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Decision 88 12 076

DEC 19 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
 Kohyo Telecommunications, Inc., a)
 California corporation, for a Certi-)
 ficate of Public Convenience and)
 Necessity to operate as a reseller)
 of cellular radio telecommunications)
 within California and for exemption)
 from the requirements of Sections)
 816-830 and 851-855 of the Public)
 Utilities Code (U-4070-C).)

DEC 19 1988

Application 88-08-062
(Filed August 29, 1988)

OPINION

Applicant Kohyo Telecommunications, Inc., a California corporation, seeks a certificate of public convenience and necessity (CPC&N) pursuant to Public Utilities (PU) Code § 1001 to resell cellular telecommunication services in California. Initially it proposes to serve within the greater Los Angeles standard metropolitan statistical area (LASMSA) which includes most of Los Angeles and Orange Counties and portions of Riverside, San Bernardino, and Ventura Counties. Applicant proposes to resell cellular radio telecommunication services furnished at wholesale rates by the Los Angeles SMSA Limited Partnership (Partnership), the cellular wireline resale carrier in the greater LAMSA, and to resell similar services furnished at wholesale rates by other utility carriers operating in LASMSA.¹ At a later time, applicant proposes to provide service in other areas throughout California on a similar basis.

¹ The Los Angeles Cellular Telephone Company is the nonwireline carrier authorized to operate in the LASMSA. In order to provide continuous service between MSAs, there may be service overlaps at the periphery of MSAs.

Applicant estimates it will provide cellular retail service to 300 customers at the end of 1988 and 2,200 customers at the end of 1992. Its pro forma income statements project profits beginning in the first quarter of its operations.

Applicant's September 1, 1988 balance sheet shows an asset of \$50,000 in cash and a liability of a \$50,000 note payable to Shozo Tanabe. Applicant proposes to issue 10,000 shares of no par common stock to Tanabe in exchange for the note. Applicant's Articles of Incorporation authorize issuance of 100,000 shares of stock. If necessary, applicant seeks Commission authorization to issue the 10,000 shares.

Rates

Applicant proposes to resell cellular service at rates substantially equivalent to PacTel Cellular's retail rates, namely:

Connection charge	\$50.00
Monthly access charge	45.00
Peak per minute usage	0.45
Off-peak per minute usage	0.27

Applicant indicates that it would charge the retail rates of the underlying carriers in other locations in which it seeks to provide retail service.

Applicant claims that its entry into the cellular resale business will enhance competition in the cellular retail market; that such competition will bring lower priced services, increase the ability of customers to choose between service providers, increase the variety of service packages, and provide a wide variety of choices of mobile customer-provided equipment; and that applicant's certification will increase utilization of existing facilities of the underlying carrier, which in turn will result in the underlying carrier using its system more efficiently.

Applicant states that:

- (1) Tanabe, its owner and president, has owned and operated a retail business engaged in the sale, installation, and service of

cellular telephones in the City of Los Angeles and vicinity and he now provides those services to over 800 customers; he also retails pagers of mobile telephone equipment.

- (2) He will be actively involved in applicant's management and is qualified to act as a cellular reseller. If additional funds are required by applicant, Tanabe plans to advance those funds or provide for them through a bank line of credit.

Applicant claims that denial of this application will cause it to suffer irreversible harm since it will lose the immediate opportunity to satisfy present demand and effectively compete with Partnership and with other resellers.

Applicant states that it and other resale companies have minimal market power and that competitive market pressures will prohibit resellers from charging unreasonably high rates to their customers; that resellers must buy from a dominant carrier and their rates must reflect the regulated wholesale prices of the services they purchase. In short, applicant asserts that the public is protected by competitive forces and by regulation of the wholesale rates of the underlying carriers. Based on those factors, applicant requests the Commission to exempt it from Sections IV, V, and VI of General Order (GO) 96-A and allow tariff revisions to become effective on one day's notice. Applicant proposes that its cellular resale rates be subject to challenge only upon a complainant demonstrating that a proposed rate structure constitutes predatory pricing.

Applicant also requests an exemption from the provisions of PU Code² §§ 816-830 and 851-855 which assertedly require

² All Arabic-numbered code sections referred to in this decision are in the Public Utilities Code.

Commission approval prior to issuance of debt, equity, or encumbrances of property by a public utility. In support of its exemption request applicant states that it will not need facilities and equipment but will sell service utilizing the facilities and equipment of underlying carriers. It avers that compliance with those code sections for resellers will not serve the purpose of protecting investment in facilities against improvident financial manipulation by utility management. Applicant contends that if it fails because of other competitive market forces, either the underlying carrier or other competitive carriers will be able to continue to offer service to its customers thus strict enforcement of such requirements would increase costs and impede competition, but would not further the policy of consumer protection which those sections of the code were designed to provide.

Applicant states that it is ready, willing, and able to offer its services immediately upon Commission authorization and commencement of commercial service to it by Partnership or any other utility authorized to furnish wholesale cellular service in the greater Los Angeles area. It requests that its application be granted ex parte and that the decision granting it authority be made effective on its date of issuance. Applicant also requests authorization to file tariffs if necessary five days after the effective date of the order and that its tariffs be made effective one day after they are filed.

Applicant states that since it proposes no construction, the granting of this application will not have an adverse impact on the environment.

By letter dated October 14, 1988 applicant requests waiver of the requirement to serve copies of the application on cities and counties in the State of California. Cities and counties furnished cellular service received notice of cellular service from the underlying cellular carriers, and since this is an

application to resell that service no further notice to those agencies should be required. We agree.

Sections IV, V, and VI of GO 96-A relate to filed and effective dates, procedures, and the filing of tariff sheets which do not increase rates or charges, as well as procedures and filing to increase rates, respectively. In general, these provisions require a showing before this Commission justifying any increase and provide in the case of cellular resellers that rates will become effective 30 days after filing tariff sheets which do not increase rates or 30 days after filing an authorized increase unless Commission authorization for a shorter period is obtained.

At this time, the considerations repeated in several recent decisions on applications of cellular radiotelephone service resellers still hold. It appears that the cellular market will be a highly competitive one. The basic scheme established by the Federal Communications Commission allowing two major carriers, one wireline and one nonwireline, to operate in the same territory, coupled with the provisions for the wholesale marketing of this service, is designed to promote vigorous competition in cellular markets.

In rulemaking proceeding R.87-08-017 (consolidated with related applications) the Commission considered the need for revisions to GO 96-A applicable to radiotelephone utilities, cellular mobile radiotelephone utilities, and certificated cellular resellers. In Decision (D.) 88-05-067 in those proceedings the Commission specified that the Sections IV and V timeframe of GO 96-A applicable to cellular resellers is 30 days. Applicant's unamplified exemption request is inconsistent with the Commission's determination in D.88-05-067 and is therefore denied. Applicant is also subject to the Commission's determination in D.88-05-067 which exempted cellular resellers from the \$750,000 advice letter increase limitation of Section VI of GO 96-A but did not

categorically exempt resellers from the provisions of that section.

Applicant's request for exemption from the provisions of PU Code §§ 816-830 should be granted consistent with our treatment of similar requests (e.g., D.86-10-007). With respect to § 851 there is an exemption when the transfer or encumbrance of property serves to secure debt, when the acquisition of a controlling interest of a reseller is not involved. §§ 851-854 should be modified to reflect that exemption. § 855 involves receiverships for water and sewer corporations which are not germane to applicant's proposed operations.

Customer complaints may be based on a variety of causes. We see no basis for limiting complaints against cellular resellers to demonstrations of predatory pricing.

Applicant's operations will subject it to the fee system set forth in PU Code §§ 401 et seq. and § 2881. Applicant will be ordered to provide for the collection of billing surcharges in its tariff rules as required by Resolutions M-4743 and T-13005. Applicant will be required to keep its records as described here.

Until a uniform accounting system for cellular resellers has been prescribed, the Commission will not issue detailed account instructions. Each cellular communications company will, however, be expected to maintain its books in such detail that financial data relating to its operations can be assembled upon request, e.g.:

1. Revenue and expenses of utility operations should be segregated from nonutility operations.
2. Charges from affiliates should be broken down so that each kind of charge can be identified.
3. Revenue accounts should be appropriately subdivided (access, peak, off-peak, service order charges, custom calling, directory listing, etc.).

4. Expense accounts should be grouped to provide a total for sales and marketing expense. This would include, in subaccounts, advertising, promotion and incentives, sales salaries and commissions, sales vehicle expense, etc.
5. General and administrative expenses should be subdivided to identify rent and lease expense, billing expense, salaries, insurance, and other appropriate subdivisions.
6. Other significant costs, such as unsold numbers, should be listed.

Applicant will be directed to file an annual report with the Commission, in a form prescribed by the Commission. Although applicant will be expected to have detailed operating information available in its records, for competitive reasons, it may not be required to disclose such detail in its filed annual reports.

Since there will be no physical construction associated with applicant's resale proposal, there would be no impact on the environment from its resale operations.

There are no protests to granting the requested authority.

Findings of Fact

1. Applicant has the ability, experience, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by applicant.
3. Applicant should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014.
4. Constraints of Sections IV, V, and VI of GO 96-A have been modified by D.88-05-067 for cellular resellers.
5. At this time, it appears that the cellular market will be highly competitive.

6. Applicant's proposed operations will provide competition in the cellular radio service market which will benefit the public at large.

7. Customer complaints may be based on a variety of causes.

8. Underlying cellular carriers are required to provide notice to the cities and counties within which they filed applications to provide cellular service. Applicant would use the facilities of such underlying carriers in each area it would provide service.

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

10. Applicant should keep its records as described in the body of this decision.

11. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted as provided in the order which follows.

2. Applicant should be subject to the provisions of this Commission's GO 96-A including Sections IV, V, and VI which have been modified by D.88-05-067.

3. Complaints against cellular resellers should not be limited to demonstrations of predatory pricing.

4. Applicant should be exempt from the provisions of §§ 816-830. Applicant should also be exempt from § 851 if the transaction involves the transfer or encumbrance of property to secure debt when the acquisition of a controlling interest of a reseller is not involved. §§ 851 to 854 should be modified to reflect that exemption. § 855 does not pertain to cellular resellers.

5. Applicant is subject to the fee systems set forth in PU Code §§ 401 et seq. and § 2881.

6. The appropriate surcharge pursuant to §§ 401 et seq. would be 0.10% for the fiscal year 1988-1989. The monthly surcharge to fund Telecommunications for the Deaf required by § 2881 and Resolution T-13005 would be 0.50%.

7. Because of the immediate need for the service, the order should become effective today.

8. Applicant should be exempted from serving notice of its application to cities and counties.

The certificate hereinafter granted is subject to the provision of law that the Commission shall have no power to authorize the capitalization of this CPC&N or the right to own, operate, or enjoy such CPC&N in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such CPC&N or right.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to applicant Kobyo Telecommunications, Inc. to operate as a reseller of cellular radio telecommunication services within California.

2. On or after the effective date of this order, applicant is authorized to file tariff schedules at the proposed rates requested above for the resale of cellular mobile radiotelephone service in the Los Angeles standard metropolitan statistical area (LASMSA) service area purchased from Los Angeles SMSA Limited Partnership (Partnership). Service may not be offered until tariffs are on file. This filing shall comply with General Order (GO) 96-A, except that applicant is authorized to employ the alternate method of page numbering described in Resolutions U-275 and T-4886 at its election. The initial filing shall contain at least the Preliminary Statement, Table of Contents, and Rate

Schedules, the rates and charges requested by applicant in its application, together with the remaining retail tariff provisions authorized for Partnership by D.84-04-014. The filing is to be effective on not less than 5 days' notice. Applicant shall file the remaining tariff schedules, to include rules and forms as prescribed by GO 96-A, no later than 10 days following the effective date of this order, to be effective on not less than 5 days' notice. The tariff shall provide for a user fee surcharge of 0.10% and for a monthly surcharge of 0.50% to fund Telecommunications Devices for the Deaf as required by Public Utilities Code § 2881 and Resolution T-13005. Failure to file the tariff may result in revocation of the authority granted here. Applicant is authorized to file rates and charges for resale of services purchased from authorized underlying cellular telecommunication carriers in other areas of California, in accordance with the provisions of Section III of GO 96-A.

3. Applicant shall keep its records as detailed in the body of this order.

4. The certificate of public convenience and necessity is granted as set forth above. Applicant is subject to the provisions of GO 96-A including Sections IV, V, and VI, as revised in D.88-05-067. The certificate granted and the authority to render service under the rates, rules, and charges authorized will expire if not exercised within 12 months after the effective date of this order.

5. Applicant is exempted from the provisions of §§ 816-830. Applicant is also exempted from § 851 if the transaction involves the transfer or encumbrance of property to secure debt when the acquisition of a controlling interest of a reseller is not involved. §§ 851 to 854 should be modified to reflect that exemption. § 855 does not pertain to cellular resellers.

6. Applicant is exempted from serving notice of its application to cities and counties.

7. Complaints against cellular resellers shall not be limited to demonstrations of predatory pricing.

8. Within 20 days after this order is effective applicant shall file a written acceptance of the certificate granted in this proceeding.

9. The corporate identification number assigned to applicant is U-4070-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

10. The application is granted as set forth above.

This order is effective today.

Dated DEC 19 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

CERTIFICATE THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

[Handwritten Signature]
Executive Director