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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revise the
Certification Process for Telephone
Corporations and the Registration Process
for Wireless Carriers.

Rulemaking 11-11-006
(Filed November 10, 2011)

**ASSIGNED COMMISSIONER'S RULING ISSUING THE PERFORMANCE
BOND WORKSHOP REPORT IN RULEMAKING TO REVISE THE
CERTIFICATION PROCESSES FOR TELEPHONE CORPORATIONS
SEEKING OR HOLDING CERTIFICATES OF PUBLIC CONVENIENCE AND
NECESSITY, AND WIRELESS CARRIERS SEEKING OR HOLDING
REGISTRATION**

Pursuant to Decision 13-05-035, the assigned Administrative Law Judge held a workshop on December 4, 2013, to examine the following questions:

- a. What size of bond should be required?
- b. What should the terms and conditions of the bond be?
- c. Should the bond requirement be applied to existing carriers or only to transferees and new applicants seeking operating authority?
- d. Should the bond amount differ by utility type or type of service?
- e. Should the bond requirement be continuous or should the obligation cease after a certain number of years during which no problems or corrective actions against the bonded entity have been taken? and
- f. Should the Commission allow for alternatives to the posting of a bond such as an irrevocable standby letter of credit, a site draft letter of credit, or escrow agreements? If

so, what criteria of performance and compliance with Commission orders and rules will provide comparable levels of consumer protection?

As a result of that workshop, the Communications Division compiled the input of workshop participants into a report attached to this ruling as Attachment A. This ruling requests parties review the workshop report for its accuracy only. Comments are due no later than May 5, 2014. Comments on policy or legal issues are not requested at this time.

IT IS RULED that that comments regarding the accuracy of the workshop report attached to this ruling as Attachment A are due no later than May 8, 2014.

Dated April 28, 2014, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL
Catherine J.K. Sandoval
Assigned Commissioner

ATTACHMENT A



STATE OF CALIFORNIA

**Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102**

DRAFT

**Workshop Report on Phase II of R.11-11-006 on the
Performance Bond for Certificates of Public Convenience
and Necessity and Wireless Identification Registration
Holders**

**Held on
December 3, 2013**

In Compliance with Ordering Paragraph 22 of Decision 13-05-035

**COMMUNICATIONS DIVISION
January xx, 2013**

TABLE OF CONTENTS

| | Page |
|---|----------|
| I. SUMMARY..... | 2 |
| II. BACKGROUND | 2 |
| III. WORKSHOP DISCUSSION | 3 |
| <i>A. Criteria for determining revisions to the existing performance bond requirement</i> | <i>3</i> |
| • <i>Amount of the Bond</i> | <i>4</i> |
| • <i>Terms and Conditions of the Bond.....</i> | <i>4</i> |
| • <i>Applicability – covers existing, transferees, or only new applicants.....</i> | <i>4</i> |
| <i>B. Exemptions to the Performance Bond Requirement</i> | <i>5</i> |
| <i>C. Alternatives to a Performance Bond</i> | <i>5</i> |
| <i>D. Other Comments</i> | <i>6</i> |

Appendix A - Administrative Law Judge Ruling

Appendix B - List of Workshop Attendees

I. SUMMARY

The Communications Division (CD) staff submits this report, which summarizes participants' comments and discussions during the December 3, 2013 workshop on the Performance Bond for Certificates of Public Convenience and Necessity (CPCN) and Wireless Identification Registration (WIR) holders.

Appendix A at the end of this report includes the Administrative Law Judge (ALJ) Ruling setting the date of the workshop and the workshop agenda. Appendix B is the list of workshop attendees.

II. BACKGROUND

In Decision (D.) 13-05-035, the Commission adopted the following revisions to the certification processes for telephone corporations seeking or holding Certificates of Public Convenience and Necessity (CPCN) and wireless carriers seeking or holding Wireless Identification Registrations (WIR):

- Required all CPCN and WIR holders to post performance bonds amounting to \$25,000 to facilitate the collection of fines, fees, surcharges, taxes, penalties, and restitution. The amount of \$25,000 was an initial amount set by the Commission until the Commission determines a reasonable bond amount to be determined during Phase II of Rulemaking (R.) 11-11-006;
- Exempted Uniform Regulatory Framework and General Rate Case Incumbent from the performance bond requirement where these carriers serve as Carriers of Last Resort (COLRs) and their wholly owned/majority owned affiliates, and Cox Communications where it serves as a COLR;
- Required CPCN and WIR applicants to provide resumes of all key officers, directors and owners of 10% or more of outstanding shares; listing all previous employment held by these individuals, and to provide information on prior or current known investigations by governmental agencies, and any settlement agreements, voluntary payments, or any other type of monetary forfeitures;
- Required applicants seeking to transfer licenses or registration to verify compliance with Commission reporting, fee, and surcharge transmittals;
- Increased the application fee for new and transferred CPCN authority from \$75 to \$500, pending appropriate legislative action;

- Required wireless registrants to pay a \$250 fee for new and transferred wireless registration; and
- Established a minimum user fee of \$100 for CPCN holders and WIR carriers, to be paid annually, including those reporting no intrastate revenues. As a result, all telephone corporations holding a CPCN and all wireless registrants must pay an annual user fee based on the Commission-established rate in effect at that time (currently set at 0.18% of gross intrastate revenue) or \$100, whichever is greater.

Ordering Paragraph 22 of D.13-05-035 directed the ALJ to open Phase II of the rulemaking and schedule a workshop within 90-days after the effective date of the decision to examine the following:

- a. What size of bond should be required?
- b. What should the terms and conditions of the bond be?
- c. Should the bond requirement be applied to existing carriers or only to transferees and new applicants seeking operating authority?
- d. Should the bond amount differ by utility type or type of service?
- e. Should the bond requirement be continuous or should the obligation cease after a certain number of years during which no problems or corrective actions against the bonded entity have been taken?
- f. Should the Commission allow for alternatives to the posting of a bond such as an irrevocable standby letter of credit, a site draft letter of credit, or escrow agreements? If so, what criteria of performance and compliance with Commission orders and rules will provide comparable levels of consumer protection?

The decision also granted the ALJ authority to adjust the workshop schedule if necessary. The ALJ had originally scheduled the date of the workshop on November 19 but rescheduled the workshop date to December 3 upon request of some parties in the proceeding.

III. WORKSHOP DISCUSSION

Participants discussed in detail some of the agenda items. The following summary highlights the workshop participants' comments and suggestions for the Commission to consider on whether a revision to the performance bond criteria should be adopted.

A. Criteria for determining revisions to the existing performance bond requirement

- *Amount of the Bond*

Most participants (namely CALTEL, ORA, and Extelnet/Cbeyond) supported the maintenance of the \$25,000 as the bond amount. No participant argued for a bond level that was linked to intrastate revenues. CALTEL further opined that tying the bond amount to a carrier's intrastate revenue for the prior year would be burdensome entailing yearly adjustments and submission of new bonds. ORA commented that the \$25,000 is acceptable but is concerned that this amount may be too small for larger companies. ORA also asked whether there is current information available on the level of fines ordered to be collected and if not, suggested going back to the 2007 Audit Report.

- *Terms and Conditions of the Bond*

Participants, notably Southern California Edison, T-Mobile, CTIA and ExteNet/Cbeyond support establishing a limited-term or sunset of the performance bond requirement for carriers that are in "good standing". This perspective noted that performance bonds should not be an ongoing obligation and that a carrier should be relieved of the obligation once it demonstrated that it has been in "good standing" for a number of years. Participants suggested a time frame of 3 or 5 years.

Participants also commented on the criteria for being in good standing. Cox suggested that among the criteria to be considered in "good standing" are the levels of investment, the years in business, the steady payments of public purpose program surcharges, User Fees, 911 fees, etc. Comcast additionally proposed that a risk assessment model should be applied to financial filings for companies in determining the amount of the bond and whether or not a carrier is in "good standing". Additionally, some participants commented that "good standing" should include those carriers that have been assessed and paid fines as that demonstrates compliance with Commission orders

- *Applicability – covers existing, transferees, or only new applicants*

CCTA commented that the decision has a fundamental error in stating that ILECs are the only carriers invested in California. Other carriers, i.e., CLECs and WIRs also have substantial facility investment and do not plan

to just abandon operations. Thus, facilities-based carriers and their affiliates should not be required to post separate bonds and should be treated in the same manner as incumbent local exchange carriers (ILECs). CALTEL agrees. CALTEL also finds that small carriers find the performance bond too burdensome. However, it is difficult to come up with criteria to implement a performance bond requirement that would be based on the type of carrier.

CCTA further commented that the application process already requires the showing of financial capability.

B. Exemptions to the Performance Bond Requirement

AT&T did not believe that workshops should consider changing the exemption. However, if the Commission finds that additional exemptions are to be granted, the current exemptions granted in D. 13-05-035 should stay.

CALTEL commented that the exemption granted to CLECs and WIRs that are affiliates of a COLR is unfair since carriers who are competitors of these exempt CLECs and WIRs have to file bonds.

Small LECs' did not object to the proposal by some carriers for the lifting of the performance bond requirement after 3 or 5 years of a carrier being in "good standing but supported the retention of existing exemptions in D.13-05-035.

C. Alternatives to a Performance Bond

CALTEL and CCTA proposed the irrevocable letter of credit as an alternative to the performance bond. However, no detailed discussion followed. CD commented that the irrevocable letter of credit, as far as CD's research indicates, is a financial instrument used in trade transactions, which would involve the submission of bill of lading, documentation on the delivery/acceptance of goods shipped, etc. Thus, CD solicited feedback from participants on how an irrevocable letter of credit would work with respect to the Commission's goal of consumer protection, collection of fines, fees, surcharges, taxes, penalties, and restitution.

ORA proposed an alternate option by creating a pool of money paid for by the carriers and using that fund to pay off the any money owed by a bad carrier. No

other participant conveyed support of ORA's option during the workshop, but Comcast and CCTA indicated opposition to this alternative.

Participants did not provide more information and there was no further discussion on this item.

D. Other Comments

CD informed participants that a draft workshop report will be sent to participants by February 3 for comments with respect to accuracy.

Participants requested if it would be possible for the assigned ALJ to issue a ruling adopting a process affording participants an opportunity to comment on a proposed "strawman" resulting from the workshop. Participants are concerned that the issuance of the PD does not afford them the opportunity to comment on the merits of the adopted rule/regulation/requirement but limits them to comment on factual errors.

KK3/cia 11/4/2013



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revise the Certification Process for Telephone Corporations and the Registration Process for Wireless Carriers.

Rulemaking 11-11-006
(Filed November 10, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING
CONTINUING RULEMAKING (R.) 11-11-006 PHASE II, WORKSHOP
ON THE PERFORMANCE BOND REQUIREMENT AND
PROVIDING PROPOSED AGENDA**

A workshop was initially scheduled for November 5, 2013. Several parties notified the assigned Administrative Law Judge (ALJ) of conflicting commitments and the desire to schedule workshops in the proceeding on contiguous dates. As a result, the November 5, 2013 workshop is continued to Tuesday, December 3, 2013, starting at 10:00 a.m., Commission Courtroom, State Office Building at 505 Van Ness Avenue, San Francisco, CA 94102, for purposes of determining a reasonable performance bond amount for Certificate of Public Convenience and Necessity (CPCN) and Wireless Identification Registration (WIR) holders as directed by the Commission in Decision 13-05-035.

The Commission initially set the performance bond amount to \$25,000 for both CPCN and WIR holders and directed the ALJ to schedule a workshop as Phase II of Rulemaking (R.) 11-11-006 to further address the performance bond requirement with respect to: 1) whether the bond size or amount should be dependent on the type of license or services offered, 2) whether the bond should

R.11-11-006 KK3/cia

be applicable to existing carriers, only to transferees or to new applicants only, and 3) whether alternatives can be considered in lieu of the performance bond, among others.

A Proposed Agenda for the workshop is attached to this ruling as Attachment A. Parties may suggest additional topics for discussion. A final Agenda will be e-mailed to the service list prior to the workshop.

IT IS RULED that:

1. A workshop is hereby scheduled for Tuesday, December 3, 2013, starting at 10:00 a.m., Commission Courtroom, State Office Building at 505 Van Ness Avenue, San Francisco, CA 94102.
2. Attachment A to this ruling provides the Proposed Agenda of the workshop.

Dated November 4, 2013, at San Francisco, California.

/s/ KATHERINE KWAN
MACDONALD

Katherine Kwan MacDonald
Administrative Law Judge

R.11-11-006 KK3/cla

ATTACHMENT A

Performance Bond Workshop (Phase II of R. 11-11-006)

Phone-Bridge (for listening only):

Passcode:

PROPOSED AGENDA

Tuesday, December 3, 2013

10:00 a.m.

Commission Courtroom, State Office Building
505 Van Ness Avenue
San Francisco, CA 94102

Objective: Determination of Reasonable Performance Bond

Conducted by: Administrative Law Judge and Communications Divisions

Time

Items

10:00 a.m.

Opening Remarks, Introductions and Workshop structure overview

10:30 a.m. – 12:00 p.m.

Criteria for determining revisions to the existing performance bond requirement for CPCN and WIR holders

- Amount of the Bond
- Terms and Conditions of the bond – monetary sanctions, continuous, CPUC as obligee
- Applicability – covers existing, transferees, or only new applicants

12:00 p.m. – 1:00 p.m.

Lunch Break

1:00 p.m. – 3:00 p.m.

Exemptions to the Bond Requirement

Alternatives to a Performance Bond

- Irrevocable Standby Letter of Credit
- Escrow
- Sight Draft Letter of Credit

3:15 - 4:00 p.m.

Discussion of Next Steps

Breaks will be taken as needed with at least one morning break and one afternoon break.

(END OF ATTACHMENT A)

APPENDIX B

List of Workshop Attendees

| <i>Name</i> | <i>Company</i> | <i>E-mail</i> |
|--------------------|--------------------------------|--|
| Lisa tse | Small LECs / Surewest | ltse@cwclaw.com |
| Gloria Ing | Southern California Edison Co. | gloria.ing@sce.com |
| John Gutierrez | Comcast | john_gutierrez@cable.comcast.com |
| Nick Selby | COX | selbytelecom@gmail.com |
| Gaylee Clarke | SED/CPUC | gal@cpuc.ca.gov |
| Michel S. Nelson | O1 Comm / Vaya | mnelson@o1.com |
| Anita Taff-Rice | Extenet | anita@icommlaw.com |
| Richard Levin | CalTel | rl@comrl.com |
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| Michele Parker | AT&T | mp1321@att.com |
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| Bill Nusbaum | TURN | bnusbaum@turn.org |
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| Danny Tse | CD/CPUC | Danny.Tse@cpuc.ca.gov |
| Jason Miller | CD/CPUC | Jason.Miller@cpuc.ca.gov |
| Greg Rubenstein | CD/CPUC | Greg.Rubenstein@cpuc.ca.gov |
| Karen Eckersley | CD/CPUC | Karen.Eckersley@cpuc.ca.gov |

(END OF ATTACHMENT A)