

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



December 5, 2005

Agenda ID #5147

TO: PARTIES OF RECORD IN APPLICATION 05-02-020

This is the draft decision of Administrative Law Judge (ALJ) Prestidge. It will not appear on the Commission's agenda for at least ten days after the date it is mailed. The Commission may act then, or it may postpone action until later.

Pursuant to Rule 77.7(f)(9), comments on the draft decision must be filed within three days of its mailing.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's Rules of Practice and Procedure. These rules are accessible on the Commission's Website at <http://www.cpuc.ca.gov>. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Prestidge at tom@cpuc.ca.gov. Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ ANGELA K. MINKIN

Angela K. Minkin, Chief
Administrative Law Judge

ANG:jva

Attachment

Decision **DRAFT DECISION OF ALJ PRESTIDGE** (Mailed 12/5/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Global Valley Networks
(U-1008-C) Pursuant to Public Utilities Code
Sections 851 Through 854 for Authority to Sell an
Office Building and Related Land.

Application 05-02-020
(Filed February 16, 2005)

**OPINION AUTHORIZING SALE OF OFFICE BUILDING AND
RELATED LAND AND APPROVING SETTLEMENT AGREEMENT****Summary**

This decision grants the application of Global Valley Networks (GVN) for authorization pursuant to Public Utilities Code Section 851¹ to sell an office building and related land located in Turlock, California to David A. Woods and Randall E. Woods (purchasers). GVN wishes to sell the office building, which it has been using as its headquarters, because GVN is relocating its offices to Patterson. We also grant the joint motion of the parties for approval of a settlement agreement that addresses certain impacts of this transaction on ratepayers.

¹ All subsequent Code references are to the Public Utilities Code, unless otherwise stated.

Background

GVN, a local exchange telecommunications provider that serves customers in parts of Stanislaus, Merced, Alameda, Santa Clara, and Yolo Counties, requests Commission authorization pursuant to Section 851 to sell an office building and related land located at 4918 Taylor Court, Turlock, California (the Turlock property) because GVN is relocating its headquarters to Patterson. The Turlock office building is presently used as GVN's headquarters, and approximately two-thirds of GVN's employees work out of this building. The land measures approximately 249,163 square feet, and the building occupies approximately 15,210 square feet on the land. The land is also used for parking and the storage of warehousing equipment. GVN has occupied the Turlock property since approximately 1986.

GVN plans to use the proceeds generated from the sale of the Turlock property to obtain a new office building in Patterson. GVN states that it wishes to relocate its headquarters to Patterson because the largest and fastest growing number of exchanges operated by GVN are located in Patterson. Based on customer research, GVN believes that relocation of its corporate offices into the area in which GVN offers services, instead of remaining 30 minutes outside of that area, would be a prudent business decision. The new Patterson office will benefit GVN customers by providing a conveniently located customer service center, including a drive-up payment window, and increased access to GVN's management and technical personnel.

GVN further states that the proposed transaction is consistent with Decision (D.) 01-06-084 (the Country Road Communications acquisition decision), Appendix A, Condition No. 1, because GVN will use the proceeds of the sale to acquire new facilities in its Patterson service area and not to satisfy

debt obligations related to the previous acquisition of GVN (formerly named Evans Telephone Company) by Country Road Communications, Inc. (Country Road).

Purchasers wish to use the Turlock property as the site for retail sales.

The sales agreement provides that GVN's sale of the Turlock property to purchasers is contingent upon Commission approval of this transaction and GVN's ability to secure land and construct a suitable office facility in Patterson. Under the agreement, GVN has 30 days after purchasers' acceptance of the offer to secure replacement land and to determine the timeline for completion of the new office building and the move-in date. The agreement also requires purchasers to lease the property back to GVN for up to one month after the close of escrow. In addition, the agreement is contingent upon purchaser's obtaining approval from Stanislaus County for the rezoning of the property to permit retail sales at the site.

GVN has agreed to sell the property to purchasers for \$2.8 million. The anticipated net loss on the sale of the land and office building is approximately \$32,334.² Before GVN and purchasers entered into this transaction, the Turlock property had been on the market for approximately one year, and GVN had received only one other offer in the amount of \$2.05 million.

Procedural History

GVN filed this application on February 15, 2005. In Resolution ALJ 176-3148, dated February 24, 2005, we preliminarily categorized this

² In the application, GVN estimates the net basis of the property as \$2,680,746.23 and the net proceeds from the sale as \$2,648,412.50. The difference between the net basis of the property and the net proceeds is \$32,334.00.

proceeding as ratesetting and preliminarily determined that a hearing is not necessary.

ORA filed a protest on March 28, 2005. ORA's protest stated that the terms of this transaction might violate certain conditions that the Commission attached to the acquisition of Evans Telephone Company (Evans Telephone), subsequently renamed as GVN, to Country Road and Evans Telephone Holdings, Inc. (Evans Holdings) in D.01-06-084, and that the application lacked sufficient information regarding the impact of the sale and the relocation of GVN's offices to Patterson on ratepayers. GVN filed a reply to the protest on April 4, 2005.

At a prehearing conference held on May 19, 2005, the parties concurred that there was no need for a hearing in this matter and agreed to file a stipulation or settlement agreement to address the issues raised in ORA's protest by June 20, 2005.

On June 20, 2005, the parties filed a proposed settlement agreement and a joint motion to accept the settlement agreement.

The Settlement Agreement

In the settlement agreement (Attachment A to this decision), the parties agreed as follows:

- The sales price for the Turlock property is \$2.8 million. The net book values of the land and building are \$1,245,816 and \$1,859,634, respectively. There is no gain on sale associated with this transaction.
- For a period of two years after the date of this transaction, GVN shall cap at \$3,100,000 the ratebase amount associated with the acquisition of land and an office building in Patterson to replace the land and office building located in Turlock for California ratemaking purposes. If GVN files a general rate

case (GRC) application for test year 2007 or earlier, GVN shall assume no more than \$3,100,000 in rate base associated with the land and building acquired to replace the land and building located in Turlock. The \$3,100,000 rate base cap shall be reduced by the associated accumulated depreciation adopted in GVN's last GRC (Resolution T-16720) for California ratemaking purposes.

- For the purposes of regulatory accounting, GVN shall book any loss associated with this transaction below the line.
- For the purposes of regulatory accounting, GVN shall cap moving expenses associated with the move from Turlock to Patterson at \$100,000.

The parties state that these conditions will enable GVN to relocate to Patterson and will also ensure that the move will not adversely affect GVN ratepayers for the next several years.

Environmental Review

The California Environmental Quality Act (Public Resources Code Section 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, hereinafter, "CEQA guidelines," Section 15002.)

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed (i.e., the Commission must act on the application before it for an approval of a sale agreement subject to PU Code Section 851), this Commission must act as either a Lead or a 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)).

Here, the County of Stanislaus (the County) is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for this proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project (CEQA guidelines 15050(b)). The specific activities which must be conducted by a Responsible Agency are contained in CEQA guidelines Section 15096.

As the Lead Agency for this project, the Stanislaus County Department of Planning and Community Development prepared and issued on June 8, 2005, an Initial Study and Negative Declaration (ISND) pursuant to CEQA. This ISND reviewed the potential environmental impacts of the GVN project over the entire range of applicable environmental resources and concluded that the instant project could not have a significant effect on the environment. The County also referred the GVN project to the San Joaquin Valley Air Pollution Control District; the Regional Water Quality Control Board; and the State Department of Transportation (CalTrans). No formal comments on the ISND were received from any of these agencies. The County's ISND did identify a number of project elements that would have to be addressed as Conditions of Approval, but these elements did not rise to the level of "mitigation" as generally understood under CEQA. Additionally, none of the Conditions of Approval developed by the County are applicable to GVN, and the Commission has no authority to impose these Conditions on the buyer. For the sake of full disclosure, these elements and conditions are as follows:

- Aesthetics – A Condition of Approval will be added to the project to require that any new outdoor lighting be aimed downward in order to address glare to surrounding areas (ISND, p.5);
- Cultural – Although no cultural resources are known to exist at the GVN project site, a standardized Condition of Approval will be added to the project to address any potential discovery of cultural resources during project implementation (ISND, p.7);
- Hydrology and Water Quality – Two Conditions of Approval were required in this resource area: (1) a Grading and Drainage Plan will be included as part of the project as required by the County Public Works Department; and (2) a Notice of Intent will be required to be filed by the developer (buyer) with the Regional Water Quality Control Board prior to the issuance of a grading permit (ISND, p.10);
- Public Services – Conditions of Approval will be added to this project to insure that the proposed development complies with all applicable fire department standards with respect to access and water for fire protection. Additionally, with the change in use, the project shall comply with all current applicable codes and ordinances for fire protection (ISND, p.13); and
- Utilities and Service Systems – Conditions of Approval will be added to the project to address necessary permits from the County Department of Environmental Resources (ISND, p.15).

The Board of Supervisors of the County of Stanislaus (Board) voted unanimously on August 23, 2005, to approve the GVN project (Rezone Application #2005-06) by adopting Ordinance C.S. 933 approving the buyer's (Wood's Furniture, Inc.) application to rezone the GVN property for its new intended use, and by adopting the Negative Declaration pursuant to CEQA Guidelines Section 15074(b). The Board ordered the filing of a Notice of

Determination with the Stanislaus County Clerk-Recorder's Office pursuant to Public Resources Code Section 21152 and California Code of Regulations Section 15075, and made the following findings:

- On the basis of the whole record, including the Initial Study and any comments received, there is no substantial evidence the project will have a significant effect on the environment;
- The Negative Declaration reflects Stanislaus County's independent judgment and analysis;
- The project is consistent with overall goals and policies of the County General Plan; and
- The proposed planned development zoning is consistent with the planned Development General Plan Description.

We have independently reviewed the application by GVN for authority to sell office facilities and related property in Stanislaus County, including the Initial Study Negative Declaration adopted by the County Board of Supervisors. We conclude that the ISND adopted by the County was developed in accordance with CEQA and is adequate for our decision-making obligations as a Responsible Agency.

Discussion

A. The Sale of the Turlock Property

Under Section 851, no public utility "shall ...sell...the whole or any part of ... property necessary or useful in the performance of its duties to the public... without having first having secured from the Commission an order authorizing it to do so."

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is in the public interest. In reviewing a

Section 851 application, the Commission may “take such action, as a condition to the transfer, as the public interest may require.”³ 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.⁴

We find that this transaction is in the public interest. The sale of the Turlock property will enable GVN to relocate to Patterson, which is within its service area, and will make GVN’s offices and staff more accessible to customers. The move will also benefit GVN customers because the new office will include a customer service center and a convenient drive-up window for payments, and relocating GVN’s offices will not interfere with GVN’s operations. Under the terms of the settlement agreement, the purchase of a new Patterson office and related land will not have adverse financial effects on GVN customers in upcoming years. Therefore, we approve this transaction under Section 851.

B. The Settlement Agreement

In this case, we must also evaluate whether the settlement agreement between GVN and ORA meets Commission requirements for approval. Under Rule 51.1 (e)⁵, the Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is:

- Consistent with the law;
- Reasonable in light of the whole record, and

³ D.3320, 10 CRRC 56, 63.

⁴ D.00-07-010 at p. 6.

⁵ All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

- In the public interest.

We find that the settlement agreement meets the criteria for approval under Rule 51.1(e), as follows:

1. The Settlement is Consistent with Law and Prior Commission Decisions.

GVN has properly applied for our authorization to sell the Turlock property pursuant to Section 851 before carrying out the transaction, and we have found that the transaction is in the public interest pursuant to Section 851. Further, this transaction does not violate any of the conditions we imposed on our approval of the acquisition and control of GVN (then known as Evans Telephone) by Country Road and Evans Holdings in D.01-06-084.⁶

⁶ In D.01-06-084, we approved the acquisition and transfer of control of then Evans Telephone (later renamed as GVN), to Country Road and Evans Holdings. However, we found that this transaction was in the public interest only so long as Evans Telephone ratepayers are insulated from the debt repayment obligations of Country Road and Evans Holdings and from the success or failure of Country Road's CLC operations, and Evans Telephone followed through with its commitment to infrastructure investment and new service offerings, while maintaining adequate service to the public. We therefore imposed the following conditions on the acquisition and transfer of control of Evans Telephone to Country Road and Evans Holdings:

- Evans Telephone (GVN) shall not sell any assets used or useful in the provision of its regulated services to satisfy debt obligations incurred by Country Road or Evans Holdings to finance the acquisition of Evans Telephone (GVN) or Evans Communications;
- Evans Telephone (GVN) shall not increase rates for its customers due to any increase in costs brought about by its acquisition by Country Road and Evans Holdings;
- Evans Telephone (GVN) shall manage its finances on a stand-alone basis, independent of Country Road, CRC Communications of California, and other affiliates.

Footnote continued on next page

2. The Settlement Agreement is Reasonable in Light of the Record as a Whole.

The record shows that GVN's decision to relocate its offices to Patterson, which is within its service area and in which GVN is serving an increasing number of customers, is a reasonable and sound business decision. Although GVN will not realize a financial gain from the sale of the Turlock property, the record shows that the property was on the market for one year and GVN had received only one, lower offer for the property before agreeing to sell it to purchasers for \$2.8 million. Therefore, it appears that GVN has made reasonable efforts to obtain a fair return from the sale of its Turlock property. In addition, the settlement agreement shows that GVN customers will be protected from unreasonable rate increases or adverse financial effects resulting from GVN's relocation of its offices to Patterson in upcoming years.

-
- Country Road and Evans Holdings shall provide Evans Telephone (GVN) with sufficient equity capital to maintain a reasonable and balanced capital structure and to provide service to the public that is safe, reliable, and in compliance with all applicable statutes and Commission orders;
 - Evans Telephone (GVN) shall comply with all existing and future affiliate rules and reporting requirements;
 - Evans Telephone (GVN) shall not pay a dividend, loan money, or provide any other forms of capital to Country Road, Evans Holdings, or other affiliates if doing so would jeopardize the utility's ability to provide reliable service at reasonable rates;
 - Country Road shall invest approximately \$11 million in network infrastructure for Evans Telephone (GVN) over the next five years and increase the offering of broadband and other services to Evans Telephone (GVN) customers, over current levels, without increasing local rates.

3. The Settlement is in the Public Interest.

The settlement agreement is in the public interest, because it will allow GVN to relocate its offices to Patterson, which will create advantages for GVN customers, while protecting GVN customers from unreasonable rate increases or other adverse financial effects resulting from the move in upcoming years.

In addition to the above criteria applicable to all settlements, we must determine whether this transaction meets Commission requirements related to all-party settlements. All-party settlements must meet the following requirements:

- **The settlement must command the unanimous sponsorship of all active parties to the proceeding.** Since GVN and ORA are the only active parties in this proceeding, this criterion plainly is met.
- **The sponsoring parties must be fairly representative of the affected interests.** GVN's proposed sale of the Turlock property will affect its customers. Since ORA represents the interests of those customers and advocates for all customers,⁷ and GVN represents the interests of its shareholders, this criterion is met.
- **No term of the settlement may contravene statutory provisions or prior Commission decisions.** As discussed above, nothing in the Settlement Agreement contravenes statutory provisions or prior Commission decisions. The settlement agreement therefore meets this criterion.
- **The settlement must convey to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.** The settlement agreement includes sufficient information regarding the ratemaking aspects of this transaction and is

⁷ Cal. Pub. Util. Code § 309.5.

adequately clear for the parties and the Commission understand its terms and for the parties to carry out the agreement.

Conclusion

For all of the foregoing reasons, we grant the application pursuant to Section 851 and grant the motion of GVN and ORA for approval of the settlement agreement.

Categorization and Need for Hearings

Based on our review of this application, there is no need to alter the preliminary determinations made in Resolutions ALJ 176-3148 as to the category of this proceeding and the need for a hearing.

Comments on Draft Decision

Section 311(g)(1) of the Public Utilities Code provides that this decision must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding. The parties have agreed to shorten the comment period to three days. Comments were received from _____ on _____ 2005.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Myra J. Prestidge is the assigned ALJ in this proceeding.

Findings of Fact

1. GVN requests authority to sell an office building and related land located in Turlock, California to purchasers for \$2.8 million.
2. GVN will not realize a gain on the sale of the Turlock property to purchasers.

3. GVN wishes to relocate its offices from Turlock to Patterson because Patterson is within its service area and GVN serves an increasing number of customers in the Patterson area.

4. The relocation of GVN's headquarters to Patterson will make GVN's offices and staff more accessible to customers.

5. GVN's new offices in Patterson will include a customer service center and a drive-up window for payments.

6. Before agreeing to sell the Turlock property to purchasers for \$2.8 million, the Turlock property had been on the market for approximately one year, and GVN had received only one, lower offer for the Turlock property.

7. In D.01-06-084, we imposed certain conditions on the acquisition and transfer of control of GVN, then known as Evans Telephone, to Countrywide and Evans Holdings.

8. The sale of the Turlock property and GVN's relocation of its offices to Patterson does not violate any of the conditions set forth in D.01-06-084.

9. The settlement agreement states that:

- a. The sales price for the Turlock property is \$2.8 million. The net book values of the land and building are \$1,245,816 and \$1,859,634, respectively. There is no gain on sale associated with this transaction.
- b. For a period of two years after the date of this transaction, GVN shall cap at \$3,100,000 the ratebase amount associated with the acquisition of land and an office building in Patterson to replace the land and office building located in Turlock for California ratemaking purposes. If GVN files a general rate case (GRC) application for test year 2007 or earlier, GVN shall assume no more than \$3,100,000 in ratebase associated with the land and building acquired to replace the land and building located in Turlock. The \$3,100,000 rate base cap shall be reduced by the associated accumulated depreciation adopted in GVN's last GRC (Resolution T-16720) for California ratemaking purposes.

- c. For the purposes of regulatory accounting, GVN shall book any loss associated with this transaction below the line.
- d. For the purposes of regulatory accounting, GVN shall cap moving expenses associated with the move from Turlock to Patterson at \$100,000.

10. The proposed settlement agreement between GVN and ORA would protect GVN customers from unreasonable rate increases or adverse financial effects resulting from the move of GVN's offices to Patterson in upcoming years.

11. All active parties have agreed to settle this case, after extensive discussions and review of the record.

12. The Settlement Agreement is the product of extensive discussion between the parties.

13. GVN and ORA fairly reflect all affected interests in this proceeding. GVN represents the interests of shareholders. ORA represents the interests of GVN's customers.

14. Conducting further proceedings, and litigating the issues in this case, would unnecessarily consume valuable resources of the Commission and the parties.

15. The County of Stanislaus is the Lead Agency for the proposed project pursuant to CEQA.

16. The Commission is a Responsible Agency for the proposed project pursuant to CEQA.

17. The Stanislaus County Department of Planning and Community Development prepared and issued an Initial Study and Negative Declaration (ISND) pursuant to CEQA on June 8, 2005.

18. The ISND prepared by the County of Stanislaus reviewed the potential environmental impacts of the GVN project over the entire range of applicable

environmental resources and concluded that the instant project could not have a significant effect on the environment.

19. The County referred the GVN project to the San Joaquin Valley Air Pollution Control District, the Regional Water Quality Control Board, and the State Department of Transportation (CalTrans) for formal comment and received none.

20. The County of Stanislaus' ISND for the GVN project concluded that there would be no significant impacts resulting from the acquisition of the land and facilities from GVN or the change in use for the property. No formal mitigation was required.

21. The County's ISND did identify a number of project elements that would have to be addressed by the buyer/developer as Conditions of Approval.

22. None of the Conditions of Approval developed by the County of Stanislaus apply to GVN, and the Commission has no authority to impose them on the buyer.

23. The Conditions of Approval developed by the County address the following CEQA resource areas: Aesthetics; Cultural; Hydrology and Water Quality; Public Services; and Utilities and Service Systems.

24. The Board of Supervisors of the County of Stanislaus voted unanimously on August 23, 2005, to approve the GVN project (Rezone Application #2005-06) and adopted Ordinance C.S. 933; adopted the Negative Declaration pursuant to CEQA Guidelines Section 15074(b); and made a number of findings.

25. The ISND developed by the County of Stanislaus was prepared pursuant to CEQA and is adequate for this Commission's decision-making purposes.

26. The Commission has considered the Stanislaus County ISND in its decision making process in accordance with the CEQA Guidelines Section 5096(f).

Conclusions of Law

1. GVN's sale of the Turlock property to the purchaser upon the terms described in the application and the settlement agreement between GVN and ORA is in the public interest and should be approved pursuant to Section 851.

2. The Settlement Agreement fully resolves and settles all disputed issues, among the parties concerning GVN's application in this proceeding.

3. The Settlement Agreement is reasonable in light of the whole record, consistent with law, consistent with prior Commission decisions, and in the public interest.

4. The settlement agreement contains adequate information and is sufficiently clear for the Commission and the parties to understand its terms and for the parties to carry out the agreement.

5. The ISND developed by the County of Stanislaus was prepared pursuant to CEQA and is adequate for this Commission's decision-making purposes.

6. The Commission has considered the County of Stanislaus' ISND in its decision making process in accordance with the CEQA Guidelines Section 15096(f).

7. This decision should be effective today so that GVN may expeditiously sell the Turlock property and the settlement agreement can take effect immediately.

O R D E R

IT IS ORDERED that:

1. The sale of the office building and related land located at 4918 Taylor Court, Turlock, California by Global Valley Networks (GVN) to David A. Woods and Randall E. Woods, based on the terms stated in the application and the settlement agreement between GVN and the Commission Office of Ratepayer Advocates (ORA) is hereby approved pursuant to Public Utilities Code Section 851.

2. The June 20, 2005 motion of GVN and ORA for approval of the settlement agreement dated June 20, 2005 is granted, and the settlement agreement is approved without modification.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.