

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
COLUMBINE TELEPHONE COMPANY, INC.)	CASE NO. COL-T-03-1
DBA TETON TELECOM FOR AUTHORITY TO)	
BORROW FROM THE RURAL TELEPHONE)	
FINANCE COOPERATIVE AN AMOUNT NOT)	ORDER NO. 29256
<u>TO EXCEED \$8,400,000.</u>)	

On April 16, 2003, Columbine Telephone Company, Inc. dba Teton Telecom filed an Application for authority to borrow an amount not to exceed \$8,400,000 from the Rural Telephone Finance Cooperative (RTFC). Columbine serves about 4,000 telephone customers in eastern Idaho. *Idaho Code* § 61-904 provides that the Commission dispose of security or borrowing applications within 30 days of filing. By letter dated May 15, 2003, the Company agreed to extend the time for the Commission’s decision until May 31, 2003.¹

THE APPLICATION

As mentioned above, Columbine seeks authority to borrow no more than \$8.4 million from the RTFC. Although the Application states that the purpose of the loan is to restructure the ownership of Silver Star Telephone Company (Columbine’s sister corporation), the proposed loan would allow the ownership restructuring of both Columbine and Silver Star. The restructuring would primarily be accomplished by creating a “buy-sell agreement.” Columbine states that the buy-sell agreement is a crucial element of an overall estate plan that will assure a smooth transition in the ownership of Silver Star and Columbine. . . . App. at 2.

A brief history of the ownership of Columbine and Silver Star is helpful in reviewing the proposed transaction. Both Columbine and Silver Star are closely held family corporations. At present, 100% of Silver Star’s stock is held by Hoopes Telephone Management, LP (“HTM”), which is in turn owned by Melvin R. Hoopes. *Id.* Mr. Hoopes is chairman of the board for both Columbine and Silver Star.

Columbine proposes depositing \$7.5 million of the loan proceeds in an investment management account with Wells Fargo Bank. The investment management account would be

¹ Because May 31 is a Saturday, Rule 17 allows this Order to be issued the next business day (June 2). IDAPA 31.01.01.017.

used as collateral for a life insurance premium loan and to finance the life insurance premiums on Mr. Hoopes' life insurance policy. The underlying life insurance policies on Mr. Hoopes are issued in favor of Silver Star and would be the eventual funding source for the buy-sell agreement. The insurance proceeds would be used to purchase the telephone stock from HTM upon the death of Mr. Hoopes. The stock will then be distributed to Silver Star's current management and to other employees through an Employee Stock Ownership Plan (ESOP).

The proposed RTFC loan is for a term of 15 years. Columbine states that the loan will initially carry an interest rate equivalent to RTFC's variable rate at the time of closing, (currently 5.25% per annum). Columbine will be responsible for principal and interest payments over the 15-year term. Although \$7.5 million will be deposited in the bank investment management account, the remaining loan balance will be used to fund RTFC's patronage capital requirement.

The Application states that the proposed transaction is consistent with the public interest. App. at 2. The Application continues that absent the buy-sell agreement, the companies "would be financially disrupted by the passing away of their principal owner [Mr. Hoopes]. The Buy-Sell Agreement is a crucial element of an overall estate plan that will assure a smooth transition in the ownership of Silver Star and Columbine without jeopardizing the companies' financial health."

Id. The filing fee required by *Idaho Code* § 61-905 accompanied Columbine's Application. Columbine maintained that a public hearing was not necessary in this matter.

STAFF REVIEW

After reviewing the Application and its supporting documents, the Staff determined that the primary purpose of the loan is to facilitate the Hoopes family's estate planning in regards to the transfer of the assets in Melvin Hoopes' personal estate. In its report, Staff noted that the RTFC loan will be secured under the existing first mortgage lien on all of the assets and revenues of Columbine. Staff also observed that the "security section" of the loan application states that additional

[s]ecurity from Hoopes Telephone Management, L.P. will be limited to a pledge of stock from each of the Company's wholly-owned subsidiaries, including, but not limited to, Silver Star Telephone Company and Columbine Telephone Company. RTFC may also require security in the form of blanket lien on or pledge of stock from the new holding company that is being contemplated in this transaction.

Staff Report at 2.

The Staff recommended that the Commission deny the Application. The Staff asserted that the “sole focus of this loan application is for the benefit of the shareholders of the Company, and the loan provides no direct benefit and very little indirect benefit to the customers of Columbine. As such, the loan is not for a normal, ongoing utility purpose.” *Id.* Staff asserted that the customers of Columbine should not be responsible for the payments or incur the risks associated with the loan. In the alternative, Staff recommended that the Application be approved conditioned upon the loan being secured with non-regulatory utility assets and revenues, and that the Company comply with certain reporting requirements.

DISCUSSION

This matter was presented at our public meeting on May 28, 2003. Counsel for Columbine responded to Staff’s recommendations and questions from the Commission. As both the Staff and counsel for Columbine noted, this is a very complex transaction.

After reviewing the Application and the comments of the parties, we find that it is appropriate to deny Columbine’s Application. *Idaho Code* § 61-901 vests the Commission with authority to examine all applications to issue securities or borrowing instruments. This section provides that the Commission may authorize utilities to issue securities or borrow funds for utility purposes. These purposes include

the acquisition of property; for the construction, completion, extension or improvement of its facilities; for the improvement or maintenance of its service; for the discharge or lawful refunding of its obligation; for the reimbursement of monies actually expended for said purposes from income or from other monies in the treasury not secured by or obtained from the issue, assumption or guarantee of security; or for any other purpose approved by the Commission....

Idaho Code § 61-901. The Commission may also deny the Application if the transaction is inconsistent with the public interest and not appropriate for the performance of utility service. *Idaho Code* § 61-902.

Turning to the facts of this case, we find the primary purpose of this loan is to facilitate a transition in ownership of the two companies by serving as collateral for life insurance premium loans and to prefund the estate tax liabilities for Mr. Hoopes. As the Staff noted, the focus of this loan Application is for the benefit of the shareholders of the Company.

Staff observed that the “loan provides no direct benefit and very little indirect benefit to the customers of Columbine.” Staff Report at 2. We agree. Even the Companies’ counsel characterized the loan as providing no legal benefit but offers an “intangible benefit” of transferring ownership of the companies to the employees and the continuation of the current management. We find that the primary purpose of this loan does not involve plant improvements or the maintenance of utility service.

While we understand the intent and purpose of the loan, we believe it is inappropriate to use utility assets and revenues as collateral for private estate planning purposes. We further find that the proposed loan is unnecessary for the purposes of providing public utility services in Idaho. We conclude that it is not in the public interest to utilize utility assets or revenues as collateral to satisfy what is essentially a loan for private purposes.

ORDER

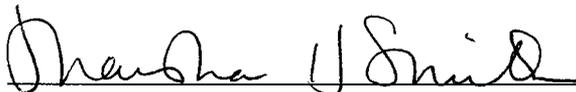
IT IS THEREFORE ORDERED that the Application of Columbine Telephone Company dba Teton Telecom to execute a loan agreement in an amount not to exceed \$8.4 million with the RTFC is denied.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this *2nd*
day of June 2003.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER

Commissioner Hansen Out of the Office
DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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