

Decision 88 02 053 FEB 24 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Hamid Helmandi, dba)
Thrifty Telephone Exchange (U-5083-C))
to transfer and S.T.M Investments)
Corp. to acquire control and)
operating authority of Thrifty)
Telephone Exchange.)

Application 87-12-018
(Filed December 8, 1987)

OPINION GRANTING TRANSFER

Background

S.T.M. Investments Corporation (applicant or S.T.M.) has filed an application to acquire control and operating authority of Thrifty Telephone Exchange (U-5083-C) (Thrifty).

Thrifty was a sole proprietorship owned and operated by Hamid Helmandi with its principal place of business at 6931 Van Nuys Road, Suite 191; Van Nuys, California 91405.

Applicant is a California corporation with its principal place of business at 6931 Van Nuys Road, Suite 191; Van Nuys, California 91405.

On December 15, 1987, copies of the application were served on entities with which applicant's proposed service is likely to compete. Notice of this application appeared in the Commission's Daily Calendar of December 11, 1987. No timely protests to the application were received; therefore, a public hearing is not necessary.

Facts Advanced by Applicant in Support of Transfer

The transaction, for which authority is now sought herein, has already taken place. The circumstances which surrounded the transaction, primarily the alleged need for expeditious action contributed to the parties' failure to seek Commission authority prior to consummation. Applicant now desires

to correct this shortcoming by seeking Commission authority as appropriate.

In support of this application, applicant also submitted the following documents as exhibits appended to its application:

- o Copy of contract for sale of business for \$145,494.68 between Hamid Helmandi and applicant consummated on July 9, 1986.
- o The most recent financial statement of S.T.M./Thrifty Telephone Exchange for period ending May 31, 1987.
- o A copy of the Articles of Incorporation of S.T.M. Investments Corporation, as a California Corporation, acknowledged on June 5, 1986 by the Secretary of State, March Fong Eu, and
- o Declaration of Mr. William J. Kettle, Sr., President of Thrifty Telephone Exchange.

Hamid Helmandi, since receiving a certificate of public convenience and necessity (CPCN) from this Commission to operate Thrifty, has developed Thrifty as a successful business. Hamid Helmandi, seller of Thrifty, now seeks to pursue other business interests, has left the United States, and currently resides in the Middle East. It is not known when, or if, he will return to the United States. Accordingly, applicant on July 9, 1986, arranged to purchase Thrifty for \$145,494.68 from Hamid Helmandi, and is operating Thrifty successfully at this time.

In view of the fact that seller has received full payment for Thrifty under terms of an agreement executed July 9, 1986 and has left the country, applicant requests a deviation from Rule 87 of the Commission's Rules of Practice and Procedure and Rules 6 and 35 which require the seller to sign and verify the application. A declaration made under penalty of perjury by William J. Kettle, Sr., on behalf of applicant, attests to the fact that Hamid Helmandi is out of the country and therefore is unable to verify (sign) the application.

Applicant further requests that this application be processed promptly under the provisions of Decision (D.) 86-08-057 which authorized and directed this Commission's Executive Director to grant noncontroversial applications for the transfer of control of nondominant interexchange telephone companies.

Discussion

Applicant has appended to the application a Statement of Income dated May 31, 1987, setting forth year to date "Sales" of \$1,004,203, and "Expenses" associated with these sales of \$726,325, yielding a "Gross Profit" of \$277,878, and "Net Income" after sales and general expenses of \$104,281, or about 10.4% of "Sales." Applicant also appended its balance sheet for S.T.M. Investment Corporation listing total assets of \$304,650, of which \$30,735 is cash, \$162,989 is receivables, \$19,125 are other deposits and \$1,492 is exchange revenue. The remaining amounts are additional fixed assets which after deduction of accumulated depreciation equal \$90,309.

Applicant has confirmed its commitment to carry on the business of Thrifty as a reseller of telecommunications services within California and has the technical competence and sufficient funds to do so.

However, we are disturbed that applicant waited nearly 17 months after executing the purchase agreement before seeking authority from this Commission for transfer of the CPCN currently assigned to seller. It is also apparent that seller could easily have signed the application, had it been filed prior to the sale. Nevertheless, the facilities and operating rights have been sold, and applicant is now seeking the required transfer of the CPCN.

We will approve this late-filed application for transfer of a CPCN because applicant has demonstrated his ability to operate the service and there are no protests. We are disturbed, however, at the apparent unconcern of this and other applicants with the requirement that this Commission issue a decision before they may

transfer a CPCN. This is a requirement that applies to all telecommunications resellers and in this heavily competitive arena, must be enforced uniformly if it is to be enforced at all.

We expect applicant and other telecommunications resellers to obtain and maintain necessary resources to ensure familiarity and compliance with the Public Utilities (PU) Code and with the Commission's Rules of Practice and Procedure. Failure to do so in the future will raise questions about whether the applicant has the requisite fitness to operate lawfully (a precondition to the transfer or grant of a CPCN) and may subject the applicant to fines or penalties under PU Code § 2107. Applicant is placed on notice that future violations will not be tolerated.

Applicant should also be aware that the acquisition price paid for Thrifty provides no basis for a finding of value of the properties or rights being acquired.

In authorizing this transfer we will require applicant to assume the telecommunications reseller obligations of the seller, including but not limited to the preparation and filing of tariff schedules, maintenance of necessary business records and payment of the fee set forth in PU Code §§ 401 et seq.

However, since there is no change of name contemplated for Thrifty at this time, Thrifty will continue to be the entity referred to, and responsible for the filing of reports and revisions to tariff schedules before this Commission under applicant's new management. Thrifty's current corporate identification number (U-5083-C) should continue to be used in the caption of all original filings with the Commission and in titles of other pleadings filed in existing cases.

Findings of Fact

1. Applicant seeks authority to transfer control of Thrifty to applicant.

2. Applicant is a California corporation in good standing qualified to do business in California.

3. Notice of this filing appeared in the Commission's Daily Calendar on December 11, 1987.

4. No timely protests and/or requests for hearings were received.

5. Applicant by payment of \$145,494.68 to Hamid Helmandi has acquired all assets of Thrifty.

6. Applicant has been operating Thrifty successfully since July 1986.

7. Transfer of facilities and operations of a telecommunications reseller without authority from this Commission is in violation of PU Code § 851.

8. The proposed transfer of Thrifty to applicant will not be adverse to the public interest.

9. No name change for Thrifty is suggested or contemplated at this time under the proposed transfer.

10. Thrifty will continue to use corporate identification number U-5083-C in all formal matters filed before this Commission.

11. A public hearing is not necessary.

12. The transfer of a reseller's certificate, such as this, would normally be approved by our Executive Director as authorized by D.86-08-057 dated August 18, 1986. However, the nature of this specific request, nearly 17 months after consummating the sale, warrants our attention, consideration, and expressed concern.

13. This decision should be effective today to allow orderly transfer of ownership without further delay.

Conclusions of Law

1. The application should be granted as provided for in the following order.

2. This transfer authorization is not a finding of the value of the rights and properties to be transferred.

ORDER

IT IS ORDERED that:

1. S.T.M. Investments Corporation (applicant) is authorized to acquire control of Thrifty Telephone Exchange, in accordance with the terms set forth in the application.

2. Applicant shall file written notice of this acquisition of control of Thrifty Telephone Exchange, with the Director of the Commission Advisory and Compliance Division within 15 days after the date of this order.

3. Thrifty Telephone Exchange's tariff schedules for interLATA telecommunications services on file with this Commission will continue to be effective and need not be refiled since no change in the utility's name is contemplated under applicant's ownership.

4. Applicant is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner: (a) to deviate from the pagination requirements set forth in paragraph II.C (1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) to deviate from the requirements set forth in paragraph II.C(4) that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's Telecommunications Branch. Tariff filings shall reflect the 4% interim surcharge noted in Ordering Paragraph 5 below.

5. Applicant is subject to the 4% interim surcharge applicable to the gross revenues of intrastate interLATA services outlined in D.87-07-090 in Order Instituting Investigation 83-11-05 dated July 29, 1987. The 4% interim surcharge collected shall be retained in an interest bearing account pending further order of the Commission.

6. The ordering paragraphs and other requirements applicable to Thrifty Telephone Exchange, as set forth in D.85-05-072 dated May 15, 1985, except as modified herein, will continue to apply to Thrifty Telephone Exchange after its transfer to applicant.

7. Thrifty Telephone Exchange's corporate identification number U-5083-C shall continue to be included in the caption of all original filings with the Commission and in the titles of other pleadings filed in existing cases.

8. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before May 31, 1988.

This order is effective today.

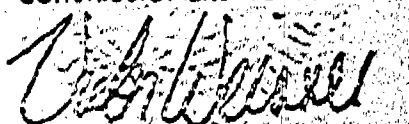
Dated FEB 24 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

Commissioner G. Mitchell Wilk,
being necessarily absent, did
not participate.

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


Victor Weiszer, Executive Director