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Decision No. 85737

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CONTINENTAL TELEPHONE COMPANY OF CALIFORNIA, a corporation, for an order authorizing it to issue and sell $10,000,000 of its First Mortgage Bonds, Series L, through a negotiated private placement, and to execute a Sixteenth Supplemental Indenture.	Application No. 56341 (Filed March 22, 1976)

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, a California corporation, seeks authority to execute and deliver a Sixteenth Supplemental Indenture, and to issue and sell not exceeding $10,000,000 aggregate principal amount of its First Mortgage Bonds, Series L, through a negotiated private placement.

After due notice, a public hearing in the above-entitled matter was held before Examiner Tomita in San Francisco on April 5, 1976, at the conclusion of which the matter was taken under submission. The Commission has received no protests in the proceeding.

Applicant furnishes local and toll telephone service in portions of Arizona, California and Nevada. It is a subsidiary of Continental Telephone Corporation, a Delaware corporation. For the year 1975, applicant's reported total operating revenues and net income amounted to $85,574,318 and $10,623,607, respectively.

The utility proposes to issue and sell $10,000,000 aggregate principal amount of its First Mortgage Bonds, Series L, under an existing indenture as heretofore amended and supplemented and as to be further supplemented and amended by a proposed Sixteenth Supplemental Indenture.

By Decision No. 85476, dated February 18, 1976, in Application No. 56223, the Commission authorized applicant herein to issue promissory notes in the aggregate principal amount of not exceeding $11,000,000, and notes refunding said notes. Their interest rate is the prime rate of Bank of America National Trust and Savings Association. According to Exhibit C, attached to this application, the commitment to extend the applicable revolving line of credit from May 31, 1976 until November 30, 1976, is subject to (a) a firm commitment from a lender satisfactory to the bank for $10,000,000 with a closing date of no later than November 30, 1976, and (b) a firm commitment from Continental Telephone Corporation satisfactory to the bank to make a $4,000,000 equity investment no later than November 30, 1976. The proceeds to be derived from the proposed bonds would be applied toward retiring a portion of the bank loans.

Applicant intends to sell the new bonds for delayed delivery in the latter portion of 1976, and states: "Sales of utility debt securities for delayed delivery are popular with institutional investors and often command a favorable reception. A sale for delayed delivery would also permit applicant to have the benefit of current lower interest rates on short-term borrowings for a longer period of time without adversely affecting applicant's relationship with its short-term lenders."

With respect to the negotiated private placement of the proposed bonds, the application states the following:

> "The proposed private placement would be negotiated on behalf of applicant by Private Placement Financing, Inc., a corporation which is wholly-owned by Harry B. Sheldon. Mr. Sheldon has negotiated private placements of securities on behalf of applicant and its affiliates for many years and has done so very successfully. He negotiated the private placement of applicant's most recent issue of sinking fund debentures, which were issued early in July 1974 with an interest rate of 8-3/4%. The fee of Mr. Sheldon's corporation for negotiating the private placement of the new bonds would be only 1/4 of 1% of the principal amount thereof, or $25,000."

The reported capitalization ratios of applicant at December 31, 1975, and as adjusted to give effect to the proposed bond issue and assuming the furnishing of $4,000,000 of additional equity capital by applicant's parent corporation, are summarized from the application, as follows:

	December 31, 1975	Pro Forma
Long-term debt	52.40%	53.49%
Preferred stock	7.03	6.66
Common stock equity	40.49	39.85
Total	100.00%	100.00%

Applicant's reasons for requesting exemption from the competitive bidding requirements are set forth in the application as follows:

> "(i) The new bonds cannot be sold by means of a negotiated private placement unless the exemption is granted. A private placement is considerably less expensive than a public offering of debt securities, since the cost of registration under the Securities Act of 1933 is avoided and the legal fees are substantially lower. In addition, the fee paid to Mr. Sheldon's corporation for arranging the private placement would be approximately $100,000 less than the underwriting discounts allowed in a public offering.

"(ii) A negotiated private placement will permit delayed delivery arrangements which are not possible in a public offering, through competitive bidding or otherwise. A sale for delayed delivery may result in more favorable terms and will provide to applicant the benefit of the lower interest rates on its short-term borrowings until the new bonds are delivered.

"(iii) It should be possible to obtain a commitment for the purchase of the new bonds from institutional investors before the end of May and thus comply with the conditions imposed by the short-term lender, whereas it would be very difficult to sell the new bonds at competitive bidding in the same period of time.

"(iv) Because of the flexibility of a private placement and the relatively brief period of time normally required to obtain commitments for a private placement, applicant will be able to offer the new bonds on the basis of its March 31 financial statements which will show improved interest coverage and should command a favorable rate.

"(v) A negotiated private placement will avoid the necessity of giving consideration to the possible problem imposed by the California Usury Law. Applicant does not propose to agree to a private placement of the new bonds at an effective interest rate as great as 10% per annum at this time, and accordingly applicant is not seeking authority to situate and structure the transaction outside of the State of California or requesting issuance of the other findings and orders which would be necessary to satisfy lawyers as to the exemption of the proposed transaction from the California Usury Law."

After consideration the Commission finds that:

1. Applicant is a California corporation operating under the jurisdiction of this Commission.
2. Applicant's First Mortgage Bonds are presently rated BBB by Standard & Poor's Corporation and Baa by Moody's Investors Service, Inc.
3. The proposed Sixteenth Supplemental Indenture would not be adverse to the public interest.
4. The proposed bonds would be for a proper purpose.
5. Applicant has need for external funds for the purpose set forth in this proceeding.
6. The sale of the proposed bonds should not be required to be through competitive bidding.
7. The money, property or labor to be procured or paid for by 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.
8. There is no known opposition and there is no reason to delay granting the relief requested.

On the basis of the foregoing findings we conclude that the application should be granted, and that the effective date of the order should be the date on which it is signed. 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. Applicant is hereby placed on notice that, if the Commission believes that the negotiated price or interest rate pertaining to the proposed bonds will result in an excessive effective interest cost, it will take into consideration in rate proceedings only that which it deems reasonable.

O R D E R

IT IS ORDERED that:

1. The sale by Continental Telephone Company of California of not exceeding $10,000,000 aggregate principal amount of its First Mortgage Bonds, Series L, is 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. Continental Telephone Company of California may execute and deliver a Sixteenth Supplemental Indenture in substantially the same form as Exhibit B attached to the application.

3. Continental Telephone Company of California may issue and sell not exceeding $10,000,000 aggregate principal amount of its First Mortgage Bonds, Series L, on terms and conditions to be negotiated in accordance with the record in this proceeding.

4. Continental Telephone Company of California shall apply the proceeds from the sale of said bonds to the retirement of promissory notes issued pursuant to authority granted by Decision No. 85476.

5. Promptly after determining the maturity date, price and interest rate pertaining to the bonds herein authorized, Continental Telephone Company of California shall notify the Commission thereof in writing.

6. Continental 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. The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27th day of APRIL, 1976.

President

William Symons Jr.

Vernon L. Sturgeon

Leonard Ross

Robert Batinovich

Commissioners