

CACD/BVC *

Decision **90 10 030** OCT 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of EVANS TELEPHONE)
COMPANY (U 1008 C) pursuant to) Application 90-08-024
Public Utilities Code §851 for) (Filed August 13, 1990)
authority to mortgage utility)
property.)

O P I N I O N

Summary of Decision

This decision grants Evans Telephone Company (Evans) the authority requested in the application.

Evans requests authority under Section 851 of the California Public Utilities Code (PU Code), to execute and deliver to the United States of America, acting through the Rural Electrification Administration, a Restated Mortgage, Security Agreement, and Financing Statement, in the form attached to the application as Exhibit A.

Notice of the filing of the application appeared on the Commission's Daily Calendar of August 16, 1990. No protests have been received.

Evans is a local exchange telephone company providing service to portions of Alameda, Merced, Santa Clara, Stanislaus and Yolo Counties, California.

For the twelve months ended December 31, 1989, Evans reported total operating revenues of \$9,846,861 and net operating income of \$3,301,943, as shown in Evan's 1989 annual report filed with the Commission.

Discussion

In 1988, pursuant to Commission authority granted in Decision (D.) 88-01-046, dated January 28, 1988, Capay Valley Telephone System, Inc. (Capay), was merged into Evans; and Evans, as the surviving corporation, assumed the liabilities of Capay, including liability for repayment of Capay's outstanding

indebtedness to the United States of America, acting through the Rural Electrification Administration (REA), in the approximate amount of \$725,000.

As a condition to REA approval of the merger of Capay into Evans, the REA requires that Evans execute a Restated Mortgage, Security Agreement, and Financing Statement (Restated Mortgage), a copy of which was attached to the application as Exhibit A. The Restated Mortgage will replace the separate mortgages previously given REA by Evans and Capay and will cover all of the properties, including the properties formerly owned by Capay.

Both Evans and Capay were previously authorized by the Commission to execute their respective REA mortgages, and amendments and supplements, as currently in effect. Evans believes that the terms and conditions of the Restated Mortgage are not in any *material* way different from the terms of the existing mortgages. However, the provisions of the Restated Mortgage are not identical to the provisions of Evan's and Capay's REA mortgages currently in effect. Among the differences are:

- o the Restated Mortgage is a mortgage only to the United States Government and not a co-mortgage to the Government and the Rural Telephone Bank (Evans repaid all indebtedness to the Bank in 1988);
- o the required insurance policy limits have been increased;
- o there are new definitions of terms used in calculations of financial ratio restrictions;
- o there are new provisions securing repayment of any amounts owed a third party and in that event such has been guaranteed by the Government.

Evans believes that execution and delivery of the Restated Mortgage may, because of the changes mentioned above, constitute a new mortgaging of Evan's utility properties not authorized by the Commission in the past and thus requiring separate approval at this time under PU Code §851. §851 states in part that:

"No public utility . . . shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its . . . plant, system, or other property necessary or useful in the performance of its duties to the public, . . . without first having secured from the commission an order authorizing it so to do. Every such sale, . . . or consolidation made other than in accordance with the order of the commission authorizing it is void."

Evans states that no matter described within the application will adversely affect any member of the public or have any impact upon the operations of Evans or Evans' subscribers. Evans notes that timely completion of REA requirements will be facilitated if a public hearing on the application is dispensed with, and Evans requests that the Commission approve this application by ex parte order.

The Commission Advisory and Compliance Division (CACD) has reviewed the application and the Restated Mortgage in context with §851 and has concluded that the Restated Mortgage is necessary and reasonable. CACD recommends, and we concur, that the authority should be granted.

Findings of Fact

1. Evans, a California corporation, operates as a telephone utility subject to the jurisdiction of this Commission.
2. The execution of the Restated Mortgage would not be adverse to the public interest.

3. The mortgaging, or re-mortgaging, of utility property under §851 of the PU Code is for proper purposes.

4. There is no known opposition and there is no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.
2. The application should be granted to the extent set forth in the order which follows.

The following order shall be effective on the date of signature.

O R D E R

IT IS ORDERED that:

1. Evans Telephone Company (Evans), on or after the date of signature, may execute and deliver to the United States of America, acting through the Rural Electrification Administration, a Restated Mortgage, Security Agreement, and Financing Statement, and may mortgage or re-mortgage, its utility property pursuant to §851 of the PU Code.
2. Evans shall file, with the CACD, copies of the Restated Mortgage, Security Agreement, and Financing Statement, 15 days after the documents have been executed.
3. Evans shall file the reports required by General Order Series 24.

4. The application is granted as set forth above.

This order is effective today.

Dated OCT 12 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners