orders, or other materials pertaining to this filing should be directed to the following.

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

and:

Katherine K. Mudge
Director, State Affairs & ILEC Relations

MegaPath, Inc.
2111 W. Braker Ln., Suite 100
Austin, Texas 78758
512-794-6197 (Tel)
512-794-6006 (Fax)
katherine.mudge@megapath.com

III. DESCRIPTION OF THE TRANSACTIONS

All of the entities involved in this Application are indirect, wholly-owned subsidiaries of CCGI Holding Corporation, and are already operating under a common management structure. Applicants propose to complete a series of *pro forma* internal restructuring merger transactions through which DIECA will acquire the assets of MegaPath, DSLnet, DSLnet-VA, and CCC, including their respective customer bases and substantially all of their assets used in the provision of telecommunications services.⁵ Upon consummation of the proposed Transactions, DSLnet will surrender its CPCN. For the Commission's convenience, an organizational chart demonstrating the proposed Transactions is attached hereto as Exhibit A. As a result of the proposed Transactions, DIECA will replace DSLnet as the service provider in Utah. Subject to receipt of the required regulatory approvals, the Transactions are expected to close in the fourth quarter this year.

Applicants emphasize that although the proposed Transactions will involve a transfer of customers, immediately following the proposed Transactions, all of those customers will continue to receive service from DIECA under the same rates, terms and conditions as the services currently provided. As a result, the proposed Transactions will be almost seamless and virtually transparent to customers served by MegaPath, CCC, DSLnet and DSLnet-VA in terms of the services that they currently receive. DSLnet does not currently provide intrastate telecommunications services to its Utah customers, but rather provides its jurisdictionally

⁵ As discussed above in note 1, the Applicants request authority, to the extent necessary, to undertake the Transactions through either transfers of assets between parties as discussed herein, mergers of the relevant entities, or both.

interstate services under contract. As such, Applicants do not believe that the Commission's slamming rules are applicable with respect to the Transactions. Nonetheless, the parties have already begun to inform customers of the pending change pursuant to their contractual notification requirements. Moreover, because DIECA is acquiring all of the assets of MegaPath, DSLnet, DSLnet-VA and CCC necessary to provide service to the transferred customers, DIECA will have all of the assets required to continue to provide high-quality services to the customers it acquires.

DIECA is well-qualified to provide service to MegaPath, DSLnet and CCC customers. DIECA currently provides local and long distances telecommunications services in 47 states and the District of Columbia. DIECA's operations will continue to be overseen by the same well-qualified management team with substantial telecommunications experience and technical expertise.

IV. REQUEST TO CANCEL THE CERTIFICATION OF DSLNET

Following the Transactions, DSLnet will no longer exist as a corporate entity. Therefore, Applicants request that, upon notification from Applicants that the Transactions have been completed, the Commission cancel the Certificate of DSLnet.

V. REQUEST FOR EXPEDITED REVIEW

Applicants are seeking to complete the proposed Transaction as expeditiously as possible in order to minimize customer confusion and realize the benefits of the proposed Transaction. Accordingly, Applicants respectfully request that the Commission expedite the processing of this Application and grant the requested authority as soon as possible to permit Applicants to consummate the Transaction in the fourth quarter 2011.

VI. PUBLIC INTEREST CONSIDERATIONS

The proposed Transactions described above will serve the public interest by ensuring that the assigned customers enjoy continuity of high-quality services. In particular, the assignment of MegaPath's, CCC's, DSLnet's and DSLnet-VA's customers, together with the transfer of other assets required to serve those customers, will ensure that the customers continue to receive uninterrupted services. The customers will be served by a carrier with significant technical, managerial and financial resources. The Transactions are intended to streamline the operations of the companies, and thereby create operational efficiencies.

Applicants seek to complete the proposed Transactions as soon as possible. Accordingly, Applicants respectfully request that the Commission process, consider, and approve this Application as expeditiously as possible.

VII. INFORMATION REQUIRED BY R746-394-7

Pursuant to R746-394-7, Applicants provide the following information:

a. identification that it is not an ILEC,

Applicants confirm that none of the Applicants or their affiliates is an ILEC in Utah.

b. identification that it seeks approval of the application pursuant to this rule,

Applicants confirm that they seek approval of the application pursuant to the information adjudication process set forth in this rule.

c. a reasonably detailed description of the transaction for which approval is sought,

A detailed description of the Transaction is provided in Sections III and IV, above.

d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and

Applicants filed a Combined Domestic and International Section 214 Application with the FCC. A copy of the Combined 214 Application is attached hereto as Exhibit B. In connection with

the Transactions, Applicants also expect to request approval from the utility regulatory agencies (“PUCs”) in the following states in addition to Utah: Arizona, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Minnesota, Mississippi, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Virginia and West Virginia. DIECA has sought certification and/or registration as an intrastate telecommunications service provider (or to transfer the certificate of its affiliate, Covad Communications Company) in California, Illinois, Massachusetts, New York, Oregon, Texas and Washington. Due to the voluminous nature of these state filings, most of which contain the same basic information, Applicants have only attached as Exhibit C a copy of the Minnesota filing requesting approval. Applicants are also providing notice to the PUCs in the following jurisdictions: Alabama, Arkansas, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Pennsylvania, Rhode Island, South Dakota, Vermont, Wisconsin, and Wyoming. Due to the voluminous and repetitive nature of the notices to be sent to these PUCs, Applicants have not included copies of the notice filings. Applicants will provide any additional filings at the request of the Commission.

- e. **copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the application.**

Applicants have not yet received any substantive notices, correspondence or orders from any federal agency or PUC reviewing the Transaction. To the extent requested by the Commission, Applicants will forward any orders or similar actions approving or denying approval of the Transaction.

VIII. CONCLUSION

WHEREFORE, for the reasons set forth above, Applicants request the Commission grant all authority necessary for the Applicants to undertake the Transaction as described herein.

Respectfully submitted,

Russell M. Blau
Jeffrey R. Strenkowski
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20006-1806
202-373-6000 (Tel)
202-373-6001 (Fax)
russell.blau@bingham.com
jeffrey.strenkowski@bingham.com

Counsel for Applicants

Dated: September 21, 2011

EXHIBIT A

Organizational Chart

EXHIBIT B

FCC Filing

EXHIBIT C

Minnesota PUC Filing