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**BEFORE THE UTAH PUBLIC SERVICE COMMISSION**

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In the Matter of the Joint Application of MegaPath Corporation and GC Pivotal, LLC d/b/a Global Capacity for Approval of Asset Transfer Transaction	Docket No. _____  <b>APPLICATION</b>
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**INTRODUCTION**

MegaPath Corporation (“MegaPath”) and GC Pivotal, LLC d/b/a Global Capacity (“Global Capacity” and together with MegaPath, “Applicants”), by their undersigned counsel, and pursuant to the provisions at Utah Code § 54-4-30 and Utah Administrative Code R746-347-7, hereby respectfully request that the Utah Public Service Commission (“Commission”) approve, to the extent necessary, a transaction whereby MegaPath will transfer certain of its network assets and non-telephone service customers to Global Capacity (the “Transaction”). MegaPath and Global Capacity anticipate and are working towards closing the Transaction on or before December 31, 2014, with the changes effective January 1, 2015.

In support of this Application, Applicants state:

## **I. DESCRIPTION OF THE APPLICANTS**

### **A. MegaPath Corporation**

MegaPath Corporation (“MegaPath”) is a Virginia corporation with principal offices at 6800 Koll Center Parkway, Suite 200, Pleasanton, CA 94566. MegaPath is a leading nationwide provider of integrated voice and data communications. MegaPath offers commercial DSL, Voice over IP (“VoIP”), T1, Ethernet, Web hosting, managed security, IP and dial-up, wireless broadband, and bundled VoIP and data services to small medium-sized businesses and enterprise businesses through MegaPath’s network and through Internet Service Providers, value-added resellers, telecommunications carriers and affinity groups. MegaPath also offers commercial DSL, T1, Ethernet, and other data services to wholesale customers who provide their own telecommunication services using the MegaPath network.

In Utah, MegaPath is authorized to provide local exchange and interexchange telecommunications services pursuant to Commission authorization issued in Docket No. 99-2277-01.<sup>1</sup> MegaPath is also authorized by the Federal Communications Commission (“FCC”) to provide international and domestic interstate telecommunications services as a non-dominant carrier.

CCGI Holding Corporation (“CCGI Holding”) is a Delaware corporation with offices located at 555 Anton Blvd., Suite 200, Costa Mesa, CA 92626. CCGI Holding is the parent company of MegaPath. CCGI is privately held by investors, including Platinum Equity LLC (“Platinum”). Neither CCGI Holding nor Platinum offer any regulated telecommunications services. Platinum is a privately held Delaware limited liability company with offices located at

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<sup>1</sup> The Commission’s original approval in the docket listed above was for DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad”). On December 14, 2012, Covad notified the Commission of an intracompany roll-up and the name change of the certificated entity to MegaPath Corporation. The Commission accepted the notification on January 8, 2013.

360 North Crescent Drive, Beverly Hills, California 90210. 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.

**B. GC Pivotal, LLC**

GC Pivotal, LLC, d/b/a Global Capacity (“Global Capacity”) is a Delaware limited liability company with principal offices located at 180 North LaSalle Street, Suite 2430 Chicago, IL 60601. Global Capacity improves the efficiency and reduces the cost of buying access networks globally. Through its “One Marketplace” service, Global Capacity brings together customers and suppliers in an automated platform that provides ubiquitous access network solutions that deliver on its brand promise – Connectivity Made Simple. Global Capacity is a wholly-owned subsidiary of Pivotal Global Capacity, LLC, a part of the Pivotal Group (“Pivotal”), a leading investment corporation headquartered in Phoenix, Arizona, that concentrates on private equity and real estate investments. Pivotal does not offer any regulated telecommunications services.

In Utah, Global Capacity is authorized to provide local exchange and interexchange telecommunications services pursuant to Commission authorization issued in Docket No. 11-2539-01. Global Capacity is also authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier.

**II. CONTACT INFORMATION**

For the purposes of this Application, contacts for the Applicants are as follows:

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**III. REQUEST FOR APPROVAL OF TRANSACTION TO TRANSFER ASSETS AND CUSTOMERS**

This Application is to seek approval of the Transaction (as defined below) pursuant to R746-349-7. None of the Applicants or their respective Utah operating companies are serving anywhere in Utah as incumbent local exchange carriers (“ILECs”).

**Description of the Transaction**

MegaPath and Global Capacity entered into a Membership Interest Purchase Agreement dated as of September 5, 2014 (the “Agreement”) whereby Global Capacity intends to obtain certain network assets and certain customers served by those assets from MegaPath (the “Transaction”). The assets to be transferred consist of MegaPath’s network, composed of equipment in the company’s collocation spaces (e.g., DSLAMs, routers, cable, and racks), applications used to provide service, equipment related to the company’s points of presence and transport, wholesale and certain direct access customers and their respective contracts, and other

associated assets (the “Subject Assets”). MegaPath does not intend to transfer its certifications and other authority to provide telecommunications services to Global Capacity; nor will it undergo a transfer of control as a result of this Transaction. As MegaPath will no longer require its authority to provide telecommunications in the state following the close of the Transaction, MegaPath will separately request that the Commission cancel its authority upon notice of consummation of the Transaction.

The Applicants emphasize that the customers being transferred are data broadband service customers and not telephone voice service customers. As no voice service customers are being transferred to Global Capacity as a result of the Transaction, and since Global Capacity will not be providing voice service to any customers, the FCC and Commission anti-slamming and/or mass migration rules do not apply to the customer transfer taking place as part of the Transaction. Nonetheless, the 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. In the interest of assuring seamless and uninterrupted service, all of the assigned customers will continue to receive service from Global Capacity under the same rates, terms and conditions of service as were previously provided by MegaPath. Future changes in the rates, terms and conditions of service to the affected customers will be undertaken pursuant to customer contracts and any applicable federal and state notice and tariff requirements.

The Applicants also intend to file or have filed applications seeking authorization for the Transaction with a number of other states. The states where the Applicants intend to file or have filed one or more applications include: Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Louisiana, Maryland,

Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. To date, no regulatory approvals have been issued. A copy of the application to the State of New York Public Service Commission is attached hereto as **Exhibit 1** and a copy of the application to the State of Minnesota Public Utilities Commission is attached hereto as **Exhibit 2**.

The Applicants will also file an application with the FCC seeking approval of this Transaction. A copy of the FCC Application will be provided to the Commission when it is filed. The Applicants expect the Transaction will receive streamlined treatment from the FCC.

#### **IV. PUBLIC INTEREST CONSIDERATIONS**

The proposed Transaction described herein is consistent with the public interest and will not impair the ability of the Applicants to perform services to the public. The Transaction will result in the assignment of certain network assets and the customers served by those assets (*i.e.* broadband data customers) to a company with a history of providing high quality communications services. The Transaction will not only allow Global Capacity to continue to provide high level services to the broadband customers currently served by MegaPath who are part of the Transaction, it will also enable Global Capacity the opportunity to be a competitive alternative for business customers in Utah. Global Capacity's operations are overseen by a well-qualified management team with substantial telecommunications experience and technical expertise.

The Transaction is structured to assure an orderly transition of customers from MegaPath to Global Capacity. In accordance with the terms of their service contracts and the rules and procedures of the Commission and applicable state(s), affected customers will be properly

notified of the Transaction and the change in their telecommunications services provider from MegaPath to Global Capacity. In addition, immediately following consummation of the Transaction, Global Capacity will continue to provide service to customers with no immediate change in their rates or terms and conditions of service. The Transaction will therefore be virtually transparent and seamless to the affected customers in terms of the services they currently receive.

In addition to the foregoing statement of the public interest, the Applicants ask the Commission to take notice of the applicable rule which provides that if this Application is unopposed, the Commission “will presume that approval of the transaction is in the public interest and will use the information contained in the application and accompanying documents as evidence to support a Commission order.” R746-349-7(3).

**V. CONCLUSION**

For the reasons stated above, the Applicants submit that the public interest, convenience and necessity will be furthered by the Transaction and respectfully request that the Commission expeditiously approve this Application.

Respectfully submitted this 1st day of October, 2014,

/s/ Joseph M. Stultz  
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**LIST OF EXHIBITS**

Exhibit 1	State of New York Application
Exhibit 2	State of Minnesota Application
Verification 1	
Verification 2	

**Exhibit 1**

**State of New York Application**

**Exhibit 2**

**State of Minnesota Application**

## Verification 1

## Verification 2

## CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2014, I caused a true and correct copy of the foregoing **APPLICATION**, to be sent via electronic mail to the following:

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/s/ Alex Nelson

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