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ORIGINAL

Decision No. _____

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)
 \$25,000,000 aggregate principal)
 amount of its 10-3/4% Notes due)
 1995 and to exempt such Notes)
 from competitive bidding.)

Application No. 55844
 (Filed July 31, 1975)

James J. Trabucco 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 \$25,000,000 aggregate principal amount of its 10-3/4% Notes due 1995.

After due notice, a public hearing on the above-entitled matter was held before Examiner Tomita in San Francisco on August 15, 1975, 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. The record in this proceeding shows that applicant is a specialized common carrier of telecommunications currently operating between San Francisco, California and Philadelphia, Pennsylvania, and that it also operates a network video link between Fort Myers, Florida and

West Palm Beach, Florida. In addition to holding licenses and construction permits issued by the Federal Communications Commission, applicant possesses the certificate of public convenience and necessity granted by our Decision No. 84167, dated March 4, 1975. Said certificate authorizes applicant, as a public utility, to establish intercity private line communication service for voice and data transmission between the cities of Bakersfield, Fresno, Los Angeles, Merced, San Francisco and Stockton.

The communications company proposes to issue its 10-3/4% Notes due 1995 in an aggregate principal amount of not exceeding \$25,000,000, and the lenders would consist of certain banks and life insurance companies. Interest would be payable semi-annually at the rate of 10-3/4% per annum and, commencing in 1981, applicant would be obligated to make annual repayments of \$1,666,667 on principal. The notes would be non-callable for the first ten years with exception of the regular sinking fund. Southern Pacific Company would be the unconditional guarantor. The evidence shows that without such guarantor applicant could not obtain the loans and favorable interest rate.

Applicant would expend the note proceeds to meet estimated capital expenditures summarized as follows:

Microwave system (land, structures, radio and other equipment)	Cleveland-Washington, D.C. Washington, D.C.-New York	\$ 5,100,000 6,400,000 4,800,000 8,700,000
Multiplex equipment		
Customer and other equipment		
	Total	<u>\$25,000,000</u>

The record in this proceeding shows that applicant proposes to use some of the note proceeds for repaying Southern Pacific Company for advances utilized for a portion of such capital expenditures, and that none of the proceeds would be used for facilities in the State of California or applied to California intrastate operations.

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 Additional Notes may be issued, as aforesaid, without being offered for competitive bidding. It is not desirable or feasible for the Additional Notes to be sold at competitive bidding for the following reasons:

"Since the date of its incorporation in Delaware on January 23, 1970, the Applicant has been continuously occupied in obtaining its required licenses from the FCC and in constructing its communications system. Applicant commenced interstate common carrier communications service on December 26, 1973. As shown in Exhibit C, at March 31, 1975, Applicant had total assets of \$51.7 million, but had received only \$706,179 in revenues for the three months then ended. At the present time, the Applicant possesses neither the operating experience nor the earnings necessary in order to commend securities to the investing public and to meet rating standards acceptable to Applicant. However, due to confidence in the Applicant and its proposed operations, the Lenders are prepared to loan necessary funds upon the terms stated in Exhibit E, which are believed by the Applicant to be more advantageous than any loan financing which could be obtained by Applicant through competitive bidding.

"Greater flexibility is obtained by placing this Additional Note financing privately with the Lenders rather than making a public distribution of securities. Unexpected development 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, the Lenders have considerable knowledge of Applicant's proposed communications system and business operations by reason of prior negotiations for the said Additional Note financing.

"It is the considered judgment of Applicant, and Applicant has been informed by Applicant's said investment banking representative that under present market conditions, loans on as favorable terms as the proposed Additional 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, 1974, in thousands of dollars, is as follows:

<u>Assets</u>	
Current assets	\$ 383,267
Investments	127,834
Property - net	3,062,350
Other assets and deferred charges	40,817
Total	<u>\$3,614,268</u>
<u>Liabilities</u>	
Current liabilities	\$ 372,183
Long-term debt	848,910
Deferred federal income taxes	495,052
Other liabilities and reserves	98,084
Equity of minority stockholders in subsidiaries	8,137
Stockholders' equity	1,791,902
Total	<u>\$3,614,268</u>

On recent occasions, commencing with Decision No. 33411, dated September 4, 1974, in Application No. 55080, relating to Southern California Gas Company's First Mortgage Bonds, Series J, we have held that the California Usury Law does not apply to security issues authorized by this Commission. Nevertheless, applicant requests specific findings, conclusions and ordering paragraphs pertaining to such law, and consistent with those set forth in said Decision No. 83411 and similar provisions of subsequent decisions.

At the public hearing applicant presented evidence supporting its request for exemption from competitive bidding and for authority to issue notes.

After consideration we find that:

1. Applicant is a Delaware corporation subject to the jurisdiction of this Commission.
2. The proposed notes would be for proper purposes.
3. Applicant has need for external funds for the purposes set forth in this proceeding.
4. The 10-3/4% per annum interest rate applicable to the proposed notes is favorable to applicant under current market conditions.
5. The proposed restricted prepayment provision is reasonable.
6. A financially strong guarantor of the proposed notes controls applicant.
7. The issuance and sale of the proposed notes should not be required to be effected through competitive bidding.
8. The money, property or labor to be procured or paid for by the 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.

9. Prevailing market conditions necessitate that applicant's proposed notes be issued and sold at an interest rate of 10-3/4% per annum, which rate is in excess of the limitations on interest rates provided in Article XX, Section 22 of the California Constitution, and the public interest requires that this Commission authorize said issuance and sale irrespective of limitations contained in the California Usury Law.
10. Pursuant to plenary powers granted to the Legislature by Article XII, Section 5 (and its predecessors) of the California Constitution, the Legislature is authorized to confer additional consistent powers upon this Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution.
11. The Legislature has conferred upon this Commission the authority to regulate the issuance of public utility securities, including bonds, notes and other evidences of indebtedness, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816 et seq. of the Public Utilities Code).
12. Pursuant to the plenary powers granted to the Legislature in Article XII, Section 5 (and its predecessors) of the California Constitution, it conferred upon this Commission comprehensive and exclusive power over the issuance of public utility securities, including bonds, notes and other evidences of indebtedness, and the California Usury Law cannot be applied as a restriction on this Commission's regulation of such issuance of public utility securities, including the establishment of a reasonable rate of interest.
13. In addition to the plenary powers granted to the Legislature by the California Constitution pursuant to which the Legislature conferred upon this Commission exclusive authority to regulate the issuance of bonds, notes and other evidences of indebtedness by public utilities (Sections 816 et seq. of the Public Utilities Code), irrespective of the Usury Law, judicial interpretation of the California Usury Law has exempted corporate notes of public utilities from operation of the Usury Law.

14. Although the usury limitation contained in Article XX, Section 22 of the California Constitution and the Usury Law Initiative Act is exceeded, the proposed transaction, as authorized by this Commission, is the best applicant can obtain because of market conditions, and applicant utility, its assignees or successors in interest, will have no occasion to and cannot assert any claim or defense under the California Usury Law; further, and necessarily, because of lawful issuance by applicant of the notes in compliance with authorization by this Commission, persons collecting interest on such authorized notes are not subject to the Usury Law sanctions.
15. This Commission does not object to applicant's situating and structuring the proposed issuance and sale of its said notes in the State of New York.

On the basis of the foregoing findings we conclude that the application should be granted. As set forth in said Decision No. 83411 and similar subsequent decisions, we further conclude that the usury limitations on interest contained in Article XX, Section 22 of the California Constitution and the Usury Law Initiative Act do not apply to the issuance of public utility securities, including bonds, notes and other evidences of indebtedness, lawfully authorized by the Public Utilities Commission.

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. The issuance and sale by Southern Pacific Communications Company of not exceeding \$25,000,000 aggregate principal amount of its 10-3/4% Notes due 1995 are hereby exempted from the Commission's competitive bidding rule set forth in Decision No. 38614, 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 \$25,000,000 aggregate principal amount of its 10-3/4% Notes due 1995.

3. Southern Pacific Communications Company may issue and sell said notes (a) at an interest rate of 10-3/4%, which rate exceeds the maximum annual interest rate otherwise permitted under the California Usury Law, as contained in Article XX, Section 22 (Interest Rates) of the California Constitution and the Usury Law Initiative Act, and (b) with such other terms and conditions, consistent with the application herein, as may be contained in the Note Agreement or negotiated with the lenders.

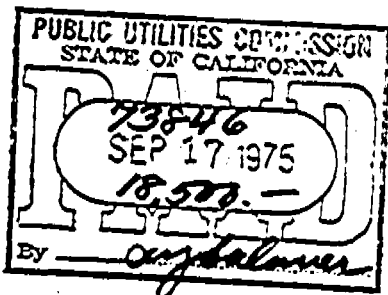
4. Neither Southern Pacific Communications Company, nor any person purporting to act on its behalf, shall at any time assert in any manner, or attempt to raise as a claim or defense in any proceeding, that the interest on its notes exceeds the maximum permitted to be charged under the California Usury Law or any similar law establishing the maximum rate of interest that can be charged to or received from a borrower.

5. Southern Pacific Communications Company shall use the proceeds from the notes herein authorized for the purposes specified in this proceeding.

6. 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.

7. This order shall become effective when Southern Pacific Communications Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$18,500.

Dated at San Francisco, California, this 10th day of SEPTEMBER, 1975.



President

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.