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Decision No. 89633 NOV 9 - 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of)	
)	
HORNITOS TELEPHONE CO., a)	Application No. 58162
corporation,)	(Filed June 22, 1978)
)	
for authority to issue Notes)	
aggregating not exceeding)	
\$125,000 and to execute a)	
Financing Agreement, Mortgage)	
and Supplemental Mortgages.)	

O P I N I O N

Hornitos Telephone Company (Hornitos) seeks authority to issue notes aggregating not more than \$125,000 and to execute a financing agreement, mortgage, and supplemental mortgages.

The applicant is a California corporation furnishing telephone service in and about the community of Hornitos in Mariposa County. For the year 1977 it reported operating revenues of \$162,311 and net income of \$10,412. Its reported balance sheet at December 31, 1977 is summarized as follows:

<u>Assets</u>	
Current assets	\$ 34,589
Investments	5,650
Net telephone plant	<u>388,972</u>
Total	<u>\$429,211</u>
<u>Liabilities and Capital</u>	
Current and accrued liabilities	\$128,095
Deferred credits	12,500
Long-term debt	149,370
Common stock equity	<u>139,246</u>
Total	<u>\$429,211</u>

The application states that Hornitos is experiencing increasing demand for telephone services and for higher grades of such telephone services. As a result of these demands, Hornitos will require in excess of \$125,000 to pay for improvements, replacements, and additions to plant. The proposed financing will be allocated as follows:

Central office equipment	\$ 18,000
Telephones	3,000
Outside plant material	<u>104,000</u>
	<u>\$125,000</u>

Hornitos plans to enter into a financing agreement with Stromberg-Carlson Corporation (Stromberg-Carlson) for short- and long-term borrowing in the amount of \$125,000. The agreement provides for interim financing initially, to be replaced no later than June 15, 1979 by a Final Installment Note. The borrowing would be secured by a mortgage in substantially the form set forth in Exhibit B attached to the application, and possibly one or more supplemental mortgages to encumber additional property acquired by Hornitos and not included in the granting clause of the original mortgage.

The interim financing would be represented by a note or notes which would bear an interest rate of 2-1/2 to 3-1/2 percentage points above the prime rate of Continental Illinois National Bank and Trust Company of Chicago in effect on the first day of each month.^{1/} There would be a commitment fee of one percent per annum, also payable monthly, based on the average daily undrawn amount during the preceding month of the total principal amount available. Interest on the Final Installment Note would be equal to the average

^{1/} At a prime rate of 10-1/4%, interest on the interim financing would be 13-3/4%.

yield on "A" rated public utility bonds offered during the three calendar months immediately preceding June, 1979, plus 1-7/8%.^{2/} Repayment would be made in 180 monthly installments.

The applicant states that it has made a substantial investigation of both short- and long-term credit sources, and that it has ascertained that the proposed financing is on the best terms available under present market conditions to a company of its size and having its debt structure and encumbrances. Financing through the Rural Electrification Administration (REA) is not a reasonable alternative, in view of that agency's standard policy not to loan funds to telephone companies where the required refinancing would exceed 20% of the total loan. In addition, the REA will not loan small telephone companies funds unless it is the sole long-term creditor. Hornitos presently has long-term debt of about \$150,000 owing to Stromberg-Carlson.

Hornitos acknowledges that the rates of interest to be charged for the proposed financing would exceed the limitations provided in Article XV, Section 1 of the California Constitution, and requests that this Commission's order specifically prohibit usury law assertions.

In Decisions Nos. 83411 and 83504,^{3/} among others, this Commission has held that in exercising its authority to regulate public utility debt securities it is not restricted by the California Usury Law and its ramifications. We reaffirm this holding and

^{2/} As of the latter part of October 1978, "A" rated utility bonds were yielding about 9.5%. This would result in an interest rate of 11.4% on the Final Installment Note.

^{3/} Decision No. 83411, dated September 4, 1974 in Application No. 55080, Southern California Gas Company. Decision No. 83504, dated September 24, 1974 in Application No. 55116, Pacific Gas and Electric Company.

conclude that if the interest limitation of the California Usury Law is exceeded but it is determined that the transaction is the best the utility can obtain because of market conditions, then the public interest requires this Commission to authorize the issuance and sale of the debt instruments.

The Communications Division has reviewed the application and the proposed construction program, and concurs with the Finance Division's conclusion that the proposed financing is necessary to implement the utility's program. The Communications Division advises, however, that there are long standing service problems in two boundary areas of the Hornitos exchange. The service problems stem from the divided responsibility between Hornitos and Mariposa County Telephone Company, Inc., for the provision of service in communities known as Catheys Valley and Mt. Bullion. The exchange boundary line between Hornitos and Mariposa bisects each of these communities; customers on one side of the boundary cannot call customers on the other side of the boundary without payment of a high toll charge. Representatives of the Communications Division have at many times in the past recommended various solutions to this unsatisfactory problem including cross boundary extended area service or a swap of territory so that each utility serves one of the communities in its entirety. Because it would be imprudent to construct plant in either of these areas until a final serving arrangement in the public interest is determined, we will not authorize any of the funds from the notes authorized herein to be spent on projects in the Mt. Bullion or Catheys Valley area. With regard to service in the Mt. Bullion and Catheys Valley area, the Commission takes official notice of its Decision No. 74030,

dated April 23, 1968 in Application No. 48971. This application was for financing authority by Roy McDonnell and Hazel McDonnell doing business as Hornitos Telephone Exchange, the predecessor of Hornitos Telephone Company. In that decision, the Commission found, "applicant's present service in the Catheys Valley area is inadequate and unreasonable". Ordering Paragraph 3 of the decision required applicant to file a monthly status report on its plan to eliminate the subscriber cross boundary problem in the Catheys Valley area. Apparently this provision was overlooked after acquisition of the property by the present owners. In view of the lack of solution to the boundary problem after our earlier order, we deem it appropriate to provide much more restrictive conditions on the financing authorized herein than had previously been taken with respect to Application No. 48971.

After consideration the Commission finds that:

1. The proposed notes would be for proper purposes.
2. The proposed Mortgage and Supplemental Mortgages would not be adverse to the public interest.
3. Hornitos has need for external funds for the purposes set forth in this proceeding.
4. The money, property or labor to be procured or paid for by 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.
5. If prevailing market conditions necessitate that the notes herein authorized be issued and sold with a rate of interest exceeding the limitations provided in Article XV of the California Constitution, then the public interest requires that this Commission authorize said issuance and sale irrespective of limitations contained in the California Usury Law.

6. Pursuant to plenary powers granted to the Legislature by Article XII, Section 5 of the California Constitution, the Legislature is authorized to confer additional consistent powers upon this Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution.
7. 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).
8. 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 California Usury Law cannot be applied as a restriction on this Commission's regulation of such issuances of public utility securities, including the establishment of a reasonable rate of interest.
9. 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 816 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.
10. If the usury limitation contained in Article XV, Section 1 of the California Constitution and the Usury Law Initiative Act is exceeded, but the transaction is authorized by this Commission and is the best petitioner can obtain because of market conditions, petitioner 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 petitioner of bonds or notes in compliance with authorization by this Commission, persons collecting interest on such authorized bonds or notes are not subject to the Usury Law sanctions.

11. Service conditions in the Catheys Valley and Mt. Bullion areas are unsatisfactory due to the bisecting of these communities by the common boundary line of Mariposa and Hornitos Companies.

There is no known opposition and there is no reason to delay granting the authority requested in the application. On the basis of the foregoing findings we conclude that the application should be granted. A public hearing is not necessary. As set forth in said Decisions Nos. 83411 and 83504, among others, we further conclude that the usury limitations on interest contained in Article XV, Section 1, of the California Constitution and the Usury Law Initiative Act do not apply to the issuance of public utility securities, including evidences of indebtedness, such as the notes, lawfully authorized by the Public Utilities Commission. The authorization herein granted is for the purpose of this proceeding only, and is not to be construed as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates. Because of the need for a solution of the service conditions in Catheys Valley and Mt. Bullion areas that may require Hornitos to serve less area in one community and more area in the other community, we will not authorize any of the construction funds authorized herein to be expended in these two areas.

Hornitos is hereby placed on notice that if the Commission believes that the interest rate pertaining to the proposed note issue will result in an excessive effective interest cost, it will take into consideration in rate proceedings only that which it deems reasonable.

Hornitos is hereby further placed on notice that it should undertake forthwith in cooperation with Mariposa County Telephone Company, Inc., to develop a solution to the boundary problems in the Catheys Valley and Mt. Bullion areas.

O R D E R

IT IS ORDERED that:

1. Hornitos Telephone Company may issue short-term and long-term notes in a principal amount not exceeding \$125,000, on the terms and conditions set forth in the application.

2. Hornitos Telephone Company may execute a Financing Agreement, Mortgage, and Supplemental Mortgages in substantially the forms set forth in Exhibits A and B, respectively, attached to the application.

3. Hornitos Telephone Company shall apply the proceeds from the issuance of said notes for the purposes referred to in the application.

4. The lender's yield on the notes of Hornitos Telephone Company authorized herein 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, if market conditions so require.

5. Neither Hornitos Telephone Company, nor any other person purporting to act on its behalf shall at any time assert in any manner, or attempt to raise as a claim or defense in any proceeding, that the interest on the Notes exceeds the maximum set forth in Article XV, Section 1 (Interest Rates) of the California Constitution or any other law of the State of California establishing the maximum rate of interest that can be charged to or received from a borrower.

6. Hornitos Telephone Company shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

7. This order shall become effective when Hornitos Telephone Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$250.

8. None of the funds authorized herein shall be expended in the Catheys Valley or Mt. Bullion areas pending solution of the boundary service problems in those areas and until further order of this Commission.

Dated at San Francisco, California, this 9th day of NOVEMBER, 1978.

Robert B. Berman
President
William G. Brown
Vernon L. Stogden
Richard D. ...

Commissioner CLAIRE T. DEDRICK

Present but not participating.

Commissioners

