



Agenda Date: 11/21/14  
Agenda Item: IA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF GC PIVOTAL, )  
LLC D/B/A GLOBAL CAPACITY FOR AUTHORIZATION )  
TO PROVIDE RESOLD AND FACILITIES-BASED )  
LOCAL EXCHANGE AND INTEREXCHANGE )  
TELECOMMUNICATIONS SERVICES IN THE STATE )  
OF NEW JERSEY )

ORDER

DOCKET NO. TE14091076

**Parties of Record:**

**Andrew M. Klein, Esq.,** KLEIN LAW GROUP <sup>PLLC</sup> for Petitioner  
**Stefanie A. Brand, Esq.,** Director, New Jersey Division of Rate Counsel

BY THE BOARD<sup>1</sup>:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., and by letter dated September 29, 2014, GC Pivotal, LLC d/b/a Global Capacity ("Petitioner" or "Global Capacity") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based and resold local exchange and facilities-based and resold interexchange non-voice telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has filed a Motion for Confidentiality and a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Global Capacity is a privately held limited liability company organized under the laws of the State of Delaware and is a wholly-owned subsidiary of Pivotal Global Capacity, LLC. Global Capacity is formed under the legal name GC Pivotal, LLC per Certificate of Formation and in New Jersey Petitioner will be doing business as Global Capacity. Petitioner's principal offices are located at 180 North LaSalle Street, Suite 2430, Chicago, Illinois 60601.

<sup>1</sup> Commissioner Dianne Solomon was not present at the 11/21/14 agenda meeting.

This Petition is being filed in connection with and thus as part of a larger transaction whereby upon approval, Global Capacity intends to obtain certain network assets and data service customers from MegaPath Corporation ("MegaPath").<sup>2</sup> Global Capacity intends to adopt existing MegaPath tariffs as its own to provide services to those customers under the same rates, terms and conditions as currently provided by MegaPath. Any future changes in the rates, terms or conditions of services provided to customers being acquired will be undertaken pursuant to their service contracts and/or applicable federal and state tariffing requirements. Global Capacity does not intend to provide voice telecommunications services at this time. In the event that its business plan changes and it desires to provide voice services (landline and/or Voice over Internet Protocol), Petitioner will notify the Board to ensure proper and timely compliance with all applicable rules and regulations.

Petitioner has submitted copies of its Certificate of Formation from the State of Delaware and its New Jersey Certificate of Authority to operate as a Foreign Limited Liability Company. Global Capacity currently is authorized to provide telecommunications services in Alabama, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida (interexchange on deregulated basis), Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Louisiana, Maine, New Hampshire, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia and Wisconsin. Petitioner is in the process of filing application to provide telecommunications services in Colorado, Florida, Georgia, Idaho, Nebraska, New Jersey, Tennessee, Washington, and Wyoming, and is planning to request expanded authority in several of the above-indicated States.

Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction, and it has not been the subject of any civil or criminal proceedings. Petitioner has not yet entered into or requested an interconnection/resale agreement in New Jersey; however, upon Board approval for authority and transfer of certain network assets, Petitioner intends to utilize the existing interconnection agreement between MegaPath and Verizon New Jersey, Inc. ("VNJ"). Petitioner states that upon consummation of the transaction, MegaPath will no longer provide telecommunications services in New Jersey and will request that the Board cancel its authority upon notice of the consummation of the transaction.

Petitioner seeks authority to provide all forms of facilities-based and resold local exchange and interexchange non-voice telecommunications services to business and enterprise customers to and from all points in the State of New Jersey that are currently or become open competition. Petitioner will provide telecommunication services through a combination of its own facilities, facilities leased from other carriers, and resale of facilities and equipment of Incumbent Local Exchange Carriers ("ILECs") operating in New Jersey. Petitioner plans on using the existing local exchange boundaries and established local calling scope of the ILECs in New Jersey. Petitioner's facilities may include ducts, wires, cables, end-office switches, telecommunications

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<sup>2</sup> MegaPath is authorized to provide local exchange and interexchange telecommunications services pursuant to Board Order issued in Docket No. TE98060350 on November 4, 1998. Global Capacity requests that the concurrently filed Petition under Docket No. TM14091077 for approval of the transfer of assets from MegaPath to Global Capacity be associated with this Petition.

equipment and other telecommunications transmission facilities. Petitioner's facilities-based service will be provided via commercial wholesale agreement with incumbents or other carriers, its own facilities or combinations thereof. Petitioner's facilities in New Jersey are/will be located at in central offices in New Jersey owned by VNJ. Petitioner will continuously monitor and maintain a high level of control over its network on twenty-four hours per day, seven days per week. Petitioner intends to adopt existing MegaPath tariffs as its own initial tariff which will be filed upon approval of this petition and the concurrently filed petition to transfer certain network assets of MegaPath. Petitioner maintains a toll-free number for customer service inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. Petitioner, instead, requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices located in Chicago, Illinois.

By letter dated October 20, 2014, the New Jersey Division of Rate Counsel submitted comments with the Board stating that, based on its review, "Rate Counsel is satisfied that the Petition meets the regulatory requirements and is consistent with the public interest, convenience, and necessity." Id. at 1. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide non-voice telecommunications services in New Jersey. Id. at 1-2. In addition, Rate Counsel does not object to a grant of the waivers requested by Petitioner, nor does Rate Counsel oppose Petitioner's request to treat its financial information as confidential and placed under seal. Id. at 2.

## **DISCUSSION**

On February 8, 1996, the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. § 151 et seq., was signed into law, removing barriers to competition by providing that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a).

Any grant of authority is subject to the right of the Board as the state regulatory authority to impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. § 253(c).

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets of qualified applicants. 47 U.S.C. § 253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Global Capacity's Petition and the information supplied in support thereof, the Board **FINDS** that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board **HEREBY AUTHORIZES** the Petitioner to provide local exchange and interexchange

telecommunications services in the State of New Jersey. Pursuant to N.J.A.C. 14:3-1.3(a), the Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board. Additionally, Petitioner is not relieved from its responsibility to file an Annual Report and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year.

Furthermore, the Board **FINDS** that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27EE-52, the Petitioner is subject to an annual assessment by both the Board and the Division of Rate Counsel, respectively.

The Board **HEREBY ORDERS:**

- 1) Petitioner shall file its tariff with the Board.
- 2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.
- 3) Pursuant to N.J.S.A. 48:2-62, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

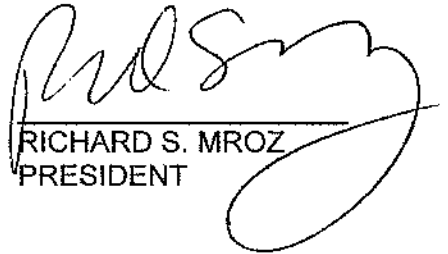
On or before February 1 of each year, the Petitioner will receive from the Division of Audits an annual report package and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

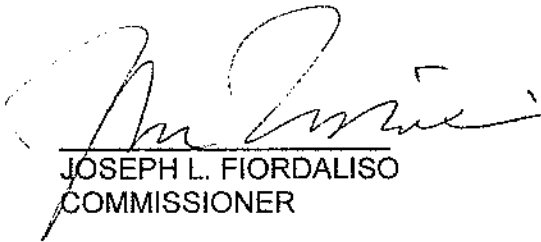
Regarding the Petitioner's request for waivers of the Board rules, the Board **FINDS** that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours' notice, and in the manner requested, and to pay to the Board all expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board **APPROVES** the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

This Order shall be effective December 1, 2014.

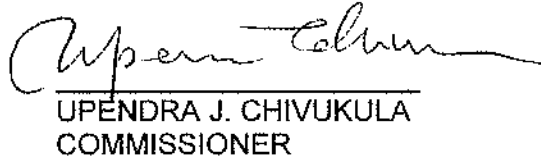
DATED: 11/21/14

BOARD OF PUBLIC UTILITIES  
BY:

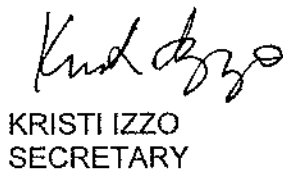
  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

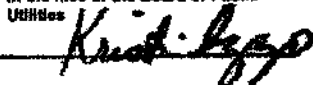
  
MARYANNA HOLDEN  
COMMISSIONER

  
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 PETITION OF GC PIVOTAL, LLC D/B/A GLOBAL CAPACITY FOR  
AUTHORIZATION TO PROVIDE RESOLD AND FACILITIES-BASED LOCAL EXCHANGE  
AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES  
IN THE STATE OF NEW JERSEY

DOCKET NO. TE14091076

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