

**ORIGINAL**

Decision No. 75269

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
LIVINGSTON TELEPHONE COMPANY, )  
LIVINGSTON TELEPHONE COMPANY OF )  
CALIFORNIA and EVANS TELEPHONE )  
COMPANY )

for an Order authorizing: )

A. Livingston Telephone Company )  
to transfer and sell and )  
Livingston Telephone Company of )  
California, a corporation, to )  
purchase and acquire the assets )  
and business of Livingston )  
Telephone Company and assume the )  
obligations of Livingston )  
Telephone Company; )

B. Livingston Telephone Company )  
to withdraw from the public )  
utility business; )

C. Livingston Telephone Company )  
of California, a corporation, to )  
issue and sell up to 30,000 shares )  
of its \$10 par capital stock; )

D. Livingston Telephone Company )  
of California, a corporation, to )  
borrow \$315,000, to issue its )  
Notes for a portion therefor and )  
to encumber its properties as )  
security for a portion of said )  
Notes and to issue a subordinated )  
Note convertible into capital )  
stock for a portion of said Notes; )

E. Evans Telephone Company to )  
purchase and hold shares of the )  
capital stock of Livingston )  
Telephone Company of California. )

Application No. 50745  
Filed December 12, 1968  
and Amendment  
Filed January 31, 1969 ✓

O P I N I O N

This is an application for an order of the Commission (1) authorizing Livingston Telephone Company to transfer its assets to Livingston Telephone Company of California, (2) authorizing the latter to assume the liabilities, obligations and encumbrances of the former, and to issue (a) 28,500 shares of \$10 par value common stock, (b) a convertible note in the principal amount of \$15,000, and (c) shares of common stock upon conversion of said note, (4) authorizing the latter corporation to enter into a Loan Agreement for the borrowing of \$300,000, and to issue notes and execute and deliver a mortgage and supplemental mortgages in accordance with such agreement, and (5) authorizing Evans Telephone Company to purchase, acquire and hold not exceeding 15,000 shares of the \$10 par value common stock of Livingston Telephone Company of California.

Livingston Telephone Company and Evans Telephone Company are California corporations operating public utility telephone systems in and about the Cities of Livingston and Patterson, respectively. Livingston Telephone Company of California is a California corporation organized on or about November 14, 1968, primarily to engage in the specific business of rendering public utility telephone service.

Livingston Telephone Company and Livingston Telephone Company of California have negotiated an agreement for the sale and purchase of all of the former's assets subject to the related liabilities. In order to obtain funds for meeting the \$600,000

purchase price Livingston Telephone Company of California proposes to borrow \$300,000 from Stromberg-Carlson Corporation and \$15,000 from John H. Evans, President of Evans Telephone Company, and to issue and sell, at par for cash, \$285,000 aggregate par value of its capital stock.

The Loan Agreement with Stromberg-Carlson Corporation will require the execution and delivery of a mortgage and one or more supplemental mortgages as security for the \$300,000 borrowing. On an interim basis Livingston Telephone Company of California will issue one or more demand notes providing for the payment of interest each month at the rate of 7-1/4% per annum. Not later than July 31, 1969, the company will issue a final note in an amount equal to the total unpaid principal balance of the interim note or notes, and in exchange for the latter. The final note will provide for the repayment of principal in 240 monthly installments, together with interest computed at the rate of 7-1/4% per annum on unpaid principal.

The \$15,000 borrowing from John H. Evans will be represented by a subordinated convertible note bearing no interest and maturing twenty-five years from its date. At any time after January 1, 1979, or prior thereto under specified circumstances, John H. Evans, or the holder of the note, will have the option to convert it into common stock of Livingston Telephone Company of California.

Evans Telephone Company intends to acquire 15,000 of the proposed issue of 28,500 shares of \$10 par value capital stock of Livingston Telephone Company of California. In addition to

enabling the two companies to share certain facilities and experienced and skilled employees through affiliation, the application shows that there would be certain financial and tax benefits.

On the basis of the June 30, 1968 balance sheet of Livingston Telephone Company, attached to the application as a part of Exhibit D-1, a pro forma balance sheet giving effect to the proposed transfer and financing is as follows:

Assets

Net telephone plant	\$461,440
Acquisition adjustment	166,431
Current assets	<u>103,517</u>
Total	<u>\$731,388</u>

Liabilities

Common stock	\$285,000
Long-term debt	417,978
Current liabilities	23,237
Other credits	<u>5,173</u>
Total	<u>\$731,388</u>

Livingston Telephone Company of California proposes to write off against the acquisition adjustment account the income tax savings attributable to the depreciation allowed upon the value of plant representing the entry in such account. This Commission determines rates on the basis of original cost; consequently, the telephone plant acquisition adjustment attributable to the proposed transfer will not be included in rate base, and its amortization will not be regarded as an operating expense for rate fixing.

This Commission recognizes that the tax basis for computing depreciation will increase upon consummation of the proposed transfer. As a result Livingston Telephone Company of California will realize additional tax deductions not available to the transferor. Inasmuch as the balance in the telephone plant acquisition adjustment account will be excluded from future rate base determination, it is equitable that the related tax savings should be treated as an offset to the annual amortization of such acquisition adjustment, and the Commission will so order.

After consideration the Commission finds that: (1) the proposed transfer, stock acquisition and documents will not be adverse to the public interest; (2) the proposed stock and note issues are for proper purposes; (3) the money, property or labor to be procured or paid for by the issue of the stock and notes herein authorized is reasonably required for the purposes specified herein; and (4) such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. On the basis of these findings we conclude that the application, as amended, should be granted. A public hearing is not necessary.

In issuing our order herein, we place Livingston Telephone Company of California and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return it should be allowed to earn on its investment in plant, and that the authorization herein granted is not to be construed as a finding of the value of the company's stock or properties nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. Livingston Telephone Company, on or after the effective date hereof and on or before June 30, 1969, may transfer and convey, and Livingston Telephone Company of California may acquire, all of the telephone systems and assets of the telephone business conducted by the former, and the latter may assume all the related obligations, liabilities and encumbrances. The transfer and conveyance may be made effective as of January 1, 1969, for accounting purposes.

2. Livingston Telephone Company of California, on or after the effective date hereof, for the purpose specified in this proceeding, may issue and sell, at par for cash, not exceeding 28,500 shares of its \$10 par value common stock.

3. Livingston Telephone Company of California, on or after the effective date hereof, may enter into a Loan Agreement with Stromberg-Carlson Corporation, may execute and deliver a mortgage and supplemental mortgages and, for the purposes specified in this proceeding, may issue interim and final promissory notes in the aggregate principal amount of not exceeding \$300,000 at any one time outstanding. The documents shall be in the same form, or in substantially the same form, as those attached to the application as Exhibits E and F.

4. Livingston Telephone Company of California, on or after the effective date hereof, for the purposes specified in this proceeding, may issue its convertible promissory note in the

principal amount of not exceeding \$15,000 and shares of its common stock in conversion thereof, all in accordance with the terms of a Subordinated Convertible Note Agreement. The note and agreement shall be in the same form, or in substantially the same form, as Exhibit G-1 attached to the amendment to the application.

5. Evans Telephone Company may purchase, acquire and hold not exceeding \$150,000 aggregate par value of the common stock of Livingston Telephone Company of California.

6. Livingston Telephone Company of California shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

7. On or before the date of actual transfer, Livingston Telephone Company shall refund all customers' deposits and advances for construction, if any, which are due and payable as of the date of transfer. All unrefunded deposits and advances shall be transferred to Livingston Telephone Company of California which shall be responsible for their refund when due.

8. On or before the date of actual transfer, Livingston Telephone Company shall deliver to Livingston Telephone Company of California, which shall receive and preserve, all available records, memoranda and papers pertaining to the construction and operation of the properties herein authorized to be transferred.

9. If the authority herein granted to transfer properties is exercised, Livingston Telephone Company of California, within thirty days thereafter, shall notify the Commission, in

writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect such transfer.

10. Within sixty days after the date of actual transfer, the tariffs of Livingston Telephone Company now on file with this Commission shall be refiled under the name of Livingston Telephone Company of California in accordance with the procedure prescribed in General Order No. 96-A or, in lieu of such refileing, Livingston Telephone Company of California may file within thirty days after the date of actual transfer, by advice letter, a notice of adoption of said presently filed tariffs.

11. Livingston Telephone Company of California shall amortize the balance in Account 100:4, Telephone Plant Acquisition Adjustment, resulting from the acquisition herein authorized, and shall effect the amortization over a twenty-year period by annual debits to Account 323, Miscellaneous Income Charges, with concurrent credits to Account 172, Amortization Reserve.

12. Livingston Telephone Company of California shall record in said Account 323 annual credits for the tax savings attributable to the additional allowable depreciation emanating from the acquisition adjustment, with an offsetting debit to a subaccount under Account 305, Operating Taxes.

13. Within sixty days after consummating the transfer herein authorized, Livingston Telephone Company of California shall file with the Commission a copy of each journal entry used to record the transfer on its books of account, together with a statement showing the estimated annual charges and credits to each account proposed to be affected by the disposition of the entire amount of the acquisition adjustment.



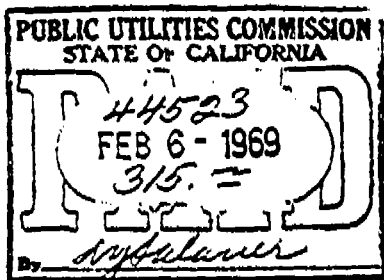
14. On or before the end of the third month after the consummation of the transfer herein authorized, Livingston Telephone Company of California shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of Livingston Telephone Company for the period commencing with the first day of the current year to and including the date for accounting purposes of the transfer if such date is other than January 1, 1969.

15. Upon compliance with all of the conditions of this order, Livingston Telephone Company shall stand relieved of its public utility obligations in the area served by the transferred systems, and may discontinue service concurrently with the commencement of service by Livingston Telephone Company of California, which for accounting purposes only may occur as of January 1, 1969.

16. This order shall become effective when Livingston Telephone Company of California has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$315.

Dated at San Francisco, California, this 4<sup>th</sup> day of FEBRUARY, 1969.

William Spivack President  
Augusta  
Paul P. Monahan  
Thomas  
Commissioners



Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.