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Decision
 CP National, a California corporation, directly and through its subsidiaries, engages in public utility operations in Oregon, California, Nevada, Texas, Utah, New Mexico, and Arizona. The company provides electric, gas, telephone, and water services in the State of California.

The property to be leased consists of telephone equipment, which would be provided to the FAA in conjunction with training and maintenance services. CP National would acquire the telephone equipment from Intellect, Inc., install it to the satisfaction of the FAA, and then simultaneously purchase the equipment from Intellect, Inc., sell the equipment to a designated leasing company, and lease it back under a Lease Agreement. CP National would then provide the equipment to the FAA under a contemporaneous Service Agreement.

The sale and leaseback transaction would be for a primary Lease term of six years, with four one-year renewal options at fair market value. Fixed periodic rent would be payable over the Lease term. CP National would have the right at the end of the primary Lease term and at the end of each option year thereafter to purchase the equipment from the leasing company at the greater of either fair market value or a stipulated termination value. CP

ORIGINAL

Decision 82 05 005 MAY - 4 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of CP NATIONAL CORPORATION, a)
California corporation for an order) Application 82-03-60
relating to telephone equipment) (Filed March 17, 1982)
lease.)

O P I N I O N

CP National Corporation (CP National) requests an order under Public Utilities (PU) Code Sections 816 through 830, either

1. Authorizing the application to acquire (but not purchase) some telephone equipment, install it to the satisfaction of the Federal Aviation Administration (FAA), and simultaneously purchase, sell, and lease back the equipment to the FAA; or
2. Exempting the proposed Lease from the Commission's jurisdiction; or
3. Dismissing the application for lack of jurisdiction.

Summary of Decision

This decision dismisses the application for lack of jurisdiction.

Notice of the filing of the application appeared on the Commission's Daily Calendar of March 19, 1982. No protests have been received.

O R D E R

IT IS ORDERED that Application 82-03-60 is dismissed.

This order is effective today.

Dated MAY 4 1982 at San Francisco, California

President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW

- 1. CP National would not be able to obtain title to the property without exercising an option to purchase it.
 - 2. Lease payments could not be credited against the purchase option price.
 - 3. CP National would not act as a guarantor of independence.
- Conclusions of Law

I CERTIFY THAT THIS DECISION WAS APPEALED TO THE ABOVE COMMISSION

Joseph E. Bodovick
Executive Director

CP National's Lease by definition is a "true lease" and the Commission has disclaimed any jurisdiction over these leases.

Although there is a simultaneous purchase and sale of the equipment, along with the leaseback, the Commission's Revenue Requirements and Legal Divisions conclude that this sale does not require the Commission's authority under PU Code Section 851.

Findings of Fact

1. Under the term of the Lease, CP National would have no equity or revisionary interests in the property.
2. CP National would not be able to obtain title to the property without exercising an option to purchase it.
3. Lease payments could not be credited against the purchase option prices.
4. CP National would not act as a guarantor of indebtedness.

Conclusions of Law

1. A public hearing is not necessary.
2. The application should be dismissed for lack of

jurisdiction

On the basis of the foregoing findings, the Commission concludes that the Lease would be a true lease as distinguished from a contract for the purchase of property or a commitment as a guarantor of indebtedness and is not subject to PU Code Sections 816 through 830.

National would have the right, upon 30 days' written notice, to cancel the Lease subject to CP National's assignment to the FAA of all of CP National's rights, obligations, and duties under the Lease. In the event of cancellation, CP National would guarantee to the Lessor that the amount payable by the FAA under the Service Agreement would at least equal the amounts payable under the Lease. CP National would indemnify the lessor's tax assumptions.

The Lease would be characterized on CP National's books as an operating Lease, rather than a capital Lease, ensuring that CP National's Lease obligations would not be construed as long-term obligations. For all practical purposes, CP National would not be obligated under the Lease except in a short-term sense.

The Service Agreement between the FAA and CP National would closely parallel the Lease, especially as to terms, termination obligations and penalties, and purchase option privileges. Periodic payments from the FAA to CP National would be fixed over the term of the Service Agreement and would closely match the initial periodic rents owing under the Lease. In effect, CP National's commitments under the Lease would be covered by the

FAA under its Service Agreement with CP National.

EX-107 D.8888 dated November 3, 1987 in A.80828.
 EX-107 D.8888 dated May 22, 1987 in A.80828.
 EX-107 D.8888 dated October 15, 1977 in A.27378.

Commission's Prior Decisions on Similar Leases

Insofar as the Lease itself is concerned, the Commission has consistently dismissed for lack of jurisdiction applications by utilities for authorization to execute "true Leases" for land or equipment in which the utility is the Lessee as in former Commission decisions for The Pacific Telephone and Telegraph Company (PT&T)^{1/} and Southern California Edison Company (SoCal)^{2/}

In the PT&T and SoCal decisions, the Commission distinguished "true leases" from conditional sales contracts and relied upon the following findings:

1. The Lessee had no equity interest in the property being leased and
2. The Lease did not encumber any "property necessary or useful in the utility's performance of its duties to the public" as defined by PU Code Section 851.

1/ PT&T's D.83333 dated August 2, 1974 in A.55095.
 PT&T's D.85874 dated May 25, 1976 in A.56467.
 PT&T's D.93699 dated November 3, 1981 in A.60928.

2/ SoCal's D.87961 dated October 12, 1977 in A.57379.