

16 January 2015

VIA EMAIL

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

Re: *Joint Application of XAND CLEC, LLC and TierPoint, LLC for Approval of an
Assignment of Assets*

Dear Ms. Burgess:

Enclosed for filing, please find a Joint Petition for Approval of Assignment of Assets as further described in the above-referenced Application.

Pursuant to NYCRR § 6-1.3 and 6-1.4, the Petitioners request confidential treatment of Exhibit B and have filed Exhibit B with the Records Access Officer concurrently with this filing. The documents submitted as Exhibit B constitute commercially sensitive information and are not made available to the public. Public dissemination of the information contained in Exhibit B would be harmful to Applicants' business interests.

Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Jonathan Mirsky
Kristine Laudadio Devine

Enclosure

Joint Petition of _____)
 _____)
 _____)
XAND CLEC, LLC)
 _____)
 and _____) Docket No. _____
 _____)
TierPoint, LLC)
 _____)
 For Approval of an Assignment of Assets)
 _____)

XAND CLEC, LLC (“XAND CLEC”) and TierPoint, LLC (“TierPoint”) (together, the “Petitioners”), through their respective undersigned counsel and pursuant to Section 99 of the New York Public Service Law, N.Y. Pub. Serv. Law § 99, hereby respectfully request authority to consummate a transaction whereby TierPoint will acquire communications assets of XAND CLEC, including its certificate of public convenience and necessity (“CPCN”).

I. DESCRIPTION OF THE PETITIONERS

XAND CLEC is Delaware limited liability company with its principal offices located at 11 Skyline Drive, Hawthorne, New York 10532. XAND CLEC offers certain telecommunications connections and services to TierPoint's customers as part of the application hosting and data storage made available in TierPoint's data center located in Westchester County. TierPoint serves as XAND CLEC's agent for marketing and for billing and collection

of these telecommunications services pursuant to a marketing and billing and collection agreement.

XAND CLEC is authorized to provide telecommunications services in the State of New York pursuant to Case No. 97-C-0484, in which CUBE Computer Corporation (the predecessor-in-interest of XAND CLEC) was granted a certificate of public convenience and necessity to operate as a reseller of all forms of telephone services within the State of New York.¹ Further information regarding XAND CLEC and the services it provides has been previously been submitted to the Commission and is therefore a matter of public record. Petitioners therefore request that it be incorporated herein by reference.

B. TierPoint

TierPoint, LLC is a Delaware limited liability company with its principal place of business at 520 Maryville Centre Drive, Suite 300, St. Louis, Missouri 63141, telephone number (314) 315-9000.

TierPoint is a leading national provider of information technology and data center services, including colocation, cloud computing, and managed IT services. Beginning with the acquisition of Colo4 in Dallas, Texas, in 2010, TierPoint was formed through strategic acquisition of some of this country's most respected and innovative data centers and IT solution providers.

TierPoint is led by seasoned executives. TierPoint's Chief Executive Officer is Paul R. Estes. Mr. Estes has served as the Chief Operating Officer for AAT Communications Corp, the largest privately-held telecommunications tower company in the U.S. until its sale to SBA

¹ See also Case No. 00-C-0159, in which the Commission granted the Petition for Approval of an Interconnection Agreement with New York Telephone Company, d/b/a Bell Atlantic- New York filed by CUBE Computer Corporation (predecessor-in-interest of XAND CLEC).

Communications in 2006. Prior to his role with AAT Communications, Mr. Estes served as Vice President, Operations for Charter Communications. Andrew M. Stewart serves as CFO of TierPoint; Mr. Stewart has facilitated acquisitions for, and growth of, TierPoint. Prior to his role at TierPoint, Mr. Stewart oversaw diligence, modeling and contract negotiations for acquisitions and divestitures at Suddenlink Communications.

TierPoint's indirect owner, Cequel Data Centers, L.P., is directly or indirectly owned by an investor group composed of management and experienced investors across the communications infrastructure industry. That investor group includes RedBird Capital Partners Management, LLC, and The Stephens Group, LLC, investment firms with communications infrastructure experience. TierPoint's existing management team will have access to the experience and expertise of these investors in addition to the highly experienced and well-qualified operational and technical personnel of TierPoint. This financial and managerial support should strengthen the ability of TierPoint to compete and the ability of TierPoint to offer the best quality telecommunications services to its customers.

TierPoint has the necessary financial commitments to consummate the transaction described herein (the "Transaction") and to provide adequate working capital to meet the operational needs for TierPoint for the foreseeable future. Attached as Exhibit B are confidential audited financial statements for 2013 for TierPoint, LLC (f/k/a Cequel Data Centers III, LLC).²

II. DESIGNATED CONTACTS

For the purposes of this Petition, questions or any correspondence, orders, or other materials should be directed to the following contacts:

For XAND CLEC, LLC:

² Petitioners respectfully request that the Commission accord confidential treatment to the documents submitted as Exhibit B, which are confidential and are not made available to the public. General dissemination of the information contained in Exhibit B would harm TierPoint, LLC in the marketplace.

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For TierPoint, LLC:

Wendy Knudsen, Executive Vice President, Secretary & General Counsel
Cameron Walbert, Senior Counsel
520 Maryville Centre Drive, Suite 300
St. Louis, MO 63141
Tel: (314) 315-9000

III. DESCRIPTION OF THE TRANSACTION

XAND CLEC and TierPoint entered into an Asset Purchase Agreement (the “APA”) on October 20, 2014, for TierPoint to acquire the communication assets of XAND CLEC, including all fiber optic cable owned by XAND CLEC and all of XAND CLEC’s right, title, and interest in and to all agreements with Con Edison and Verizon pertaining to XAND CLEC’s fiber optic cable. TierPoint will use the communications assets of XAND CLEC to serve TierPoint’s customers, which will include the existing customers of XAND CLEC.

Affected customers will be notified of the carrier change from XAND CLEC to TierPoint. A sample of the form of notice that will be provided to applicable affected customers is provided in Exhibit C hereto.

As described in Section I.B, TierPoint will obtain all the assets of XAND CLEC. For the Commission’s convenience, illustrative pre- and post-Transaction organization charts are provided as Exhibit D hereto.

Accordingly, Applicants respectfully request authority for the transfer of all telecommunications-related assets of XAND CLEC from XAND CLEC to TierPoint. Immediately following the Transaction, TierPoint will provide service to existing customers at the same rates, terms, and conditions as currently provided by XAND CLEC. In addition, TierPoint will continue to be operated by highly experienced, well-qualified management and operational and technical personnel as described in Section I.B above.

IV. PUBLIC INTEREST STATEMENT

The Transaction described herein will serve the public interest because XAND CLEC's telecommunications operations will be owned and operated by TierPoint. TierPoint is a leading national provider of information technology and data center services, including colocation, cloud computing, and managed IT services. TierPoint and its management team are experienced with information services. By adding XAND CLEC's telecommunication's services and expertise to its service offerings, TierPoint will improve its ability to compete as well as provide expanded services to its customers.

The transfer of XAND CLEC's telecommunications assets to TierPoint will be virtually transparent to customers as there will be no change in their services, or to any rates, terms, or conditions of the telecommunications services currently offered by XAND CLEC. The only perceptible change at closing will be the formal corporate name of the company providing the affected customers' telecommunications services. All XAND CLEC customers will receive notice of the transfer, in the form attached hereto as Exhibit C.

Immediately following the proposed Transaction, TierPoint will provide high-quality communications services to customers without interruption and without change in rates, terms, or conditions. Applicants emphasize that the proposed Transaction will be seamless and virtually

transparent to customers and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. The proposed Transaction should strengthen the ability of TierPoint to compete and offer telecommunications services within the State of New York.

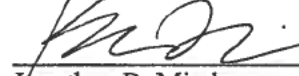
V. **CONCLUSION**

For the reasons stated above, Petitioners respectfully request the Commission grant all authority necessary for the Transaction described herein.



Wendy Knudsen
Executive Vice President, Secretary &
General Counsel
Cameron Walbert,
Senior Counsel
TierPoint, LLC
520 Maryville Centre Drive, Suite 300
St. Louis, MO 63141

Respectfully submitted,



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kdevine@hwglaw.com
Counsel for XAND CLEC, LLC

Dated: January 16, 2015

EXHIBITS

Exhibit A	Telecommunications Carrier Critical Information Form
Exhibit B	Financial Statements of TierPoint, LLC (CONFIDENTIAL)
Exhibit C	Sample Customer Notice
Exhibit D	Pre- and Post-Transaction Illustrative Charts
Verifications	

EXHIBIT A

TierPoint, LLC Telecommunications Carrier Critical Information Form

EXHIBIT B

Financial Statements of TierPoint, LLC.

(CONFIDENTIAL - FILED UNDER SEAL)

Petitioners respectfully request that the Commission accord confidential treatment to the documents submitted as Exhibit B, which are confidential and are not made available to the public. General dissemination of the information contained in Exhibit B would harm the position of TierPoint, LLC in the marketplace.

EXHIBIT C

Sample Customer Notice

If it is determined that at closing XAND CLEC, LLC will have third-party customers entitled to receive notices, TierPoint proposes to use the following text:

To our valued customers:

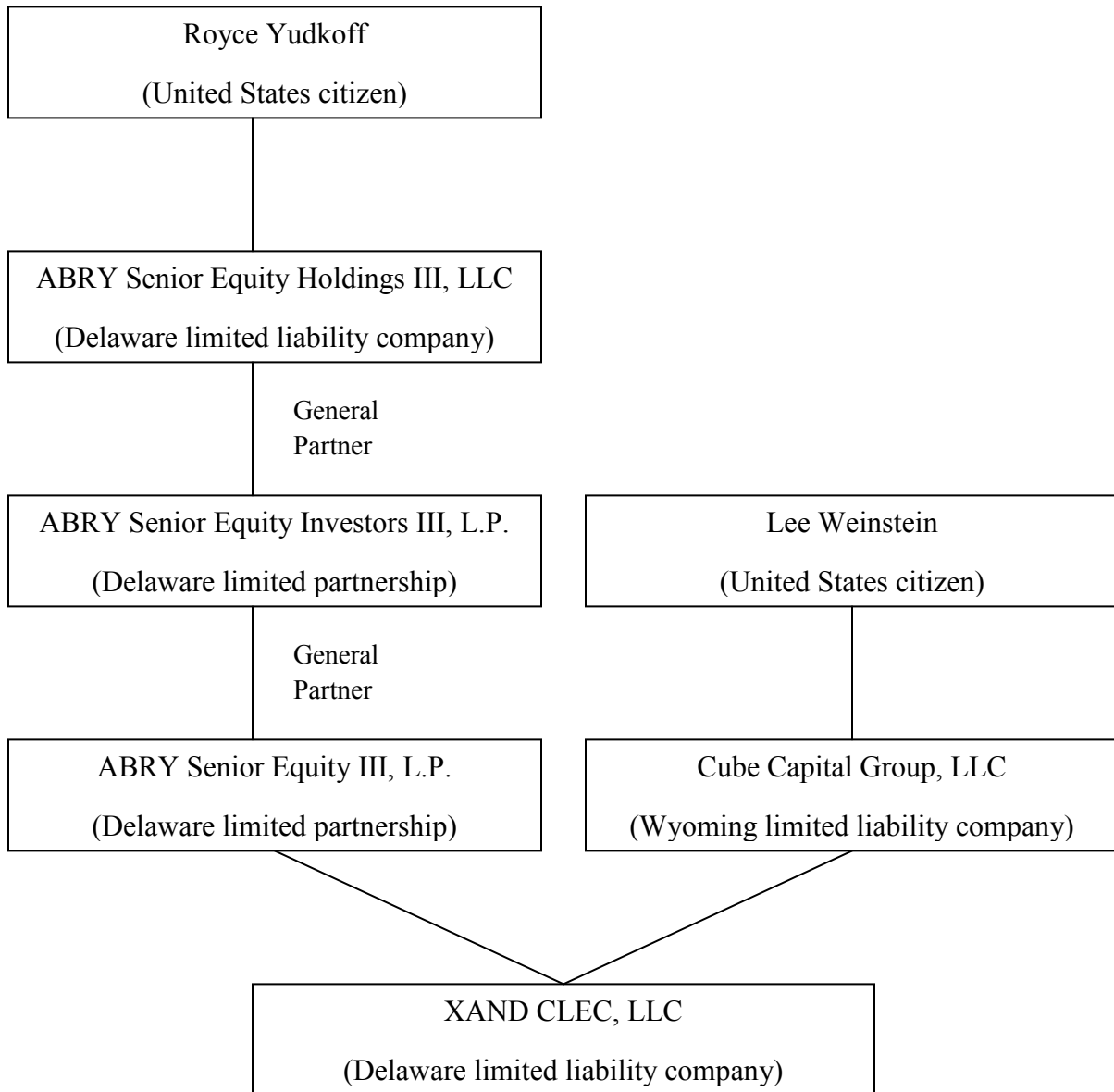
We wanted to take this opportunity to advise you of a change of ownership in your XAND service. Specifically, on or about [INSERT DATE], XAND CLEC, LLC will transfer its fiber optic cable assets to TierPoint, LLC. As a result your telecommunications services will be provided by TierPoint, LLC. Your services and the associated pricing and terms and conditions of service will not change as a result of this transfer. There will not be any charge associated with this change. If you have any questions about your bill, please contact us at 314-965-2020.

We recognize that you always have a choice in telecommunications carriers, subject to restrictions in your contract or service order, and we appreciate your business. TierPoint, LLC looks forward to providing you with the same great service you are accustomed to receiving.

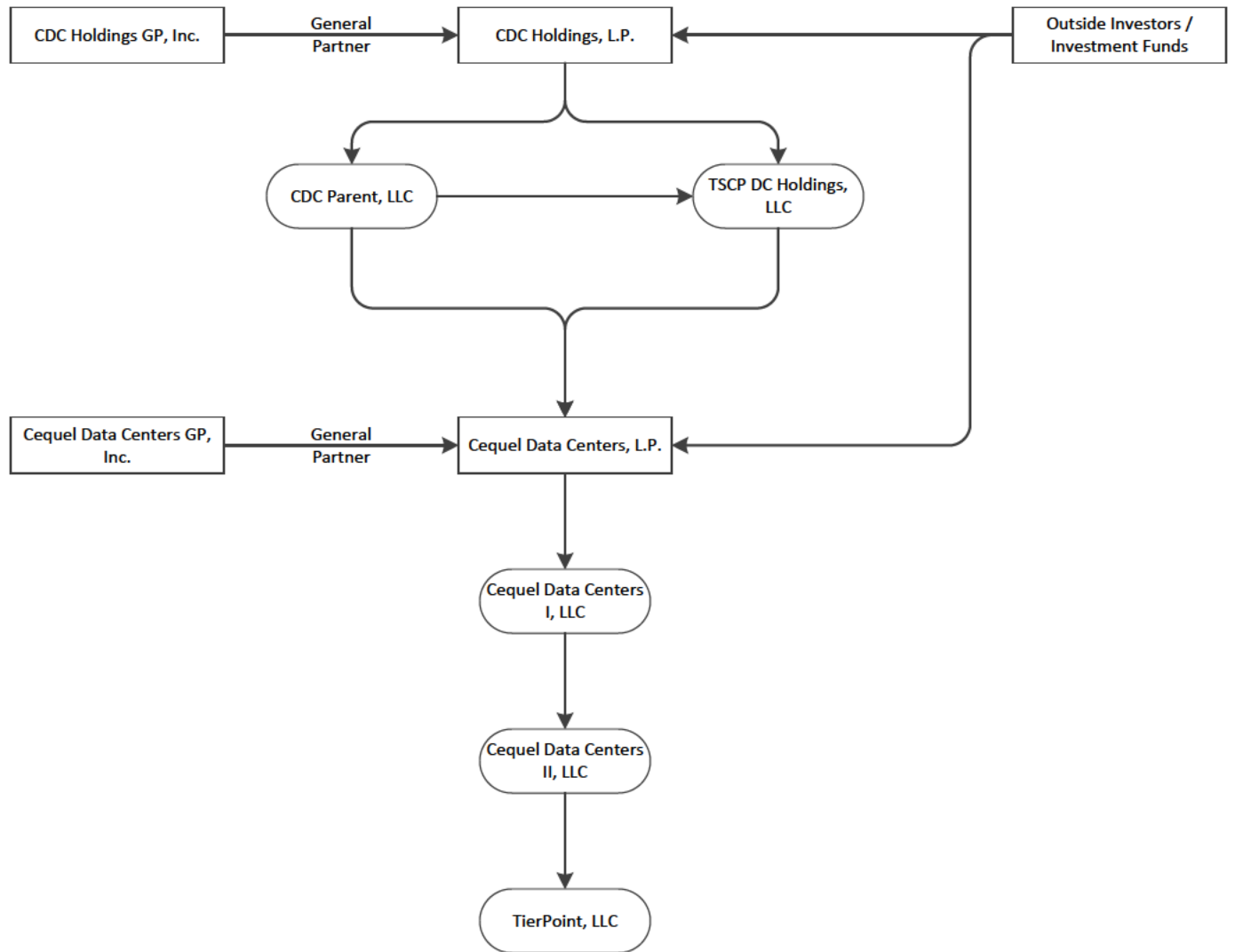
EXHIBIT D

Pre- and Post-Transaction Illustrative Charts

Pre-Transaction Organization of XAND CLEC, LLC



Post-Transaction Organization of TierPoint, LLC



VERIFICATIONS

VERIFICATION

I, Brian St. Jean, of XAND CLEC, LLC, state that I am authorized to make this Verification on behalf of XAND CLEC, LLC; that the foregoing filing was prepared under my direction and supervisions; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

16 day of January, 2015

A handwritten signature in black ink, appearing to read 'Brian St. Jean', is written over a horizontal line.

Name: Brian St. Jean
Title: Vice President
Company: XAND CLEC, LLC

VERIFICATION

I, Wendy Knudsen, of TierPoint, LLC, state that I am authorized to make this Verification on behalf of TierPoint, LLC; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

16th day of January, 2015



Name: Wendy Knudsen

Title: Executive Vice President, Secretary,
and General Counsel

Company: TierPoint, LLC