



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

VERIFIED 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)

ORDER

DOCKET NO. TM17060688

Parties of Record:

James H. Laskey, Esq., Norris, McLaughlin & Marcus, P.A., on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On June 27, 2017, GTT Americas, LLC ("GTTA" or "Transferee"), Pivotal Global Capacity, LLC ("Transferor"), and GC Pivotal, LLC d/b/a Global Capacity ("Global Capacity")(collectively, "Petitioners"), submitted a Joint Verified Petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 requesting Board approval to transfer control of Global Capacity to Transferee and its direct parent company GTT Communications, Inc. ("GTT Parent"). Following consummation of the transaction, Global Capacity will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

BACKGROUND

GTTA is a Delaware limited liability company and a direct, wholly-owned subsidiary of GTT Parent, a Delaware corporation. GTT Parent is a publicly traded company with no majority shareholder. GTT Parent and Transferee have headquarters in McLean, Virginia. GTT Parent, through its subsidiaries (collectively with GTT Parent, "GTT"), including Transferee, is a global provider of cloud networking services. GTTA 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. Transferee holds authority from the Federal Communications Commission ("FCC")

to provide interstate and international telecommunications services. GTT has approximately 24 employees working in New Jersey.

Global Capacity is a Delaware limited liability company with headquarters in Waltham, Massachusetts. Global Capacity provides access network solutions to telecommunication carriers, managed service providers, application service providers, and enterprise customers globally. In New Jersey, Global Capacity is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services. See, 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 Telecommunications Services in the State of New Jersey, Docket No. TE14091076, (November 21, 2014). Global Capacity has approximately ten employees located in New Jersey. Global Capacity is a direct, wholly-owned subsidiary of Transferor, an Arizona limited liability company. Transferor is a portfolio company of Pivotal Group, an investment corporation for private equity and real estate. Transferor does not offer any regulated telecommunications services.

DISCUSSION

Pursuant to a Membership Interest Purchase Agreement dated as of June 23, 2017 by and among Transferee, Global Capacity, and Transferor, Transferee GTTA will acquire all of the outstanding equity interest in Global Capacity from Transferor. As a result, Global Capacity will be a direct, wholly-owned subsidiary of Transferee and indirect, wholly owned subsidiary of GTT Parent. Petitioners state that 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 Global Capacity's ownership will change, as Transferee and ultimately, GTT Parent, become the new owners. Petitioner notes that Global Capacity does not have an employee pension plan but adds that any existing rights in any other retirement plan offered by Global Capacity will be retained upon completion of the transaction.

Petitioners state GTT is managerially, technically and financially qualified to assume ownership and control of Global Capacity. Petitioners assert the proposed transaction will serve the public interest by enhancing the ability of Global Capacity to serve its customers more effectively and efficiently with enhanced service offerings through combined existing networks and through access to additional financial, technical and managerial resources to compete in the marketplace.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated July 27, 2017, stating it does not object to approval of the proposed acquisition provided conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. Specifically, as a condition of approval, Rate Counsel urges the that Board require Petitioners to notify the Board and Rate Counsel with an appropriate written explanation to be received a minimum of thirty (30) days prior to effectuating a reduction in New Jersey jobs that is greater than fifteen percent (15%) throughout a period of four (4) years post-issuance of the Board order.

By letter dated July 31, 2017, the Petitioners responded to the comments of Rate Counsel. While objecting to the proposal as unprecedented and unduly intrusive into the management of

companies that provide solely competitive services, Petitioners also object to a four (4) year reporting period. Petitioners are willing to accept a three (3) year reporting period. Petitioners noted 34 current New Jersey employees.

FINDINGS AND CONCLUSIONS

In considering a transfer of control request, the Board shall evaluate the impact of acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. N.J.S.A. 48:2-51.1(a). The Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly-owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

After a careful review of this matter, the Board is satisfied that positive benefits will flow to customers based upon the record, and that the combined enterprise would not be able to exercise market power to raise prices above competitive levels or exclude competitors from the marketplace. The Board therefore **FINDS** that the proposed transaction will have little impact on competition. The Board additionally **FINDS** that there will be no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions. The provision of service quality on competitive offerings is in the public interest. The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. The Board notes that Petitioners currently employ 34 persons in New Jersey. Petitioners note that there are no immediate plans with respect to these employees. While the Board concurs with Rate Counsel that there is a need for the Board to be notified when there is a reduction in staff, consistent with the Board's findings in similar merger reviews, the Board **FINDS** that the provisions adopted therein are appropriate and should be maintained. Accordingly, no additional pre-reduction reporting requirements will be imposed at this time.

The Board, therefore, requires Petitioners to notify the Board, providing an explanation if there is a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) for three (3) years post-issuance of this order. As Petitioners have assured that existing employee retirement plans will be retained, the Board is persuaded, consistent with N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, that Petitioners are not unable to fulfill pension obligations.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with applicable law and is not contrary to the public interest. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.

The Order is issued subject to the following provisions:

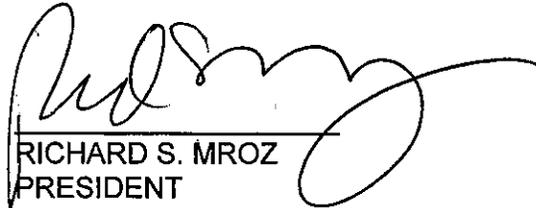
1. For three (3) years from the issuance of this Order, if there is any net loss of jobs in New Jersey, greater than (15%), Petitioners shall notify the Board of such change and provide an appropriate explanation.

2. The Order is subject to Petitioners notifying the Board Secretary and the Office of Cable Television and Telecommunications, in writing, within five (5) days of the date of the closing of the proposed transaction.

This Order shall be effective September 2, 2017.

DATED: 8/23/17

BOARD OF PUBLIC UTILITIES
BY:



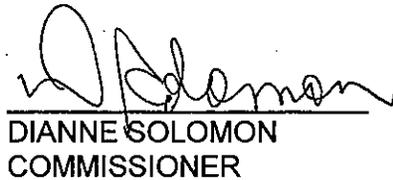
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JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

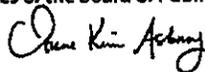


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 

IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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AND GC PIVOTAL, LLC D/B/A GLOBAL CAPACITY FOR APPROVAL TO TRANSFER
CONTROL OF GC PIVOTAL, LLC TO GTT AMERICAS, LLC
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