

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 3, 2010

IN 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

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DOCKET NO.
09-00189

ORDER APPROVING *APPLICATION*

This matter came before Director Mary W. Freeman, Director Eddie Roberson and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 11, 2010 for consideration of the *Application* filed on November 25, 2009 by 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"), requesting approval for a *pro forma* internal change of control of DSLnet from DSL-Parent to MegaPath, DSL-Parent's current direct parent company.

MegaPath is a Delaware corporation and the direct parent of company of DSL-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 and security services. MegaPath does not currently offer any regulated telecommunications services and therefore, does not hold any

telecommunications authorizations from the Federal Communications Commission (“FCC”) or any state regulatory authority.

DSL-Parent is a non-active Delaware corporation and is a wholly-owned direct subsidiary of MegaPath. DSL-Parent provides a variety of IP and data services. DSL-Parent does not currently offer any regulated telecommunications services and therefore, does not hold any telecommunications authorizations from the FCC or any state regulatory authority.

DSLnet is a Delaware limited liability company and is currently a wholly-owned, direct subsidiary of DSL-Parent and a wholly-owned, indirect subsidiary of MegaPath. In Tennessee, DSLnet is authorized as a competing telecommunications service provider pursuant to Authority Order in Docket No. 99-00092 issued on June 4, 1999. DSLnet is also authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier.

THE APPLICATION

The *Application* states that 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.

FINDINGS AND CONCLUSIONS

Although the Applicants requested the transfer pursuant to Tenn. Code Ann. § 65-4-112, the panel found that Tenn. Code Ann. § 65-4-113 (2004) applied to the proposed transfer of control because it results in the internal transfer of a certificated carrier. Tenn. Code Ann. § 65-4-113(a) (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, which in pertinent part, states as follows:

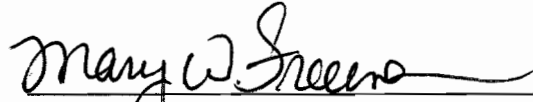
Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.


The panel made the following findings regarding the proposed transfer of control. The transfer of control serves the public interest because the transaction will provide the Applicants with significant financial and operational benefits and as a result, MegaPath and DSLnet will be stronger companies, which will benefit DSLnet's customers. The Applicants do not anticipate a change in the management or operational personnel as a result of the transaction and DSLnet will continue to be led by an experienced management team. Further, the proposed transaction does not involve a change in DSLnet's operating authority in Tennessee and DSLnet's tariffs will remain in effect. According to the *Application*, DSLnet's customers will continue to receive their existing services under the same name and at the same rates, terms and conditions as at present. Therefore, the transfer of control of DSLnet should be seamless and transparent to consumers in Tennessee. Thereafter, based on the foregoing findings and the entire record, the panel voted unanimously to approve the *Application*.¹

¹ The Authority usually conditions approval of transfers of control on subsequent approval by the FCC. According to a *Data Response* received on December 17, 2009, the Applicants filed a Notice of the *Pro Forma* Transfer with the FCC on December 11, 2009. The Applicants stated that FCC approval of the *pro forma* transfer of control is not required.

IT IS THEREFORE ORDERED THAT:

The *Application* filed by MegaPath Inc. and its wholly-owned subsidiaries DSL.net, Inc. and DSLnet Communications, LLC is approved.


Mary W. Freeman, Director


Eddie Roberson, Director


Kenneth C. Hill, Director