

Decision 90 11 009 NOV 09 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
SPECTRUM CELLULAR, INC., for a )  
Certificate of Public Convenience and )  
Necessity to Operate as a Reseller )  
of Cellular Radio Telecommunications )  
Services Within California. )

**ORIGINAL**  
Application 90-07-075  
(Filed July 27, 1990)

O P I N I O N

On July 27, 1990, Spectrum Cellular, Inc. (Spectrum), filed its application seeking a certificate of public convenience and necessity (CPC&N) to provide cellular resale service within California. While this application was pending, Spectrum filed with the Secretary of State and changed the name of its corporation to Karfone Leasing, Inc. (Karfone). Hence, the CPC&N will be granted in the name of Karfone Leasing, Inc. Karfone proposes to offer service initially in the Los Angeles/Oxnard areas.

Karfone served a copy of its application on cellular resellers with whom it may compete and to other interested parties. Notice of the application appeared in the Commission's Daily Calendar on August 6, 1990. No protests were received.

Karfone proposes to resell the services of facilities-based certificated carriers operating in the Los Angeles/Oxnard Central Geographical Statistical Areas (CGSAs). Applicant will purchase services from such carriers at their tariffed wholesale rates and will resell these services to the general public at initial general resale rates set forth as follows:

General Resale

Connection Charge	\$50.00
Monthly Access Charge	45.00
Peak Minute Usage	.45
Off-Peak Minute Usage	.27

In addition, Karfone proposes to lease variable cellular telephones on a for-profit basis, without price concessions, at rates of \$1 to \$19.95 per month, plus installation and setup charges, conditioned by tariff that service be secured from Karfone on an ongoing basis at its general resale rates. Lease terms would range in duration from 12 to 60 months. At the end of the lease period, customers could exercise a buy-out option for the equipment, or the equipment could be returned to Karfone for resale to the public.

Karfone states that its president and 50% shareholder, Norman Nomer, has extensive management experience with major international consumer product companies, and that its secretary/treasurer and 50% shareholder, Gordon Marks, has been involved in the telecommunications industry since 1982.

Karfone's pro forma balance sheet shows total assets of \$10,000. Karfone has submitted a statement by its two shareholders agreeing to advance up to \$100,000 for the needs of the enterprise. Spectrum has supplemented its application with a letter from Grandreams Limited, London, England, expressing an intent to invest between \$700,000 and \$800,000 in the operations of Karfone. Karfone anticipates a first-year deficit of \$429,657. Karfone believes that its deficit will be short term, particularly since Karfone intends to expand its operation to other areas of the state.

Karfone seeks expedited approval of its application in order that it may begin to tap what it believes to be continuing significant demand for cellular service in the Los Angeles/Oxnard CGSAs and other metropolitan areas in California. Because of this, Karfone requests that the effective date of its certificate be made the date its application is granted by the Commission.

Karfone has provided adequate information for a grant of authority to provide cellular telecommunications services. Cellular resale markets in California are by their nature

competitive. That competition will restrain Karfone from charging unreasonably high prices to customers. Karfone has represented that it has adequate financial resources to call upon to withstand short-term losses.

Karfone asks that it be authorized to file tariffs one day after the effective date of this order, with such tariffs to be effective not less than one day after filing. We decline to grant this expedited tariff procedure, because we believe that both the Commission staff and other parties should have the opportunity to review Karfone's equipment leasing tariff. The Commission in another proceeding (I.90-08-062) is investigating the alleged "bundling" of tariffed cellular service with price concessions on non-tariffed equipment. Moreover, the Commission is reviewing the issue of "bundling" in applications for rehearing in Decision (D.) 90-06-025. Public Agenda No. 2814 is set for September 25, 1990. Karfone relies in part of D.90-06-025 in proposing the tariff provisions of its equipment lease plan. Although Karfone proposes no price concession in its equipment lease, its requirement that tariffed service continue during a non-tariffed lease term is a matter that warrants staff review at the time that Karfone's more detailed tariffs are filed.

Karfone should be subject to the fee system set forth in Public Utilities (PU) Code § 401, et seq. (specifically, § 431.ff), that is used to fund the costs of regulating common carriers, related businesses, and public utilities. By Resolution M-4754, dated May 4, 1990, the fee level for fiscal year 1990-91 for telephone corporations was set at one-tenth of 1% (0.10%) of intrastate revenues subject to the fee. Appropriate provisions should be incorporated in Karfone's tariff rules for the imposition of this surcharge.

As a telephone corporation operating as a cellular radio telecommunications reseller, Karfone also should be subject to the three-tenths of 1% (0.3%) surcharge on gross intrastate revenues to

fund Telecommunications Devices for the Deaf. This surcharge became effective July 1, 1989, as set forth in Resolution T-13061 dated April 26, 1989 pursuant to PU Code § 2881.ff.

Findings of Fact

1. Karfone requests a CPC&N to operate as a reseller of cellular telecommunications services in the Los Angeles/Oxnard CGSAs and throughout California.

2. No protest to the application has been received.

3. The proposed operation is financially feasible.

4. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect on the environment.

5. Public convenience and necessity require the granting of this application.

Conclusions of Law

1. Karfone is subject to the user fee system set forth in PU Code § 401 et seq.

2. Karfone should be treated as a nondominant carrier and, therefore, be considered exempt from PU Code §§ 816-830 and 851-855 with respect to transfers or encumbrances made for the purpose of securing debt, consistent with Decision (D.) 85-07-081, D.85-11-044 and D.90-06-025.

3. The user fee for the 1989-90 fiscal year should be 0.10%.

4. Karfone is subject to the three-tenths of 1% (0.3%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf, pursuant to Resolution T-13061, dated April 26, 1989.

5. Karfone should be subject to the provisions of the Commission's GO 96-A, as modified by D.88-05-067 and D.90-06-025.

6. This order should be effective on the date signed because Karfone's proposed service will help to meet demand for cellular service in California and will enhance competition in the cellular retail market.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of those rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Karfone Leasing, Inc., to operate as a reseller of cellular telecommunications services in California.
2. Within 20 days of the effective date of this order, Karfone shall file a written acceptance of the certificate granted in this proceeding.
3. Karfone is authorized to file, after the effective date of this order and in compliance with General Order (GO) 96-A, general resale tariffs applicable to its cellular resale services. The tariffs shall become effective on not less than 5 days' notice. The rates and charges shall be as proposed in this application. Karfone may file tariffs dealing with equipment leasing, and the tariffs will be effective on regular notice (30 days) in order to permit staff review.
4. Karfone shall notify the Commission Advisory and Compliance Division Director in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins.
5. Karfone is subject to the provisions of GO 96-A, as revised in D.88-05-067 and D.90-06-025.
6. Karfone shall keep its books and records in accordance with the Uniform System of Accounts for cellular telecommunications utilities prescribed by this Commission.
7. Karfone shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the format specified by

and available from the Chief of the Auditing and Compliance Branch of the Commission Advisory and Compliance Division.

8. Karfone is subject to the user fee as a percentage of gross intrastate revenues under PU Code § 401, et seq.

9. Karfone is subject to the three-tenths of 1% (0.3%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf, pursuant to Resolution T-13061.

10. The corporate identification number assigned to Karfone Leasing, Inc., is U-4096-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.

11. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

12. Within 60 days of the effective date of this order, Karfone shall comply with PU Code § 708, Employee Identification Cards, and notify, in writing, the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division.

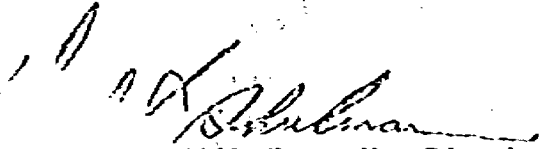
This order is effective today.

Dated NOV 09 1990, at San Francisco, California.

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

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

Commissioner Stanley W. Hulett,  
being necessarily absent, did  
not participate.

  
\_\_\_\_\_, Executive Director - 6 -  
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