

Decision No. 79242

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of)

CONTINENTAL TELEPHONE COMPANY)
OF CALIFORNIA, a California)
corporation,)

for an order authorizing it to)
issue and sell \$12,000,000)
Principal Amount of its First)
Mortgage Bonds, Series I due)
1996, and exempting the issuance)
and sale of said Bonds from the)
requirements of the Commission's)
Competitive Bidding Rule)

Application No. 52872
Filed September 20, 1971

Orrick, Herrington, Rowley & Sutcliffe, by
James F. Crafts, Jr., Attorney at Law,
for applicant.
Sidney J. Webb, for the Commission staff.

O P I N I O N

Continental Telephone Company of California seeks
an order of the Commission authorizing it to execute and
deliver a supplemental indenture, and to issue and sell on
a negotiated basis \$12,000,000 principal amount of its
bonds.

After due notice, a public hearing in the above-entitled matter was held before Commissioner Holmes and Examiner Donovan in San Francisco on September 30, 1971, at the conclusion of which the matter was taken under submission.

Applicant is a California corporation furnishing local and toll telephone service in various portions of Arizona, California and Nevada. It is a subsidiary of Continental Telephone Corporation, a Delaware corporation. On August 27, 1971, applicant acquired the public utility properties and business of Golden West Telephone Company. For the 12 months ended June 30, 1971, the reported total operating revenues and net income for the two companies combined amounted to \$51,463,741 and \$7,121,575, respectively, the corresponding figures for California operations being \$43,815,639 and \$6,049,817.

The utility's construction program for the year 1971, giving effect to the Golden West Telephone Company transaction, amounts to approximately \$25,513,800. Applicant proposes to finance permanently approximately \$9,200,000 of such program through selling 200,000 shares of its \$20 par value preferred stock, at par, and 115,555 shares of its \$5 par value common stock for \$45 per share. As of September 30, 1971, applicant's outstanding short-term bank loans incurred to finance temporarily a portion of the construction program amounted to \$15,750,000.

In order to obtain funds for repaying a portion of its bank borrowings, the utility proposes to offer and sell \$12,000,000 principal amount of its First Mortgage

Bonds, Series I due 1996. The bonds would be secured by an existing indenture as heretofore supplemented and as further supplemented by a proposed Thirteenth Supplemental Indenture containing a five-year restrictive redemption provision.

Applicant's capitalization ratios as of May 31, 1971 (giving retroactive effect to said Golden West Telephone Company transaction) and as adjusted to give effect to the sale of the new bonds, and to said proposed sale of 200,000 additional shares of preferred stock and 115,555 additional shares of common stock, are summarized from the application as follows:

	<u>As of May 31, 1971</u>	<u>As Adjusted</u>
Long-term debt	53%	54%
Preferred stock	8	9
Common stock equity	<u>39</u>	<u>37</u>
Total	<u>100%</u>	<u>100%</u>

After extensive study the Commission, by Decision No. 38614, dated January 15, 1946, in Case No. 4761 (46 C.R.C. 281) promulgated a rule which requires competitive bidding pertaining to the securities presently under consideration, unless the utility makes a due showing that the sale thereof at competitive bidding should not be required. The only material issue in this proceeding is whether or not the company has made a clear and convincing showing that adherence to such rule would be adverse to the utility and its customers.

Upon consideration of the application, testimony and exhibits, we find that:

1. Applicant's bonds are rated Baa by Moody's Investors Service, Inc., and BBB by Standard & Poor's Corporation, both of which indicate medium grade.
2. With the exception of one offering of unsecured notes, Exhibit No. 1 sets forth an analysis of recent offerings of public utility bonds and debentures rated Baa and A by Moody's Investors Service, Inc.
3. Only Baa rated bonds, and Baa rated debentures not junior to bonds, are comparable to applicant's bonds for present purposes.
4. Because of the small number of offerings comparable to applicant's bonds, Exhibit No. 1 has no probative value.
5. On July 9, 1970, following negotiation \$10,000,000 of applicant's 9-1/2% Series G Bonds were offered to the public at their principal amount, the underwriting spread being 1.25%.
6. The principal underwriters of said Series G Bonds consisted of Salomon Brothers & Hutzler, E. F. Hutton & Company Inc., Allen & Company Incorporated, and Burnham and Company.
7. At least four of the nine directors of applicant's parent corporation are closely connected with investment bankers, including E. F. Hutton & Company Inc., and Burnham and Company.
8. Applicant's principal advisory source regarding the proposed offering of Series I Bonds has been E. F. Hutton & Company Inc., which is urging negotiation rather than competition.
9. Tight money market conditions, which prevailed at the time of the offering of said Series G Bonds, no longer exist.
10. The proposed bond issue is for a proper purpose.

11. Applicant has need for external funds for the purpose set forth in this proceeding.
12. The proposed restrictive redemption provision is reasonable.
13. The proposed Thirteenth Supplemental Indenture would not be adverse to the public interest.
14. The money, property or labor to be procured or paid for by the issue of the bonds herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that (a) applicant has failed to make a clear and convincing showing that a competitive bidding offering of its Series I Bonds would be adverse to itself and its customers, and (b) except to the extent that it seeks authority to sell the bonds through negotiation, the application should be granted.

The authorization herein granted is for the purpose of this proceeding only, and is not to be construed 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. Insofar as it seeks authority to sell bonds through negotiation the application is denied.
2. Continental Telephone Company of California may execute and deliver a Thirteenth Supplemental Indenture in substantially the same form as Exhibit C attached to the application.

3. Continental Telephone Company of California may invite the submission of written sealed bids for the purchase of not exceeding \$12,000,000 principal amount of its First Mortgage Bonds, Series I due 1996, the invitation for bids to be published at least five days prior to the opening of the bids.

4. Continental Telephone Company of California may issue and sell not exceeding \$12,000,000 principal amount of its First Mortgage Bonds, Series I due 1996, at competitive bidding to the purchaser, or purchasers, offering to it the most favorable terms as disclosed by the bids received.

5. Continental Telephone Company of California shall apply the proceeds to be derived through the issue and sale of said bonds toward repaying short-term bank loans incurred in connection with its construction program.

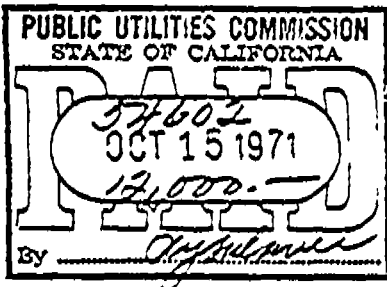
6. Promptly after awarding the contract for the sale of said bonds, Continental Telephone Company of California shall file a written report with the Commission showing, as to each bid received, the name of the bidder, the price, the interest rate and the cost of money to applicant based upon such price and interest rate.

7. As soon as available, Continental Telephone Company of California shall file with the Commission three copies of its prospectus pertaining to said bonds.

8. Within one month after issuing and selling the bonds herein authorized, Continental Telephone Company of California shall file with the Commission a statement, in lieu of a report under General Order No. 24-B, disclosing the purpose to which the bond proceeds were applied.

9. This order shall become effective when Continental Telephone Company of California has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$12,000.

Dated at San Francisco, California, this 13th day of OCTOBER, 1971.



[Signature]
Chairman
William Sproule Jr.

[Signature]
Commissioners

[Signature]
Commissioners

Concurring opinion
to be attached
[Signature]

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

COMMISSIONER D. W. HOLMES, Concurring:

This Commissioner notices an increasing tendency, on the part of the companies it regulates, to request exemptions from our normal competitive bidding rule (cited in this order) in the sale of their debt securities. Although I agree with the companies' contention that they should not be absolutely precluded from financing on a negotiated basis, I feel that it is necessary to point out to the industry what qualifies an issue for negotiated financing. There are two factors which justify negotiated financing:

- (1) The company must show that a negotiated sale of its securities would be beneficial to the present and future ratepayers and that it would not impose upon them an unduly high interest rate which they must repay. Never in the testimony that I have heard has the ratepayer been mentioned. The argument has always been on behalf of management or stockholders. It is incumbent upon this Commission to consider the repercussions to the ratepayers since we are the lone voice which would protect their interest. Since they are not usually represented in such financial hearings,

the burden of proof necessarily falls on the company to show that a negotiated issue will, in fact, be in the best interests of its ratepayers.

(2) This Commissioner would also be willing to consider the propriety of negotiated financing in the event of an emergency. If it were a corporate emergency, the burden of proof would again fall on the company. If emergency conditions in the financial climate exist, such as the extremely high interest costs and tight money supply that prevailed in 1970, this Commission should be flexible enough to adjust to these circumstances.

I am the assigned Commissioner on this case; I approve of the Examiner's opinion and order. However, I am filing this concurring opinion with the hope that it will be illuminating to the utilities who come to the Commission for approval of their financing programs.


D. W. HOLMES, Commissioner

Dated at San Francisco, California,
October 13, 1971.