

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MIP VI TRAINER, L.P.
and PAVLOV MEDIA, INC for
Authority Permitting MIP VI TRAINER,
L.P. to acquire indirect control of
CAMPUS COMMUNICATIONS
GROUP Inc. (U7352C).

Application 23-09-007

**DECISION GRANTING AUTHORITY
FOR TRANSFER OF INDIRECT CONTROL
OF CAMPUS COMMUNICATIONS GROUP, INC.
TO MIP VI TRAINER, L.P.**

Summary

Pursuant to Public Utilities Code Section 854 and Rule 3.6 of the California Public Utilities Commission's Rules of Practice and Procedure, the Commission grants authority for the transfer of indirect control of Campus Communications Group, Inc. to MIP VI Trainer, L.P., subject to the terms and conditions set forth in the Ordering Paragraphs.

This proceeding is closed.

1. Background

On September 14, 2023, MIP VI Trainer, L.P. (MIP) and Pavlov Media, Inc. (Pavlov) (jointly, Joint Applicants), filed Application (A.) 23-09-007, a Joint Application pursuant to Public Utilities (Pub. Util.) Code Section 854 and Rule 3.6 of the California Public Utilities Commission's (Commission) Rules of

Practice and Procedure (Rules) for approval of MIP's acquisition via indirect control of Campus Communications, Inc. (Campus). On that same date, Joint Applicants filed a motion to file Exhibit E and Exhibit F to A.23-09-007 under seal as confidential.

On September 21, 2023, Resolution ALJ 176-3533 preliminarily determined that the category of this proceeding is ratesetting.

On October 18, 2023, Chief Administrative Law Judge (ALJ) Michelle Cooke issued a notice assigning A.23-09-007 to ALJ Andrea D. McGary. On October 26, 2023, Pavlov filed a motion for reassignment of the assigned ALJ based on a peremptory challenge. On October 30, 2023, Chief ALJ Cooke issued a ruling granting Pavlov's October 26, 2023, request and reassigning A.23-09-007 to ALJ Seaneen McCarthy Wilson.

A prehearing conference (PHC) was held on December 4, 2023, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. At the PHC, the assigned ALJ requested that Joint Applicants clarify and, if necessary, declare exemptions for information uncovered during the due diligence review of the Commission, requiring a response by Joint Applicants be filed and served within 10 days of the PHC. On January 22, 2024, the Assigned Commissioner's Scoping Memo and Ruling was issued.

On December 5, 2023, MIP filed and served its response to the assigned ALJ's request at the PHC. On December 13, 2023, Pavlov filed and served its response to the assigned ALJ's request at the PHC.

On December 14, 2023, the assigned ALJ issued a ruling requesting information, to which: (1) MIP filed and served a response on December 18, 2023, which included a revised Exhibit H (Exhibit H.1) which declares an

exception to the requirements for the verification required by Decision (D.) 13-05-035; and (2) Pavlov filed and served its response on January 9, 2024, which included a revised Exhibit I (Exhibit I-2) which declares an exception to the requirements for the verification required by D.13-05-035.

On January 25, 2024, the assigned ALJ issued a ruling: (1) denying MIP's request in A.23-09-007 for exemption from Rule 2.2; and (2) requiring MIP either provide a Statement of Good Standing with the Secretary of State of California for MIP in compliance with Rule 2.2, or provide specific cites to applicable Public Utilities Codes and/or Rules that allow exemption from Rule 2.2. On January 29, 2024, MIP filed and served a response to this ruling. On January 31, 2024, MIP filed and served a supplemental response to this ruling.

All assigned Commissioner and ALJ rulings are affirmed herein.

2. Submission Date

This matter was submitted on January 31, 2024, upon receipt of all information necessary for the Commission rule on Joint Applicants' request.

3. Parties to Transaction

MIP is a Limited Partnership organized under the laws of Delaware. MIP was established as a vehicle to hold a minority interest investment in Pavlov. MIP is indirectly owned by investment vehicles ultimately controlled by MacQuarie Group Limited (MGL). MGL is a diversified financial group providing clients with asset management and finance, banking, advisory and risk and capital solutions across debt, equity, and commodities.

MIP has the right to elect two of the five members of the board of directors of Pavlov.

MIP has no Statement of Good Standing with the Secretary of State of California because it conducts no intrastate business in California and is not

required to qualify to transact business in California. It seeks an exemption from Rule 2.2, to the extent required, on that basis (addressed in Section 4 herein).

Pavlov is a corporation organized under the laws of Delaware. Pavlov provides internet, video, voice services, and software services to apartments, single family homes, businesses, and communities in over 40 states and Canada. Pavlov does not provide intrastate telecommunications service in California and holds no authority itself from this Commission. Currently, MIP owns approximately 45 percent of Pavlov, which wholly owns Campus. As discussed in Section 5 herein, MIP proposes to make additional contributions to Pavlov, resulting in an ownership in Pavlov of greater than 50 percent.

Campus (U-7352-C) holds a certificate of public convenience and necessity (CPCN) to provide resold and full facilities-based local exchange telecommunications services in California pursuant to D.18-11-039. Campus is a wholly owned subsidiary of Pavlov.

4. MIP Request for Exemption from Rule 2.2

As discussed in Section 3 herein, MIP seeks an exemption from Rule 2.2, which requires applicants seeking a CPCN to provide a Statement of Good Standing with the Secretary of State of California. Initially, the assigned ALJ denied MIP's request for this exemption.¹ Subsequently, MIP provided further supporting documentation, including numerous decision references to the Commission granting exemptions to Rule 2.2 (and its predecessor Rule 16.4) in proceedings similar to the request herein. These exemptions were granted on the basis that, pursuant to Corporations Code Section 191(b), a foreign corporation that controls an entity transacting business in California but does not itself

¹ See assigned ALJ Ruling dated January 25, 2024.

transact any business in California is not considered to be transacting business in California. As a limited partnership organized under the laws of Delaware, MIP qualifies as such a foreign corporation. Consistent with the Commission's prior authorities which granted the requested exemption, we grant MIP's request for an exemption from the requirements of Rule 2.2. Therefore, MIP does not need to provide a Statement of Good Standing with the Secretary of State of California in A.23-09-007.

5. Proposed Transaction

The Joint Applicants request authority, pursuant to Pub. Util. Code Section 854 and Rule 3.6, for approval of the transfer of indirect control of Campus to MIP. The acquisition of indirect control would result from MIP acquiring a controlling interest in Pavlov.

Pursuant to the Stockholders Agreement of Pavlov Media, Inc. dated March 27, 2023, and as a Class A Stockholder of Pavlov, MIP proposes to make additional capital contributions to Pavlov that would result in MIP having an ownership interest in Pavlov of greater than 50 percent, instead of the existing 45 percent interest. This increased ownership in Pavlov results in a change of indirect control of Campus.

The Joint Applicants state that the proposed transaction will result in an infusion of additional financial and operational resources to Pavlov and Campus, that would: (1) benefit customers of Campus; (2) strengthen Campus' competitive position; and (3) supplement current management of Pavlov and Campus with the additional expertise of MIP.

6. Jurisdiction and Standard of Review for Acquisitions/Transfers of Authority

Pub. Util. Code Section 854(a) requires Commission authorization before a public utility may "merge, acquire, or control either directly or indirectly any

public utility organized and doing business in this state....” The purpose of this and related code sections is to enable the Commission, before any transfer of public utility authority is consummated, to review the proposal and to take such action, as a condition of transfer, as the public interest may require.² Absent prior Commission approval, Pub. Util. Code Section 854(a) provides that the transaction is “void and of no effect.”

The Commission has broad discretion under Pub. Util. Code Section 854(a) to approve or reject a proposed transaction. In the current case, Pub. Util. Code Section 854(b)-(c) are not applicable because no party to the transaction has gross California revenues exceeding \$500,000,000. If necessary and appropriate, the Commission may attach conditions to approval of a transaction to protect and promote the public interest. The primary question in a transfer of control proceeding under Pub. Util. Code Section 854(a) is whether the transaction will be in the public interest. When the acquiring individual or company which does not have a CPCN seeks to acquire control of a company that possesses a CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking the type of CPCN held by the company being acquired.

7. Certificate of Public Convenience and Necessity Criteria

7.1. California Environmental Quality Act

Pursuant to the California Environmental Quality Act (CEQA)³ and Rule 2.4, the Commission acts as the designated lead agency to consider the environmental impacts of projects that are subject to the Commission’s

² See San Jose Water Co. (1916) 10 C.R.C. 56.

³ Public Resources Code § 21000, *et seq.*

discretionary approval. Pursuant to Public Resources Code Section 21065,⁴ in part, a project under CEQA may or will cause a physical change in the environment. This application for transfer of indirect control does not involve and will not result in a physical change in the environment. Therefore, granting this application will not have an adverse impact upon the environment.⁵ Before it can construct facilities, including equipment to be installed in existing buildings or structures, Campus (the holder of the CPCN) must file for additional authority, and submit to any necessary CEQA review.

7.2. Financial Qualifications

To be granted a CPCN for authority to provide full facilities based services, an applicant must demonstrate that it has a minimum of \$100,000 cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses.⁶ In Exhibit D to A.23-09-007, MIP provided a letter of guarantee from MIP VI (FCC) AIV, L.P.,⁷ showing that MIP has sufficient funds to meet start-up expenses as well as any deposits, so has therefore fulfilled this requirement. The financial documentation provided by MIP will be subject to verification and review by the Commission for one year to ensure that such funds are available.

⁴ Excerpt from Public Resources Code Section 21065: "Project" means "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment".

⁵ See A.23-03-004 at 8.

⁶ The financial requirement for Competitive Local Exchange Carriers is contained in D.13-05-035 and D.95-12-056, Appendix C. The financial requirement for Non-Dominant Interexchange Carriers is contained in D.14-11-004.

⁷ MIP is a direct, wholly owned subsidiary of MIP VI (FCC) AIV, L.P., a Delaware limited partnership.

7.3. Technical Qualifications

To be granted a CPCN for authority to provide interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business.⁸ MIP supplied biographical information on its management in Exhibit J and Exhibit K to its application that demonstrates that MIP has sufficient expertise and training to operate as a telecommunications provider.

In its application as well as in responses to assigned ALJ rulings referenced in Section 2 herein, MIP verified that, except for the exceptions declared in Exhibit H.1 and Exhibit I-2 to their December 18, 2023, and January 9, 2023 responses, respectively, no one associated with or employed by MIP as an affiliate, officer, director, partner, or owner of more than 10 percent of MIP, or anyone acting in a management capacity for MIP:

held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of [Sections] 17000 *et seq.*, [Sections] 17200 *et seq.*, or [Sections] 17500 *et seq.* of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; or (g) been found to have violated any statute, law, or rule pertaining to public

⁸ D.95-12-056 at Appendix C, Rule 4.A.

utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.⁹

In the above referenced responses, MIP stated that the declared exceptions have all been resolved.

Also, to the best of MIP's knowledge, neither MIP nor any affiliate, officer, director, partner, nor owner of more than 10 percent of MIP, or any person acting in such capacity whether or not formally appointed, is being, or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.¹⁰

For the foregoing reasons, this decision finds that MIP is in compliance with the requirements of D.13-05-035.

8. Safety Considerations

With the adoption of the *Safety Policy Statement of the California Pub. Util. Commission* on July 10, 2014, the Commission has, among other things, heightened its focus on the potential safety implications of every proceeding. The Commission considered the potential safety implications here and is satisfied that MIP will meet the Commission's minimum safety goals and expectations because: (1) MIP has taken steps to meet the financial requirements as set forth in this decision for a facilities-based interexchange carrier and (2) Campus is a public utility that is required pursuant to Pub. Util. Code

⁹ See Application, answers 8-9. These certifications are required by D.13-05-035, Ordering Paragraph (OP) 14.

¹⁰ *Ibid.*

Section 451 to “...furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

9. Environmental and Social Justice Plan

In Section III.D to A.23-09-007, Joint Applicants state that Campus’ increased access to financial resources as a result of the proposed transaction, should result in a benefit to the Environmental and Social Justice (ESJ) communities, as well as all Californians. Specifically, Joint Applicants state that as a result of the proposed transaction, Campus would be able to offer improved access to communications services at competitive prices. Based on the information provided, this decision finds that approval of the application is consistent with the Commission’s ESJ goals.

10. Discussion and Conclusion

As discussed above, Joint Applicants meet the requirements for the Commission to grant the transfer of indirect control of Campus to MIP. The transaction will: (1) infuse Pavlov, as well as its wholly owned subsidiary Campus, with additional financial and operational resources; (2) strengthen Campus’ competitive position; (3) benefit customers of Campus; and (4) supplement current management of Pavlov and Campus with the additional expertise of MIP.

We therefore grant the application pursuant to Pub. Util. Code Section 854(a).

11. Request to File Under Seal

On September 14, 2023, Joint Applicants filed a request for confidential treatment of the confidential versions of Exhibit E and Exhibit F to A.23-09-007.

This motion was filed pursuant to General Order (GO) 66-C, Pub. Util. Code Section 583 and Section 5412.5, and Rule 11.4. Joint Applicants represent that the information harmful to Joint Applicants in the competitive telecommunications marketplace and could place them at an unfair business disadvantage.

We have granted similar requests in the past and do so here, pursuant to the Ordering Paragraphs herein.

12. Waiver of Comment Period

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

13. Assignment of Proceeding

Karen Douglas is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. Campus was issued a CPCN pursuant to D.18-11-039, to provide resold and full facilities-based competitive local exchange service.
2. Campus is a wholly owned subsidiary of Pavlov.
3. MIP is a Limited Partnership formed as a vehicle to hold an investment in Pavlov, and currently owns a minority interest in Pavlov.
4. A.23-09-007 was filed on September 14, 2023. The application seeks authorization to transfer indirect control of Campus to MIP.
5. MIP seeks an exemption from Rule 2.2, which requires applicants to provide a Statement of Good Standing with the Secretary of State of California.
6. Pursuant to Corporations Code Section 191(b), a foreign corporation that controls an entity transacting business in California but does not itself transact

any business in California is not considered to be transacting business in California.

7. MIP does not transact business in California.
8. The proposed transaction will not result in any changes to the services provided by Campus or to rates, terms, or conditions of service.
9. The proposed transaction will not have an adverse impact on competition in the marketplace.
10. The proposed transaction will not have an adverse impact on the public interest.
11. The proposed transaction will have no physical change in the environment.
12. The proposed transaction will not have an adverse impact on safety.
13. MIP has filed financial documents publicly and under seal, showing it meets the Commission's financial requirements for a CPCN.
14. Pursuant to GO 66-C, Pub. Util. Code Section 583 and Section 5412.5, and Rule 11.4. Joint Applicants filed two motions for leave to file confidential versions of Exhibit E and Exhibit F to A.23-09-007.
15. Applicants have met the requirements for a transfer of a CPCN pursuant to Pub. Util. Code Section 854(a).

Conclusions of Law

1. The proposed transaction constitutes a change of control within the meaning of Pub. Util. Code Section 854(a).
2. MIP should be granted an exemption from Rule 2.2.
3. Joint Applicants have met the Commission's requirements for approval of the transfer of control applicable to the proposed transaction, therefore the

requested authority for transfer of indirect control of Campus to MIP should be granted.

4. Campus should continue to be bound by the terms and conditions imposed on it when its CPCN was granted in D.18-11-039.

5. This transfer does not require CEQA review because the proposed transaction is not a project as defined by CEQA, because it will not result in a physical change in the environment.

6. The Joint Applicants' motions for leave to file confidential information contained in Exhibit E and Exhibit F to A.23-09-007 under seal should be granted.

7. This decision should be effective immediately.

8. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The transfer of indirect control of Campus Communications Group, Inc. to MIP VI Trainer, L.P. is approved.

2. MIP VI Trainer, L.P. is granted an exemption from Rule 2.2 of the California Public Utilities Commission's Rules of Practice and Procedure.

3. Campus Communications Group, Inc. shall continue to be bound by the terms and conditions imposed on it when its certificate of public convenience and necessity was granted in Decision 18-11-039.

4. The motions filed by MIP VI Trainer, L.P. and Pavlov Media, Inc. for leave to file confidential information under seal contained in Exhibit E and Exhibit F to Application 23-09-007 are granted. These documents shall remain under seal for three years after the date of this order. During this three-year period, the confidential materials shall remain under seal and not be accessible or disclosed to persons other than the Commissioners and staff of the California Public

Utilities Commission (Commission) except on further order or ruling of the Commission, the assigned Administrative Law Judge, or the designated Law and Motion Judge at the time of such ruling. If any interested party believes it is necessary for any of this information to remain under seal longer than three years, that party shall file a new motion stating the justification of further withholding the information from public inspection. The motion shall be filed at least 30 days before expiration of the instant order.

5. Application 23-09-007 is closed.

This order is effective today.

Dated _____, at Sacramento, California.