



Agenda Date: 8/15/12  
Agenda Item: IVA

**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 VERIFIED PETITION OF ) ORDER  
DIECA COMMUNICATIONS, INC, D/B/A COVAD )  
COMMUNICATIONS COMPANY FOR APPROVAL TO )  
PARTICIPATE IN CERTAIN FINANCING )  
ARRANGEMENTS ) DOCKET NO. TF12030278

**Parties of Record:**

**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel  
**James H. Laskey, Esq.**, Norris McLaughlin & Marcus P.A., for Petitioner

**BY THE BOARD:**

On March 29, 2012, DIECA Communications, Inc. d/b/a Covad Communications ("DIECA" or "Petitioner") filed a verified petition with the Board of Public Utilities ("Board") requesting approval (i) to participate in certain financing arrangements whereby MegaPath Group, Inc., the parent company of DIECA ("MegaPath"), would incur long-term debt obligations, including a term loan and a revolving line of credit, of up to \$245,000,000 (the "Financing Facilities"); and (ii) to encumber DIECA's property through the grant of a security interest in DIECA's assets in support of the financing arrangements.

DIECA is a Virginia corporation with offices located at 6800 Koll Center Parkway, Suite 200, Pleasanton, CA 94566. Its parent, MegaPath, is a Delaware corporation company located at the same address. MegaPath, through its operating companies, is one of the largest facilities-based providers of managed services in the United States, providing voice, data, and security services to small, medium, and enterprise business customers. The MegaPath network is a nationwide, Multiprotocol Label Switching enabled, all-optical Internet Protocol network that provides high Quality of Service to customers throughout the country. Serving over 235 metro markets throughout the United States, MegaPath, through its operating companies, offers Internet connectivity via DSL, T1, Bonded T1, high-speed Ethernet, and cable with dedicated circuits.

In New Jersey, DIECA is authorized to provide intrastate telecommunications services pursuant to Board authority dated November 4, 1998, in Docket No. TE98060350. DIECA is also authorized by the Federal Communications Commission to provide international and domestic interstate telecommunications services as a non-dominant carrier.

DIECA and MegaPath intend to enter into the proposed financing arrangements to refinance existing indebtedness, finance capital expenditures, and for other permitted corporate purposes.

The borrower in the financing arrangements will be MegaPath, with DIECA potentially as a co-borrower. The proposed financing arrangements will consist of long-term debt obligations of up to \$245,000,000, including a revolving credit facility of up to \$35,000,000 which will replace, at a materially lower interest rate, the long-term debt that MegaPath currently possesses. The Financing Facilities are expected to mature on a date up to six years from the date of closing. Based on market conditions, the term of the Financing Facilities may be set to mature on the date that is 364 days after the closing date, provided that upon receipt of the requisite regulatory approvals the maturity dates for the Financing Facilities will be extended to the expected term of up to six years from the date of closing. The interest rates under the Financing Facilities will be determined based on market conditions at the time of closing.

All obligations of MegaPath and its subsidiaries under the Financing Facilities are expected to be guaranteed by DIECA, and any current or future affiliates, subject to certain exceptions to be determined. Further, the Financing Facilities are expected to be secured by substantially all the assets of MegaPath and DIECA, and any current or future affiliates, subject to certain exceptions to be determined. DIECA and MegaPath emphasize that none of the pledging of jurisdictional assets or guarantee obligations described herein will apply to DIECA until required regulatory approvals are received.

Participation in the financing arrangements will not result in a change in Petitioner's management or day-to-day operations; nor will it adversely affect its current or proposed operations in New Jersey. DIECA also states that the proposed financing arrangements described herein are consistent with the public interest and will not impair the ability of DIECA to perform services to the public. The contemplated pledges and guarantees will be entirely transparent to consumers and will not alter the rates, terms and conditions under which DIECA provides service in New Jersey.

DIECA further states that approval of DIECA's participation in the proposed financing arrangements will serve the public interest in promoting competition among telecommunications carriers by providing MegaPath (and therefore DIECA) with the opportunity to strengthen its financial position. DIECA believes that the financial arrangements described herein provide important financial benefits to the company. As a result, the proposed transaction is expected to continue to yield financial benefits that ultimately inure to the benefit of DIECA's customers. Furthermore, Petitioner states that by increasing the breadth and scope of telecommunications services made available through DIECA's ongoing operations, this financing transaction will ultimately benefit New Jersey consumers. In sum, according to Petitioner, greater access to capital will strengthen DIECA's ability to bring competitive telecommunications services to consumers in New Jersey and is, therefore, in the public interest.

The Division of Rate Counsel has reviewed this matter and by letter dated July 24, 2012 does not object to the approval of the Petition.

After a thorough review of the petition and all related documents, and the recommendation of Board Staff, the Board **FINDS** that the purposes of this financing are necessary, reasonable and proper; that the proposed borrowing is in accordance with law and is in the public interest; and that the purposes thereof should be approved. The Board, after being satisfied with the actions as proposed by DIECA as indicated above, and approving the purposes thereof, **HEREBY ORDERS** that DIECA be and is **HEREBY AUTHORIZED** to participate in the financing transaction as hereinabove described.

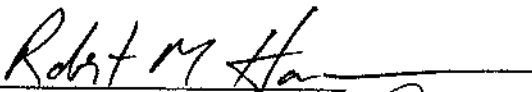
This Order is subject to the following provisions:

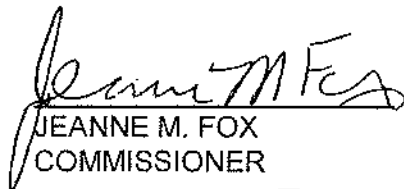
- 1) This Board's approval is expressly limited to the financing described herein and as more fully described in the Petition and supporting documents.
- 2) This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by DIECA.
- 3) Petitioner shall notify the Board of any material default on the terms of the financing arrangement within five (5) business days of such occurrence.
- 4) Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement shall not constitute automatic transfer of Petitioner's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
- 5) Petitioner shall notify the Board, within five (5) business days, of any material changes in the financing arrangements and shall provide complete details of such transactions including any anticipated effects upon service in New Jersey.
- 6) This Order shall not affect or in any way limit the exercise of the authority of this Board, or of the State of New Jersey, in any future petition or in any proceeding with respect to rates, franchises, services, financing (including the method of sale of securities), accounting, capitalization, depreciation or in any other matter affecting DIECA.

This Order shall be effective on August 25, 2012.

DATED: 8/15/12

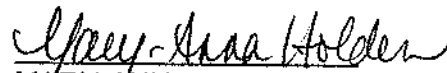
BOARD OF PUBLIC UTILITIES  
BY:


  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

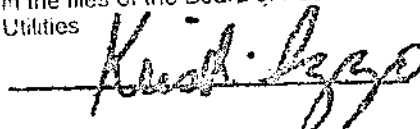
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
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



## Service List

**In The Matter Of The Verified Petition Of DIECA Communications, Inc. D/B/A Covad  
Communications Company And For Approval To Participate In Certain Financing  
Arrangements  
Docket No. TF12030278**

Mark Beyer, Chief Economist  
Office of the Economist  
Board of Public Utilities  
44 South Clinton Avenue  
9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Stefanie A. Brand, Esq.,  
Director  
Division of Rate Counsel  
31 Clinton Street - 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, New Jersey 07101

James H. Laskey Esq.  
Norris McLaughlin & Marcus PA  
721 Route 202-206  
Bridgewater, NJ 08807

Robert Wojciak  
Office of the Economist  
Board of Public Utilities  
44 South Clinton Avenue  
9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Jose Rivera-Benitez, Esq.  
Division of Rate Counsel  
31 Clinton Street - 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, New Jersey 07101

Jeffrey R. Strenkowski, Esq.  
Bingham McCutchen LLP  
2020KStreet NW  
Washington, DC 20006

Anthony Centrella, Director  
Div. of Telecommunications  
Board of Public Utilities  
44 South Clinton Avenue  
9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Alex Moreau, DAG  
Division of Law  
124 Halsey Street  
P. O. Box 45029  
Newark, NJ 07101

Anthony Hansel, Esq.  
Assistant General Counsel  
Covad Communications Co.  
1750 K Street, NW  
Washington, DC 20006