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Decision 91-08-003 August 7, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Alpine CA-3, L.P. for a Certificate of)
 Public Convenience and Necessity Under)
 Section 1001 of the Public Utilities)
 Code of the State of California for)
 Authority to Construct and Operate a)
 New Domestic Public Cellular Radio)
 Telecommunications System in the)
 Alpine Rural Service Area (Alpine,)
 Calaveras, Amador, Tuolumne, and)
 Mariposa Counties).)

ORIGINAL

Application 91-02-073
(Petition for Modification
filed June 20, 1991)

O P I N I O N

Alpine CA-3, L.P., (Alpine) seeks an order modifying Decision (D.) 91-05-037 to eliminate the second sentence from Conclusion of Law 2.

Discussion

Alpine points out that Conclusion of Law 2 contains a sentence that is inconsistent with the Commission's opinion at page 9 and with its order at pages 12, ¶¶ 14 and 16. The questioned language is as follows:

"Proceeds from the security issue may not be charged to operating expenses or income."
(D.91-05-037, p. 10.)

The Commission notes in the opinion that the lender will provide both construction funds and working capital for Alpine's initial operating requirements. (Id., p. 9.) The Commission goes on to approve Kings' financing plans without condition. (Id.) Ordering Paragraphs 14 and 16 also approve Alpine's financing proposal without condition. (Id., p. 12.) Alpine asserts that the questioned sentence in Conclusion of Law 2 creates an uncertainty whether or not it may lawfully use the loan proceeds to fund its

initial operations, since Public Utilities (PU) Code § 818 prohibits such use "except as otherwise permitted in the order."

PU Code § 818 sets forth the requirements for orders approving financing. As relevant here, § 818 requires that such an order shall state:

1. The amount of the financing;
2. The purposes to which the proceeds will be applied;
3. That, in the opinion of the Commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order; and,
4. That, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The emphasized language gives the Commission authority in the case of bonds, notes, or other evidences of indebtedness to allow the proceeds of such instruments to be applied to purposes chargeable to operating expenses or to income. In the case of start-up companies, such as Kings, it appears reasonable to allow lender-furnished funds to be used as initial operating capital while the company is developing a stream of income from operations. Accordingly, we will grant Alpine's request for an order amending Conclusion of Law 2 to delete the second sentence.

Finding of Fact

As a start-up company, Alpine will require working capital in amounts sufficient to meet initial operating requirements.

Conclusions of Law

1. The petition of Alpine for modification of D.91-05-037 should be granted, as set forth in the following order.

2. Since this matter is unopposed and noncontroversial, the following order should be effective immediately.

O R D E R

IT IS ORDERED that D.91-05-037 is modified by deleting the second sentence from Conclusion of Law 2.

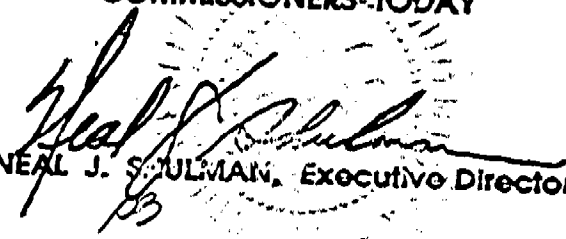
This order is effective today.

Dated August 7, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Daniel Wm. Fessler,
being necessarily absent, did
not participate.

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


NEAL J. S. SULMAN, Executive Director