

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
LEGAL
COMMISSION STAFF
WORKING FILE

FROM: KATHY STOCKTON
TERRI CARLOCK

DATE: JUNE 18, 2003

RE: COLUMBINE TELEPHONE COMPANY, INC. DBA TETON
TELECOM; CASE NO. COL-T-03-1.

BACKGROUND

On April 16, 2003, Columbine Telephone Company, Inc. dba Teton Telecom Columbine applied pursuant to *Idaho Code* § 61-901 for authority to execute a Loan Agreement in an amount not to exceed \$8,400,000 with the Rural Telephone Finance Cooperative (RTFC). The Application states that the purpose of the loan is for the restructuring of the ownership of Silver Star Telephone Company, Columbine's sister corporation.

On June 17, 2003, the Company filed Columbine Telephone Company's Petition for Reconsideration or Clarification. The Petition states,

1. Commission Order No. 29256 denied Columbine's application to borrow an amount not to exceed \$8,500,000 [sic] from the Rural Telephone Finance Cooperative on the grounds that "it is not in the public interest to utilize utility assets or revenues as collateral to satisfy what is essentially a loan for a private purpose." Order No. 29256 at 4.
2. Following the issuance of Order No. 29256, Columbine has renegotiated the terms of the proposed loan with RTFC. As a result of these negotiations Columbine will not be required to provide a mortgage or other security interest on its assets to support the new loan. Instead, RTFC has agreed to accept a security interest in Columbine 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.

3. Section 61-901, Idaho Code, states that a utility's right "to issue mortgages, deeds of trust or other instruments with respect to its property situated within the state of Idaho" is subject to the Commission's jurisdiction and regulatory authority. It would appear, therefore, that the renegotiated loan does not require Commission approval because it is not secured by utility assets.
4. In the alternative, if the Commission nevertheless finds that it has jurisdiction over the proposed RTFC loan, Columbine requests that the Commission reconsider and revoke its finding that the loan is "not in the public interest." Because the renegotiated loan will be secured solely by Columbine's equity ownership, it does not place the utility's assets at risk and it has no potential adverse impacts on ratepayers.

Petition at 1-2.

The Company requests that the Commission issue a new Order that finds that Commission approval of the renegotiated RTFC loan is not required, or that the renegotiated loan is not adverse to the public interest and is therefore approved. Columbine has not requested a hearing.

STAFF COMMENTS

Staff asserts that Commission approval of the renegotiated loan is still required. *Idaho Code* § 61-901 states in part 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 subjected to the regulation and supervision of the public utilities...." Staff believes that this renegotiated loan falls into the "issue or guarantee securities" section of *Idaho Code* § 61-901.

First, the proposed loan is being made to Columbine, a public utility. Staff previously recommended that in order to protect customers, certain restrictions should be required on the loan that would serve to protect utility customers. To safeguard customers, Staff proposed that any mortgage lien be placed on non-regulated utility assets and revenues only, and that no regulated utility property or revenues be used as security for this loan. In the alternative, Staff indicated at the May 28, 2003 decision meeting that the stock could be pledged. The renegotiated loan will be using the company stock as collateral rather than the mortgage lien on the utility assets and revenues. Second, as set out in the Petition, 13% of Columbine stock is held by Silver Star, a regulated utility, which is in turn owned by HTM. Verification of the

renegotiated terms and review of final loan documents filed after closing will assure that customers are protected with this change.

STAFF RECOMMENDATION

Staff asserts that the Commission still has jurisdiction over this security issuance. Staff recommends that the loan be approved with the renegotiated security terms. Staff further recommends that the Company comply with the following reporting requirements:

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 certification, 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.

Staff still considers it appropriate to require the Company to meet the above reporting requirements, were the Commission to grant the Petition for Reconsideration or Clarification.

COMMISSION DECISION

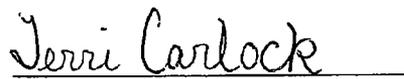
Does the Commission wish to reconsider or clarify its prior Order No. 29256?

Does the Commission find that it does or does not have jurisdiction over the renegotiated RTFC loan?

Does the Commission wish to issue a new Order finding that the renegotiated loan is not adverse to the public interest?

Does the Commission wish to approve the renegotiated loan with Staff's reporting recommendations?


Kathy Stockton


Terri Carlock