

Decision No. 81961

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Southern Pacific Communications)
Company for authority to issue)
notes and additional stock.)

Application No. 54255
(Filed August 21, 1973)

Herbert A. Waterman and Richard S. Kopf, Attorneys
at Law, for applicant. Sidney J. Webb, for the
Commission staff.

O P I N I O N

Southern Pacific Communications Company seeks exemption from the Commission's competitive bidding rule, and authority to issue \$24,000,000 aggregate principal amount of notes and \$5,900,000 aggregate par value of common stock.

After due notice, a public hearing on the above-entitled matter was held before Examiner Donovan in San Francisco on September 21, 1973, at the conclusion of which the matter was taken under submission. The Commission has received no protests in the proceeding.

Applicant is a corporation incorporated on January 23, 1970 under the laws of the State of Delaware, and is a wholly owned subsidiary of Southern Pacific Company. Applicant is a specialized common carrier of telecommunications presently constructing a microwave communications system which will extend from Seattle, Washington to San Diego, California, and from Los Angeles, California to East St. Louis, Illinois via Houston, Texas.

The communications company proposes to issue \$12,000,000 of notes in favor of Connecticut General Life Insurance Company, \$12,000,000 of notes in favor of Teachers Insurance and Annuity Association of America, and \$5,900,000 aggregate par value of its common stock to Southern Pacific Company. The proceeds of \$29,900,000 would be applied toward defraying the cost of construction and completion of the facilities for applicant's microwave communications system, and toward repaying temporary advances obtained for such construction and completion.

The notes aggregating \$24,000,000 would be designated as 3-1/4% Notes due 1993, and Southern Pacific Company would be the unconditional guarantor. Commencing in 1979 applicant would repay from \$1,600,000 to \$5,000,000 principal amount of the notes annually. The notes would be non-refundable for the first ten years with the proceeds of debt financing incurred at an interest cost lower than 8-1/4% per annum.

As justification for seeking exemption from competitive bidding requirements with respect to the notes, the application states the following:

"Applicant requests that the Commission find that the Notes may be issued, as aforesaid, without being offered for competitive bidding. It is not desirable or feasible for the Notes to be sold at competitive bidding for the following reasons:

"Applicant has not engaged in the common carrier communications business since the date of its incorporation in Delaware on January 23, 1970, having been continuously occupied since that date in obtaining its required licenses from the Federal Communications Commission and in constructing its said communications system. As Applicant has not

yet engaged in the communications business, Applicant does not possess the background of operating experience and earnings in that business which may be necessary in order to commend securities to the investing public and to provide standards for judging their ratings and quality. On the other hand, the said Lenders, due to their confidence in Applicant and its proposed operations, are prepared to loan necessary funds upon the terms stated, which are believed by Applicant to be more advantageous and superior to any loan financing which could be obtained by Applicant through competitive bidding, both in respect of terms of repayment and interest cost. Moreover, greater flexibility is being provided by said loans being placed with only two lenders, rather than being publicly held. Unexpected developments may occur in any new enterprise, and it is of value to have its securities closely held to permit necessary changes to be negotiated in the event such developments become significant. Private placements of securities, including privately negotiated loans, have been widely adopted for the financing of new companies. Furthermore, each of the said Lenders has considerable knowledge of Applicant's proposed communications system and business operations by reason of prior negotiations for the said Note financing.

"It is the considered judgment of Applicant, and Applicant has been informed by persons who are actively engaged in the public offering of securities of communications companies, that, under present market conditions, loans on as favorable terms as the proposed Note financing cannot be obtained through the public offering of Applicant's securities, or by competitive bidding."

A summary of the reported consolidated balance sheet of Southern Pacific Company and subsidiaries at December 31, 1972, in thousands of dollars, is as follows:

Assets

Current assets	\$ 337,090
Investments	95,465
Property - net	2,818,606
Other assets and deferred charges	<u>42,098</u>
Total	<u>\$3,293,259</u>

Liabilities

Current liabilities	\$ 302,486
Long-term debt	791,008
Deferred federal income taxes	424,715
Other liabilities and reserves	70,199
Equity of minority stockholders in subsidiaries	7,726
Stockholders' equity	<u>1,697,125</u>
Total	<u>\$3,293,259</u>

Applicant presented evidence at the public hearing for supporting its request for exemption from competitive bidding and for authority to issue notes and stock.

After consideration we find that:

1. The proposed stock and note issues are for proper purposes.
2. Applicant has need for external funds for the purposes set forth in this proceeding.
3. The proposed restricted prepayment provision is reasonable.
4. The 8-1/4% per annum interest rate applicable to the proposed notes is favorable to applicant under current market conditions.

5. A financially strong guarantor of the proposed notes controls applicant.
6. The issue and sale of the proposed notes should not be required to be effected at competitive bidding.
7. The money, property or labor to be procured or paid for by the issues of the stock and notes herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application should be granted. The action taken herein 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, nor as including or implying in this proceeding the granting of any authority to provide any intrastate services, either generally or on any specific route.

O R D E R

IT IS ORDERED that:

1. The issue and sale by Southern Pacific Communications Company of not exceeding \$24,000,000 aggregate principal amount of its 8-1/4% Notes due 1993 are hereby exempted from the Commission's competitive bidding rule set forth in Decision No. 33614, dated January 15, 1946, as amended, in Case No. 4761.
2. Southern Pacific Communications Company may issue and sell at a price of not less than 100% of their principal amount not exceeding \$24,000,000 aggregate principal amount of its 8-1/4%

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Notes due 1993. Commitment fees may be deducted from the price. The notes shall be in substantially the same form as that in evidence as Exhibit No. 4 and subject to Note Agreements containing terms consistent with Exhibit No. 5.

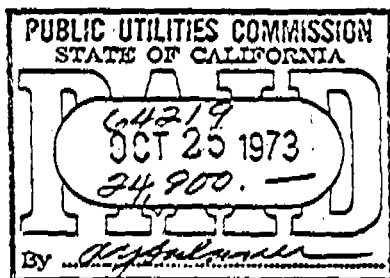
3. Southern Pacific Communications Company may issue and sell to Southern Pacific Company, at par for cash or in repayment of temporary advances, not exceeding 590,000 shares of \$10 par value common stock.

4. Southern Pacific Communications Company shall use the proceeds from the sale of the notes and stock herein authorized for the purposes specified in this proceeding.

5. Southern Pacific Communications Company shall file with the Commission reports required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

6. This order shall become effective when Southern Pacific Communications Company has paid the fees prescribed by Sections 1904(b) and 1904.1 of the Public Utilities Code, which fees are \$18,000 and \$6,900, respectively, or a total of \$24,900.

Dated at San Francisco, California, this 2nd day of October, 1973.



President
William Symons, Jr.

Commissioners

- 6 Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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