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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ULTRATELECOM, INC. (I.D. No. U-4013-C), a California corporation and CELLULAR SERVICE, INC. (I.D. No. U-4007-C), a California corporation, for authority to sell and purchase assets used in seller's cellular resale business.	Application 88-02-038 (Filed February 22, 1988)

OPINION

On January 29, 1988, applicants Ultratelecom, Inc. (seller) and Cellular Service, Inc. (purchaser) entered into an arrangement in which seller agreed to convey, and purchaser agreed to acquire, the subscriber base of seller of 760 customers in the Los Angeles Cellular Geographic Service Area (CGSA) for an amount equal to $200 for each subscriber unit in service plus residual payments of 6% of the usage billings for those customers continuing to receive service from purchaser. Purchaser made a downpayment of $25,000 on February 1, 1988, the execution date of that agreement (Exhibit A attached to the application). Applicants seek Commission authorization under Public Utilities (PU) Code Section 851 to approve the agreement to permit purchaser to acquire seller's customer base and to provide resale service to those customers. The balance of the purchase price subject to adjustments, based on any overstatement of customers, is due on the closing date, which will occur not later than five days after the effective date of a favorable Commission decision. Seller would convey necessary documentation, including customer records; currently held customer deposits; and accrued interest.

Seller states that it is experiencing extreme financial difficulties, including making payments to PacTel Cellular (PacTel), its facilities-based wholesale supplier of cellular service. Seller desires to transfer its customers to an entity, such as purchaser, which is able to service its customers. Applicants contend that Commission approval of their transaction would be in the public interest to ensure continuity of cellular radiotelephone utility service to seller's existing subscribers; purchaser has an extensive existing resale operation in the Los Angeles and San Diego CGSAs and is qualified to continue to provide seller's customers with cellular services; purchaser has tariffs already in place which are the same as seller's comparable tariffs.[1]

Due to seller's financial emergency and after consultation with the Commission staff and with PacTel (see Exhibit D attached to the application), purchaser took over seller's billing and collection operations on February 1, 1988, acting as seller's agent. Purchaser as seller's agent is billing the approximately 760 customers proposed to be transferred in accordance with seller's tariff for advance access charges, enhanced service charges, air time usage, total billings, toll and other charges, and unbilled roaming charges. In order to ensure the continuity of service from PacTel, purchaser assumed the obligations contained in its February 1, 1988 letter to PacTel as follows:

> "This letter is being written to you on your request upon the terms required by your counsel.
>
> "Cellular Service, Inc. is willing to undertake financial responsibility for the currently active Pactel telephone numbers of

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1 In addition to the services offered by seller, purchaser offers a discount corporate plan and a premium service plan.

Ultratelecom, Inc. This is dependent upon Pactel creating a new account under the dual name of Ultratelecom Inc., Cellular Service, Inc. The obligation will be structured as follows:

"1. Active usage for January to be billed in arrears on the February invoice.

"2. All usage, monthly access and special feature charges associated with the current active numbers beginning on February 1st, 1988 to be billed on the March invoice.

"3. All new charges associated with the numbers in future billings.

"This is to conform with our current billing status with Pactel as well as to prevent dual billing to Ultratelecom customers. This is the sum total of the obligation that Cellular Service, Inc. agrees to assume. Any other charges, credits, allowances, letters of credits, etc. are the sole responsibilities of Ultratelecom.

"Cellular Service, Inc. agrees to be obligated for the financial responsibility outlined above whether or not the California Public Utilities Commission approves or disapproves the transfer of Ultratelecom, Inc.'s currently active customers to Cellular Service, Inc.

"Cellular Service, Inc. agrees to not discontinue service to the currently active Ultratelecom, Inc.'s customers unless the customers do not meet the requirements outlined in Ultratelecom, Inc.'s tariff."

All amounts collected on the billings sent by purchaser, as agent for seller, will be held in an account on behalf of purchaser regardless of Commission action on the agreement. In addition, all cellular radiotelephone revenue received by seller for billings after January 1, 1988 would be transferred and assigned to purchaser.

Seller agreed that, for a period of two years after the closing date, neither it nor any of its officers, directors, employees, or affiliates will acquire more than a 10% ownership interest of any business engaged in solicitation of customers or in providing cellular radiotelephone services similar to those offered by purchaser either directly or indirectly.

Seller's income statement for the year ending September 30, 1987 shows a net loss of approximately $120,000. Seller's corresponding balance sheet shows current assets of $1,017,410; total assets of $1,421,615; current liabilities of $1,126,063 which exceed its current assets by $108,653; its total liabilities were $1,200,432. Its shareholder's common stock equity of $260,000, was reduced by negative retained earnings of $38,817.

Purchaser's March 31, 1987 balance sheet shows current assets of $1,797,413, net property and equipment of $110,007, other assets of $633,026 including one-time commissions of $596,245, and total assets of $2,540,446. Its current liabilities of $2,042,907 exceed its current assets by $245,494. Purchaser's total liabilities were $2,072,743. Its equity of $467,703 includes retained earnings of $242,083, which includes $185,672 for the year ending March 31, 1987.

The following tabulation is excerpted from the income statements furnished to the Commission by purchaser (Exhibits 1 and 2):

	Excerpts From Income Statements		
	From 10/1/87 to 12/31/87	From 7/1/87 to 12/31/87	From 1/1/88 to 1/31/88
	(Amount in Thousands)		
Income	$4,739.4	$8,962.5	$1,705.5
Expenses:			
Wholesale Service	3,568.3	6,759.4	1,301.5
Selling Expenses:			
Advertising	74.4	0.4	0.1
Commissions	553.3	980.9	112.4
Other	90.1	188.2	33.2
General & Admin.:			
Amortization	126.7	233.4	49.0
Other	446.8	863.9	155.8
Net Other Inc. & Exp.	1.8	(3.3)	1.6
Profit Before Taxes	(118.3)	(67.0)	51.9

(Red Figure)

Applicants state that since no construction is involved because of the transfer and sale agreement, it may be seen with certainty that no environmental assessment is necessary under Rule 17.1 of the Commission's Rules of Practice and Procedure. We concur.

Applicants further state that this is a noncontroversial application by nondominant telecommunications carriers to transfer assets or control. Therefore, they request that the application be acted upon expeditiously by the Commission's Executive Director pursuant to Decision 86-08-057.

Discussion

The transfer and sale requested by applicants should be authorized to avoid interruption of service to seller's customers. Those customers would receive service at the same rates now being charged to them and they would be offered additional services.

The application does not address seller's status after the customer transfer. Since the agreement limits seller to a 10% noncontrolling interest in any entity providing resale cellular service for two years and the Commission requires newly certificated resellers to exercise their certificates within one year, seller's resale authority should be revoked rather than suspended. Seller would not be precluded from reapplying for resale authority after the two-year period.

At this time the Commission has not established a system of accounts for cellular resellers. The financial information furnished by purchaser indicates that it has capitalized commission expenses and it is now expensing and amortizing such expenses. In addition, it has incurred substantial advertising expenses.

Conventional utility ratemaking procedures obviously do not apply to resale companies who do not require physical plant for their operations except for office furniture and equipment; nor are conventional ratemaking procedures likely to apply to facilities-based cellular companies.

Analysis of the tabulation above shows that by purchaser's increases in the level of its advertising and commission expenses, in the period from October 1, 1987 to December 31, 1987 compared to the prior quarter, contributed to its pretax earnings going from a profit of approximately $51,300 to a loss of approximately $118,300. Purchaser's pretax earnings for the month ending January 31, 1988 improved to approximately $51,900 after it nearly eliminated advertising expenses and sharply reduced the level of commission expenses. The income statements indicate that either (1) additional funding is required to sustain purchaser's operations while maintaining high levels of growth promotional activities; or (2) purchaser would have to reduce the relative level of those activities to operate a profit. Otherwise purchaser could find itself in similar financial straits as seller.

Findings of Fact

1. Seller has authority to provide cellular resale service in California. It provides such service in the Los Angeles CGSA.

2. Purchaser has been authorized to provide cellular service in California. It provides such service in the Los Angeles and San Diego CGSAs.

3. Seller experienced extreme financial difficulties including making payments to PacTel, its facilities-based wholesale supplier of cellular service.

4. Purchaser agreed to buy seller's subscriber base of cellular resale customers and to provide service to those customers.

5. Purchaser took over seller's billing and collection operations on February 1, 1988, acting as seller's agent. Purchaser is billing those customers at seller's tariff charges. Purchaser has assumed seller's obligations to pay PacTel for the wholesale service supplied by it to seller.

6. Purchaser provides cellular service at the same rates and charges as seller. In addition, purchaser provides service under a discounted corporate plan tariff and a premium service plan tariff.

7. Seller agreed that for a period of two years after the closing date, neither it nor of its officers, directors, employees, or affiliates will acquire more than a 10% ownership interest in any business engaged in the solicitation of customers or in providing cellular radiotelephone services similar to those provided by purchaser either directly or indirectly.

8. Purchaser does not require use of physical plant or equipment (with the exception of office furniture and equipment) to provide cellular resale service to its customers or those of seller. Conventional utility ratemaking procedures are not appropriate for applicants' operations.

9. Large expenditures for advertising and commissions to promote growth can result in purchaser operating at a loss.

10. Purchaser needs to either curtail its expenditures for advertising and commissions to promote growth or it must secure additional funding to avoid a financial emergency.

11. Seller should be responsible for payment of regulatory surcharges until January 31, 1988, prior to purchaser assuming control of its operations. Seller should pay those charges as a condition on approval of the transfer. Seller should also file a 1987 annual report and an annual report for the period ending January 31, 1988.

12. Purchaser should pay the regulatory surcharges for the period following its taking over seller's operations including the period it operated as seller's agent.

13. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

14. No protests were received.

Conclusions of Law

1. There would be no adverse financial effect on seller's customers flowing from the proposed transfer.

2. The requested transfer and sale of seller's customer base to purchaser should be authorized to ensure continuity of cellular resale service to seller's customers.

3. Seller should file payment of the regulatory surcharges for the period ending January 31, 1988 as a condition of the transfer.

4. The order in this application should be made effective today.

5. Seller's resale certificate should be revoked on the closing date of the transfer and sale. Its tariffs should be canceled on that closing date.

6. No public hearing is necessary.

ORDER

IT IS ORDERED that:

1. The requested transfer and sale of Ultratelecom, Inc.'s (seller) customer base to Cellular Service, Inc. (purchaser) is authorized contingent on payment of unpaid regulatory surcharges to the Commission by seller for the period ending January 31, 1988.

2. Seller's cellular resale certificate I.D. No. U-4013-C is revoked as of the closing date of the transfer and sale. Seller's tariffs are canceled as of that date.

3. Purchaser is authorized to provide cellular resale service to the transferred customers under its filed tariffs within the Los Angeles area.

4. The application is granted as set forth above.

This order is effective today.

Dated MAY 11 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

Victor Weisser, Executive Director

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