

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband, Video and Market Branch**

**RESOLUTION T-17591
December 14, 2017**

R E S O L U T I O N

Resolution T-17591: Granting Request for Limited Modification of Resolution T-17497, Submitted by Cal.net, Inc. (U-1340-C), to remove the requirement for a construction phase performance bond for the El Dorado North Project.

I. Summary

This Resolution grants the Request for Limited Modification of Resolution T-17497, Cal.net, Inc. ("Cal.net") submitted on October 25, 2017.¹ Good cause exists for granting the Request for Modification of T-17497 to remove the requirement for a construction phase performance bond from the Resolution.

In T-17497, the Commission ordered Cal.net, as a condition to receiving the grant, to obtain a performance bond during the construction phase of the El Dorado North project.²

I. Background

On March 31, 2015, Cal.net, submitted a grant application for CASF funding to build last-mile fixed wireless infrastructure to provide broadband Internet and VoIP telephony services to underserved rural communities in the northern regions of El Dorado County. In T-17497, issued on January 20, 2016, the Commission approved funding in the amount of \$1,139,755 from the California Advance Service Fund (CASF) for Cal.net's El Dorado North project. In T-17497,

¹Cal.net's Request for Limited Modification is considered an application or petition for modification of a resolution. The standards for granting or rejecting are the same ones as for the petition for modification filed in a formal proceeding, (See Commission Rules of Practice and Procedure, Rule 16.4).

² Resolution T-17497, Ordering Paragraph 4, pp.17 and pp.11-12.

the Commission ordered Cal.net, as a condition to receiving the grant, to obtain a performance bond during the construction phase of the El Dorado North project.³

Cal.net was eligible to receive a CASF grant due to expanded eligibility rules set forth in D.14-02-018, which allowed non-telephone corporations⁴ to apply for CASF grants. Because D.14-02-018 expanded eligibility to non-telephone corporations, in the Decision, the Commission required all non-telephone corporations to obtain a performance bond for the construction phase of the project to ensure completion of the project and the protection of that ratepayer funds.⁵

On September 11, 2017, Cal.net sent a letter to the Executive Director requesting clarification of the bond requirement or an extension of time to comply with Resolution T-17497.⁶ Specifically, Cal.net explained that basis for bond requirement in T-17497 was its status as a non-telephone corporation. Cal.net stated that there is no need for the bond requirement given that Cal.net has obtained its CPCN to provide full facilities-based and resold competitive local exchange telecommunications services and interexchange services in February 2017. Cal.net further requested clarification that Cal.net be relieved of the bond requirement given its status as a CPCN holder, or in the alternative, an extension of time in which to comply with obligation to provide a performance bond until Cal.net submits a formal request for clarification that the bond requirement no longer applies.⁷

On October 4, 2017, the Executive Director responded stating that T-17497 is clear in its requirement that Cal.net obtain a performance bond. Specifically, the response explained that T-17497 contains no provision relieving Cal.net of the bond requirement in the event that Cal.net obtains a CPCN. As such, the letter instructed Cal.net to submit a request for modification of T-17497, and extended the deadline for submitting the performance bond to February 1, 2018.⁸ The extension included time to comply with the bond requirement and to submit a request for modification of T-17497, should Cal.net choose to do so.⁹

³ Resolution T-17497, Ordering Paragraph 4, p. 17.

⁴ D.14-02-018, p. 2 which states “Entities that do not hold a Certificate of Public Convenience and Necessity (CPCN) or a Wireless Identification Registration.”

⁵ D.14-02-018, pp. 1-3, and 11-19, see also Resolution T-17443, Appendix 2, Revised Application Requirements and Guidelines, p. 11.

⁶ Cal.net letter Requesting Clarification or Extension to Comply with Resolution T-17497.

⁷ Id.

⁸ Request for Extension of Time to Comply with Resolution T-17497 letter, dated October 4, 2017.

⁹ Id.

On October 25, 2017, Cal.net submitted a Request for Limited Modification of T-17497 to the Director of the Communications Division. Cal.net served its request on the CASF service list on October 30, 2017. In the Request for Limited Modification, Cal.net requests that the Commission modify T-17497 to remove the requirement for a construction phase performance bond from the Resolution.

II. Discussion

In T-17497, the Commission ordered Cal.net to obtain a performance bond for the El Dorado North project because CASF rules require all non-telephone corporations to post a performance bond for the construction phase of the project in order to ensure completion of the CASF grant funded project.¹⁰ Specifically, T-17497 required Cal.net to send an executed bond, equal to the total amount payable under the CASF award, to the CPUC's Executive Director and to the Director of Communications Division within five business days after the completion of the CEQA review.¹¹

In its Request for Limited Modification of T-17497, Cal.net states that the requirement to obtain a performance bond for the construction phase of its project was based on its status as a non-telephone corporation at the time the CASF grant was awarded. Further, Cal.net states that there is no need for the requirement given that Cal.net obtained its CPCN in February 2017. Specifically, Cal.net states that it is now a telephone corporation, and therefore the Commission has regulatory authority over it and can ensure the CASF money is protected.

In analyzing whether to grant or deny Cal.net's request for modification of a resolution, we look for guidance to Rule 16.4 of the Commission's Rules of Practice and Procedure, which sets forth the standards for a petition for modification that is filed in a formal proceeding.¹² Rule 16.4 states, in part:

- (a) A petition for modification asks the Commission to make changes to an issued decision. Filing a petition for modification does not preserve the party's appellate rights...;
- (b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry

¹⁰ D.14-02-018, pp. 2-3, and 12-19; see also Resolution T-17443, Appendix 2, Revised Application Requirements and Guidelines, p. 11.

¹¹ Resolution T-17497, p. 12.

¹² Commission Rules of Practice and Procedure, Rule 16.4; see also footnote 1.

out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

- (c) ...If more than one year has elapsed since the effective date of the decision, the Administrative Law Judge may direct the petitioner to serve the petition on other persons...;
- (d) ...If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision...;

Here, Cal.net alleges that new or changed facts warranting modification were not in existence at the time T-17497 issued.¹³ Specifically, Cal.net did not hold a CPCN and was not operating as a telephone corporation at the time of approval of the El Dorado North project. In fact, Cal.net's Request for Modification states that Cal.net received a CPCN to provide full facilities-based and resold competitive local exchange telecommunications services and interexchange service in California on February 9, 2017, and is now a telephone corporation.¹⁴

Further, the sole basis for requiring Cal.net to obtain a performance bond for the construction phase of its project was its status as a non-telephone corporation at the time the CASF grant was awarded. In D.14-02-018, the Commission implemented this requirement as a safeguard to ensure that any non-certificated entities (non-telephone corporations) were financially and technically qualified to meet CASF program requirements as a condition of receiving CASF money. In D.14-02-018, the Commission also acknowledged that the bond requirement was necessary to ensure complete construction of the project in accordance with the approved CASF grant.

CD agrees that facts warranting modification of T-17497 were not in existence at the time the Resolution issued. CD staff further agrees that the Request for Modification is warranted because Cal.net received a CPCN is now a certified telephone corporation. Because Cal.net received a CPCN and is now a certified telephone corporation, the Commission has full regulatory authority over Cal.net and, as such, can ensure the protection of CASF money. Accordingly, good cause exists for granting the request for

¹³ Cal.net' complied with the requirements set forth in Rule 16.4, Cal.net submitted the Request for Modification within one year, Cal.net's request concisely states the justification for the modification and allegations of new or changed facts are supported by a declaration.

¹⁴ See Request for Limited Modification, dated October 25, 2017, p. 2 citing D.17-02-008.

modification of the performance bond requirement given that the obligation to post a bond is no longer necessary.

III. Comments on Draft Resolution

In compliance with Public Utilities Code § 311(g), a notice letter was e-mailed on November 14, 2017, informing all parties on the CASF Distribution List of the availability of the draft of this resolution for public comments at the Commission's website at (<http://www.cpuc.ca.gov/PUC/documents>). This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at this same website.

IV. Findings and Conclusions

1. On March 31, 2015, Cal.net, Inc., a non-telephone corporation, submitted a CASF grant application to build last-mile fixed wireless infrastructure to provide broadband Internet and VoIP telephony services to underserved rural communities of the northern regions of El Dorado County.
2. On January 20, 2016, the Commission approved funding in the amount of \$1,139,755 from the CASF for Cal.net's El Dorado North project in T-17497. Ordering Paragraph No. 4 of T-17497 ordered Cal.net to post a performance bond for the construction phase of the El Dorado North project.
3. On February 9, 2017 Cal.net received a certificate of public convenience and necessity to provide full facilities-based and resold competitive local exchange telecommunications services and interexchange service in California.
4. On September 11, 2017, Cal.net sent a letter to the Executive Director requesting clarification of the bond requirement or extension of time to comply with Resolution T-17497.
5. On October 4, 2017, the Executive Director issued an extension for compliance with the deadline for submitting the performance bond to February 1, 2018.
6. On October 25, 2017, Cal.net submitted a Request for Limited Modification of T-17497 to the CD director to remove the performance bond requirement.
7. CD reviewed Cal.net's Request for Limited Modification of T-17497 and the information provided and recommends Commission approval of the requested modification of T-17497.

8. A notice letter was e-mailed on November 14, 2017, informing all parties on the CASF distribution list of the availability of the draft of this Resolution for public comments at the Commission's website (<http://www.cpuc.ca.gov/PUC/documents>). This letter also informed parties that the final confirmed Resolution adopted by the Commission will be posted and available at this same website.

THEREFORE, IT IS ORDERED that:

1. Cal.net's request for Limited Modification of Resolution T-17497, submitted on October 25, 2017, is granted for the reasons stated herein.
2. Cal.net's request for removal of the construction phase performance bond requirement in T-17497 is granted and is effective as of the date of this Resolution, and so long as Cal.net is a public utility and holds a CPCN.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the California Public Utilities Commission at its regular meeting on December 14, 2017. The following Commissioners approved it

TIMOTHY J. SULLIVAN
Executive Director