

Decision 03-08-059 August 21, 2003

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

Application of Verizon California Incorporated  
(U 1002-C) for Authority to Lease Parking Space  
to the Town of Los Gatos.

Application 03-04-008  
(Filed April 4, 2003)

**DECISION GRANTING APPROVAL  
UNDER PUBLIC UTILITIES CODE SECTION 851  
FOR A LEASE OF UTILITY PROPERTY**

We grant the Application of Verizon California Incorporated (Verizon) for authority to lease available land under Pub. Util.Code § 851.<sup>1</sup> The property to be leased (Property) consists of a portion of a parking lot located at 15 Montebello Way in Los Gatos, adjacent to Verizon's Los Gatos central office. The Commission previously approved an existing lease between Verizon and the United States Postal Service (USPS) involving a portion of the Property in Decision (D.) 99-06-092. The proposed lease to the Town of Los Gatos (Los Gatos) would encompass both the portion of the Property presently leased to USPS and a small additional segment of the parking lot. Upon Commission approval, the proposed lease will supersede the lease between Verizon and the USPS and Los Gatos will sub-lease the USPS parcel to the Postal Service, retaining the balance for its use.

---

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

**Background**

The Property is subject to a Lease Agreement (Lease) between Verizon and Los Gatos dated July 3, 2002, as amended by a First Amendment dated March 17, 2003. The amended Lease provides for the construction of parking lot improvements, primarily fencing, and access control gates, which will commence upon Commission approval of the transaction. Pursuant to the Lease, Los Gatos will lease the Property from Verizon for use as a vehicle parking lot for a period of 15 years, with one additional five-year renewal term. The monthly base rent rises throughout the term of the lease at five-year intervals, as follows:

|                     |             |
|---------------------|-------------|
| Years 1 through 5   | \$ 4,345.84 |
| Years 6 through 10  | \$ 4,997.71 |
| Years 11 through 15 | \$ 5,747.36 |

The single renewal option is at fair rental value.

The Lease provides that Los Gatos will construct, at its own expense, parking lot improvements on the Property, subject to Verizon’s right to approve plans and specification. The Lease further provides that upon completion of the parking lot improvements, title to them will pass to Verizon at no cost.

Los Gatos broadly indemnifies Verizon against all tort liability related to the construction or use of the parking improvements on the Property and releases Verizon from liability to third parties irrespective of the basis for the third party’s claim. Los Gatos is forbidden to bring hazardous substances, explosives or flammable materials onto the Property without Verizon’s prior consent.

Los Gatos is also required to

- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on the Property;
- Maintain appropriate comprehensive general liability insurance; and
- Indemnify Verizon against all liability for damages or injury to persons on the Property except to the extent caused by Verizon's negligent or willful misconduct.

### **The Application**

On April 4, 2003, Verizon filed its application, seeking authorization from the Commission to enter into the Lease. Verizon's application is made under § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public.<sup>2</sup> Leasing an

---

<sup>2</sup> Section 851 reads:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

*Footnote continued on next page*

employee parking lot is therefore one of the enumerated activities that require approval under § 851.<sup>3</sup>

### **Determination of Best Secondary Use**

Verizon states that its objective has been to select a cost-effective use for that portion of the Property excess to its needs consistent with the continuing use of the balance of the Property for Verizon's purposes. Verizon states that the lease will not interfere with its existing operations, nor will it impair its ability or obligation to serve its customers. The Property is currently used as a vehicle parking lot that serves employees of both Verizon and the USPS.

To evaluate the rental potential of the Property, in 1999 Verizon obtained an appraisal of the property from Cushman and Wakefield of California, Inc. that is included as an exhibit to the Application. The appraisal concludes that the fair rental value of the site is \$1850 per month. Because the rent to be paid by Los Gatos significantly exceeds the fair market rental in the appraisal, even taking into account four years worth of appreciation in real property prices, we conclude that the lease is a cost-effective use of the property.

---

Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

<sup>3</sup> As the Commission previously stated: "The language of Section 851 is expansive, and we conclude that it makes sense to read "encumber" in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility's plant, system, or property." (D.92-07-007, 45 CPUC 2d 24, 29.)

## **Environmental Review**

The California Environmental Quality Act (Public Resources Code Sections 21000 et. seq., hereafter CEQA) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities. (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Because the Commission must issue a discretionary decision (i.e., grant Section 851 authority) without which the proposed activity cannot proceed, and because the activity has the potential to result in either a direct physical change in the environment or an indirect physical change in the environment (CEQA Guidelines, Section 15378), the application is subject to CEQA and the Commission must act as either a lead or responsible agency under CEQA. The lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guidelines, Section 15051(b).) A responsible agency is required to consider the environmental consequences of a project that is subject to its discretionary approval and in particular, to consider the lead agency's environmental documents and findings before acting upon or approving a project. (CEQA Guidelines, Section 15050(b).)

In this case, Los Gatos is the lead agency for CEQA and the Commission is a responsible agency. On December 17, 2001, Los Gatos adopted a Downtown Parking Management Plan that included the proposed lease by Los Gatos of the Verizon/Montebello Way parking lot. Los Gatos determined that the Downtown Parking Management Plan is a project as defined under CEQA, but that the Plan itself is exempt from CEQA pursuant to CEQA Guidelines, Section 15262. Section 15262 provides an exemption for feasibility and planning studies. However, Los Gatos also found that certain components of the Plan would be

projects as defined by CEQA and potentially would require separate environmental review.

On June 12, 2003, Los Gatos further considered and approved various Plan components, including the Verizon/Montebello Way parking lot lease and a minimal improvement approach for the lot. The identified planned improvements will include installation of lighting, landscaping, and sidewalks. Los Gatos determined that these activities are exempt from CEQA pursuant to CEQA Guidelines, Section 15301(c) and Section 15304(b). Section 15301 provides an exemption for certain existing facilities where the project involves negligible or no expansion of an existing use. Section 15304 provides an exemption for certain minor alterations to land, specifically including landscaping. We find that Los Gatos reasonably determined that the planned activities associated with the lease of the Verizon/Montebello Way parking lot are exempt from CEQA pursuant to CEQA Guidelines, Section 15301 and Section 15304 and we adopt that finding for purposes of our approval. No further environmental review is required.

### **Discussion**

As a lease of utility-owned real property, the proposed transaction falls squarely within the requirements of § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The basic task of the Commission in a § 851 proceeding is to determine whether the transaction serves the public interest: “The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.” (D.02-01-058.) We have reviewed the proposed agreement and find

it does not interfere with Verizon's operation or affect its ability to provide service to its customers. The use of the property to provide parking for employees of Los Gatos and the USPS is a productive purpose. Accordingly, we find the lease is in the public interest and should be approved.

### **Waiver of Comment Period**

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

### **Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. In order for Los Gatos to operate a vehicle parking lot on the Property, a lease from Verizon is required.
2. Lease of the Property to Los Gatos is consistent with the current uses of the related Verizon properties.
3. The Lease will not impair Verizon's ability to provide service to the public.
4. The lease of the Verizon/Montebello Way parking lot is part of the Los Gatos Downtown Parking Management Plan.
5. Los Gatos determined that the Downtown Parking Management Plan is exempt from CEQA pursuant to CEQA Guidelines, Section 15262; however, certain components of the Plan may be projects subject to further environmental review.
6. On June 12, 2003, Los Gatos further approved the Verizon/Montebello Way lease and planned improvements to provide lighting, landscaping, and

sidewalks. Los Gatos determined that these activities are exempt from CEQA pursuant to CEQA Guidelines, Section 15301(c) and Section 15304(b).

7. There is no known opposition to granting the authorization requested.

**Conclusions of Law**

1. Approving the requested Lease is in the public interest.

2. We find Los Gatos reasonably determined that the planned parking lot improvements for the Verizon/Montebello Way lot are exempt from CEQA pursuant to CEQA Guidelines, Section 15301(c) and Section 15304(b) and we adopt that finding for purposes of our approval.

3. This decision should be effective today in order to allow Los Gatos to expeditiously enter into the Lease with Verizon.

**O R D E R**

**IT IS ORDERED** that:

1. Verizon California Incorporated's Application for authority to lease a portion of its parking lot in the Town of Los Gatos to the Town of Los Gatos is granted, as described above.

2. This proceeding is closed.

This order is effective today.

Dated August 21, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY

