Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Verizon California Inc. for Approval Pursuant to Section 851 to Transfer Property Located at One Verizon Way, Thousand Oaks, to Baxter Healthcare Corporation.	Application 01-09-026 (Filed September 20, 2001)

INTERIM OPINION APPROVING LEASE OF ONE VERIZON WAY TO BAXTER HEALTHCARE CORPORATION

I. Summary

This decision grants the request of Verizon California Inc. (Verizon) for authority under Pub. Util. Code § 851 to lease to Baxter Healthcare Corporation (Baxter) portions of its buildings and real estate located at One Verizon Way in Thousand Oaks, California (the Property). Baxter ultimately plans to use the Property as the headquarters for Baxter Biosciences, a division of Baxter. The lease will remain in effect pending the Commission's consideration of Verizon's request to sell the Property to Baxter.

II. Background

Verizon is a telecommunications carrier regulated by this Commission and engaged principally in the business of providing local exchange service in California. Baxter is a subdivision of Baxter International, headquartered in Deerfield Illinois. Baxter Biosciences develops technology and products designed to treat hemophilia, immune deficiencies, and other blood-related disorders.

On September 14, 2001, Verizon and Baxter entered into an Agreement for Purchase and Sale (Sale Agreement) of Verizon's buildings and real estate located at One Verizon Way. The Agreement is targeted to close on July 1, 2002.

The Property that Verizon is selling includes two buildings on 40.49 acres of land located in the City of Thousand Oaks in Ventura County. The Property currently serves as Verizon's regional headquarters for general and administrative purposes. The primary building is a 426,000 square-foot, three-story structure that includes approximately 380,000 square feet of rentable space. The building was built in 1977-78 and is rated as Class A office space suitable for a corporate headquarters facility. The other building on the Property is a one-story, 2,100 square foot building, which houses Verizon's vehicle fleet maintenance services.[1] In addition, the Property includes approximately 1,250 outdoor surface parking spaces and landscaping.

In addition to the Sale Agreement, Verizon and Baxter also entered into two separate agreements, dated August 15, 2001, involving the use of the Property by Baxter pending Commission approval of the sale. The first of these agreements is a revocable license agreement (License) that allows Baxter to occupy approximately 21,000 square feet of office space on the Property beginning on November 7, 2001. The License is made pursuant to the provisions of General Order(GO) 69-C and expressly provides that Baxter shall not interfere with Verizon's operations on the Property and that Baxter has not obtained any right, title, or interest whatsoever in or to any portion of the premises. Under the

[1] This vehicle maintenance building will be included in the sale, but will be leased back to Verizon for a five-year period.

License, Baxter may use the space only for administrative and general office use and may not alter, add to, or improve the premises without prior written consent.

The second agreement is a lease agreement (Lease) that replaces the License upon Commission approval of the Lease. The Lease allows Baxter to occupy an additional 10,000 square feet of office space as of January 1, 2002. The Lease is set to expire on July 1, 2002, at which point it would be superseded by the Sale Agreement assuming that closing has occurred. If the sale has not closed, Baxter has the option to extend the Lease and to rent approximately 230,000 square feet of additional space.

Under both the License and Lease, Baxter will pay Verizon approximately $38,000 per month, based upon $1.81 per rentable square foot. Verizon states that the lease price was set to reflect the prevailing market rate based upon comparable leases. The monthly lease payment is subject to a 3% annual increase and to proportional increases to the extent that Baxter exercises certain space expansion options in the Lease.

Verizon requests that the Commission grant approval of the Lease on an expedited basis so that Baxter and Verizon can consummate the Lease on a timely basis. Verizon contends that expedited approval of the Lease will benefit both parties by eliminating some of the uncertainty in operational planning inherent in a property transfer of this type.

On November 7, 2001, the Commission's Office of Ratepayer Advocates (ORA) submitted a late-filed protest to the application. ORA does not oppose the lease or sale of the Property, but objects to Verizon's proposed ratemaking treatment of any gain from the sale. Because ORA's protest does not concern the lease, we will proceed with review of the lease as an uncontested matter. We

will consider ORA's protest on ratemaking when we review the proposed sale of the Property in a subsequent order.

III. Reasons for Lease and Subsequent Sale of the Property

According to the application, the Lease in advance of the sale of the Property allows Baxter to begin use of the Property while the Commission determines whether to approve the Sale Agreement. The Lease meets Baxter's needs in terms of timing for occupying office space and it provides Verizon with rental income during the period the sale is pending. Further, Verizon contends that the Lease and sale of the Property to Baxter will not disrupt Verizon's ability to provide service to its customers because of the staged relocation built into the transaction and because the Sale Agreement allows Verizon to lease-back limited space at the Property after the sale is consummated.

Verizon states that the ultimate sale of the Property at One Verizon Way is designed to improve efficiency by consolidating Verizon's operations to available office space in other buildings owned or leased by Verizon. According to Verizon, the Property is expensive to operate and is not fully utilized. The sale will enable Verizon to minimize office space expenses by relocating employees at One Verizon Way to other less costly buildings in the Thousand Oaks area that currently have available capacity. Verizon plans to redeploy its work force by selling the Property to Baxter and consolidating employees located at the Property to available office space at Verizon's Lakeview Canyon Road and Ventu Park Road facilities. After the sale, Verizon's facility at Lakeview Canyon Road will serve as the regional headquarters building for Verizon.

Verizon contends that the Lease and ultimate sale will benefit California by allowing Baxter to expand its presence in California, thus creating jobs and

improving the local economy. Further, Verizon will maintain its headquarters presence in Thousand Oaks and Ventura County by relocating its employees to other local offices.

IV. Environmental Matters

The California Environmental Quality Act (CEQA) requires that an agency consider the environmental consequences of its actions before it makes a formal decision. CEQA is triggered when an agency has discretionary authority over an action prior to its completion.[2]

Verizon explains that the transaction at issue involves lease and ultimate sale of already developed property that will continue to be used by Baxter for administrative and general purpose. Because the transaction contemplates no change in the current use of the property, Verizon states that review under CEQA is not implicated. Further, Verizon maintains that neither the Lease nor the sale transaction will have any significant adverse effect on the environment, and thus each transaction falls within an exemption to CEQA.[3] Verizon also contends that prior Commission orders and the CEQA Guidelines state that construction affecting the interior of existing buildings does not trigger full CEQA review.[4]

We find that upon review of the circumstances of the proposed Lease involving the use of an existing structure, there is no possibility that the Lease

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[2] See Public Resources Code Section 21065 and 14 California Code of Regulations (CCR), CEQA Guidelines, § 15378.

[3] See Rule 17.1(d)(1) and 14 CCR § 15061(b)(3).

[4] See D.01-05-081 and 14 CCR § 15301.

will have a significant effect on the environment. The Lease involves an already developed property and the Lease contemplates no change in use of the property. Neither Verizon nor Baxter is seeking authority from the Commission to change the existing uses of the Property. Any subsequent change in use of the Property under the Lease can only be made with the prior consent of Verizon. This decision does not grant Baxter or Verizon authority to make future changes or improvements to the Property under the Lease without appropriate environmental review.

V. Discussion

A. Interplay of GO 69-C and Section 851

In recent decisions, we have voiced concern with the emerging pattern of a utility licensing property under GO 69-C as a precursor to a planned application for sale or lease of the property under § 851. (*See, e.g.*, D.01-06-059, D.01-03-064, and D.00-12-006.) It appears that utilities may be using GO 69-C as a means to give immediate effect to transactions with third parties while awaiting Commission approval of a longer-term arrangement.

We have expressed concern that segmenting projects in this way has the potential to circumvent environmental review when the Commission is presented with a transaction that clearly articulates the intention to split the project into two parts, one governed by GO 69-C, and the other subject to § 851 Commission review.

The current case involves the grant of an interim license under GO 69-C, followed by an interim lease, culminating with sale of the property. We do not find that the transaction was designed to circumvent GO 69-C because the License differs significantly from the Lease and sale transactions and because, as described above, Verizon has not circumvented CEQA review through its

license of the property in advance of the lease and sale. The License contains restrictions on Baxter's use of the Property that differ from the Lease and the License is revocable on 30 days' notice.

Having found that the facts of this case do not present a situation where Verizon is using GO 69-C to avoid the requirements of CEQA or the advance approval requirements of § 851, we may now consider whether to approve the Lease of the Property.

B. Whether to Approve the Lease

Pub. Util. Code § 851 requires advance, discretionary approval before sale or lease of utility property "necessary or useful in the performance of its duties to the public." Advance approval is the mechanism by which the Public Utilities Code ensures that financial and other transactions do not proceed until the Commission has had a chance to review and, if necessary, place conditions on those transactions. (E.g., Pub. Util. Code, §§ 851, 852, 854.) The relevant inquiry for the Commission in Section 851 proceedings is whether the proposed transaction is "adverse to the public interest."[5]

Verizon does not need the Property at issue in the Lease for public utility purposes and the Lease does not disrupt service to Verizon customers. The Lease allows Baxter to begin use of the Property while the Commission considers the sale application. At the same time, Verizon will begin to consolidate its employees space in other nearby facilities. Thus, the

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[5] *See, e.g., Universal Marine Corporation*, D.84-04-102, 14 CPUC2d 644 ("[W]e have long held that the relevant inquiry in an application for transfer is whether the transfer will be adverse to the public interest"); *see also* D.89-07-016, 32 CPUC2d 233.

consolidation, plus the income from the lease, will help offset the operating expenses of the Property.

The Lease involves only limited use of the Property[6] and specifically prohibits Baxter from altering, adding to, or improving the premises without prior written consent. The lease rate is consistent with current market rates. Further, the Lease involves a payment to Verizon of $10 million to compensate it for relocation expenses in preparation for the initial rental period and final sale. This payment is non-refundable, regardless of whether the Sale of the property is ultimately consummated.

We find that the Lease is not adverse to the public interest because it does not disrupt service to Verizon's customers and because it will allow Verizon to make efficient use of the Property, while sale of the Property is pending.

VI. Request for Confidentiality

Verizon requests confidential treatment of certain pages of its application and Sale Agreement that disclose the proposed purchase price for the Property.[7] Verizon contends that disclosure of this information could place Verizon at a business disadvantage. Specifically, Verizon maintains that if the purchase price is made public, future potential buyers will know the price for which Verizon was willing to sell the Property and this will disadvantage Verizon in future sale

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[6] Under the lease, Baxter will have access to 31,000 square feet of office space, with the right to extend to another 230,000 square feet rather than the full 380,000 square feet available at the site.

[7] The purchase price is disclosed on pages 5 and 11 of the Application, and pages 2 and 25 of the Purchase and Sale Agreement, which is attached to the Application as Exhibit A. Verizon has filed redacted versions of these pages for the public.

negotiations. Further, Verizon states that it will make the price available to any party willing to execute Verizon's standard, Commission approved confidentiality agreement.

We agree that the disclosure of the proposed purchase price for the Property, while the Sale Agreement is still pending approval before the Commission, could disadvantage Verizon. We have granted similar requests for confidentiality of proposed asset sale prices and we will grant Verizon's request to file these pages under seal.

VII. Public Review and Categorization

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.

In Resolution ALJ 176-3072, dated October 2, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. There were no responses to the application. A public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3072.

Findings of Fact

1. On August 15, 2001, Baxter entered into a revocable License with Verizon to occupy office space at One Verizon Way (the "Property") on or about November 7, 2001.

2. Verizon and Baxter request authority, pursuant to § 851, for Verizon to convert the License to a Lease that allows Baxter to occupy up to 261,000 square feet of office space at the Property.

3. The office space involved in the Lease is no longer required for utility purposes.

4. The Lease expires on July 1, 2002, at which point it would be superseded by a Sale Agreement involving the same Property assuming that closing has occurred. If the sale has not closed, Baxter has the option to extend the Lease.

5. Under the License, Baxter has not obtained any right, title or interest whatsoever to the Property and may not alter, add to, or improve the Property without prior written consent.

6. The Property is developed for office use and will continue to be used for this purpose under the Lease.

7. Any subsequent change in use of the Property by Baxter under the Lease can only be made with the prior consent of Verizon.

8. The Lease does not disrupt service to Verizon's customers and allows Verizon to make efficient use of the Property while sale is pending.

9. Verizon requests that the proposed purchase price of the Property be kept under seal.

10. Public disclosure of the purchase price would disadvantage Verizon in any future sale negotiations.

Conclusions of Law

1. A public hearing is not necessary.

2. The proposed Lease as set forth in the application is in the public interest and should be approved.

3. The facts of this case do not present a situation where GO 69-C is being used to avoid the requirements of CEQA or the advance approval requirements. of § 851.

4. This decision does not grant Baxter or Verizon authority to make future changes or improvements to the Property under the Lease without appropriate environmental review.

5. Neither the License nor the Lease of the Property will have a significant effect on the environment.

6. Verizon's request to file unredacted pages indicating the proposed purchase price of the Property under seal should be granted for two years.

7. This order should be effective today so that the License Agreement may convert to a Lease expeditiously.

INTERIM ORDER

IT IS ORDERED that:

1. Verizon California Inc. (Verizon) may lease to Baxter Healthcare Corporation (Baxter) the Property set forth in Application (A.) 01-09-026, in accordance with the Lease Agreement attached to the application.

2. Verizon's request for the purchase price of the Property, filed under seal with the Application to be maintained under seal, is granted for two years from the effective date of this decision. During that period, the information shall not be made accessible or disclosed to anyone other than persons who have executed a confidentiality agreement with Verizon or the Commission staff, except on the further order or ruling of the Commission, the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

3. If Verizon believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. A.01-09-026 shall remain open for consideration of the sale of the Property to Baxter.

This order is effective today.

Dated _____, at San Francisco, California.