

GLOBECOMM SYSTEMS INC
Form DEFM14A
October 21, 2013

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

PROXY STATEMENT PURSUANT TO SECTION 14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
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GLOBECOMM SYSTEMS INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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(1) Amount Previously Paid:

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(3) Filing Party:

(4) Date Filed:

GLOBECOMM SYSTEMS INC.

45 Oser Avenue

Hauppauge, New York 11788

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

to be held on November 22, 2013

Dear Globecomm Stockholder:

Globecomm Systems Inc., a Delaware corporation (Globecomm), will hold a special meeting of stockholders at Globecomm s principal executive offices at 45 Oser Avenue, Hauppauge, New York 11788 at 10:00 a.m., local time, on November 22, 2013, for the following purposes:

1. To consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of August 25, 2013, as it may be amended from time to time (the merger agreement), by and among Globecomm, Wasserstein Cosmos Co-Invest, L.P., a Delaware limited partnership (Parent), and Cosmos Acquisition Corp., a Delaware corporation and an indirect wholly owned subsidiary of Parent.
2. To approve the adjournment of the special meeting, if necessary, to solicit additional proxies in the event there are not sufficient votes in favor of adoption of the merger agreement at the time of the special meeting.
3. To consider and vote on a proposal to approve, on a non-binding, advisory basis, certain compensation that may or will be paid by Globecomm to its named executive officers that is based on or otherwise relates to the merger.
4. To act upon other business as may properly come before the special meeting and any and all adjourned or postponed sessions thereof.

Only record holders of common stock, par value \$0.001 per share, of Globecomm (the Globecomm common stock) at the close of business on October 9, 2013 are entitled to receive notice of, and will be entitled to vote at, the special meeting.

Under Delaware law, if the merger is completed, holders of Globecomm common stock who do not vote in favor of adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares as determined by the Delaware Court of Chancery. In order to exercise your appraisal rights, you must deliver to Globecomm a written demand for an appraisal prior to the stockholder vote on the merger agreement, not vote in favor of adoption of the merger agreement and comply with other Delaware law procedures explained herein. A copy of Section 262 of the Delaware General Corporation Law (Section 262), the statute that governs appraisal rights, is reproduced in Annex C to the accompanying proxy statement.

Our board of directors unanimously recommends that you vote FOR the proposal to adopt the merger agreement, FOR the adjournment proposal and FOR the named executive officer merger-related compensation proposal.

Your vote is important and we urge you to vote electronically through the Internet or by telephone by following the instructions included with your proxy card, or complete, sign, date and return your proxy card as promptly as possible by mail in the accompanying reply envelope, whether or not you expect to attend the special meeting. If you are unable to attend in person and you return your proxy card, your shares will be voted at the special meeting in accordance with your proxy. If your shares are held in street name by your broker or other nominee, only that holder can vote your shares unless you obtain a valid legal proxy from such broker or nominee. You should follow the directions provided by your broker or nominee regarding how to instruct such broker or nominee to vote your shares.

The merger is described in the accompanying proxy statement, which we urge you to read carefully as it sets forth details of the merger and other important information relating to the merger. A copy of the merger agreement is attached as Annex A to the proxy statement. **If you have any questions or need assistance with voting, please contact MacKenzie Partners, Inc. who is assisting us with the solicitation, toll-free at (800) 322-2885 or collect at (212) 929-5500 if you are calling from outside North America.**

By Order of the Board of Directors,

Julia Hanft
Corporate Secretary

October 21, 2013

The accompanying proxy statement is dated October 21, 2013 and, together with the enclosed form of proxy card, is first being mailed to Globecomm stockholders on or about October 23, 2013.

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SUMMARY TERM SHEET

This Summary Term Sheet, together with the Questions and Answers about the Special Meeting and the Merger, summarizes the material information in the proxy statement. You should carefully read this entire proxy statement and the other documents to which this proxy statement refers you for a more complete understanding of the matters being considered at the special meeting. In addition, this proxy statement incorporates by reference important business and financial information about Globecomm. You may obtain the information incorporated by reference into this proxy statement without charge by following the instructions in Where You Can Find More Information on page 109 of this proxy statement.

References to Globecomm, the Company, we, our or us in this proxy statement refer to Globecomm Systems Inc. and its subsidiaries, unless otherwise indicated by the context.

The Parties to the Merger (see page 56)

Globecomm Systems Inc., a Delaware corporation, is a leading provider of satellite-based communications infrastructure solutions and services on a global basis, offering a comprehensive suite of design, engineering, installation and integration solutions, managed network services and lifecycle support services. Globecomm's principal executive offices are located at 45 Oser Avenue, Hauppauge, New York 11788, and its telephone number is (631) 231-9800.

Wasserstein Cosmos Co-Invest, L.P., which we refer to as Parent, is a newly formed Delaware limited partnership that was formed by Wasserstein & Co., LP, which we refer to as Wasserstein & Co., solely for the purpose of entering into the merger agreement and consummating the transactions contemplated by the merger agreement. Parent has not engaged in any business except for activities incident to its formation and in connection with the transactions contemplated by the merger agreement. Wasserstein & Co. is the general partner of Parent. The principal office address of Parent is c/o Wasserstein & Co., LP, 1301 Avenue of the Americas, 41st Floor, New York New York 10019, and its telephone number is (212) 702-5600.

Cosmos Acquisition Corp., which we refer to as Merger Sub, is a Delaware corporation and an indirect wholly owned subsidiary of Parent. Merger Sub was formed solely for the purpose of entering into the merger agreement and consummating the transactions contemplated by the merger agreement. Merger Sub has not engaged in any business except for activities incident to its incorporation and in connection with the transactions contemplated by the merger agreement. The principal office address of Merger Sub is c/o Wasserstein & Co., LP, 1301 Avenue of the Americas, 41st Floor, New York New York 10019, and its telephone number is (212) 702-5600.

The Structure of the Merger and the Merger Agreement

The Structure of the Merger (see page 62). You are being asked to vote to adopt an agreement and plan of merger, dated as of August 25, 2013, by and among Globecomm, Parent and Merger Sub, as it may be amended from time to time, which agreement we refer to as the merger agreement. Pursuant to the merger agreement, Merger Sub will merge with and into Globecomm, which we refer to as the merger. Globecomm, which we sometimes refer to as the surviving corporation, will be the surviving corporation in the merger and will continue to do business as Globecomm following the merger. As a result of the merger, Globecomm will cease to be an independent, publicly traded company and will become an indirect wholly owned subsidiary of Parent.

Merger Consideration (see page 63). Subject to the following sentence, if the merger is completed, each share of our common stock, which we refer to as Globecomm common stock, will be converted into the right to receive \$14.15 in cash, without interest and less any applicable withholding taxes, which we refer to as the merger consideration. The following shares of Globecomm common stock will not be converted into merger consideration in connection with the merger:

shares held by any of our stockholders who are entitled to and who properly exercise, and do not withdraw or lose, appraisal rights under the General Corporation Law of the State of Delaware, which we refer to as the DGCL;

shares held by the Company as treasury stock; and

shares owned by Parent or any subsidiary of either Globecomm or Parent.

Treatment of Options (see page 64). In accordance with the terms of the merger agreement, each option to purchase shares of Globecomm common stock, which we refer to as Globecomm stock options, under any employee stock option or compensation plan or arrangement of the Company that is outstanding immediately prior to the completion of the merger, whether or not then exercisable or vested, will automatically be cancelled immediately prior to the completion of the merger, and, subject to applicable withholding taxes, the holder will be entitled to receive an amount in cash equal to the product of (i) the excess, if any, of (a) the merger consideration over (b) the exercise price per share of Globecomm common stock subject to such Globecomm stock option, and (ii) the total number of shares of Globecomm common stock subject to such Globecomm stock option as in effect immediately prior to the completion of the merger, without interest and with the aggregate amount of such payment rounded down to the nearest cent.

Treatment of Globecomm Restricted Shares (see page 64). Upon consummation of the merger, each restricted share representing a share of Globecomm common stock, which we refer to as a Globecomm restricted share, will, to the extent not already fully vested, vest, and each holder of such Globecomm restricted share will be entitled to receive the merger consideration for each Globecomm restricted share, without interest and less any applicable withholding taxes.

Treatment of Other Globecomm Equity-Based Rights (see page 64). Upon consummation of the merger, each award of a right entitling the holder thereof to shares of Globecomm common stock or cash equal to or based on the value of Globecomm common stock (other than Globecomm common stock options and Globecomm restricted shares) that is outstanding immediately prior to the completion of the merger will automatically be cancelled by virtue of the merger, and the holder will be entitled to receive the merger consideration for each such right.

Conditions to the Completion of the Merger (see page 65). Each party's obligation to complete the merger is subject to the satisfaction or waiver (to the extent permitted by applicable law) of the following closing conditions:

the proposal to adopt the merger agreement shall have been approved by the affirmative vote of the holders of at least a majority of the outstanding shares of Globecomm common stock entitled to vote thereon;

no order issued by any governmental authority shall be in effect (whether temporary, preliminary or permanent) restraining, enjoining or otherwise prohibiting the consummation of the merger, and no applicable law shall be in effect that prohibits or makes illegal or otherwise restrains the consummation of the merger;

any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, which we refer to as the HSR Act, and the International Traffic in Arms Regulations, which we refer to as ITAR, relating to the merger shall have expired or terminated and any National Industrial Security Program Operating Manual, which we refer to as NISPOM, requirements shall have been met;

Parent or the Company shall have been notified by the Committee on Foreign Investment in the United States, which we refer to as CFIUS, that (i) it has determined that it lacks jurisdiction over the transactions contemplated by the merger agreement or has concluded its review and determined not to conduct a full investigation and that there are no unresolved national security issues with respect to the transaction or (ii) if a full investigation is required, the United States government will not take action to prevent the consummation of the transactions contemplated by the merger agreement; and

certain consents shall have been received from the Federal Communications Commission, which we refer to as the FCC, and certain other actions relating to Globecomm's FCC licenses shall have been completed.

Additionally, the obligation of Parent and Merger Sub to complete the merger is subject to the satisfaction of or waiver (to the extent permitted by applicable law) of the following other conditions:

Globecomm shall have performed in all material respects all of its obligations required to be performed by it under the merger agreement at or prior to the effective time of the merger;

Globecomm's representations and warranties shall be true in all respects as of the date of the merger agreement and as of the date of the completion of the merger (or, in the case of representations and warranties that by their terms address matters only as of another specified time, as of that time), subject to the varying materiality standards set forth in the merger agreement;

Globecomm's Closing Condition Adjusted EBITDA, as defined in The Merger Agreement Conditions to the Completion of the Merger beginning on page 65 of this proxy statement, for the most recent 12-calendar months ending 30 days or more prior to the closing of the merger (or, if the final month in such 12-calendar month period is September, 45 days) shall have met or exceeded \$32,000,000 until and including the 12-month period ending November 30, 2013;

Parent shall have received a certificate signed by an authorized executive officer of Globecomm certifying that the conditions described in the preceding three bullet points have been satisfied;

since the date of the merger agreement, there shall not have occurred any change, effect, development or circumstance that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, as defined in The Merger Agreement Definition of Material Adverse Effect beginning on page 70 of this proxy statement;

there shall not be any pending or threatened proceeding in writing by a governmental authority against Globecomm, Parent or Merger Sub or any of their officers or directors that could reasonably be expected to materially and adversely affect the ability of Parent to consummate the merger or that seeks to enjoin the transactions contemplated by the merger agreement;

Globecomm shall not have (i) published or become obligated to file or publish any press release or file a report with the Securities and Exchange Commission, which we refer to as the SEC, to the effect that prior financial statements of Globecomm filed with the SEC may no longer be relied upon or (ii) announced that the audit committee of our board of directors is conducting an investigation of accounting matters; and

Globecomm and its subsidiaries shall not have been debarred from any contracting with any federal governmental authority of the United States.

The obligation of Globecomm to complete the merger is subject to the satisfaction or waiver (to the extent permitted by applicable law) of the following other conditions:

each of Parent and Merger Sub shall have performed in all material respects all of its obligations required to be performed by it under the merger agreement at or prior to the effective time of the merger;

Parent's and Merger Sub's representations and warranties shall be true and correct as of the date of the merger agreement and as of the completion of the merger (or, in the case of representations and warranties that by their terms address matters only as of another specified time, as of such time), except where the failure to be true and correct (without regard to any qualifications or exceptions as to materiality contained in such representations and warranties), would not, individually or in the aggregate, impair, prevent or delay in any material respect the ability of each of Parent or Merger Sub to perform its obligations under the merger agreement; and

Globecomm shall have received a certificate signed by an authorized executive officer of Parent certifying that the conditions described in the preceding two bullet points have been satisfied.

Conduct of Business Pending the Merger (see page 71). We have agreed to refrain from certain enumerated actions between the date of the merger agreement and the completion of the merger without Parent's consent, including actions that are outside the ordinary course of our business. See The Merger Agreement Conduct of Business Pending the Merger beginning on page 71 of this proxy statement.

No Solicitation by Globecomm (see page 74). Subject to the exceptions described in The Merger Agreement No Solicitation by Globecomm beginning on page 74 of this proxy statement, Globecomm has agreed that neither Globecomm nor any of its subsidiaries will, nor will Globecomm or any of its representatives, directly or indirectly:

solicit, initiate or take any action to knowingly facilitate or encourage the submission of any acquisition proposal;

enter into or participate in any negotiations with, or furnish any information relating to Globecomm or any of its subsidiaries or afford access to the business, properties, assets, books or records of the Company or any of its subsidiaries to, any third party relating to an acquisition proposal or any inquiry, proposal or request for information that may reasonably be expected to lead to an acquisition proposal;

enter into any merger agreement, letter of intent, agreement in principle, share purchase agreement, asset purchase agreement, share exchange agreement, option agreement or other similar contract relating to an acquisition proposal (other than a confidentiality agreement entered into in accordance with the terms of the merger agreement);

fail to make, or withdraw, qualify or modify in a manner adverse to Parent, or publicly propose to withdraw, qualify or modify, the recommendation of our board of directors to Globecomm's stockholders to adopt the merger agreement or fail to include the recommendation of our board of directors with respect to the merger in this proxy statement;

take any action to exempt any third party from the provisions of any state takeover statute;

approve, adopt or recommend to Globecomm's stockholders, or publicly propose to approve, adopt or recommend to Globecomm's stockholders any acquisition proposal, which, together with any action described in the two preceding bullet points, we refer to as an adverse recommendation change; or

resolve or propose to do any of the foregoing.

Our board of directors, at any time prior to the adoption of the merger agreement by Globecomm's stockholders, may withdraw its recommendation, which would be an adverse recommendation change, if (i) Globecomm receives an acquisition proposal that was not the result of a breach of the merger agreement and our board of directors determines in good faith, after consultation with outside financial advisors and outside legal counsel, that such proposal constitutes a superior proposal, as defined in The Merger Agreement No Solicitation by Globecomm beginning on page 74 of this proxy statement, or (ii) an intervening event, as defined in The Merger Agreement No Solicitation by Globecomm beginning on page 74 of this proxy statement, has occurred and our board of directors determines in good faith, based on the opinion of outside legal counsel and after consultation with its outside financial advisors and outside legal counsel, that the failure to take such action would breach its fiduciary duties under applicable law, in each case, subject to Globecomm's notification to Parent of such superior proposal or intervening event and the right of Parent to match such superior proposal and to increase its bid with respect to an intervening event.

However, subject to the satisfaction of certain notice provisions and other requirements as described in The Merger Agreement No Solicitation by Globecomm beginning on page 74 of this proxy statement, Globecomm may:

engage in negotiations or discussions with any third party and its representatives or financing sources if such third party has made an acquisition proposal after the date of the merger agreement that our board of directors determines in good faith constitutes or is reasonably likely to result in a superior proposal by the third party;

furnish to such third party or its representatives or financing sources information, including nonpublic information, relating to Globecomm or any of its subsidiaries or afford access to the business, properties, assets, books and records of Globecomm and its subsidiaries pursuant to a confidentiality agreement with terms no less favorable than the confidentiality agreement entered into in connection with the merger agreement, provided that all such information (to the extent not previously provided or made available to Parent) is provided or made available to Parent prior to or substantially concurrently with the time it is provided to such third party; and

take any nonappealable, final action required by applicable law and any action that any court of competent jurisdiction requires Globecomm to take.

Termination of the Merger Agreement (see page 82). The merger agreement may be terminated at any time before the completion of the merger, whether before or after Globecomm's stockholders have adopted the merger agreement, as follows:

By mutual written agreement of Parent and Globecomm;

By either Parent or Globecomm, if, subject to certain exceptions and limitations:

the merger has not been consummated by February 25, 2014, which we refer to as the outside date, subject to extension upon the written agreement of Parent and Globecomm;

there is any applicable law that makes completion of the merger illegal or otherwise prohibited or that permanently enjoins Globecomm or Parent from completing the merger and such injunction has become final and nonappealable; or

no adverse recommendation change has occurred but Globecomm's stockholders fail to adopt the merger agreement at a Globecomm stockholders' meeting called for that purpose (or at any adjournment or postponement thereof).

By Parent, subject to certain exceptions and limitations, in certain additional instances:

(i) prior to Globecomm stockholder approval if there is an adverse recommendation change, (ii) prior to Globecomm stockholder approval if Globecomm materially breaches its obligations relating to non-solicitation as described in "The Merger Agreement - No Solicitation by Globecomm" beginning on page 74 of this proxy statement, or (iii) if Globecomm (a) publishes or becomes obligated to file or publish any press release or file a report with the SEC to the effect that prior financial statements of Globecomm filed with the SEC may no longer be relied on or (b) announces that the audit committee is conducting an investigation of accounting matters; or

if there has been a material breach by Globecomm of any representation or warranty or failure to perform any covenant or agreement that results in failure of applicable conditions and that cannot be cured by the outside date or, if curable, within 30 days.

By Globecomm, subject to certain exceptions and limitations, in certain additional instances:

if an adverse recommendation change has occurred and our board of directors has approved our entry into a definitive agreement providing for a superior proposal, provided that Globecomm has complied with its obligations relating to non-solicitation as described in "The Merger Agreement - No Solicitation by Globecomm" beginning on page 74 of this proxy statement, and paid the applicable termination fee;

if there has been a material breach by Parent of any representation or warranty or failure to perform any covenant or agreement that results in failure of applicable conditions and that cannot be cured by the outside date or, if curable, within 30 days;

if all conditions to closing have been satisfied (other than those to be satisfied at closing or that have not been satisfied due to the failure of Parent or Merger Sub to perform their obligations under the merger agreement), Parent and Merger Sub fail to consummate the merger within two business days of the date on which the closing should have occurred and Globecomm is ready and willing to consummate the merger; or

if an adverse recommendation change has occurred and the Globecomm stockholders fail to approve the merger at the stockholders' meeting called for that purpose.

Termination Fees and Expenses (see page 84). The merger agreement provides for termination fees to be paid by either Globecomm or Parent in certain circumstances.

Termination Fee Payable by Globecomm Globecomm has agreed to pay Parent a cash termination fee, which we refer to as the Globecomm termination fee, if the Merger is terminated under specified circumstances, in the amount of:

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\$10,200,000, if Parent terminates the merger agreement (i) prior to Globecomm stockholder approval, if there is an adverse recommendation change, (ii) prior to

Globecomm stockholder approval, if Globecomm materially breaches its obligations related relating to non-solicitation as described in The Merger Agreement No Solicitation by Globecomm beginning on page 74 of this proxy statement, or (iii) if Globecomm (a) publishes or becomes obligated to file or publish any press release or file a report with the SEC to the effect that prior financial statements of Globecomm filed with the SEC may no longer be relied on or (b) announces that the audit committee is conducting an investigation of accounting matters;

\$10,200,000, if Globecomm terminates the merger agreement due to an adverse recommendation change and our board of directors has approved our entry into a definitive agreement providing for a superior proposal;