

BINGHAM

RECEIVED

2009 NOV 25 AM 10:49

T.R.A. DOCKET ROOM

Jean L. Kiddoo
Brett P. Ferenczak
Kimberly A. Lacey
jean.kiddoo@bingham.com
brett.ferenczak@bingham.com
kimberly.lacey@bingham.com

November 24, 2009

Via Overnight Courier

Sharla Dillon, Docket Room Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

DOCKET NO.

09-00189

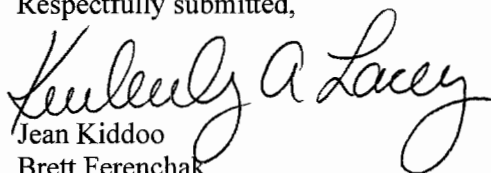
**Re: Joint Application of MegaPath Inc., DSL.net, Inc. and DSLnet
Communications, LLC for Approval of a *Pro Forma* Internal Change of
Control of DSLnet Communications, LLC**

Dear Ms. Dillon:

Enclosed for filing with the Commission are an original and thirteen (13) copies of the above-referenced Application. Also enclosed is a check in the amount of \$25.00 to cover the filing fee.

Please date-stamp the enclosed extra copy of this filing and return it in the attached self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact Kimberly Lacey at (202) 373-6288.

Respectfully submitted,



Jean Kiddoo
Brett Ferenczak
Kimberly A. Lacey

Counsel to Applicants

Boston
Hartford
Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Walnut Creek
Washington

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

A/73225497.1

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

Application of)	
)	
)	
Megapath Inc.,)	
DSL.net, Inc.)	
)	
and)	Docket No. _____
)	
DSLnet Communications, LLC)	
)	
For Approval of a <i>Pro Forma</i> Internal Change)	
of Control of DSLnet Communications, LLC)	
)	

APPLICATION

1. MegaPath Inc. (“MegaPath”) and its wholly owned subsidiaries DSL.net, Inc. (“DSL-Parent”) and DSLnet Communications, LLC (“DSLnet”) (MegaPath, DSL-Parent and DSLnet collectively, the “Applicants”), through their undersigned counsel and pursuant to Tenn. Code Ann. § 65-4-112, et seq. and the rules of the Tennessee Regulatory Authority (“TRA”), request approval or such authority as may be necessary or required for a *pro forma* internal change of direct control of DSLnet from DSL-Parent to MegaPath, DSL-Parent’s current direct parent company. This change is the result of the merger of DSL-Parent, with and into MegaPath, with MegaPath surviving. The change of direct control is *pro forma* in nature because MegaPath ultimately controls DSLnet both before and after the merger.

2. The Applicants must complete the internal merger before December 31, 2009 in order to realize significant financial benefits. Therefore, Petitioners request that the TRA act expeditiously to grant the authority requested herein.

3. In support of their Application, the Applicants state as follows:

I. DESCRIPTION OF THE APPLICANTS

4. MegaPath is a Delaware corporation with its principal office located at 555 Anton Boulevard, Suite 200, Costa Mesa, CA 92626. MegaPath is the direct parent company of DSLnet-Parent and indirect parent company of DSLnet. MegaPath is a provider of a variety of managed Internet Protocol ("IP") services including cable and satellite system broadband Internet access, mobility services such as digital certificates, global remote access, personal firewalls, and remote access virtual private networks ("VPN"), and security services. MegaPath does not currently offer any regulated telecommunications services and therefore does not hold any telecommunications authorizations from the FCC or any state regulatory authority.

5. DSL-Parent is a non active Delaware corporation with its principal offices located at 50 Barnes Park North, Suite 104, Wallingford, Connecticut 06492. DSL-Parent is a wholly owned direct subsidiary of MegaPath. Effective on or about December 24, 2009, DSL-Parent will merge with and into MegaPath, with MegaPath surviving. As a result of the merger, DSL-Parent's separate corporate existence will cease. DSL-Parent provided a variety of Internet Protocol and data services. DSL-Parent does not offer any regulated telecommunications services and therefore did not hold any telecommunications authorizations from the FCC or any state regulatory authority.

6. DSLnet is a Delaware limited liability company with principal offices located at 50 Barnes Park North, Suite 104, Wallingford, Connecticut 06492. DSLnet is currently a wholly owned, direct subsidiary of DSL-Parent and a wholly owned, indirect subsidiary of MegaPath. DSLnet primarily provides interstate highspeed access to the internet services. DSLnet, LLC is authorized to provide intrastate telecommunications services in forty-seven (47) states and the District of Columbia, and DSLnet's affiliate, DSLnet Communications VA, Inc., is authorized to

provide intrastate telecommunications services in Virginia. In Tennessee, DSLnet holds a Certificate of Convenience and Necessity as a Competing Telecommunications Service Provider pursuant to Order issued by the TRA in Docket No. 99-00092 on June 4, 1999. DSLnet is also authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate telecommunications services as a non-dominant carrier.

7. Further information concerning DSLnet's legal, technical, managerial and financial qualifications to provide service was submitted with its application for certification and other documents filed with the TRA and is, therefore, a matter of public record. DSLnet respectfully requests that the TRA take official notice of that information and incorporate it herein by reference.

II. CONTACT INFORMATION

8. Questions or inquiries concerning this Application may be directed to:

Jean L. Kiddoo, Esq.
Brett P. Ferenchak, Esq.
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20006
Tel: (202) 373-6000
Fax: (202) 373-6001
Email: jean.kiddoo@bingham.com
brett.ferenchak@bingham.com

with copies to:

Steven B. Chisholm, Senior Vice President
MegaPath Inc.
555 Anton Boulevard, Suite 200
Costa Mesa, California 92626
Fax: (714) 327-2041
Email: Steve.Chisholm@megapath.com

and:

Schula Hobbs
Regulatory Affairs
DSLnet Communications, LLC
50 Barnes Park North, Suite # 104
Wallingford, CT 06492
203-284-6205 (fax)
shobbs@megapath.com

III. DESCRIPTION OF THE TRANSACTION

9. Pursuant to an Agreement and Plan of Merger between MegaPath and DSL-Parent, DSL-Parent will merge with and into MegaPath, with MegaPath surviving. As a result, DSLnet will become a wholly owned, direct subsidiary of MegaPath. Since MegaPath already indirectly wholly owns DSLnet, this change of direct control of DSLnet is *pro forma* in nature. Applicants therefore request authority for the transfer of direct control of DSLnet from DSL-Parent to MegaPath resulting from this *pro forma* internal merger. For the Commission's convenience, pre- and post-transaction corporate organizational structure charts are provided as Exhibit A.

10. Following the *pro forma* internal merger, DSLnet's customers will continue to receive service under the same rates, terms and conditions of service as before. The proposed transaction will not involve a change in DSLnet's operating authority in Tennessee and DSLnet's tariffs will remain in effect. Thus, the proposed transaction will be seamless and transparent to Tennessee consumers. Further, there will be no change in DSLnet's management as a result of this change of control.

IV. PUBLIC INTEREST CONSIDERATIONS

11. Applicants respectfully submit that the proposed transaction serves the public interest. In particular, Applicants submit that the proposed transaction will be transparent to

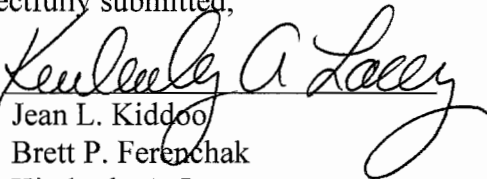
Tennessee consumers. Immediately following the *pro forma* change of control, DSLnet will continue to offer service with no change in the rates or terms and conditions of service. Further, DSLnet will continue to provide service to its customers under the same name, and will continue to be led by an experienced management team. Therefore, the transfer of control of DSLnet will be seamless and transparent to consumers in Tennessee.

V. CONCLUSION

12. For the reasons stated above, Applicants respectfully submit that the public interest will be furthered by expeditious grant of this Application.

Respectfully submitted,

By:



Jean L. Kiddoo

Brett P. Ferenchak

Kimberly A. Lacey

BINGHAM MCCUTCHEN LLP

2020 K Street, N.W.

Washington, DC 20006

Tel: (202) 373-6000

Fax: (202) 373-6001

Email: jean.kiddoo@bingham.com

brett.ferenchak@bingham.com

kimberly.lacey@bingham.com

COUNSEL FOR APPLICANTS

Dated: November 24, 2009

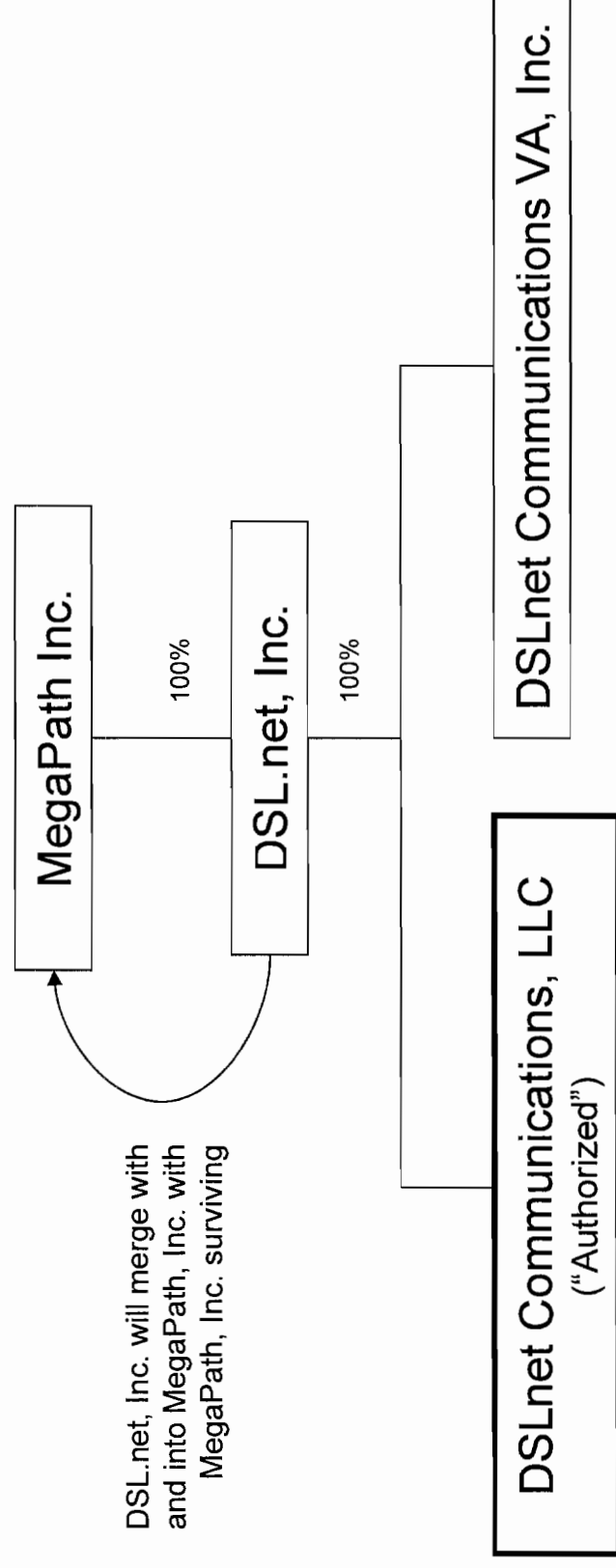
LIST OF EXHIBITS

Exhibit A	Pre- and Post-Transaction Corporate Organizational Structure
Verification	

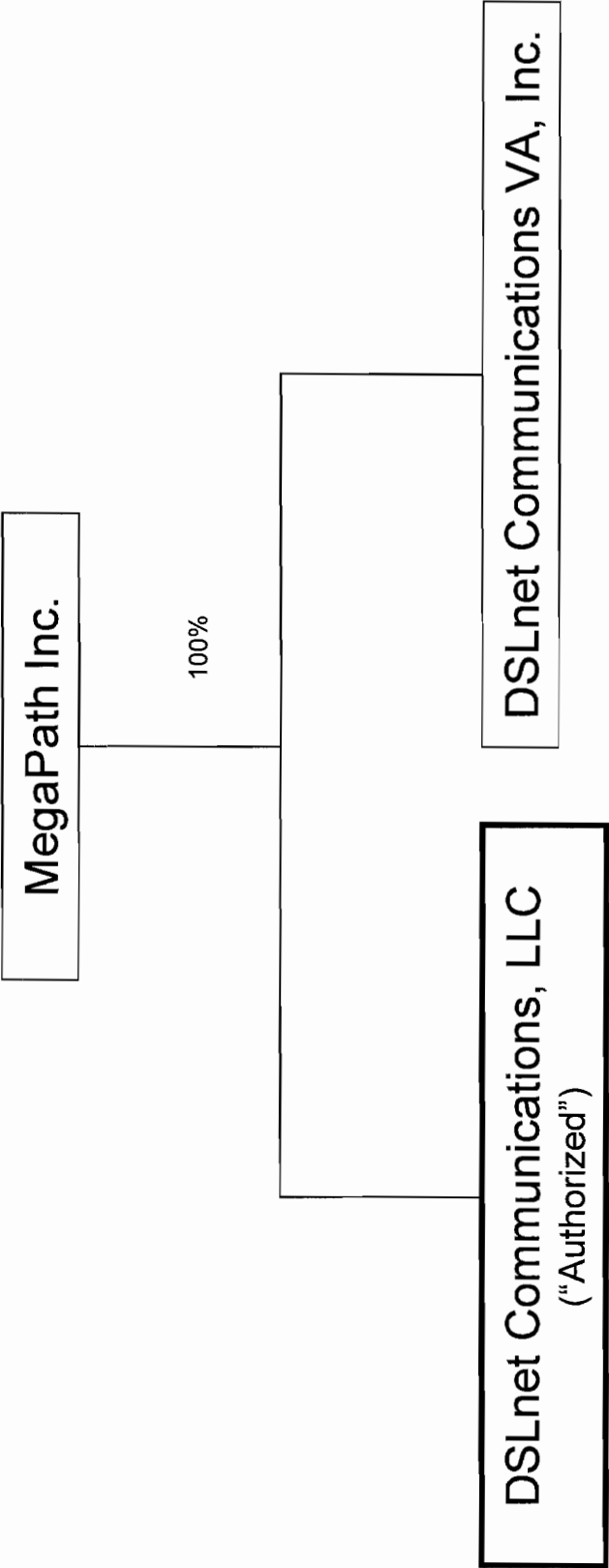
EXHIBIT A

Pre- and Post-Transaction Corporate Organizational Structure

Pre- Pro Forma Intra-Corporate Merger



Post- Pro Forma Intra-Corporate Merger



Verification

STATE OF CALIFORNIA

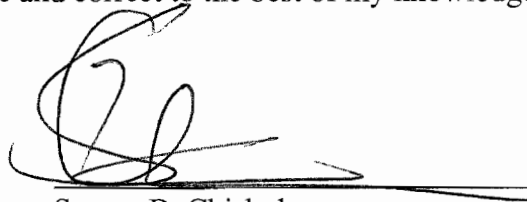
COUNTY OF ORANGE

§
§
§

SS:

VERIFICATION

Steven B. Chisholm, being duly sworn, deposes and say that I am the Senior Vice President, of MegaPath Inc., DSL.net, Inc. and DSLnet Communications, LLC; that I am authorized to make this Verification on behalf of MegaPath Inc., DSL.net, Inc. and DSLnet Communications, LLC; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



Steven B. Chisholm
Senior Vice President
MegaPath Inc., DSL.net, Inc. and DSLnet
Communications, LLC

Sworn and subscribed before me this 19 day of Nov, 2009.



Notary Public

My commission expires: Jan 16, 2013

