

Decision No. 90104 1 MAR 27 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of	)	
Southern Pacific Communications Company	)	
for authority to issue \$50,000,000	)	Application No. 58675
aggregate principal amount of its 10%	)	(Filed February 14, 1979)
Notes due 1999 and to exempt such Notes	)	
from competitive bidding.	)	

O P I N I O N

Southern Pacific Communications Company (SPCC) seeks authority to issue and sell, through private placement, \$50,000,000 aggregate principal amount of its 10% Notes due 1999. Notice of the filing of the application was published on the Commission's Calendar of February 16, 1979.

SPCC was incorporated on January 23, 1970, under the laws of the State of Delaware, and is a wholly-owned subsidiary of Southern Pacific Company. The applicant is a specialized common carrier of telecommunications currently operating between San Francisco and Los Angeles on the West Coast and such cities as Boston, New York, and Washington on the East Coast. In addition to holding licenses and construction permits issued by the Federal Communications Commission, SPCC possesses the certificate of public convenience and necessity granted by our Decision No. 84167, dated March 4, 1975, (as affirmed by Decision No. 89580, dated October 31, 1978) in Application No. 55284, et al. The certificate authorizes SPCC, as a public utility, to establish intercity private line communication service for voice and data transmission between the cities of Bakersfield, Fresno, Los Angeles, Merced, San Francisco, and Stockton.

The communications company proposes to issue its 10% Notes due 1999 in an aggregate principal amount not exceeding \$50,000,000 to two lenders, Prudential Insurance Company of America and Mutual Life Insurance Company of New York (Lenders). Interest would be payable quarterly at the rate of 10% per annum and commencing in 1986, SPCC would be obligated to make annual

repayments of \$3,300,000 on principal, with a final payment of \$3,600,000, due on maturity in 1999. The Note issuance would be subject to a cash deficiency agreement between Southern Pacific Company, SPCC, and Lenders, providing that Southern Pacific Company shall be liable for any cash deficiency making SPCC unable to discharge its debt service obligations under the Additional Notes as they become due. The evidence shows that without such cash deficiency agreement, SPCC could not obtain the loans and favorable interest rate.

SPCC would expend the note proceeds to meet estimated capital expenditures summarized as follows:

Radio and Multiplex Equipment	\$18,971,000
Structures	1,602,000
Buildings and Land	2,293,000
Switches	21,488,000
Terminal Equipment	2,532,000
Other	<u>3,114,000</u>
Total	\$50,000,000

SPCC proposes to use some of the note proceeds for repaying Southern Pacific Company for advances utilized for a portion of such capital expenditures.

As justification for seeking exemption from competitive bidding requirements with respect to the note, the application states the following:

"Applicant requests that the Commission find that the Additional Notes may be issued, as aforesaid, without being offered for competitive bidding. It is not desirable or feasible for the Additional Notes to be sold at competitive bidding for the following reasons:

Since the date of its incorporation in Delaware on January 23, 1970, the Applicant has been continuously occupied in obtaining its required licenses and permits from the FCC and other governmental agencies, in constructing its communications system and in marketing its services to the business community. Applicant commenced interstate common carrier communications service on December 26, 1973. Since that time, it has experienced severe rate competition from American Telephone and Telegraph Company (and its operating subsidiaries) which has resulted in Applicant operating at a net loss in each year through 1978. Despite AT&T's rate competition, Applicant is now generating a positive cash flow and had an operating profit of \$1/2 million in the fourth quarter of 1978. Applicant expects to end the year 1979 on an overall profitable basis. At the present time, Applicant does not have a history of earnings necessary to commend securities to the investing public and to meet rating standards acceptable to Applicant. However, due to confidence in the Applicant and its proposed operations, the Lenders are prepared to loan necessary funds upon the terms stated in Exhibit C, which are believed by the Applicant to be more advantageous than any loan financing which could be obtained by Applicant through competitive bidding.

Greater flexibility is obtained by placing this Additional Note financing privately with the Lenders rather than making a public distribution of securities. Unexpected developments may occur in any new enterprise and it is of value to have its securities closely held to permit necessary changes to be negotiated in the event such developments become significant. Private placements of securities, including privately negotiated loans, have been widely adopted for the financing of new companies. Furthermore, the Lenders have considerable knowledge of Applicant's proposed communications system and business operations by reason of prior negotiations for the said Additional Note financing.

It is the considered judgment of Applicant, and Applicant has been informed by Applicant's investment banking representative that under present market conditions, loans on as favorable

terms as the proposed Additional Note financing cannot be obtained through the public offering of Applicant's securities, or by competitive bidding."

The Finance Division believes that the terms of the proposed financing are reasonable, given current market conditions and the Applicant's short history. The Communications Division has also reviewed the application and affirms that the proposed financing is necessary to support the company's construction program.

After consideration, we find that:

1. Applicant is a Delaware corporation subject to the jurisdiction of this Commission.
2. The proposed notes would be for proper purposes.
3. Applicant has need for external funds for the purposes set forth in this proceeding.
4. The 10% per annum interest rate applicable to the proposed notes is favorable to applicant under current market conditions.
5. The proposed cash deficiency agreement is reasonable.
6. The issuance and sale of the proposed notes should not be required to be effective through competitive bidding.
7. 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.

On the basis of the foregoing findings, we conclude that the application should be granted.

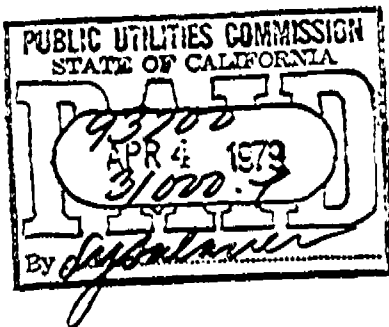
There is no known opposition to the application. A public hearing is not necessary. The authorization herein granted is for the purpose of this proceeding only, and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. The issuance and sale by Southern Pacific Communications Company of not exceeding \$50,000,000 aggregate principal amount of its 10% Notes due 1999 are hereby exempted from the Commission's competitive bidding rule set forth in Decision No. 38614, dated January 15, 1946, as amended, in Case No. 4761.
2. Southern Pacific Communications Company may issue and sell not exceeding \$50,000,000 aggregate principal amount of its 10% Notes due 1999.
3. Southern Pacific Communications Company shall use the proceeds from the notes herein authorized for the purposes specified in the application.
4. Southern Pacific Communications Company shall file with the Commission reports required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.
5. This order shall become effective when Southern Pacific Communications Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$31,000.

Dated at San Francisco, California, this 27<sup>th</sup> day of MARCH, 1979.



*[Signature]*  
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President  
*[Signature]*  
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*[Signature]*  
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Commissioners  
*[Signature]*  
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Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.