

Decision 09-02-016 February 20, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Vanco Direct USA, LLC (U-6969-C) and Capital Growth Acquisition, Inc. for Approval of Transfer of Control.

Application 08-12-001  
(Filed December 1, 2008)

**DECISION AUTHORIZING TRANSFER OF OWNERSHIP  
AND CONTROL OF VANCO DIRECT USA, LLC  
TO CAPITAL GROWTH ACQUISITION, INC.**

**Summary**

This decision grants Applicants' request for a transfer of ownership and control of Vanco Direct USA, LLC to Capital Growth Acquisition, Inc. No protests have been filed. Vanco Direct USA, LLC holds certificates of public convenience and necessity to provide interLATA and intraLATA telecommunications services in California as a switchless reseller and to provide resold local exchange telephone service. Capital Growth Acquisition, Inc. has made the required fitness showing. Vanco Direct USA, LLC will continue to provide service to its existing telecommunications customers under currently applicable rates, terms, and conditions.

**1. Procedural History**

Applicants filed this application on December 1, 2008, and followed on December 9 with a Motion to Expedite Approval. Notice of the filing of the application first appeared in the Commission's Daily Calendar on December 10, 2008. Accordingly, consistent with Rule 2.6 of the Commission's Rules of

Practice and Procedure (Rules), the 30-day protest period continued until January 9, 2009. No protests were filed. After expiration of the protest period, the assigned Administrative Law Judge (ALJ) requested, by email, additional information to clarify the application. On January 16, 2009, Applicants filed a Response to Administrative Law Judge's Request for Information (response), which includes verification by Dan Kardarzke, Vice-President of Capital Growth Acquisition, Inc. (Capital Growth Acquisition) and Capital Growth Systems, Inc. (CGSI).

## **2. Parties to the Transaction**

Vanco Direct USA, LLC (Vanco) is organized as a Delaware limited liability company with principal offices in Chicago, Illinois and is a wholly owned subsidiary of Vanco plc. The parent company, incorporated under the laws of England and Wales, is currently in administration in the United Kingdom. The application describes the administration procedure as the "United Kingdom equivalent of an insolvency proceeding, similar to a bankruptcy filing in the United States." (Application at 2.)

Vanco holds two Certificates of Public Convenience and Necessity (CPCNs) issued by this Commission. Decision (D.) 05-10-019 granted Vanco a CPCN to provide InterLATA and IntraLATA telecommunications services in California as a switchless reseller; D.05-11-008 granted a CPCN to provide resold local exchange telephone service. In addition, according to the application, Vanco has authority to provide telecommunications services in over 30 other states, as well as federal authority, under rules and regulations of the Federal Communications Commission, to provide domestic interstate and international services.

The application describes Vanco as a “leading U.S.-based virtual network operator (VNO) that offers carrier- and technology-neutral telecommunications services through strategic relationships with hundreds of carriers and proprietary information resources” and states that Vanco serves as “a single source for analysis, design, planning and provisioning of customized carrier-neutral Layer 1 connections in the U.S. for telecom service providers and cable operators.” (Application at 4.) According to the application, customers include Bell Canada, Asia Netcom, AT&T, Verizon, and Time Warner Cable.

Capital Growth Acquisition is a Delaware corporation formed for the purpose of purchasing Vanco. It is a wholly owned subsidiary of CGSI, a publicly traded corporation with principal offices in Chicago, Illinois.

According to the application, CGSI “delivers telecom logistics solutions to a global client set consisting of systems integrators, telecommunication companies, and enterprise customers” and “helps customers improve efficiency, reduce cost, and simplify operations of complex global networks, with a particular focus on access networks – often referred to in the industry as the ‘last mile.’” (Application at 5.)

Neither CGSI nor Capital Growth Acquisition holds CPCNs for any telecommunications operating authority. However, D.05-09-055 granted Global Capacity Group, Inc. (Global Capacity Group), one of CGSI’s other subsidiaries, a CPCN to operate as a switchless reseller of interLATA telecommunications services and, to the extent authorized by D.94-09-065, to provide the intraLATA telecommunications services offered by communications common carriers in California. According to the application, Global Capacity Group also provides resold and facilities-based local exchange and interexchange service in more than 30 other states.

### **3. The Proposed Transaction**

Pursuant to the executed Interest and Loan Purchase Agreement attached to the application as Exhibit 3, Capital Growth Acquisition will purchase 100% of the limited liability assets of Vanco. Once the transaction has been completed, Vanco will become a wholly owned direct subsidiary of Capital Growth Acquisition and an indirect subsidiary of CGSI. Exhibit 4 to the application, an organizational chart, illustrates the pre-closing and post-closing ownership structure. Vanco will continue to hold its California CPCNs and will continue to provide services to its customers under current rates, terms and conditions and initially, under its own name. The application represents that Capital Growth Acquisition does intend to change the Vanco name but will make all required submissions to the Commission and provide any necessary customer notice.

Applicants represent that this change of ownership and control is in the public interest, will be transparent to customers, and will go forward without any disruption to them. They further represent that “[a]ll customer service numbers/operations, contracts and procedures of Vanco will also remain in place after the transaction, including procedures relating to billing and repair complaints.” (Application at 9.)

### **4. Discussion**

Pub. Util. Code § 852<sup>1</sup> provides that no public utility, and no subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under the laws of this state, without prior

---

<sup>1</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

Commission authorization. Section 854 further requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . . .” The purpose of these and related sections is to enable the Commission, before any transfer of a public utility is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation in which a company that does not hold a CPCN seeks to acquire control of a company that does hold one, the Commission requires the acquiring company to make the same fitness showing as new applicants for the type of CPCN held by the company being acquired. As noted previously, Vanco holds CPCNs to operate as a California interLATA and intraLATA switchless reseller and to offer resold local exchange telephone service. Capital Growth Acquisition holds neither type of CPCN and thus must make the required fitness showing.

The fitness showing consists of two parts – adequate finances and adequate experience. An applicant that seeks a CPCN to operate as an inter/intra-LATA switchless reseller or to offer resold local exchange telephone service, or both, need only demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm’s start-up costs.<sup>2</sup> Adequate experience often is established by showing that existing operational staff will continue, post-transfer.

---

<sup>2</sup> If the applicant seeks authority to offer facilities-based or limited facilities-based service, the financial minimum is higher, \$100,000. The financial requirement is not additive, however. In other words, if an applicant seeks more than one CPCN and each

*Footnote continued on next page*

The application, as further clarified by Applicants' response, addresses both parts of the fitness equation. Before addressing fitness, however, Applicants' response first removes an underlying question about the proposed transfer by stating that the United Kingdom administrators "had the authority and express approval to sell" Vanco to Capital Growth Acquisition. (Response at 1.) Applicants then respond to financial fitness concerns raised by Exhibit 2 to the application, which includes CGSI's Securities and Exchange Commission 10-Q filing for the quarter ending September 30, 2008. In particular, Applicants expressly state that they "possess a minimum of \$100,000 of unencumbered cash, reasonably liquid and readily available to meet expenses." (Verification to Response.) This sum exceeds the \$25,000 showing required for the instant transaction.

Finally, Applicants provide additional information about the management and operation of Vanco post-transfer. They explain that "there is no learning curve" for the current management of CGSI because they were the original founders of Vanco and moreover, that they will be retaining key employees following finalization of the transfer. (Response at 5.) Thus, Vanco should have adequate operational expertise going forward.

Therefore, the application, as clarified by Applicants' response, should be found to be in the public interest and should be approved.

---

requires a minimum financial showing of \$25,000, the applicant need only establish that it has reserves of \$25,000. Likewise, where an applicant seeks a CPCN that requires a \$25,000 minimum financial showing and another CPCN with a \$100,000 minimum, showing \$100,000 in reserves suffices for both.

## **5. Motion to Expedite**

Applicants' motion asks the Commission to expedite review of this application given the United Kingdom's pending administration of Vanco plc, Vanco's parent. The proposed decision of the ALJ has been placed on an agenda for action at the first regularly scheduled public meeting for which this matter is eligible, pursuant to Rule 14.6 and in keeping with our internal operating procedures. Therefore, Applicants' motion is moot.<sup>3</sup>

## **6. Categorization and Need for Hearings**

In Resolution ALJ 176-3227, dated December 18, 2008, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given this status, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3227.

## **7. Comments on Proposed Decision**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

## **8. Assignment of Proceeding**

Rachelle B. Chong is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

---

<sup>3</sup> Applicants' motion does not purport to make a showing that an unforeseen emergency exists pursuant to Rule 14.4(a) and that accordingly, the Commission might reduce or waive the statutory period for public review and comment.

### **Findings of Fact**

1. Vanco is a Delaware limited liability company with its principal business offices located in Chicago, Illinois.
2. Capital Growth Acquisition is a Delaware corporation formed for the purpose of acquiring Vanco. Capital Growth Acquisition is a wholly owned direct subsidiary of Capital Growth Systems, Inc.
3. Vanco holds CPCNs to provide interLATA and intraLATA telecommunications services in California as a switchless reseller and to provide resold local exchange telephone service.
4. As a result of the transaction, Capital Growth Acquisition will acquire a 100% ownership interest in Vanco and will therefore have ultimate control of Vanco.
5. Capital Growth Acquisition does not hold a CPCN that authorizes the provision of telecommunications services in California.
6. Capital Growth Acquisition intends to change the Vanco name after complying with any applicable Commission submission and customer notice requirements.
7. Vanco's customers will continue to receive service under the same rates, terms, and conditions after the transaction.
8. Applicants expressly state that they "possess a minimum of \$100,000 of unencumbered cash, reasonably liquid and readily available to meet expenses." This sum is in excess of the \$25,000 the Commission requires to substantiate financial fitness to operate as a California interLATA and intraLATA switchless reseller or to offer resold local exchange telephone service, or both.
9. Applicants meet the requirements for technical and managerial expertise because the current management of CGSI were the original founders of Vanco

and following finalization of the transfer, key employees of Vanco will be retrained.

10. Notice of this application appeared on the Commission's Daily Calendar on December 10, 2008. No protests have been filed.

11. The proposed decision of the ALJ has been placed on an agenda for action at the first regularly scheduled public meeting for which this matter is eligible following expiration of the protest period.

12. No hearings are necessary.

### **Conclusions of Law**

1. Where a company that does not hold a telecommunications CPCN seeks to acquire control of a company that does hold one, the Commission requires the acquiring company to make the same fitness showing as a new applicant for the type of CPCN held by the company being acquired.

2. Because Vanco holds CPCNs to operate as an inter/intra-LATA switchless reseller and to offer resold local exchange telephone service, Capital Growth Acquisition must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet expenses, and that post-transfer Vanco will have adequate experience to continue to offer services under its CPCNs.

3. Capital Growth Acquisition meets the Commission's requirements for the issuance of CPCNs to operate as an inter/intra-LATA switchless reseller and to offer resold local exchange telephone service.

4. This transaction is in the public interest.

5. The December 9, 2008 Motion to Expedite should be deemed moot, since review has proceeded as expeditiously as possible, pursuant to Rule 14.6 and in keeping with the Commission's internal operating procedures.

6. In order to avoid delaying finalization of the transaction, this application should be approved, effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The transfer of ownership and control of Vanco Direct USA, LLC to Capital Growth Acquisition, Inc. is approved.
2. The December 9, 2008 Motion to Expedite is moot.
3. Application 08-12-001 is closed.

This order is effective today.

Dated February 20, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners