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Decision No. 90657 AUG 14 1979**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of General Telephone )  
 Company of California to issue )  
 and sell, at competitive bidding, )  
 not exceeding \$100,000,000 prin- )  
 cipal amount of First Mortgage )  
 Bonds, Series BB, and to execute )  
 and deliver a Supplemental )  
 Indenture. )

Application No. 58982  
 (Filed July 6, 1979)

O P I N I O N

General Telephone Company of California (General) seeks authority (a) to issue and sell at competitive bidding, not exceeding \$100,000,000 principal amount of first mortgage bonds and (b) to execute and deliver a supplemental indenture.

General requests this authority pursuant to Sections 816, 817, 818 and Section 851 of the Public Utilities Code. Notice of the filing of the application was published on the Commission's Daily Calendar of July 11, 1979.

General is a California corporation engaged in the business of providing telephone service to customers in portions of 20 counties, all in the State of California. For the twelve months ended May 31, 1979, the utility reported total operating revenues of \$1,026,812,000 and net income of \$110,743,000.

The purpose of issuing additional securities is to reimburse the utility for monies actually expended for capital purposes but not obtained from external sources. The utility reports that as of May 31, 1979, there is \$398,952,000 of plant available for the issuance of additional securities, as set forth in the following summary:

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|  | <u>Amount</u><br>(000) |                   |
|--|------------------------|-------------------|
| Telephone plant, net of depreciation   |                        | \$2,520,673       |
| Less: Deferred taxes   | \$244,956              |                   |
| Unamortized investment credit  | <u>102,473</u>         | <u>347,429</u>    |
| Total telephone plant available for<br>the issuance of securities            |                        | \$2,173,244       |
| Less securities outstanding:   |                        |                   |
| Proceeds from sale of common stock   | 623,764                |                   |
| Proceeds from sale of preferred<br>stock                                     | 157,113                |                   |
| Principal amount of long-term debt   | <u>993,415</u>         | <u>1,774,292</u>  |
| Total telephone plant available for<br>the issuance of additional securities |                        | <u>\$ 398,952</u> |

General estimates its short-term indebtedness as of August 31, 1979 to be \$160,000,000, with all proceeds having been spent for capital purposes.

The Revenue Requirements Division of the Commission's staff has evaluated the recorded construction expenditures of General for the past two years ending December 31, 1978. The gross construction expenditures for the years 1977 and 1978, totaled \$795,733,000. Review by the staff of the Revenue Requirements Division of the 1979 estimate made by General confirms the need for gross construction expenditures in excess of \$1,000,000,000. These estimated construction expenditures are consistent with inflationary trends, and past and projected increases in the number of main extensions. The estimated expenditures required to provide planned additions to buildings, central office equipment, station equipment, outside plant, and other plant and equipment are necessary to meet customer growth and movement, modernization and plant replacement. The Revenue Requirements Division reserves the right, however, to reconsider the reasonableness of any construction expenditures in future proceedings.

The first mortgage bonds would be offered and sold pursuant to the Commission's competitive bidding requirements, on or before December 31, 1979. The bonds will have a maturity not to exceed 30 years. Accrued interest included in the purchase of the bonds would be used for general corporate purposes. The bonds would be subject

to a restricted redemption provision until five years from the date of the bonds and would be secured by an existing indenture, as heretofore supplemented and as further supplemented by a proposed supplemental indenture for each series issued.

General's capitalization ratios reported as of May 31, 1979 and as estimated as of December 31, 1979 giving effect to the proposed bond issue, and also giving effect to Application No. 58953, filed June 22, 1979 seeking authority to issue \$20,000,000 of common stock are summarized from Exhibit B attached to the application, as follows:

|                 | <u>May 31, 1979</u> | <u>Pro Forma</u> |
|-----------------|---------------------|------------------|
| Long-term Debt  | 49.0%               | 49.6%            |
| Preferred Stock | 7.8                 | 7.6              |
| Common Equity   | 43.2                | 42.8             |
|                 | <u>100.0%</u>       | <u>100.0%</u>    |

If it appears the cost to General for such bonds might of necessity exceed 10 percent per annum, General intends to situate and structure the proposed issuance and sale of its first mortgage bonds in the State of New York without restricting the market for such bonds to areas outside of California. Since General's proposal does not operate to restrict the potential bond market to the detriment of General or its ratepayers, we are not opposed to such structuring and situating of the proposed issuance and sale. In this connection Decision No. 90263, dated May 8, 1979, in Application No. 58747, relating to General, Decision No. 83411, dated September 4, 1974, in Application No. 55080, relating to Southern California Gas Company, and Decision No. 83504, dated September 24, 1974, in Application No. 55116, relating to Pacific Gas and Electric Company, hold that this Commission in exercising its authority to regulate public utility debt securities is not restricted by the California usury

law and its ramifications. We reaffirm this holding and 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 securities.

Findings of Fact:

1. General is a California corporation operating under the jurisdiction of this Commission.
2. The proposed bonds would be for proper purposes.
3. General has need for external funds for the purposes set forth in the application.
4. The proposed restricted redemption provision is reasonable.
5. The money, property or labor to be procured or paid for by the issuance of the bonds herein authorized is reasonably required for the purposes specified herein, which purposes, except as otherwise authorized for accrued interest, are not, in whole or in part, reasonably chargeable to operating expenses or to income.
6. Underwriters will not be restricted from offering or selling General's proposed bonds in California.
7. The proposed supplemental indenture would not be adverse to the public interest.
8. Prevailing market conditions may necessitate that General's proposed bonds will be issued and sold at a cost of money exceeding the limitations provided in Article XV, Section 1, of the California Constitution.
9. Pursuant to plenary powers granted to the Legislature by Article XII, Sections 22 and 23, of the California Constitution, the Legislature is authorized to confer additional consistent powers upon the Public Utilities Commission as it deems necessary and appropriate, unrestricted by any other provisions of the California Constitution.

10. The Legislature has conferred upon the Public Utilities Commission the authority to regulate the issuance of public utility securities, including evidence of indebtedness, and to prescribe restrictions and conditions as it deems reasonable and necessary (Sections 816, et seq. of the Public Utilities Code).

11. Pursuant to the plenary powers granted to the Legislature in Article XII, Sections 22 and 23, of the California Constitution, it conferred upon the Public Utilities Commission comprehensive and exclusive power over the issuance of public utility securities, including evidences of indebtedness, and the application of the California usury law as a restriction on the Public Utilities Commission's regulation of such issuances of public utility securities, including the establishment of a reasonable rate of interest, would not be in the public interest or be protective of General and its customers.

12. In addition to the plenary powers granted to the Legislature by the California Constitution pursuant to which the Legislature conferred upon the Public Utilities Commission exclusive authority to regulate the issuance of bonds 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 bonds of public utilities from the operation of the usury law.

13. Even if the usury limitation contained in Article XV, Section 1, of the California Constitution and the usury law is exceeded, since the transaction is authorized by this Commission, General, its assignees or successors in interest will have no occasion to and cannot assert any claim or defense under the California usury law and it would be against the public policy of this State for General to do so; further, and necessarily, because the lawful issuance by General of its proposed bonds in compliance with authorization by the Public Utilities Commission is consistent with the public policy of this State, persons collecting interest on such authorized bonds are not subject to the usury law sanctions.

14. General's proposal to situate and structure, if General chooses to do so, the issuance and sale of its proposed bonds in New York and involving a choice of New York law is not inconsistent with the public policy of this State, and does not violate a fundamental policy of this State.

15. There is no known opposition and there is no reason to delay granting General's request.

Conclusions of Law:

1. The application should be granted to the extent set forth in the order which follows.

2. A public hearing is not necessary.

As set forth in said Decisions Nos. 83411, 83504 and 90263, we further conclude that the usury limitations on interest contained in Article XV, Section 1, of the California Constitution and the usury law do not apply to the issuance of public utility securities including evidences of indebtedness lawfully authorized by the Public Utilities Commission.

The authorization granted herein is for the purposes 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. General Telephone Company of California may execute and deliver a supplemental indenture in substantially the form of Exhibit C or Exhibit C-1 attached to the application.

2. General Telephone Company of California may invite the submission of written sealed bids for the purchase of not exceeding \$100,000,000 aggregate principal amount of its Series BB First Mortgage Bonds, with a maturity of not to exceed thirty years.

3. On or before December 31, 1979, General Telephone Company of California may issue, sell and deliver its Series BB First Mortgage Bonds in the aggregate principal amount of not exceeding \$100,000,000 at the price offered in a bid which would result in the lowest annual cost of money to it calculated in the manner provided in the invitation for bids, a copy of which is attached to the application as a part of Exhibit D or Exhibit D-1.

4. Promptly after awarding the contract for the sale of the Series BB First Mortgage Bonds, General Telephone Company of California shall file a written report with the Commission showing, as to each bid received, the name of the bidder, the price, the interest rate and cost of money to it based upon such price and interest rate.

5. As soon as available, General Telephone Company of California shall file with the Commission three copies of its final prospectus relating to the Series BB First Mortgage Bonds.

6. General Telephone Company of California shall apply the net proceeds from the sale of the Series BB First Mortgage Bonds to the purposes set forth in the application.

7. Within thirty days after issuing, selling and delivering the bonds herein authorized, General Telephone Company of California shall file with the Commission a statement in accordance with General Order No. 24-B, disclosing the purposes for which the proceeds were used.

8. Neither General Telephone Company of California, nor anyone purporting to act on its behalf, shall at anytime assert in any manner, or attempt to raise as a claim or defense in any proceeding, that the cost of money applicable to the Series BB First Mortgage Bonds exceeds the maximum permitted to be charged under the California usury law or any similar law establishing the maximum rate of interest that can be charged to or received from a borrower.

9. This order shall become effective when General Telephone Company of California has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$56,000.

Dated at San Francisco, California, this 14<sup>th</sup> day of AUGUST, 1979.

John E. Bayon  
President  
William L. Steyer

Philip T. DeFuria  
Leonard W. Gravelle  
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA  
PAID  
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56,000.  
BY [Signature]