

Decision 90 05 011MAY 04 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
KWIK-PAGE COMMUNICATIONS, INC. for a)
Certificate of Public Convenience and)
Necessity to provide radiotelephone)
utility paging services in various)
California locations.)

Application 89-12-041
(Filed December 27, 1989)

O P I N I O N

Summary of Decision

This decision dismisses the application of Kwik-Page Communications, Inc. (Kwik-Page) for a certificate of public convenience and necessity (CPC&N) to construct and operate one-way paging facilities in various locations in Southern California.

Background

The Federal Communications Commission (FCC) authorized Kwik-Page, a California corporation, pursuant to the provisions of 47 CFR 22.000 et seq., to construct and operate 20 one-way paging transmission facilities on 931.6625 megahertz in various locations in Southern California. The FCC issued the construction permits for the facilities between March 22, 1989 and April 6, 1989.

On December 27, 1989, Kwik-Page, filed Application (A.) 89-12-041 for a CPC&N to construct and operate the one-way paging transmission facilities authorized by the FCC.

Copies of the application were served on cities and counties within the proposed service area and other entities with which Kwik-Page's proposed service area is likely to compete, as listed on the certificate of service attached to the application.

Notice of the application appeared on the Commission's Daily Calendar of January 2, 1990.

On January 24, 1990, ICS Communications (ICS) filed a protest to the application on grounds that Kwik-Page, among other

things, failed to comply with various rules of the Commission's Rules of Practice and Procedure and certain sections of the Public Utilities (PU) Code. On February 28, 1990, ICS withdrew its protest claiming that the disagreements between ICS and Kwik-Page have been resolved.

Although ICC's protest has been withdrawn, we believe that the following deficiencies in the application need to be resolved before the requested CPC&N may be granted:

Failure to Show Financial Responsibility

A basic requirement of Rule 18(o) of the Commission's Rules of Practice and Procedure is that an application for a CPC&N to furnish one-way paging service must demonstrate the financial responsibility of the applicant. This is usually accomplished by statements or exhibits showing the financial ability of the applicant to render the proposed service together with information regarding the manner in which the applicant proposes to finance the cost of the proposed construction (Rule 18(g) incorporated in Rule 18(o)).

A.89-12-041 is completely devoid of any financial information concerning Kwik-Page. The application merely shows its articles of incorporation (Exhibit A); its principal place of business; and the fact that all of its outstanding stock is owned by three individuals. Although A.89-12-041 shows a pro forma statement of profit and loss (Exhibit E), it includes no financial statements, actual or pro forma, and no current financial information. The applicant is silent as to the identities of the three stockholders, and as to their financial assets and worth.

While the application does not contain the needed financial statements, it claims that Kwik-Page will receive a \$200,000 loan from its shareholders which will enable it to absorb the short-term losses the service is anticipated to generate. The application does not describe the loan with any specificity. Based

on a review of the pro forma profit and loss statement, it appears that the loan will be for three years.

Not only are the terms of the loan unknown, Kwik-Page does not seek Commission approval of the loan as required by PU Code § 818 for loans exceeding a 12-month duration. In fact, the proposed loan, without prior Commission authorization, would be void under the provisions of PU Code § 825.

In addition, the provisions of PU Code § 825 would also render the acquisition of Kwik-Page's stock by the three stockholders void without prior Commission approval.

Failure to Show Construction Costs

Rule 18(o) requires that an application for a CPC&N include a statement detailing the estimated cost of construction and estimated annual fixed and operating costs associated therewith. The application does not include the estimated construction costs.

Failure to file the Application
Within the Prescribed Time

Rule 18(o)(1) of the Commission's Rules of Practice and Procedure requires an applicant for a CPC&N to furnish one-way paging service to file an application for such certificate with the Commission within 30 days after the grant of the relevant permit by the FCC:

"(o) In the case of an application to furnish one-way paging or two-way mobile radiotelephone service (other than cellular mobile radiotelephone service), the following requirements apply in addition to those enumerated in Rules 1 through 8, 15 through 17.1, and (a), (b), (d), first sentence of (f), (g), (h), and (i) above:

"(1) When the applicant obtains the relevant construction permit from the Federal Communications Commission (FCC) it shall, no later than 30 days after the grant of the relevant construction permit(s), submit its application, including a legible copy of the

engineering data submitted to the FCC and a legible copy its FCC permit(s), to this Commission. The proposed new service area, or the effect of changed facilities on the utility(s) existing service area, if any, will be shown on a fully legible engineered service area contour map, of suitable scale, prepared in accordance with the applicable criteria set forth in 47 CFR 22. The use of aeronautical charts for this purpose is unacceptable." (Rule 18(o)(1) Commission's Rules of Practice and Procedure, emphasis added.)

According to Rule 18(o)(1), the application should have been filed by May 6, 1989. It was not filed until December 27, 1989.

Discussion

In the absence of a financial statement, we are unable to ascertain the ability of Kwik-Page to finance the venture. Kwik-Page contends that it will receive a \$200,000 loan from its shareholders. However, Kwik-Page does not reveal the identity of the shareholders or the terms of the loan which would inform us if the shareholders are indeed in a position to loan such amounts. Kwik-Page also does not seek Commission approval for the loan.

In addition to the absence of financial information, the application does not contain the construction cost of the project which makes it even more difficult for us to evaluate Kwik-Page's ability to finance and operate the service.

Finally, the application does not explain or provide any exculpatory reason for the almost 8-month delay in filing A.89-12-041. The application does not even seek a waiver from the 30-day filing requirement of Rule 18(o)(1). Instead, it requests expedited treatment.

It is evident from the above that the application is deficient in many respects. We have no option but to deny Kwik-Page's request and dismiss the application without prejudice.

While we dismiss Kwik-Page's application, we note that Kwik-Page has served copies of this application on cities and counties within the proposed service area and other entities with which Kwik-Page's proposed service area is likely to compete. We also note that the notice of this application has appeared on the Commission's Daily Calendar of January 2, 1990. Therefore, should Kwik-Page reapply within 60 days of the date of this order, for a CPC&N to construct and operate one-way paging facilities for the same locations, we will waive the 30-day protest period provided by Rule 8.3 of the Commission's Rules of Practice and Procedure.

Findings of Fact

1. On December 27, 1989, Kwik-Page filed A.89-12-041 for a CPC&N to construct and operate one-way paging facilities in various location in Southern California.

2. A.89-12-041 does not provide adequate information to establish Kwik-Page's financial responsibility as required by Rule 18(o) of the Commission's Rules of Practice and Procedure.

3. Kwik-Page claims that it will receive a \$200,000 loan from its three shareholders for a three-year duration.

4. Kwik-Page does not reveal the terms of the loan.

5. Kwik-Page does not seek Commission approval for the loan as required by PU Code § 817.

6. A.89-12-041 does not provide the construction cost of the proposed one-way paging facilities as required by Rule 18(o) of the Commission's Rules of Practice and Procedure.

7. Between March 22, 1989 and April 6, 1989, the FCC issued Kwik-Page permits to construct one-way paging facilities.

8. Rule 18(o)(1) of the Commission's Rules of Practice and Procedure requires an applicant for a CPC&N for one-way paging service to file an application for such certificate with the Commission within 30 days after the grant of the relevant permit by the FCC.

9. Kwik-Page failed to comply with Rule 18(o)(1) in filing A.89-12-041.

Conclusion of Law

A.89-12-041 should be dismissed without prejudice for failure to comply with the Commission's Rules of Practice and Procedure, and sections of the PU Code as discussed herein.

O R D E R

IT IS ORDERED that Application 89-12-041 of Kwik-Page Communications, Inc. for a certificate of public convenience and necessity to construct and operate one-way paging facilities is dismissed without prejudice effective today.

This proceeding is closed.

Dated MAY 04 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. STULMAN, Executive Director