

Decision 88 01 046 JAN 28 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 EVANS TELEPHONE COMPANY (U 1008 C) )  
 for an order authorizing EVANS )  
 TELEPHONE COMPANY to acquire control )  
 of CAPAY VALLEY TELEPHONE SYSTEM, )  
 INC. (U 1005 C); to issue a note )  
 in an amount not exceeding \$800,000; )  
 and to merge CAPAY VALLEY TELEPHONE )  
 SYSTEM, INC. into EVANS TELEPHONE )  
 COMPANY. )

Application 87-10-004  
 (Filed October 9, 1987)

OPINION

This is an application in which Evans Telephone Company (Evans) seeks authority to acquire control of Capay Valley Telephone System, Inc. (Capay), to issue a note in an amount not exceeding \$800,000 and to merge Capay into Evans.

Notice of the filing of the application appeared in the Commission's Daily Calendar on October 13, 1987. There are no protests.

The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Evans is a telephone corporation as defined in Public Utilities (PU) Code § 234 and subject to the jurisdiction of the Commission. (U 1008 C.) Evans was incorporated in California on December 27, 1951. It furnishes telephone service to portions of Merced, Stanislaus, and Santa Clara Counties. Its principal place of business is in Turlock, California. Evans is a local family-owned and operated enterprise. The property owned by Evans and devoted to telephone service is comprised of land, buildings, poles, lines, wire, cable, central office equipment, telephones,

and other pertinent equipment necessary for the rendition of telephone service.

3. Capay is a telephone corporation as defined in PU Code § 234 and subject to the jurisdiction of the Commission. (U 1005 C.) Capay was incorporated in California on October 15, 1955. It furnishes telephone service to a portion of Yolo County. Its principal place of business is in Guinda, California. The property owned by Capay and devoted to telephone service is comprised of land, buildings, poles, lines, wire, cable, central office equipment, telephones, and other pertinent equipment necessary for the rendition of telephone service.

4. Andrew E. Smith (Smith) is the owner of 2,423 shares of Capay's common stock which are all of the issued and outstanding shares of Capay.

5. Evans, Smith, and Capay have negotiated a proposed agreement which they intend to execute upon receiving appropriate authority from the Commission. A copy of the agreement is attached to the application as Exhibit B. The agreement provides that Evans will purchase all of Capay's outstanding stock from Smith for \$1,000,000. Evans has negotiated proposed financing for a portion of the purchase of Capay stock. Evans proposes to borrow an amount \$800,000 from Smith under a promissory note, a proposed form of note is attached to the application as Exhibit C. The promissory note would bear interest at nine percent (9%) per annum and be payable over nine years in annual installments of Ninety Thousand Dollars (\$90,000) principal for eight years and Eighty Thousand Dollars (\$80,000) for the final year, plus interest.

6. Evans proposes to merge Capay into itself after it acquires 100% of Capay's common stock. Pursuant to California Corporation Code § 1110, a corporation may merge a one hundred percent-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 and assumption of the liabilities of the merged subsidiary. A copy of the proposed Certificate of Ownership, which constitutes the merger agreement, is attached to the application as Exhibit D. By means of this two-step process, i.e., first, the acquisition of Capay stock, and then a merger, Capay will first become a wholly owned subsidiary of Evans and then be merged into that parent. The purpose of the merger is to simplify the operations of the respective telephone companies and to cut costs by eliminating duplication and administration expenses. The merger will entail no change in the property utilized by the telephone companies in their respective operations.

7. Upon completion of the proposed merger, Evans, as the surviving company, will file a tariff amendment adopting the present and existing tariffs of Capay and will continue to serve the customers of Capay under its present tariffs.

8. Capay's annual report for the year ending December 31, 1986, shows that the net depreciated book cost of its plant was \$810,353. Capay's operating revenues for the year ending December 31, 1986 were \$299,949.

9. Evan's annual report for the year ending December 31, 1986, indicates that the net depreciated book value of its plant was \$9,504,270. Evan's operating revenues for the year ending December 31, 1986 were \$6,262,761.

10. Evans has the ability, including financial ability, to acquire and operate Capay.

11. The proposed acquisition of control of Capay by Evans and subsequent merger into Evans is not adverse to the public interest.

12. The proposed security issue is for lawful purposes and the money, property, or labor to be obtained by it are required for these purposes. Proceeds from the security issue may not be charged to operating expenses or income.

13. Because the public interest would best be served by having the acquisition of control and merger take place expeditiously, the ensuing order should be made effective on the date of issuance.

Conclusions of Law

1. The application should be granted.
2. Evans should be authorized to issue a promissory note for an amount not to exceed \$800,000.

This authorization is not a finding of the value of the rights and properties of which control is to be acquired and which will be merged into Evans.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order Evans Telephone Company (Evans) may acquire control of Capay Valley Telephone System, Inc. (Capay) and after acquisition merge Capay into Evans in accordance with the terms set forth in the application. Evans shall file written notice of the acquisition of control with the\* Telecommunications Branch within 15 days after the acquisition takes place.
2. Evans shall either file a statement adopting Capay's tariffs or refile those tariffs under its own name as prescribed in General Order Series 96. Rates shall not be increased unless authorized by this Commission.
3. The authority granted by this order shall expire on December 31, 1988, if it has not been exercised by that date.

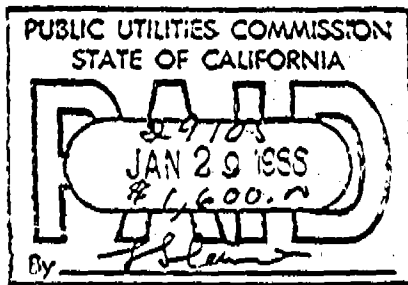
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\* Commission Advisory and Compliance Division's.


4. The authority granted by this order to issue an evidence of indebtedness will become effective when the issuer pays \$1,600 set by PU Code § 1904(b).

In all other respects this order is effective today.  
Dated JAN 28 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners



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

  
Victor Weinstock, Executive Director  
PB