

Decision \_\_\_\_\_

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

Joint Application of Central Valley Telecom, LLC (U7216C) for Authorization for a Transfer of its Certificate of Public Convenience and Necessity to CVIN, LLC.

Application 12-05-007  
(Filed May 3, 2012)

Application of CVIN, LLC for Modification of Resolution T-17295 to Eliminate Performance Bond Requirement.

Application 12-05-008  
(Filed May 3, 2012)

**DECISION AUTHORIZING TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FROM CENTRAL VALLEY TELECOM, LLC TO CVIN, LLC AND MODIFYING RESOLUTION T-17295 TO ELIMINATE THE PERFORMANCE BOND REQUIREMENT FOR CVIN, LLC**

**Summary**

We consolidate Applications 12-05-007 and 12-05-008. We approve the joint application of Central Valley Telecom, LLC and CVIN, LLC to transfer Central Valley Telecom, LLC's Certificate of Public Convenience and Necessity to CVIN, LLC. We approve the application of CVIN, LLC for exemption from the performance bond requirement of Resolution T-17295. We also grant CVIN, LLC's motion to file its audited consolidated financial statements under seal.

**Background**

Central Valley Telecom, LLC (CVT) and CVIN, LLC (CVIN) (collectively Joint Applicants) are under common ownership and the common control and

ownership of affiliates of seven rural incumbent local exchange carriers, including Foresthill Telephone Co. (d/b/a Sebastian), the Ponderosa Telephone Company, Sierra Telephone Company, Inc., Calaveras Telephone Company, Volcano Telephone Company, Ducor Telephone Company, and Cal-Ore Telephone Company.

The immediate purpose of the proposed transaction is to facilitate CVIN's access to California Advanced Services Fund (CASF) grant funds authorized under Resolution T-17295 for construction of CVIN's Central Valley Next Generation Broadband Infrastructure Project (Project), which will provide 1,371 miles of open-access middle-mile fiber-optic network infrastructure to 18 Central Valley counties, including Amador, Calaveras, Colusa, El Dorado, Fresno, Kings, Kern, Mariposa, Merced, Madera, Nevada, Placer, San Joaquin, Stanislaus, Tuolumne, Tulare, Sutter, and Yuba.

When the Commission issued Resolution T-17295, CVIN did not hold a Certificate of Public Convenience and Necessity (CPCN). Grants under the CASF fund are available only to CPCN holders or entities that have been granted a Wireless Identification Number (WIR) by the Commission.<sup>1</sup> Consequently, in order to receive the CASF grant, Resolution T-17295 requires CVIN to furnish a performance bond equal to the total amount payable under the CASF award, or 10% of the Project cost. Obtaining the required bond on reasonable terms has proven to be nearly impossible, thus the transfer of CVT's CPCN will enable

---

<sup>1</sup> CASF funding is also available to a consortium as long as the lead financial agent for the consortium is an entity holding a CPCN or a wireless carrier registered with the Commission. *See* Decision (D.) 07-12-054 at 34-35.

CVIN to qualify for elimination of the performance bond requirement, as requested in Application (A.) 12-05-007.

However, obtaining a CPCN is a necessary but insufficient condition for receiving an exception to the CASF grant performance bond requirement. Under CASF rules, in order to be exempted from posting a performance bond a CPCN holder must certify that its share of the Project costs comes from its capital budget and not from outside financing sources. Thus, in order to facilitate CVIN's access to its CASF grant funds, CVIN requests an exemption from the performance bond requirement. Accordingly, Joint Applicants filed A.12-05-008, requesting such exemption and, at approximately the same time, filed motions in both proceedings to consolidate A.12-05-007 with A.12-05-008.

There were no protests to either application.

## **Discussion**

### **A. Motion to Consolidate**

Under Rule 7.4, proceedings may be consolidated when they involve related questions of law or fact. Here, there are related factual issues as to CVIN's financial position. As a prerequisite to approving the transfer of the CPCN, CVIN must establish its financial fitness. The determination of whether CVIN, once it holds a CPCN, should be permitted to access CASF grant funds without posting a performance bond also requires an inquiry into CVIN's financial position. Although the specific financial standards that are applicable to the two applications are not precisely the same, they are sufficiently related to enable the applications to be consolidated.

### **B. Change of Control**

The primary standard by which the Commission reviews whether a transaction should be approved under Section 854(a) is whether the transaction

will be “adverse to the public interest.”<sup>2</sup> As part of its determination, and where a company acquiring control of a certificated telecommunications carrier does not possess a CPCN in California, the Commission applies the same requirements that govern a new applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Specifically, the company must demonstrate a minimum of \$100,000 in cash or cash equivalent and demonstrate adequate technical expertise in telecommunications or related business.

With regard to financial qualifications, applicants have attached CVIN’s audited consolidated financial statements under seal. The financial statements reflect that CVIN has more than sufficient cash or cash equivalent to meet the Commission’s requirements for acquiring a CPCN. Accordingly, the transaction meets the requisite financial requirements and there is no basis to find that the transaction will adversely affect CVT’s financial status.

With regard to operations, applicants represent that CVT will continue to operate in the same manner with the same employees after the transaction is completed as it operates today.

Applicants also state that to the best of their knowledge, no one associated with or employed by either applicant as an affiliate, officer, director, partner, or owner of more than 10% of an applicant was previously associated with a telecommunications carrier that was been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers. Nor is either applicant currently under

---

<sup>2</sup> See D.03-12-033 at 6; D.01-06-007 at 15.

investigation for similar violations. In addition, applicants have represented that there will be no change in CVT's management, operations, and service offerings and the transaction will not affect CVT's operations. Thus, the transaction satisfies the Commission's technical requirements.

We find that applicants have demonstrated that CVIN has the financial and technical qualifications to acquire CVT. We also find that there will be no immediate changes to CVT's direct management or the service that CVT provides as a result of the transfer.

In sum, we find that the proposed change of control is not adverse to the public interest and should be approved.

### **C. Request for Exemption from Performance Bond Requirement**

The total cost of the Project is \$66,659,967. Funding for the Project is being provided through a combination of an American Recovery and Reinvestment Act (ARRA) federal grant of \$46,619,767, the \$6,659,967 CASF grant approved in Resolution T-17295 and \$13,319,934 supplied by CVIN. Under the Commission's rules governing the CASF program, a CPCN holder that certifies that its share of the total Project funding comes from its capital budget and is not obtained from outside sources may request exemption from the requirement of posting a performance bond. CVIN has certified that its contribution (20% of the total Project costs - \$13,319,934)<sup>3</sup> will come from internally generated funds. In fact, CVIN has already expended \$5,749,403 from its internal funds and completed approximately 30% of the Project as of May 2012. In a subsequent filing CVIN

---

<sup>3</sup> See August 20, 2012, Response by CVIN to Administrative Law Judge's e-mail Request for Information.

indicated that expenditures for the Project totaled \$41,606,587 as of September 14, 2012. ARRA grant funds provided 70% of that expenditure. Since it could not yet access CASF grant funds, CVIN contributed \$12,481,976 from its internal funding sources.<sup>4</sup> To finish the Project however, CVIN now requires access to the CASF grant funds. In the absence of an exemption from the performance bond requirement, access to the CASF grant funds is not available.

In considering whether to grant the requested exemption, we are mindful that making high-speed broadband available to customers of California's rural telephone companies is a priority of the Commission, the State of California and the federal government. All recognize that such access is essential to participation in the emerging digital economy. Conversely, customers without such access are increasingly on the wrong side of the so-called "digital divide" with substantial negative consequences for their economic well-being. The CASF program is specifically designed to address this problem and the high-speed network that CVIN is constructing will be a significant step forward for the residents of the affected counties. Failure to grant the exemption after CVIN has made the necessary showing of financial responsibility is contrary to the public purposes of the program and serves no useful purpose.<sup>5</sup>

---

<sup>4</sup> See Joint Applicants' Motion for Issuance of Expedited Decision to Avoid Cessation of Construction and Potential Failure of the Central Valley Next Generation Broadband Infrastructure Project, September 26, 2012.

<sup>5</sup> We have an open rulemaking (Rulemaking 11-11-006) considering whether performance bonds should be required of CPCN holders in all circumstances. The Proposed Decision of Commissioner Sandoval in that docket was circulated for comment on October 18, 2012. If we adopt the Proposed Decision, CVIN will have to comply with the new rules adopted in that decision.

As found in Paragraph B of the Discussion section, transfer of the CPCN will have no effect on the management structure, business practices or service offerings of CVT.

Under these circumstances, the application should be granted.

### **Categorization and Need for Hearing**

In Resolution ALJ 176-3294 dated May 24, 2012, both proceedings were characterized as ratesetting and it was preliminarily determined that hearings are not necessary. We affirm the characterization and hearing determination.

### **Request to File Under Seal**

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, CVIN has filed a motion for leave to file its audited consolidated financial statements under seal. CVIN represents that the information is sensitive, and disclosure could place it at an unfair business disadvantage. We have granted similar requests in the past and do so here.

### **Waiver of Comments**

The applications were noticed on May 9, 2012. No protests were filed. This is an uncontested matter in which the decision grants the relief requested. Applicants have requested expedited approval. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Linda A. Rochester is the assigned Administrative Law Judge.

### **Findings of Fact**

1. CVIN is constructing the Project with funding from the ARRA, the California Advanced Services Fund, and its own resources.

2. CVT and CVIN are presently unable to obtain the performance bond required by Commission Resolution T-17295.
3. CVIN will provide its share of the total cost of the Project from internally generated funds.
4. CVIN has adequate financial resources to meet its obligations under the CPCN and to provide its share of Project funding.
5. Transfer of CVT's CPCN to its affiliate CVIN will result in no change in the management structure, business practices or service offerings of CVT.
6. No one associated with or employed by CVIN as an affiliate, officer, director, partner, or owner of more than 10% of an applicant was previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunications carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 1700, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers. Nor is CVIN currently under investigation for similar violations.
7. CVIN and CVT filed motions to consolidate A.12-05-007 and A.12-05-008.
8. Pursuant to Rule 11.4, CVIN filed a motion for leave to file its audited consolidated financial statements under seal.

**Conclusions of Law**

1. CVIN meets the Commission's requirements for an acquiring company of an authorized provider of telecommunications services.
2. The transfer of control proposed in the application would not be adverse to the public interest.



3. Construction of the Project is in the public interest.
4. Transfer of CVT's CPCN to CVIN is necessary to enable CVIN to petition for modification of Resolution T-17295 to eliminate the performance bond requirement.
5. The proceedings should be consolidated.
6. CVIN's motion to file its audited consolidated financial statements under seal should be granted for two years.
7. The applications should be approved.

**O R D E R**

**IT IS ORDERED** that:

1. The joint application of Central Valley Telecom, LLC and CVIN, LLC to transfer the Certificate of Public Convenience and Necessity held by Central Valley Telecom, LLC to CVIN, LLC is approved.
2. Resolution T-17925 is amended as follows:
  - a. The paragraph beginning at the bottom of page 5 of the Resolution is modified by adding the following introductory clause:

Until such time as CVIN holds a telecommunications certificate of public convenience and necessity and has certified that all of the funding it is providing comes from its capital budget and is not obtained from outside financing sources.
  - b. The same paragraph is further modified by adding the following sentence at the end of the paragraph:

Once CVIN holds a telecommunications certificate of public convenience and necessary and has properly certified that all of the funding it is providing comes from its capital budget and is not obtained from outside

financing sources, CVIN will no longer be subject to the requirement to post a performance bond and shall thereafter be subject to guidelines, requirements and terms and conditions associated with the granting of CASF funds for telecommunications CPCN holders to whom performance bonding requirements do not apply.

- c. Finding Number 15 is modified by adding the following introductory clause:

Until such time as CVIN holds a telecommunications certificate of public convenience and necessity and has certified that all of the funding it is providing comes from its capital budget and is not obtained from outside financing sources.

- d. Finding Number 16 is revised to read as follows:

CVIN should comply with all applicable guidelines, requirements and conditions associated with the granting of CASF funds as specified in the ordering paragraphs of D. 07-12-054, D.09-07-020 and Resolutions T-172333 and T-17143 including but not limited to the submission of FCC Form 477 and Commission auditing requirements.

- e. A new Finding is added reading as follows:

CVIN has properly certified that all of the funding it is providing comes from its capital budget and is not obtained from outside financing sources.

- f. Ordering Paragraph 2 is modified by changing the period to a comma and adding the following clause:

... provided that, once CVIN holds a telecommunications certificate of public convenience and necessity and has properly certified that all of the funding it is providing comes from its capital budget and is not obtained from outside financing sources, CVIN will no longer be subject to the requirement to post a performance bond.

- g. Ordering Paragraphs 3 and 4 are combined and revised to read as follows:

Until such time as CVIN holds a telecommunications certificate of public convenience and necessity, CVIN shall comply with all guidelines, requirements, and conditions associated with the CASF funds award as specified in Resolution T-17233 including but not limited to 1) the requirement to post a performance bond equal to the total amount payable under this CASF award, or 10% of the Project costs; 2) the requirement to submit the information sheets in Appendices 1 and 2 of Res. T-17233 within 10 business days from the effective date of this resolution; 3) the condition that all applicants must agree in writing to allow the Commission to inspect the applicant's accounts, books papers, and documents related to the application and award of CASF funds; and 4) the requirement to comply with all the guidelines, requirements and conditions associated with the CASF funds award as specified in Res. T-17143 including but not limited to a filing with the Commission of FCC Form 477. Once CVIN holds a telecommunications certificate of public conveniences and necessity, CVIN shall no longer be subject to the requirement to post a performance bond and shall thereafter be subject to the guidelines, requirements, and terms and conditions associated with the granting of CASF funds for telecommunications CPCN holders to whom performance bonding requirements do not apply.

3. Applications 12-05-007 and 12-05-008 are consolidated.

4. CVIN, LLC's motion to file its audited consolidated financial statements under seal is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant

Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by Applicants or as ordered by a court of competent jurisdiction. If CVIN, LLC believes that it is necessary for this information to remain under seal for longer than two years, Applicants may file a new motion at least 30 days before the expiration of this limited protective order.

5. These proceedings are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.