

**EXHIBIT D**

**New York Application**

**Ferenchak, Brett P.**

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**From:** DMM@dps.ny.gov  
**Sent:** Monday, June 26, 2017 1:39 PM  
**To:** Ferenchak, Brett P.  
**Subject:** New Matter Approval - Matter Number 17-01328 : Msg. Tracking No.: 15

This e-mail is provided by the New York State Public Service Commission. A new matter filing for the above-referenced matter number has been accepted by Central Operations.

Matter Number: [17-01328](#)

Matter Type: Petition

Matter Subtype: Acquisition or Transfer of Securities

Matter Title: Joint Petition of GTT Americas, LLC, Pivotal Global Capacity, LLC and GC Pivotal, LLC d/b/a Global Capacity for Approval to Transfer Control of GC Pivotal, LLC to GTT Americas, LLC

Description/Purpose of Filing: Joint Petition of GTT Americas, LLC, Pivotal Global Capacity, LLC and GC Pivotal, LLC d/b/a Global Capacity for Approval to Transfer Control of GC Pivotal, LLC to GTT Americas, LLC

Company/Organization: GC Pivotal LLC dba Global Capacity, GTT Americas, LLC, Pivotal Global Capacity, LLC c/o Pivotal Group

Date Filed: 06/26/2017

Document(s) Filed:

Document Title	Document Type	Security	File Name	File Size
<a href="#">Joint Petition of GTT Americas, LLC, Pivotal Global Capacity, LLC and GC Pivotal, LLC d/b/a Global Capacity for Approval to Transfer Control of GC Pivotal, LLC to GTT Americas, LLC</a>	Petitions	Public	NY ToC Petition.pdf	534 KB

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# Morgan Lewis

**Andrew D. Lipman**  
**Brett P. Ferenchak**  
**Stephany Fan**

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June 26, 2017

## ***Via Electronic Filing***

Hon. Kathleen H. Burgess, Secretary  
New York Public Service Commission  
Agency Building 3  
Three Empire State Plaza  
Albany, NY 12223-1350

**Re: Joint Petition of GTT Americas, LLC, Pivotal Global Capacity, LLC and GC Pivotal, LLC d/b/a Global Capacity for Approval to Transfer Control of GC Pivotal, LLC to GTT Americas, LLC**

Dear Ms. Burgess:

Attached for filing with the Commission is the above-referenced Petition. Please acknowledge receipt and acceptance of this filing. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Andrew D. Lipman  
Brett P. Ferenchak  
Stephany Fan

*Counsel for GTT Americas, LLC*

Cc: Katherine K. Mudge (Counsel for Global Capacity and Transferor)

**Morgan, Lewis & Bockius LLP**

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**BEFORE THE  
NEW YORK PUBLIC SERVICE COMMISSION**

Joint Petition of

**GTT Americas, LLC,  
Pivotal Global Capacity, LLC and  
GC Pivotal, LLC d/b/a Global Capacity**

for Approval to Transfer Control of GC Pivotal, LLC  
to GTT Americas, LLC

Matter No. \_\_\_\_\_

**JOINT PETITION**

GTT Americas, LLC (“GTTA” or “Transferee”); Pivotal Global Capacity, LLC (“Transferor”); and GC Pivotal, LLC d/b/a Global Capacity (“Global Capacity”) (collectively, “Petitioners”),<sup>1</sup> by their undersigned representatives and pursuant to New York Public Service Law §§ 99 and 100, and the regulations of the Commission, request approval, to the extent required, to transfer control of Global Capacity to Transferee and its direct parent company, GTT Communications, Inc. (“GTT Parent”).<sup>2</sup>

In support of this Petition, Petitioners provide the following information:

**I. DESCRIPTION OF THE PETITIONERS**

**A. GTT Americas, LLC and GTT Communications, Inc.**

GTТА is a Delaware limited liability company and direct, wholly owned subsidiary of GTT Parent, a Delaware corporation. GTT Parent and Transferee have headquarters at 7900

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<sup>1</sup> Mr. Kissel, who executed the attached verification for Global Capacity, is also an authorized representative of Transferor. Therefore, Petitioners clarify that Mr. Kissel provides his verification on behalf of both Global Capacity and Transferor.

<sup>2</sup> A separate petition seeking approval for GTТА and Global Capacity to participate in certain financing arrangements concurrently with or following completion of the Transaction (as defined below) (the “Financing Petition”) will be filed in the near future. Approval of the Financing Petition is not a condition to closing the Transaction and the Financing Petition should be considered separately from, and in no way delay Commission action on, this Petition.

Tysons One Place, Suite 1450, McLean, Virginia 22102. GTT Parent, through its subsidiaries (collectively with GTT Parent, “GTT”), including Transferee, is a global provider of cloud networking services. Transferee provides regulated and non-regulated interstate and international communications services to customers throughout the United States. Transferee is authorized to provide intrastate telecommunications services in California and New York.<sup>3</sup> Transferee holds authority from the Federal Communications Commission (“FCC”) to provide interstate and international telecommunications services.

GTT Parent is a publicly traded company (NYSE: GTT) with no majority shareholder. The sole shareholder of GTT Parent with greater than 10% ownership or control is Universal Telecommunications, Inc. (“UTI”), which currently owns approximately 16.6% of the stock in GTT Parent. UTI is a small private equity investment and advisory firm run and majority owned by H. Brian Thompson, GTT Parent’s Chairman of the Board.

**B. GC Pivotal, LLC and Pivotal Global Capacity, LLC**

Global Capacity is a Delaware limited liability company with headquarters at 265 Winter Street, Waltham, Massachusetts 02451. Through its One Marketplace, 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. One Marketplace provides simple, cost-effective and high-performance network solutions that support the exploding bandwidth requirements driven by Cloud, mobility and globalization. Global Capacity delivers its solutions to telecommunication carriers, managed service providers, application service providers, and enterprise customers globally. In New York, Global Capacity is author-

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<sup>3</sup> Transferee is authorized to operate as a reseller of interexchange telephone services pursuant to a Certificate of Public Convenience and Necessity (“CPCN”) granted in Case No. 02-C-0530. The CPCN was originally granted to Global Internetworking, Inc., which changed its name to Global Telecom & Technology Americas, Inc. (see Case Nos. 07-C-0149 & 07-C-0522) and subsequently to GTT Americas, LLC.

ized to provide local exchange and interexchange telecommunications services pursuant to a Certificate of Public Convenience and Necessity transferred to Global Capacity in Case No. 11-00413.

Global Capacity is a direct, wholly owned subsidiary of Transferor, an Arizona limited liability company. Transferor is a portfolio company of Pivotal Group, a leading investment corporation that concentrates on private equity and real estate investments. Transferor does not offer any regulated telecommunications services.

## **II. DESIGNATED CONTACTS**

Questions, correspondence or other communications concerning this Petition should be directed to:

For Transferee:

Andrew D. Lipman  
Brett P. Ferenchak  
Stephany Fan  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue  
Washington, DC 20004-2541  
202-739-3000 (tel)  
202-739-3001 (fax)  
andrew.lipman@morganlewis.com  
brett.ferenchak@morganlewis.com  
stephany.fan@morganlewis.com

With copies for Transferee to:

Tony Hansel  
VP, Deputy General Counsel  
GTT Communications  
7900 Tysons One Place, Suite 1450  
McLean, VA 22102  
Tony.Hansel@gtt.net

For Transferor and Global Capacity:

Katherine K. Mudge  
Enoch Keever, PLLC  
Bridgepoint Plaza  
5918 W. Courtyard Dr., Suite 500  
Austin, Texas 78730  
512-615-1233 (tel)  
512-615-1198 (fax)  
kmudge@enochkeever.com

With copies for Transferor and Global Capacity to:

Jeremy Kissel  
Deputy General Counsel  
Global Capacity  
180 N. LaSalle St. Ste. 2430  
Chicago, IL 60601  
jkissel@globalcapacity.com

### **III. DESCRIPTION OF THE TRANSACTION**

Pursuant to the Membership Interest Purchase Agreement, dated as of June 23, 2017, by and among Transferee, Global Capacity and Transferor, Transferee will acquire all of the outstanding equity interest in Global Capacity from Transferor (the “Transaction”). As a result, Global Capacity will be a direct, wholly-owned subsidiary of Transferee and indirect, wholly-owned subsidiary of GTT Parent. Diagrams depicting the pre- and post-Transaction corporate ownership structure of Global Capacity are provided as Exhibit A.

GTT is managerially, technically, and financially well-qualified to complete the Transaction. As noted above, Transferee currently provides telecommunications services throughout the country. Biographies of GTT’s key management demonstrating such qualifications are provided as Exhibit B. For additional detail on the managerial and financial qualifications of GTT, please see [www.gtt.net](http://www.gtt.net).<sup>4</sup> Additionally, GTT will utilize the experience of management and employees with Global Capacity to support continued provision of services. Supported by the experienced management and financial resources of GTT, Global Capacity will therefore continue to have the managerial, technical and financial qualifications to provide high quality telecommunications services.

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

Petitioners submit that the Transaction described herein will serve the public interest. The Transaction will bring together two successful enterprises that have demonstrated a long-standing commitment to excellence in a highly competitive marketplace. The financial, technical, and managerial resources of GTT are expected to enhance Global Capacity’s ability to compete

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<sup>4</sup> GTT Parent’s most recent financial statements on SEC Form 10-Q are available at: <http://app.quotemedia.com/data/downloadFiling?webmasterId=101533&ref=11581783&type=HTML&symbol=GTT&companyName=GTT+Communications+Inc.&formType=10-Q&dateFiled=2017-05-09&cik=1315255>.

in the telecommunications marketplace. Further, combining the existing networks of GTT and Global Capacity will enhance their ability to serve their customers effectively and efficiently. At the same time, the Transaction will have no adverse impact on the customers of Global Capacity and should be seamless to the Global Capacity customers. Immediately following the Transaction, Global Capacity will continue to provide high-quality services at the same rates and on the same terms and conditions as are currently in effect. Any future changes to the rates, terms and conditions of service will be undertaken pursuant to the customers' contracts and applicable law. The only material change immediately following closing of the Transaction will be that that Global Capacity's ownership will change, with Transferee, and ultimately GTT Parent, being the new owners.

V. CONCLUSION

For the foregoing reasons, Petitioners submit that the public interest, convenience and necessity would be furthered by grant of this Petition permitting the Transaction.

Respectfully submitted,



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Katherine K. Mudge  
Enoch Keever, PLLC  
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Austin, Texas 78730  
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*Counsel for Transferor and Global Capacity*



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stephany.fan@morganlewis.com

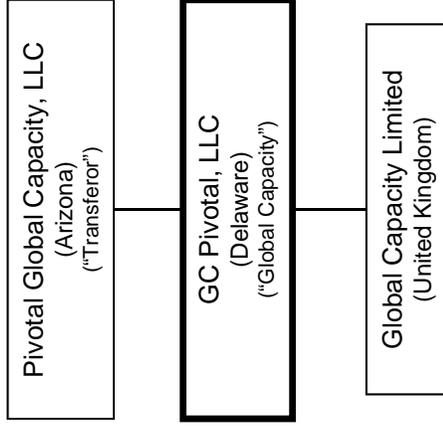
*Counsel for Transferee*

Dated: June 26, 2017

**EXHIBIT A**

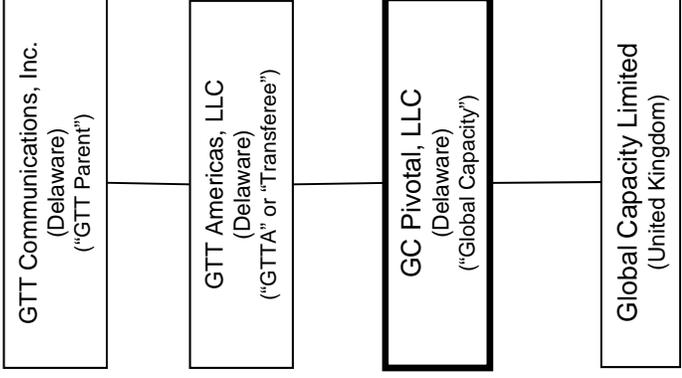
**Pre- and Post-Transaction Corporate Ownership Structures**

# Pre-Transaction Ownership Structure of Global Capacity



Unless indicated all ownership percentages are 100%.

Post-Transaction Ownership Structure of Global Capacity



Unless indicated all ownership percentages are 100%.

## **EXHIBIT B**

### **Management Biographies**

#### **Richard D. Calder, Jr., President & Chief Executive Officer**

Richard “Rick” D. Calder, Jr. is GTT’s president and chief executive officer, appointed by GTT’s Board of Directors effective May 2007. He brings over two decades of experience in the telecommunications arena to GTT. In his role, Mr. Calder has full strategic and operational responsibility for the company and also serves as a director on the company’s Board of Directors. Mr. Calder joined GTT from InPhonic, Inc., a leading provider of wireless services and products, where he served as the president and chief operating officer. Prior to InPhonic, Mr. Calder was president of Business Enterprise & Carrier Markets at Broadwing Communications. He held senior management positions at Winstar Communications and prior to Winstar, Mr. Calder co-founded GO Communications, a wireless communications company. In his early career, Mr. Calder held various marketing and business development positions at MCI Communications, and various marketing and engineering positions at Tellabs, Inc. Mr. Calder received a Bachelor of Science in Electrical Engineering from Yale University and an MBA from the Harvard Business School.

#### **Chris McKee, General Counsel and EVP, Corporate Development**

Chris McKee is GTT’s general counsel and EVP, corporate development and corporate secretary for the GTT Board. Mr. McKee is responsible for all of the company’s corporate legal requirements, human resources and supplier management. Mr. McKee also oversees the development of strategic business opportunities for the company, including all merger and acquisition activities. Mr. McKee has over 20 years of broad legal experience in the telecommunications industry. Prior to joining GTT, he served as general counsel for StarVox Communications where he was responsible for the company’s legal department, mergers and acquisitions, employment law, litigation, and legal support for the sales teams. Mr. McKee also formerly served as vice president and assistant general counsel for Covad Communications where he headed Covad’s Washington DC office and directed the federal and state regulatory compliance and advocacy efforts for the company. Mr. McKee previously worked for XO Communications, Net2000 Communications and was in private practice in Washington DC as an associate at Dickstein Shapiro and Cooley LLP. Mr. McKee also serves as a director of Cool Technologies, which is developing heat dispersion technologies for use in various product platforms worldwide (NASDAQ: WARM). Mr. McKee received a Bachelor of Arts from Colby College and a law degree from Syracuse University.

#### **Michael Sicoli, Chief Financial Officer**

Mike Sicoli is GTT’s chief financial officer, leading GTT’s global finance group, including financial operations, external reporting, investor relations and all banking and advisory relationships. Prior to joining GTT, Mr. Sicoli served as principal of MTS Advisors, LLC, a consulting and advisory services firm he founded in 2013. From 2010 to 2013, he served as chief executive officer of Sidera Networks, a fiber optic service provider that was merged with Lightower Fiber Networks in 2013. From 2005-2010, Mr. Sicoli served as chief financial officer of RCN Corporation, a publicly traded cable, broadband, and fiber optic service provider. Prior to that, Mr. Sicoli held various positions at Nextel Communications, Deloitte Consulting, and Accenture. Mr. Sicoli also serves as a director of Lumos Networks, a fiber-based bandwidth infrastructure and

service provider in the Mid-Atlantic region (NASDAQ: LMOS). Mr. Sicoli holds a Bachelor of Arts in Economics from The College of William and Mary and an MBA from The University of Virginia, Darden Graduate School of Business Administration.

**Bob Burris, Senior Vice President, Global Engineering and Operations**

Bob Burris is GTT's senior vice president, global engineering and operations. Mr. Burris is an industry veteran bringing over 30 years of operational, engineering, and technology experience to the company. Mr. Burris is responsible for all operations and engineering components of the company. Prior to joining GTT, Mr. Burris held vice president level positions at Harris Caprock where he managed the firm's government transport system and global terrestrial network. Before Caprock, Mr. Burris held senior level management positions at Core 180, Arbinet and Cable and Wireless.

## VERIFICATION

COMMONWEALTH OF VIRGINIA      §  
   §      SS:  
COUNTY OF FAIRFAX                   §

**VERIFICATION**

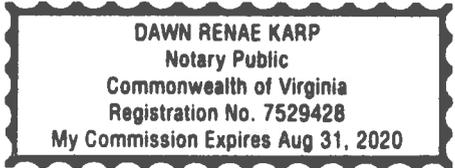
I, Tony Hansel, state that I am Vice President and Deputy General Counsel of GTT Communications, Inc.; that I am authorized to make this Verification on behalf of GTT Communications, Inc. and its subsidiaries, including GTT Americas, LLC (collectively, the “Company”); that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Tony Hansel  
Vice President and Deputy General Counsel  
GTT Communications, Inc.

Sworn and subscribed before me this 23rd day of June, 2017.

  
\_\_\_\_\_  
Notary Public

My commission expires 8/31/2020



STATE OF ILLINOIS  
COUNTY OF COOK

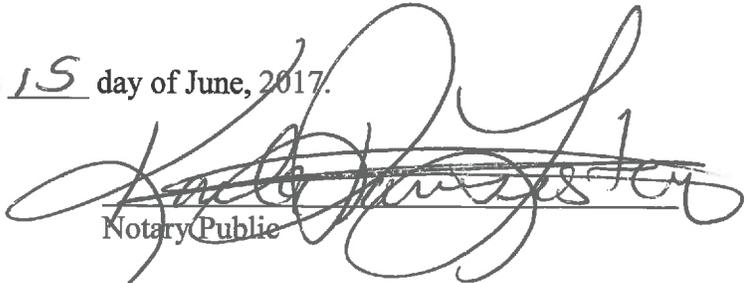
§  
§ SS:  
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**VERIFICATION**

I, Jeremy Kissel, state that I am Senior Vice President and Deputy General Counsel of GC Pivotal, LLC d/b/a Global Capacity (“Global Capacity”); that I am authorized to make this Verification on behalf of Global Capacity and its subsidiaries (collectively, the “Company”); that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Jeremy Kissel  
Senior Vice President and Deputy General Counsel  
GC Pivotal, LLC d/b/a Global Capacity

Sworn and subscribed before me this 15 day of June, 2017.

  
\_\_\_\_\_  
Notary Public

My commission expires July 26, 2020

  
KARLA DAVIS-LUSTER  
Official Seal  
Notary Public - State of Illinois  
My Commission Expires Jul 26, 2020