

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. 29271
TO EXCEED \$8,400,000.)	

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). The proposed loan would be used to restructure the ownership of Columbine and its sister corporation, Silver Star Telephone Company. In Order No. 29256 issued June 2, 2003, the Commission denied Columbine’s Application. The Commission found that it was inappropriate to use utility assets and revenues as collateral for the loan. Order No. 29256 at 4.

On June 17, 2003, Columbine filed a Petition for Reconsideration or Clarification. The Company’s Petition stated that Columbine had renegotiated the collateral for the loan. As set out in greater detail below, based on these new circumstances, the Commission grants reconsideration and approves the Application as conditioned below.

THE INITIAL APPLICATION

As mentioned above, Columbine initially sought authority to borrow no more than \$8.4 million from the RTFC. 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 stated that the buy-sell agreement was “a crucial element of an overall estate plan that will assure a smooth transition in the ownership of Silver Star and Columbine. . . .” Application at 2.

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.* HTM ultimately owns 87% of the stock of Columbine with the remaining 13% owned by Silver Star. Mr. Hoopes is chairman of the board of both Columbine and Silver Star.

Columbine proposed depositing \$7.5 million of the loan proceeds in an investment management account with Wells Fargo Bank. The investment management account would be 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 would 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 stated 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 stated that the proposed transaction is consistent with the public interest. Application at 2. The Application continued 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. Columbine did not request a public hearing.

STAFF REVIEW

After reviewing the Application and its supporting documents, the Staff determined that the primary purpose of the loan was 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 that the Company comply with certain reporting requirements.

ORDER NO. 29256

In Order No. 29256, the Commission denied Columbine’s Application for the proposed loan. The Commission noted that it was inappropriate and not in the public interest to use utility assets and revenues as collateral for private estate planning purposes. The Commission concluded that it was not in the public interest to use utility assets as collateral. Order No. 29256 at 4.

PETITION FOR RECONSIDERATION

Following the issuance of Order No. 29256, Columbine renegotiated the terms of the proposed loan with RTFC. Rather than providing a mortgage or security interest in utility assets and revenues to support the new loan, Columbine states that

RTFC has agreed to accept a security interest in Columbine’s stock as collateral for the proposed loan. 87% of Columbine’s stock is owned by Teton Communications, Inc., which is in turn owned by Hoopes Telephone Management, LP. The other 13% of Columbine’s stock is held by Silver Star Telephone Company.

Petition at 2. In other words, Columbine has reconfigured the loan so that it is secured with non-utility assets. Given this restructuring of the loan and removing utility assets as collateral, Columbine asserts that “the renegotiated loan does not require Commission approval.” *Id.* at 2; *see Idaho Code* § 61-901.

In the alternative, Columbine requests that if the Commission finds it does have jurisdiction over the renegotiated RTFC loan, that the Commission reconsider its previous

finding that the loan is not in the public interest. Because the renegotiated loan will be secured solely by Columbine's equity ownership, the utility's assets and revenues are no longer directly at risk. Consequently, there is no adverse impact on ratepayers.

STAFF REVIEW

Based upon the renegotiated loan and specifically the use of non-utility assets and revenues as collateral, the Staff recommends approval. Staff believes that the renegotiated collateral significantly reduces the risk to ratepayers while realigning ownership of the companies. However, the Staff disputed Columbine's assertion that the renegotiated loan is no longer subject to the Commission's jurisdiction and regulatory authority. Staff noted that *Idaho Code* § 61-901 states that the "right of every public utility . . . to issue, assume or guarantee securities and to issue mortgages, deeds of trust or other instruments of security with respect to its property situated within the state of Idaho, is hereby subject to the regulation and supervision of the public utilities commission. . . ." Staff maintains that even though Columbine removed its assets and revenues as collateral and instead pledged its equity, the utility is the entity executing and responsible for the loan. In addition, Silver Star, a regulated public utility, also holds 13% of Columbine's stock.

If the Commission decides to approve the renegotiated loan, Staff recommends several reporting conditions. More specifically, the Staff recommends that the Commission direct Columbine to file:

- (1) Verified copies of any agreement entered into pursuant to this Order;
- (2) A copy of the RTFC's final due diligence investigation report;
- (3) A copy of the executed collateral documentation;
- (4) Copies of all annual certifications, covenant reports, and letters regarding these determinations; and
- (5) Copies of letters and approval by RTFC of any future assignment of any portion of the loan to a subsidiary.

DISCUSSION

After having reviewed the Petition for Reconsideration or Clarification and the Staff's Report, we find that it is appropriate to grant reconsideration in this matter. As we noted in Order No. 29256, our primary concern in denying the initial Application was that utility assets

and revenues not be utilized as collateral in this instance. Order No. 29256 at 3-4. As set out in Columbine's Petition, the Company has renegotiated the terms of the loan and is using Columbine's equity as collateral.

With this change in collateral, Columbine asserts that the loan is no longer subject to the Commission's jurisdiction and regulatory authority. We disagree. The RTFC loan is still being made to Columbine. Pledging Columbine's stock as collateral for the proposed loan reduces the potential risks to ratepayers but still obligates the Company to repay the loan. Moreover, Silver Star owns 13% of Columbine's equity. Consequently, we find that the Commission does appropriately have jurisdiction over this matter pursuant to *Idaho Code* § 61-901.

In summary, we grant Columbine's Petition for Reconsideration or Clarification. Having reviewed the terms of the renegotiated loan, we now find it reasonable and in the public interest to approve the loan. We further adopt Staff's reporting conditions set out above.

ORDER

IT IS HEREBY ORDERED that Columbine's Petition for Reconsideration or Clarification is granted. Having reconsidered the loan Application with the changes in collateral, the Commission shall approve the reconfigured loan with the conditions recommended by the Staff.

IT IS FURTHER ORDERED that Columbine shall file copies of final loan documents and comply with the Staff's recommended conditions.

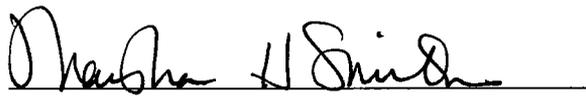
IT IS FURTHER ORDERED that nothing in this Order shall be construed to obligate the State of Idaho to guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed under the provisions of this Order.

IT IS FURTHER ORDERED that this authorization is without prejudice to the regulatory authority of this Commission with respect to rates, services, accounts, evaluations, estimates, or determination of costs, or any other matter which may come before this Commission pursuant to its jurisdiction and authority as provided by law.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. COL-T-03-1 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* §61-627.

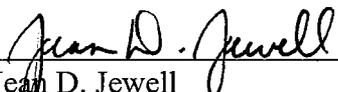
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 23rd
day of June 2003.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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