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Decision No. 85296

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of LIVINGSTON TELEPHONE)
COMPANY, a corporation, for authority)
to issue notes aggregating not)
exceeding \$1,175,000 at any one time)
outstanding, and to execute a)
Financing Agreement, Mortgage and)
Supplemental Mortgages.)

Application No. 56652
(Filed July 29, 1975)

O P I N I O N

Livingston Telephone Company seeks authority to execute a Financing Agreement, Mortgage and Supplemental Mortgages, to issue notes in the aggregate principal amount of not exceeding \$1,175,000 at any one time outstanding, and to guarantee interim borrowings of Evans Telephone Company.

Applicant is a California corporation furnishing telephone services in and about Livingston, Merced County. For the year 1975, its reported total operating revenues and net income amounted to \$569,364 and \$50,902, respectively.

The application shows that the company has experienced and is experiencing an increasing demand for increasing qualities and quantities of telephone services, and that it needs in excess of \$1,175,000 to be expended approximately as follows:

Plant additions -		
Electronic central office	\$	726,300
Outside construction		61,200
Stand-by generator		23,500
Station apparatus		20,000
Total	\$	<u>831,000</u>
Refunding short-term indebtedness incurred for -		
Work equipment	\$	20,000
Outside construction		75,000
Central office equipment		122,000
Station apparatus		22,000
Total	\$	<u>239,000</u>
Paying current accounts payable for -		
Building improvements	\$	25,000
Central office		15,000
Outside construction		40,000
Station apparatus		25,000
Total	\$	<u>105,000</u>
Grand Total		<u>\$1,175,000</u>

Applicant has negotiated a Commitment Agreement with Stromberg-Carlson Corporation for the long-term borrowing of the \$1,175,000 pursuant to a Financing Agreement. Such agreements contemplate that on December 15, 1978, the utility will issue a Final Installment Note with principal repayable in 120 consecutive substantially equal monthly installments, together with interest at the rate of 11-1/2% per annum or 1-1/4% per annum over the weighted average yield of "A" rated public utility bonds, whichever rate is higher. The note would be secured by a mortgage and one or more supplemental mortgages.

According to the application, the utility intends to borrow interim funds from banks. The borrowings would be represented by notes bearing interest at a rate of not more than 1% per annum over the San Francisco prime rate in effect at Bank of America National Trust and Savings Association on the first day of each

month, and would have initial or renewal maturity dates of not later than December 31, 1978. In order to obtain the advantageous interest rate, applicant and its affiliate, Evans Telephone Company, must each become a guarantor of the other's interim bank borrowings.

The application shows that the terms of the proposed financing are the best applicant can obtain in view of its size, scope, debt structure and encumbrances.

On numerous occasions, commencing with Decision No. 83411, 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 states that Stromberg-Carlson Corporation is unwilling to enter into the loan transactions unless this Commission makes certain specific findings and orders pertaining to such law.

After consideration we find that:

1. The proposed documents would not be adverse to the public interest.
2. The proposed notes would be for proper purposes.
3. The money, property or labor to be procured or paid for by the issue of 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.
4. Prevailing market conditions necessitate that applicant's proposed Final Installment Note be issued with a rate of interest exceeding the limitations provided in Article XV of the California Constitution.

5. Pursuant to plenary powers granted to the Legislature by Article XII, Section 5 of the California Constitution, the Legislature is authorized to confer such additional consistent powers upon this Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution, except those directly relating to this Commission.
6. The Legislature has conferred upon this Commission the authority to regulate the issuance of public utility securities, including evidences of indebtedness, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816, et seq. of the Public Utilities Code).
7. Pursuant to the plenary powers granted to the Legislature in Article XII, Section 5 of the California Constitution, it conferred upon this Commission comprehensive and exclusive power over the issuance of public utility securities, including evidences of indebtedness, and the application of the California Usury Law as a restriction on this Commission's regulation of such issuances of public utility securities, including the establishment of a reasonable rate of interest, would not be in the public interest or be protective of public utilities or their customers, but would, instead, impair the ability of public utilities to obtain funds necessary to provide an adequate standard of public utility service to their customers.
8. 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 notes by public utilities (Sections 316, 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.
9. Although the usury limitation contained in Article XV 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.

10. 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 the effective date of the order should be the date on which applicant pays the prescribed fee. A public hearing is not necessary.

As set forth in said Decision No. 93411 and similar subsequent decisions, we further conclude that the usury limitations on interest contained in Article XV 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 this 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. Livingston Telephone Company may execute a Financing Agreement, Mortgage and Supplemental Mortgages and, for the purposes set forth in the application, may issue interim notes and a Final Installment Note in the aggregate principal amount of not exceeding \$1,175,000 at any one time outstanding. The documents shall be substantially consistent with Exhibits A and B attached to the application.

2. Livingston Telephone Company may guarantee the interim borrowings of Evans Telephone Company as described in Application No. 56651.

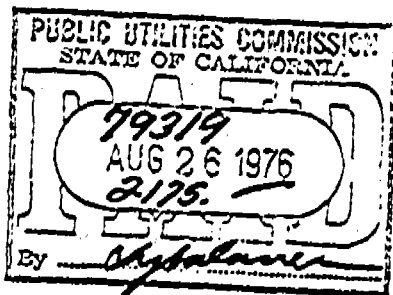
3. The interest rate for the Final Installment Note, authorized by paragraph 1 hereof, may exceed the maximum annual interest rate otherwise permitted under the California Usury Law, as contained in Article XV of the California Constitution and the Usury Law Initiative Act.

4. Neither Livingston Telephone Company, its successors in interest, any of its stockholders, or any person purporting to act on its behalf, nor any other interested party 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 Final Installment Note 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. Livingston Telephone 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 Livingston Telephone Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$2,175.

Dated at San Francisco, California, this 24th day
of AUGUST, 1976.



William J. Lyons President
Leonard Ross
Robert Bateman Commissioners