

Decision 87 10 035

OCT 16 1987

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CRICO TELECOMMUNICATIONS OF SAN JOSE )  
(U-2031-C), a California Limited )  
Partnership for modification of )  
Decision No. 86-08-057 to exempt )  
radiotelephone utilities from )  
certain provisions of Articles V )  
and VI of Chapter 4 of the )  
California Public Utilities Code. )

Application 84-03-92  
(Filed June 23, 1987)

O P I N I O N

Crigo Telecommunications of San Jose (petitioner) is a radiotelephone utility (RTU) with authority to provide one-way paging and signalling, two-way mobile telephone and point-to-point microwave RTU services within its authorized service area. Petitioner is a limited partnership with its principal place of business in San Jose.

Petitioner seeks modification of Decision (D.) 86-08-057 in Application (A.) 84-03-92. Specifically, petitioner seeks an order which would extend to RTUs the exemptions and expedited procedures provided by that decision to nondominant telecommunications carriers.<sup>1</sup>

D.86-08-057 was the final opinion in A.84-03-92 of the California Association of Long-distance Telephone Companies (CALTEL). CALTEL originally sought an order exempting all nondominant telecommunications carriers from Article V (§§ 816-830) and VI (§§ 851-855) of Chapter 4 of the Public Utilities (PU) Code.

<sup>1</sup> Petitioner submitted its pleading as a new application seeking the relief specified above. However, the docket office retitled the pleading as a Petition for Modification of D.86-08-057 and filed it in A.84-03-92.

These provisions require utilities subject to the Commission's jurisdiction to obtain its approval before engaging in certain specified financial transactions. The Commission is also authorized to exempt individual utilities or classes of public utilities from those Articles pursuant to §§ 829 and 853 of the PU Code.

In a series of decisions in A.84-03-92 (D.85-01-008, D.85-07-081, D.85-11-044, and D.86-08-057) the Commission ultimately ruled that nondominant telecommunications carriers should be exempt (1) from Article V (§§ 816-830) in its entirety and (2) from the requirement of obtaining Commission authority to transfer legal title to, or otherwise encumber, properties to which § 851 applies, when such transfer or encumbrance serves to secure debt. (See Ordering Paragraph b of D.85-11-044). While D.86-08-057 did not completely exempt nondominant telecommunications carriers from Article VI (§§ 851-855), the Order did authorize the Executive Director to grant noncontroversial applications by such carriers for authority to transfer assets or control under §§ 851 through 855. (See Ordering Paragraph 1 of D.86-08-057.)

The exemption from Article V (§§ 816-830) was predicated on the Commission's finding that:

"In the present competitive atmosphere no public purpose is served by regulating issuance of stocks, bonds, and other forms of ownership or indebtedness by resellers [nondominant interexchange carriers]. We cannot say with certainty whether consumers would be benefitted or harmed by full regulation in this field. While it is possible that full imposition of Commission regulation could prevent a reseller from finding itself in financial difficulty, such regulation might also prevent one or more resellers from meeting competitive challenges or obtaining timely financing for expansion purposes..."  
(D.85-01-008, p. 5.)

The Commission went on to conclude that, "since competition exists, no purpose is served by requiring regulation under PU Code §§ 816-830 of stocks and securities transactions." (Finding of Fact 2 at p. 7, D.85-01-008).

In D.85-07-081, the next decision in this application, the Commission found that the exemption provided in D.85-01-008 should be expanded to include:

"Encumbrance of utility property when the encumbrance is necessary to obtain financing. This is frequently the case, and our already granted exemption from debt regulation has narrow application if we do not also exempt from formal application requirements the encumbrance of property and the transfer of legal title to property when the encumbrance [or]...transfer is for the purpose of securing debt." (D.85-07-081, p. 6.)

In its final order in A.84-03-092 the Commission concluded that it should establish expedited procedures for applications for transfers of control under Article VI, concluding that:

"Concerns such as the competitive nature of the underlying business and the need for expeditious handling of applications for transfers of assets or control also justify delegating to the Executive Director the authority to grant noncontroversial applications involving nondominant telecommunications carriers." (D.86-08-057, p. 9.)

The exemptions provided to nondominant telecommunications carriers by the decisions in A.84-03-092 have been extended to resellers of cellular telephone services. While no generic proceeding was held with respect to cellular resellers, the Commission has routinely and consistently extended the benefits of D.86-08-057 (or the interim decisions leading up to it) to cellular resellers. (For example, D.86-02-011 in A.85-11-007 and D.85-06-015 in A.85-04-014.)

Petitioner asserts that the Commission has thus (1) provided nondominant interexchange carriers with the exemptions and the expedited procedure set forth in D.86-08-057 and (2) extended those benefits to cellular resellers. Petitioner contends that the fundamental rationale for those decisions is the fact that no public interest is served by requiring non-monopoly carriers to seek Commission authority in order to undertake financial transactions.

Petitioner further alleges that none of the entities involved possess monopoly power. Instead, nondominant telecommunications carriers and cellular resellers operate in highly competitive markets. According to petitioner, no public interest is served by regulating the prudence of their various financial transactions. Requiring nondominant entities to seek Commission authority for the transactions described in Articles V and VI only results in an unnecessary expenditure of Commission staff resources and the resources of the entities involved. Petitioner points out that the proposal eventually adopted in D.86-08-07 was unopposed; and that such lack of opposition suggests a wholesale lack of interest in these types of activities when conducted by nondominant entities.

Petitioner believes that the fundamental rationale underlying the Commission's decision to exempt nondominant telecommunications and carriers and cellular resellers from Article V and the encumbrance provisions of Article VI applies to RTUs as well. Petitioner alleges that RTUs operate in highly competitive markets and, accordingly, the public has little interest in the prudence of their financial transactions, since the cessation of operations by one of the state's approximately 90 RTUs would hardly result, according to petitioner in a cessation of available service to the public.

Petitioner concludes that there is no public interest in the prudence of RTU financial transactions. On the other hand,

petitioner alleges that the burden placed on the staff and the RTUs in the application process is great. It cites by way of example A.86-06-053 in which the petitioner sought authority to issue a long-term subordinated note, to guarantee the indebtedness of certain affiliates, and to enter into a security agreement pledging certain of its assets. The application was granted some five months later by D.86-11-008. The lenders in the transaction underlying A.86-06-053, however, expressed uncertainty with respect to the authority granted by D.86-11-008. It became necessary for petitioner to return to the Commission to seek supplemental authority in order to provide, "the degree of comfort of repayment...which banks commonly regard as necessary."

(D.87-03-022). It was necessary for petitioner to file a petition for modification of D.86-11-008 and the Commission granted that petition by D.87-03-002 in March, 1987. Petitioner states that the whole process, however, required a significant expenditure of Commission and staff resources as well as those of the petitioner in order to bring the matter to a satisfactory resolution. Petitioner notes however that, as in the case with virtually all applications under Articles V and VI of Chapter 4 of the Code, there was no opposition to or even interest in A.86-06-053. Petitioner believes that, as is the case with cellular resellers and nondominant interexchange carriers, there is simply no reason to continue to impose these regulatory requirements on RTUs.

Petitioner requests that the application be granted on an ex-parte basis stating that it is unaware of any opposition to extending the benefits of D.86-08-057 to RTUs. Petitioner requests an order modifying D.86-08-057 so that:

1. RTUs are exempt from the provisions of §§ 816-830 of the PU Code;
2. RTUs are exempt from the provisions of § 851 of the PU Code with respect to

transfers or encumbrances made for the purpose of securing debt; and

3. Applications under Article VI for authority to transfer the assets or control of an RTU that are noncontroversial, that is unopposed, may be granted by order of the Executive Director.

#### Discussion

The petitioner attached to its application a certificate of service by mail which stated merely that copies of the pleading were "served on the parties in this proceeding". The names of the parties served were not listed in the certificate of service.<sup>2</sup> However, notice of the filing of the petition for modification of D.86-08-057 appeared in the Commission's daily calendar of June 29, 1987. No formal protests have been filed and no correspondence has been received with respect to this petition.

We agree with the allegations of the petitioner that the RTU industry is highly competitive in the same sense that the nondominant interexchange telecommunications carriers and cellular resellers compete in a volatile marketplace. Alternative forms of service are readily available to customers of RTUs in this state. It is not necessary to regulate financial transactions of competing RTUs any more than it is necessary to regulate similar transactions

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<sup>2</sup> We discourage this form of certificate of service. This is especially inappropriate in ex parte party matters where no public hearings have been held and consequently no written record of parties entering an appearance at a hearing is available. While our own formal file in A.84-03-92 shows that several persons had expressed interest in this application and were accordingly served with copies of D.86-08-057, we cannot know from petitioner's certificate of service that it has in fact served the same list of interested persons. However, by letter of August 17, 1987, counsel for petitioner sent the list of persons served with a copy of the application. The list included the interested persons from the formal file and 86 California RTUs.

of nondominant interexchange carriers or cellular resellers. The rationale for regulating these transactions is to insure that a monopoly carrier or public utility does not engage in imprudent financial transactions to the point where it is unable to provide public service to its captive customer base. This rationale does not apply where customers of a given RTU may seek the same or similar service from competing companies. Accordingly, we conclude that the application of Crico Telecommunications of San Jose should be granted as set forth in the following order.

Findings of Fact

1. RTUs operate in highly competitive markets.
2. The public has little interest in the prudence of the financial transactions involving RTUs.
3. The cessation of operations of one of the state's RTUs should not result in a cessation of available service to the public.
4. Applications under Articles V and VI of Chapter 4 of the PU Code are rarely protested and are typically disposed of by ex parte order of the Commission.
5. Even ex parte disposition of applications under Article V and VI of Chapter 4 of the PU Code involve significant Commission and Commission staff resources.
6. The Commission has exempted nondominant interexchange carriers and cellular resellers from certain of the requirements of Articles V and VI and relaxed other regulatory requirements under those Articles.

Conclusions of Law

1. RTUs should be treated in the same manner as nondominant interexchange carriers and cellular resellers with respect to the requirements of Articles V and VI of Chapter 4 of the PU Code.
2. The Commission is authorized to exempt individual utilities or classes of public utilities from the requirements of Articles V and VI of Chapter 4 of the PU Code, pursuant to §§ 829 and 853 of the PU Code.

3. D.86-08-057 should be modified to grant the relief sought by petitioner.

O R D E R

IT IS ORDERED that:

1. Ordering Paragraph 1 of D.86-08-057 dated August 18, 1986 is modified to read: "D.85-01-008, D.85-07-081, and D.85-11-044 are hereby modified to permit the Executive Director to grant noncontroversial applications by nondominant telecommunications carriers and radiotelephone utilities for authority to transfer assets or control under §§ 851-855 of the PU Code." (Underscoring indicates change.)

2. Radiotelephone Utilities (RTU) are exempted from the provisions of §§ 816-830 of the Public Utilities (PU) Code.

3. RTUs are exempted from the provisions of § 851 of the PU Code with respect to transfers or encumbrances made for the purpose of securing debt.

4. The petition is granted as set forth above.

This order becomes effective 30 days from today.

Dated ~~Oct 16 1987~~, at San Francisco, California.


STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
Commissioners

Commissioner John B. Ohanian, being necessarily absent, did not participate.

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I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Weiss, Executive Director