

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Cancellation of the)
 Registration to Provide Interconnected) File No. DD-2014-0201
 Interconnected Voice Over Internet Protocol)
 Service of MegaPath Corporation)

MEGAPATH CORPORATION'S
RESPONSE OPPOSING STAFF'S MOTION TO CANCEL
VoIP REGISTRATION

COMES NOW MegaPath Corporation (“MegaPath”) and files this response opposing the Motion to Cancel VoIP Registration (“Motion”) filed by the Staff of the Missouri Public Service Commission (“MPSC Staff”), on the grounds that the filing MegaPath made with the FCC referenced by Staff does not affect customers being served out of central offices in Missouri, For the reasons stated herein, MegaPath requests that the Motion be withdrawn with prejudice or, in the alternative, denied in its entirety. In support of this request, MegaPath respectfully states the following:

1. MegaPath is a nationwide provider of voice and data services to consumers and businesses with a network that spans 50 States. MegaPath operates in 50 states, in approximately 250 major metropolitan areas, including Missouri. MegaPath provides broadband or data (*e.g.*, ADSL2+, T-1, Bonded T-1, Ethernet over Copper) services and VoIP primarily to small and medium-sized and enterprise businesses on a retail basis, and also on a wholesale basis (*e.g.* EarthLink, Sprint, certain ILECs). As part of MegaPath's business and in order to obtain access to end-users and certain facilities, MegaPath leases loops and transport from the incumbent local exchange companies ("ILEC"), and uses those leased components in

combination with MegaPath's network to provide competitive services to its customers in Missouri, as well as nationwide.

2. With respect to Missouri, MegaPath holds a certificate as a competitive provider issued by the Commission on July 26, 1999 in Case No. TA-99-159.¹ As a competitive provider, MegaPath timely files its Annual Reports, Statements of Revenue, and has complied with the requirements of the Commission as they apply to the services provided by MegaPath in Missouri. To MegaPath's knowledge, MegaPath's certificate remains in good standing with the Commission.

3. In addition, according to MegaPath's understanding of the mandates of H.B. 1779, MegaPath timely registered as a VoIP provider and the Commission approved MegaPath's registration, effective October 2, 2008, in Case No. DA-2009-0074.² Since that time, MegaPath has complied and timely filed all applicable reports, Statements of Revenue, and other information required under the law with respect to MegaPath's VoIP service. To MegaPath's knowledge, the VoIP registration remains in good standing, until the filing of this Motion.

5. MegaPath currently provides broadband and/or VoIP services to over 2,500 customers in the State of Missouri. MegaPath is currently collocated in 45 Central Offices owned by ILECs in the Missouri. MegaPath interconnects and obtains access to unbundled

¹ In Case No. TA-99-159, the Commission approved the certificate for DIECA Communications, Inc. d/b/a Covad Communications Company. Then, in File No. DN-2013-0273, by Order dated February 6, 2013 (eff. Feb. 7, 2013), the Commission approved a name change from DIECA Communications, Inc. d/b/a Covad Communications Company to MegaPath Corporation.

² In Case No. DA-2009-0074, the Commission approved the VoIP certificate for DIECA Communications, Inc. d/b/a Covad Communications Company. Then, in File No. DN-2013-0273, by Order dated February 6, 2013 (eff. Feb. 7, 2013), the Commission approved a name change from DIECA Communications, Inc. d/b/a Covad Communications Company to MegaPath Corporation.

network elements and collocation through a Commission-approved interconnection agreement with AT&T Missouri which enable MegaPath to provide the services listed herein.

Motion Regarding VoIP Registration

6. MegaPath continues to provide competitive alternatives for broadband and VoIP services to consumers in the State of Missouri and has neither requested nor sought any changes to its VoIP registration or its competitive provider certificate. For the reasons stated below, MegaPath strenuously objects to the Motion and revocation of its VoIP registration.

7. During the 3Q 2013, MegaPath identified a *limited*³ number of central office (“COs”) nationwide -- specifically 20 out of 2,027 COs in which MegaPath is currently collocated -- that were sufficiently unprofitable and for which MegaPath could no longer justify the ILEC and other costs associated with the provision of broadband and/or VoIP services through those COs.

8. In recognition of the requirements of MegaPath’s retail and wholesale contracts, as well as of the Federal Communications Commission (“FCC”), MegaPath initiated notice to its retail customers and/or wholesale partners as early as 4Q 2013. Furthermore, as required by the FCC, MegaPath provided electronic notification to all affected MegaPath customers in November 2013. MegaPath’s notice efforts are more fully described in Paragraph 5 of MegaPath’s revised Section 63.71 Application filed with the FCC on December 20,

³ The term “limited” was also italicized in the Notice of Discontinuance of Common Carrier Broadband Internet Access Transmission Service, filed with the FCC on December 20, 2013. The December 20, 2013 version corrected errors in the initial filing on November 12, 2013.

2013(“MegaPath’s FCC Application”).⁴ A copy of MegaPath’s FCC Application is attached herein as **Exhibit 1** and incorporated herein for all purposes.

9. In its FCC Application, MegaPath explained that it was providing notice and seeking FCC approval of the discontinuance in a “*limited*” number of COs, specifically 20, that would be shut-down in California, Indiana, Maryland, Massachusetts, Michigan, Missouri, New York, Pennsylvania, and Washington, and for which MegaPath would no longer provide broadband services.⁵ Nationwide, these COs supported services to 62 direct (or retail) end users and 50 wholesale carriers.⁶ Furthermore, as noted by MegaPath, the only services that were affected were interstate high speed data and Internet services.⁷

10. As it turns out, out of the 20 nationwide COs identified for closure and discontinuance of services, there are no Missouri COs affected, as originally believed. The customer address is in Missouri, but the customer is actually served out of a CO that is being closed and located in Illinois. Therefore, MegaPath’s notice to Missouri was incorrect and can be ignored or considered withdrawn. MegaPath apologizes for the confusion and error.

11. MegaPath denies that it has requested “cancellation [sic] of its registration” in Missouri.⁸ MegaPath is not aware of any document or pleading filed with the Commission containing such a request. Instead, as can be seen from the information provided in MegaPath’s FCC Application, as well as state-specific information provided herein, MegaPath continues to

⁴ MegaPath revised its original FCC Application (filed Nov. 12, 2013) in response to the FCC’s inquiries regarding minor inconsistencies in the body of the Application. MegaPath revised the FCC application and filed it timely with the FCC. The revisions did *not* affect the body of the basic request, but did clarify that MegaPath was not seeking to discontinue any VoIP services to the *limited* number of COs and customers.

⁵ MegaPath’s Application, pp. 1-2 and Exhibit A.

⁶ *Id.*, Exhibit A.

⁷ *Id.*, p. 1.

⁸ Motion, ¶ 2.

provide broadband and VoIP services in Missouri. Therefore, MegaPath's VoIP registration should not be cancelled. MegaPath has now obtained guidance from Commission Staff as to a suggested method of providing notice to the Commission in the event of an actual CO closure in Missouri and MegaPath will do so going forward.

12. MegaPath continues to provide VoIP services to Missouri customers, notwithstanding the discontinuance of service in the single Illinois CO referenced above. Covad also remains collocated in 68 COs in Missouri which enables Covad to offer and to provide broadband and VoIP services.

Conclusion

13. For the reasons stated herein, MegaPath opposes Staff's Motion. MegaPath remains a competitive provider of services to customers in Missouri and meets all of the requirements under the law to be a VoIP provider in the State of Missouri. At no time has MegaPath sought to relinquish its VoIP registration, and does not believe that there is any support for the Motion or such an assertion.

14. MegaPath has been and remains willing to answer any concern, issue, or question that the Staff has regarding its FCC Application or its provision of services in Missouri. Staff can at any time contact the undersigned in-house Vice President, who is listed as the regulatory contact for MegaPath.

Accordingly, MegaPath respectfully requests that the Motion be withdrawn with prejudice and/or denied in its entirety, and for all such further relief to which MegaPath is entitled.

Respectfully submitted,

Katherine K. Mudge
Vice President – Regulatory Affairs &
Litigation
MegaPath Corporation
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Austin, Texas 78758
(512) 794-6197 (direct)
(512) 794-6006 (fax)
Katherine.mudge@megapath.com

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

Carl J. Lumley, #32869
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)
Email: clumley@lawfirmemail.com

Attorneys for MegaPath Corporation

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing documents was either faxed, emailed, or mailed by U.S. Mail postage paid this 3rd day of January, 2014, to the following:

General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102

Staffcounsel@psc.mo.gov

Lewis Mills
Office of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

/s/ Carl J. Lumley

DEC 20 2013

FCC Mail Room

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Section 63.71 Notice of Discontinuance of)
Certain Broadband Internet Access)
Transmission Service of)
MegaPath Corporation)

**Notice of Discontinuance of Common Carrier Broadband Internet
Access Transmission Service**

MegaPath Corporation ("MegaPath" or "Applicant") hereby provides notice authorization pursuant to Section 214(a) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214, Section 63.71 of the Commission's Rules, 47 C.F.R. § 63.71, and the Report and Order and Notice of Proposed Rulemaking ¶¶ 100-101 (issued in CC Docket No. 02-33, *et al.* (Sept. 23, 2005)) to discontinue its provision of domestic telecommunications services – namely, interstate high speed data and Internet services – to a limited portion of its customers in California, Indiana, Maryland, Massachusetts, Michigan, Missouri, New York, Pennsylvania, and Washington.

MegaPath is a leading nationwide provider of integrated voice and data communications. 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 MegaPath's network and through Internet Service Providers, value-added resellers, telecommunications carriers and affinity groups to small and medium-sized businesses and home users. MegaPath is also authorized by the Federal Communications Commission to provide interstate services.

In an effort to maintain its nationwide broadband network of over 2,027 central offices in the most efficient manner possible, MegaPath has identified 20 central offices in its network that

will be shut down. These central offices have been stagnant in growth for some time and only support 45 direct end user customers of MegaPath, 17 Enterprise, and 50 wholesale carriers. A total of 190 circuits provisioned through the wholesale carriers will be affected by the proposed discontinuance. The proposed discontinuance will not result in harm to the affected customers because the customers will have the opportunity to select another telecommunications carrier for their telecommunications needs and the CLECs and ILEC(s) in their area will continue to offer them high speed data and Internet service. The Applicant provides the following information pursuant to Section 63.71 of the Commission's Rules:

1. Name and Address of the Carrier: MegaPath Corporation is located at 6800 Koll Center Parkway, Ste. 200, Pleasanton, California 94566.
2. Date of Planned Service Discontinuance, Reduction or Impairment: The Applicant plans to discontinue interstate special access high speed DSL service to the affected customers in a limited number of central offices listed above on February 1, 2014, or as soon thereafter as any necessary regulatory approvals are obtained. Applicant understands that this application will be automatically granted on the 31st day after public notice of filing unless the Commission notifies the Applicant to the contrary.
3. Points of Geographic Areas of Service Affected: Applicant proposes to discontinue interstate special access high speed DSL service to the affected customers in the limited central offices located in the states of California, Indiana, Maryland, Massachusetts, Michigan, Missouri, New York, Pennsylvania, and Washington.
4. Brief Description of Type of Service Affected: The services received by the affected customers include the provision interstate special access high speed DSL service, which is used for high speed Internet access.

5. Brief Description of the Dates and Methods of Notice to All Affected Customers:

In November 2013, Applicant provided notification to all affected MegaPath direct and Enterprise customers via e-mail and an outbound calling campaign. The e-mail communication and the calling campaign informed the customers that, due to changes in MegaPath's network coverage, it would no longer be able to provide broadband Internet service to the customer's particular location as of February 1, 2014, but advised each customer to contact MegaPath to determine if there were potential alternatives. The e-mail communication and the calling representatives provided a toll-free number for customers to call either to disconnect their service or to investigate other service alternatives using other MegaPath affiliate service. Likewise, in November 2013, wholesale customers were contacted via e-mail notification and outbound calling campaign informing them that certain central offices would be shut down on February 1, 2014. Additionally, each wholesale customer received a list of its circuits impacted by the planned closures and was encouraged to work with their end users to find a new provider for their Internet services. This method of communication to MegaPath's customers (retail and wholesale) is standard and the accepted method of notice to the customers under the applicable contracts and practice, as opposed to notice via standard postal mail.

Applicant's notice to the commercial and wholesale customers conforms to the requirements of Section 63.71(a) of the Commission's Rules, informing it customers again of the February 1, 2014 disconnect date. Copies of the form of the wholesale and direct customer notices are appended hereto as *Exhibit A*.

6. Whether the Carrier is Considered Dominant or Non-dominant with Respect to the Service to be Discontinued, Reduced or Impaired: Applicant is considered non-dominant with respect to the affected services.

In accordance with Section 63.71 of the Commission's Rules, a copy of this Application is being mailed to the Governors and public services commissions of the states of California, Indiana, Maryland, Massachusetts, Michigan, Missouri, New York, Pennsylvania, and Washington and to the Special Assistant for Telecommunications for the Secretary of Defense, concurrently with the filing of this application.

Additional questions regarding this application may be addressed to the undersigned.

Respectfully submitted,

MegaPath Corporation

By: 

Katherine K. Mudge
Vice President – Regulatory Affairs &
Litigation
MegaPath Corporation
1835B Kramer Ln., Ste. 100
Austin, Texas 78758
(512) 794-6197

Dated: December 19, 2013

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Section 63.71 Application was served this 19th day of December 2013, by mailing true and correct copies thereof, postage prepaid, to the following persons at the addresses listed below.

Secretary of Defense
ATTN: Special Assistant for Telecommunications
Pentagon
Washington, DC 20301

Secretary
California Public Utility Commission
505 Van Ness Avenue
San Francisco, CA 94102

The Honorable Jerry Brown
Governor of California
State Capitol Building, Suite 1173
Sacramento, CA 95814

Chairman James D. Atterholt
Indiana Utility Regulatory Commission
PNC Center
101 W. Washington Street, Suite 1500E
Indianapolis, IN 46204

The Honorable Michael Pence
Governor of Indiana
206 State House
Indianapolis, IN 46204

Juan C. Alvarado
Director
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul St., 16th Floor
Baltimore, MD 21202

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, MD 21401

Secretary
Massachusetts Department of
Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

The Honorable Deval Patrick
Governor of Massachusetts
Massachusetts State House
Office of the Governor
Room 280
Boston, MA 02133

Robin P. Ancona
Director
Michigan Public Service Commission
Dept. of Licensing and Regulatory Affairs
4300 W. Saginaw Highway
PO Box 30221
Lansing, MI 48909

The Honorable Rick Snyder
Governor of Michigan
Olds Plaza
P.O. Box 30013
Lansing, MI 48909

Secretary
Missouri Public Service Commission
Public Information Office
Governor Office Building
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102-0360

The Honorable Jeremiah Nixon
Governor of Missouri
Office of the Governor
P.O. Box 720
Jefferson City, MO 65102

Kathleen H. Burgess
Secretary to the Commission
New York State
Department of Public Service
Empire State Plaza, Agency Bldg. 3
Albany, NY 12223-1350

The Honorable Andrew Cuomo
Governor of New York
NYS State Capitol Building
Albany, NY 12224

Tom Charles
Director
Pennsylvania Public Utility Commission
400 North Street
Keystone Building
Harrisburg, PA 17120

The Honorable Tom Corbet
Governor of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Mark Vasconi
Director, Regulatory Services
Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Dr. S.W.
Olympia, WA 98504

The Honorable Jau Inslee
Governor of Washington
Legislative Building
P.O. Box 40002
Olympia, WA 98504



Katherine K. Mudge

EXHIBIT A



6800 Koll Center Parkway, Suite 200, Pleasanton, California 94566

Client Services: 925-201-2563

www.megapath.com

October 17, 2013

RE: Important Notice about Discontinuation of Your Broadband Service

Dear MegaPath Customer,

Regretfully, this letter is to inform you that your broadband service at the following address will be decommissioned, as early as **February 1, 2014**, as part of a MegaPath network modification.

Company Name:

Account Number:

Service Type:

Service Address:

Please be assured that your satisfaction is very important to us. The decision to discontinue this service is the result of a recent operational assessment and we want to do everything possible to make your transition to a new service as smooth as possible.

A MegaPath representative will reach out to you to discuss the alternative services available and next steps. If you have yet to speak with a MegaPath representative about this issue, please contact **Anthony Pompano** in Client Services today at **203.284.6267**. It is imperative for you to talk with Anthony Pompano **no later than December 15, 2013** in order for you to determine what alternatives you have with MegaPath or if you need to seek service from another provider. Unfortunately, this service disconnection will take place and, therefore, we ask that you work with us to determine your best alternatives as soon as possible.

If we are able to provide you with an alternative service, once you place an order, we will deliver a new local loop to your location. You should experience only a brief interruption of service while our technician moves your local area network (LAN) connection. Please note that we will not be able to provide you with same IP addresses, so we recommend that you be prepared to make the change when the technician is onsite installing the new equipment. The technician will ensure that your service is operational before leaving your site.

In the event, however, that we cannot provide you another service, then your service will be disconnected as of **February 1, 2014**. The FCC will normally authorize this proposed discontinuance of service unless it is shown that customer would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the §63.71 Application of MegaPath Corporation. Comments should include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.

Thank you for your business and loyalty throughout the years. We value you as a customer and apologize for any inconvenience. As always, your MegaPath representative is available to assist you with any account questions.

Sincerely,

Mark Senda
Chief Operating Officer
MegaPath



MegaPath

W H O L E S A L E

Partner Advisory

Date October 16, 2013
Audience MegaPath Wholesale Partners
Subject Discontinuation of Broadband Service in Selected COs
Affected Services Frame Access / Residential / Enterprise IDSL / Ethernet 2.0 / Ethernet 3.0 / TeleSOHO / TeleSpeed / TeleSurfer / TeleXtend in Selected COs

**Important Notice about Discontinuation of
Broadband Service in Selected COs**

Dear MegaPath Wholesale Partner,

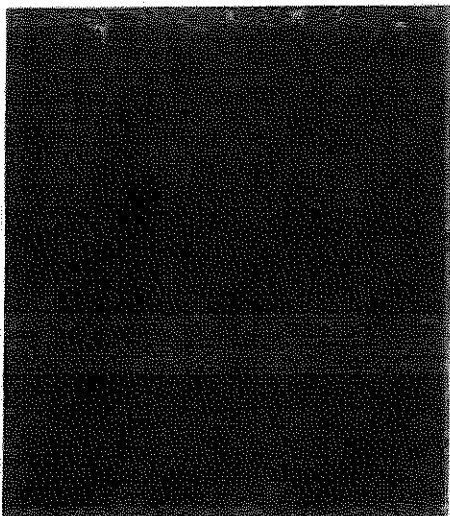
This letter is to inform you that we will be decommissioning a select number of Central Offices (COs) and discontinuing all access services in those COs. Consequently, your current service will be disconnected as of February 1, 2014.

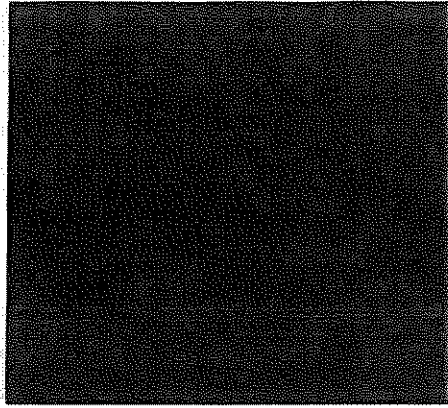
These COs are being decommissioned due to the low volume of existing and new business. We are actively researching new COs to add to our network that will be of greater value to our partners and welcome your input on this process.

The affected COs are as follows:

Market

CLLI Code





All services in these Central Offices are affected, including, but not limited to:

Frame Access

Residential

Enterprise IDSL

Ethernet 2.0 / 3.0

TeleSOHO and TeleSurfer (including ADSL)

TeleSpeed

TeleXtend

Attached is a list of circuits that will be affected by the decommissioning of these COs. Early termination fees do not apply to these circuits.

Please be assured that your satisfaction is very important to us. While the decision to decommission these sites was a difficult one, we want to do everything possible to make your transition to a new service as smooth as possible.

A MegaPath representative will reach out to you to answer any questions and offer any assistance you may need in the transition. If you would like to speak with a MegaPath representative immediately, please contact your Sales Support Manager or Account Representative.

We value you as a partner and apologize for any inconvenience.

Sincerely,

David Williams

Senior Vice President

MegaPath Wholesale

FCC Statement

The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier, or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the FCC releases public notice of the proposed

discontinuance. Address your comments to:

**Federal Communications Commission
Wireline Competition Bureau
Competition Policy Division
Washington, DC 20554**

Please include a reference to §63.71 Application of MegaPath Corporation in your comments. Comments should also include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.

The information contained in this communication, including any attachments, is confidential and intended only for use by the recipients expressly named, and may be legally privileged. If you are not the intended recipient, any dissemination, distribution or copying of this communication by you is strictly prohibited. If you have received this communication in error, please delete it from your systems.

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