

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**February 19, 2009**

**IN RE:**

**JOINT PETITION OF VANCO DIRECT USA, LLC  
AND CAPITAL GROWTH ACQUISITION, INC. FOR  
APPROVAL OF A TRANSFER OF CONTROL AND  
APPROVAL OF ISSUANCE OF DEBT AND RELATED  
FINANCING TRANSACTIONS**

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**DOCKET NO.  
08-00220**

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**ORDER APPROVING TRANSFER OF AUTHORITY  
AND RELATED FINANCING TRANSACTIONS**

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This matter came before Chairman Eddie Roberson, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 26, 2009 for consideration of the *Joint Petition of Vanco Direct USA, LLC and Capital Growth Acquisition, Inc. for Approval of a Transfer of Control and for Approval of Issuance of Debt and Related Financing Transactions* (“*Joint Petition*”) filed on November 21, 2008 by Vanco Direct USA, LLC (“Vanco”) and Capital Growth Acquisition, Inc. (“CGA”) (together, “Petitioners”).

Vanco is a Delaware limited liability company and a wholly-owned subsidiary of Vanco plc, a company incorporated under the laws of England and Wales. Vanco plc is currently in administration in the United Kingdom. “Administration” is the United Kingdom equivalent of an insolvency proceeding, similar to a bankruptcy filing in the United States. Vanco is authorized to resell local and interexchange long distance services in Tennessee<sup>1</sup> and has approximately thirteen business customers.

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<sup>1</sup> See *In re: Petition of Vanco Direct USA, LLC for Authority to Provide Resell Telecommunications Services in Tennessee*, Docket No. 05-00306, *Order Granting Authority to Resell Local and Interexchange Long Distance Services in Tennessee* (August 14, 2006).

CGA is a Delaware corporation and a wholly-owned subsidiary of Capital Growth Systems, Inc. d/b/a Global Capacity (“CGSI”). CGSI is a publicly-traded corporation that delivers telecom logistics solutions to a global client set consisting of systems integrators, telecommunications companies, and enterprise customers. CGSI’s subsidiary, Global Capacity, Inc. is authorized to provide resold and facilities-based local exchange and interexchange services in several states. CGA and CGSI are not authorized to provide telecommunications services in the State of Tennessee.

#### **THE JOINT PETITION**

According to the *Joint Petition*, the Petitioners entered into an Interest Purchase Agreement pursuant to which CGSI’s wholly owned subsidiary, CGA, which was created for this purpose, will purchase 100% of the limited liability company interests of Vanco. At the conclusion of the transaction, Vanco will be a wholly-owned direct subsidiary of CGA. The proposed transfer of control will have no impact on customers because the transaction will only result in a change in the ultimate ownership of the service provider. CGA does not intend to change the Vanco name at present, but, will provide any necessary notice to customers and make any necessary filings with the Authority if a new name is determined.

According to the Petitioners, CGSI will enter into a new senior secured financing term credit agreement with an institutional lender as agent for itself and possibly additional participants (collectively, the “Senior Secured Lender”) for funding of \$8,500,000 at closing, subject to increase by up to \$2,000,000 upon approval of the lender and CGSI. The financing will bear interest at prime plus 9% (approximately 12% per annum), with an additional 5% per annum to accrue and be added to principal of the loan, and have an initial term of 364 days, to be increased to a two year term financing in the event that CGSI is successful in acquiring 100% of the beneficial ownership of Vanco (the “Proposed Transaction”). The Senior Secured Lender will acquire a five year warrant to purchase up to 12,000,000 shares of the capital stock of CGSI in consideration for providing the line of credit. The line of credit will be further secured by the collateral pledge of the assets of CGSI’s

other subsidiaries, as well as the non telecom assets of Vanco. These other subsidiaries, including Global Capacity Group, Inc., will be named as co-borrowers on the note.

The Petitioners further state that in order to fund transaction costs associated with the Proposed Transaction and provide additional working capital to CGSI, CGSI will also borrow approximately: (i) \$9,025,000 from a consortium of institutional and high net worth lenders who will collectively fund a tranche of subordinate debt, to be secured by a junior lien on the assets of CGSI's subsidiaries and all of the non-telecom assets of Vanco (the "Junior Secured Debt"); and (ii) \$3,000,000 from the seller in the form of an unsecured note, subject to increase by up to \$1,000,000 over time to the extent that Vanco receives rent payments from a prospective sub-tenant for its space or where the sub-tenant assumes primary liability on the sublease. As part of the subordinate debt financing, the *Joint Petition* asserts that Vanco's existing secured notes (original principal amount of \$19,000,000, which has been reduced by about \$541,000 due to poor conversions on debt to equity) will be exchanged for two new tranches. The subsidiaries of CGSI, including Global Capacity Group, Inc., will be co-obligors on the subordinate financing and will pledge their non-telecom assets to secure the same and shall continue in force for the remaining terms of the loans in question. The proposed financing transaction will not affect the day-to-day operations or the rates, terms and conditions offered by the Petitioners.

The proposed transfer and related financing transactions will not result in any changes to Vanco's provision of service to its current customers; Vanco will continue to provide services to its customers under the same name, at current rates, terms and conditions thereby making the proposed transfer and financing arrangements virtually transparent to consumers in the State of Tennessee.

#### **FINDINGS AND CONCLUSIONS**

The Petitioners request approval for a merger and transfer of control pursuant to Tenn. Code Ann. § 65-4-112 and Tenn. Code Ann. § 65-4-113 (2004) and approval to participate in certain related debt financing transactions pursuant to Tenn. Code Ann. § 65-4-109 (2004). The Authority

finds that the transaction should be considered pursuant to Tenn. Code. Ann. § 65-4-113 because it involves the transfer of control of a Tennessee certificated entity to a non-certificated entity.

Tenn. Code Ann. § 65-4-113(a) (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, which in pertinent part, states as follows:

Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Regarding the related financing transactions, Tenn. Code Ann. § 65-4-109 (2004) provides as follows:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

At a regularly scheduled Authority Conference held on January 26, 2009, the panel voted unanimously to approve the transfer of authority pursuant to Tenn. Code Ann. § 65-4-113(b) (2004) and the financing transaction pursuant to Tenn. Code Ann. § 65-4-109 (2004) based on the following findings:

1. The financing transaction is subject to the approval of this Authority pursuant to Tenn. Code Ann. § 65-4-109 (2004).

2. The financing transaction is being made in accordance with laws enforceable by this Agency.

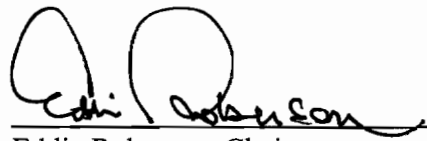
3. The transaction is in the public interest because it will allow Vanco to provide services on an uninterrupted basis.


**IT IS THEREFORE ORDERED THAT:**


1. The transfer of authority of Vanco Direct USA, LLC to Capital Growth Acquisition, Inc. as described in the *Joint Petition* and discussed herein is approved.

2. Vanco Direct USA, LLC and Capital Growth Acquisition, Inc. are authorized to participate in the financing transaction as described in the *Joint Petition* and discussed herein.

3. The Authority's approval of this transaction should not be used for the purpose of inferring an analysis or assessment of the risks involved. This decision is not intended to create any liability on the part of this Agency, the State of Tennessee or any political subdivision thereof.

  
Eddie Roberson, Chairman

  
Sara Kyle, Director

  
Mary W. Freeman, Director