

Decision 84 12 038

DEC 19 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 J. H. EVANS INC., EVANS TELEPHONE)
 COMPANY and LIVINGSTON TELEPHONE)
 COMPANY for an order authorizing)
 EVANS TELEPHONE COMPANY to acquire)
 control of LIVINGSTON TELEPHONE)
 COMPANY and to merge LIVINGSTON)
 TELEPHONE COMPANY into EVANS TELE-)
 PHONE COMPANY.)

Application 84-10-008
(Filed October 2, 1984)

O P I N I O N

This is an application by J. H. Evans, Inc. (Evans, Inc.), Evans Telephone Company (Evans Telephone), and Livingston Telephone Company (Livingston) seeking an order authorizing Evans Telephone to acquire control of Livingston and to merge Livingston into Evans Telephone.

Notice of the filing of the application appeared in the Commission's Daily Calendar on October 4, 1984. There are no protests.

The Commission makes the following findings and conclusion.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Evans, Inc. is a California corporation having its principal place of business in Patterson, California. It currently owns 100% of the outstanding stock of Evans Telephone and approximately 59% of the outstanding stock of Livingston. The other, approximately 41% of the stock of Livingston, is owned by Evans Telephone. Thus Evans, Inc.'s current ownership represents directly or indirectly 100% of the voting power of both Evans Telephone and Livingston.

3. Evans, Inc. proposes to make a contribution to the capital of Evans Telephone, its wholly owned subsidiary, in the form of all of said 59% of the Livingston stock, after which Evans Telephone will own 100% of the stock of Livingston. Evans Telephone proposes then to merge Livingston into itself by a statutory short-form merger, which is a simplified procedure for merging a 100% owned subsidiary into its parent.

4. Evans Telephone was incorporated in California on December 27, 1951, as a public utility telephone company. It furnishes telephone service to portions of Stanislaus and Santa Clara Counties. Members of the Evans family owned the predecessor business and 100% of Evans Telephone stock since its incorporation. These family members have served in various capacities as directors, officers, and employees of Evans Telephone.

5. Livingston was incorporated in California on November 14, 1968, as a public utility telephone company. It furnishes telephone service to a portion of Merced County. Members of the Evans family have controlled Livingston since its incorporation, either directly or through corporations owned by them, and members of the Evans family have served in various capacities as directors, officers, and employees of Livingston.

6. As the first step in the proposed restructuring, Evans, Inc. proposes to make a contribution to the capital of Evans Telephone in the form of all of its Livingston stock so that Evans Telephone will then own 100% of the stock of Livingston. Although this is technically a transfer of control, it is simply a transfer within a controlled group of affiliates with no significance other than to facilitate the proposed merger. Evans Telephone proposes then to merge Livingston into itself. Under California Corporations Code § 1110 a corporation may merge a 100% owned subsidiary into itself by a summary "short-form merger." To effect such a merger the parent files with the Secretary of State a Certificate of Ownership, which sets forth the merger resolution of the parent's board of directors providing for the merger assumption of the liabilities of

the merged subsidiary. A copy of the proposed Certificate of Ownership, which constitute the merger agreement, is attached to the application as Exhibit C.

7. The purpose of the proposed merger is to simplify the operations of the respective telephone companies and to cut costs by eliminating duplication and administrative expenses. There will be no exchange of consideration in the transaction, since prior to the transaction, Evans, Inc. has 100% control, directly or indirectly, of both telephone companies and it will end up with 100% control of Evans Telephone, the subsidiary company which will remain after Livingston is merged into it. The merger will entail no change in the property utilized by the telephone companies in their operations.

8. If the proposed merger is consummated, Evans Telephone, the surviving company, proposes to file a tariff amendment adopting the present and existing tariffs of Livingston and to continue to serve the customers of Livingston under its present tariffs pending any future action by the Commission to consolidate the exchanges of Evans Telephone and Livingston for ratemaking purposes.

9. No change in operation or management of Evans Telephone or Livingston will occur by reason of this transaction. The control and management of Evans Telephone after the merger will be exactly the same as it now is for Evans Telephone and for Livingston. The bylaws, officers and directors of Evans Telephone are currently identical to the bylaws, officers and directors of Livingston.

10. The proposed acquisition of control of Livingston by Evans Telephone and merger of Livingston into Evans Telephone is not adverse to the public interest.

11. It can be seen with certainty that there is no possibility that a granting of this application may have a significant effect of the environment.

12. Since the order only affects the parties to it, it should be made effective on the date of issuance.

Conclusion of Law

The application should be granted.

O R D E R

IT IS ORDERED that:

1. J. H. Evans, Inc. (Evans, Inc.), Evans Telephone Company (Evans Telephone), and Livingston Telephone Company (Livingston) are authorized to permit Evans Telephone to acquire control of Livingston and merge Livingston into Evans Telephone in accordance with the terms set forth in the application. Evans Telephone shall file written notice of the merger with the Communications Divisions within 15 days after it is consummated.

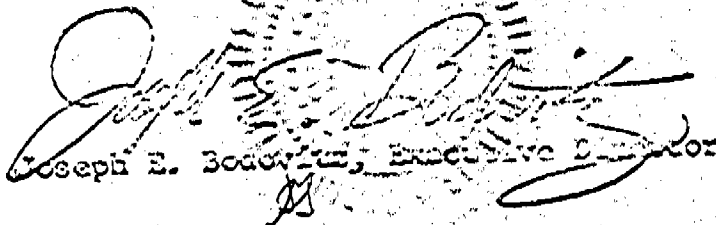
2. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before December 31, 1985.

This order is effective today.

Dated DEC 19 1984, at San Francisco, California.

DONALD VIAL
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
FREDERICK R. DUDA
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director