

Decision 91-07-038 July 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Kings Telephone Company, a corporation,)
for a Certificate of Public Convenience)
and Necessity under Section 1001 of the)
Public Utilities Code of the State of)
California for Authority to Construct)
and Operate a New Domestic Public)
Cellular Radio Telecommunications)
System in the Kings County Rural)
Service Area.)

ORIGINAL

Application 91-02-087
(Filed February 19, 1991;
Petition Filed June 14, 1991
and amended June 19, 1991)

SECOND INTERIM OPINION

Kings Telephone Company (Kings) seeks an order modifying Decision (D.) 91-05-026 to:

1. Amend Ordering Paragraph 13 to authorize Kings to issue an evidence of indebtedness in principal not exceeding \$3,009,450, instead of the \$3,000,000 authorized in D.91-05-026. Kings requests that the order modifying D.91-05-026 be issued nunc pro tunc, as of the effective date of D.91-05-026.

2. Amend Ordering Paragraph 14 to provide for a total fee under Public Utilities (PU) Code § 1904(b) of \$4,010, rather than \$4,000, the amount already paid by Kings.

3. Eliminate the second sentence from Conclusion of Law 8, which states: "Proceeds from the security issue may not be charged to operating expenses or income."

Discussion

In the body of the application Kings alleges that its financing arrangements will fund construction of the cellular system and provide funds for its initial working capital. Kings further alleges that the expenditures to be funded through such arrangements are expected to be about \$2.5 million in the first year and \$0.5 million during the second through the fifth years of

operation. These figures total \$3 million, the amount of financing authorized in D.91-05-026. Nowhere else in the body of the application, or in the prayer, does Kings specify the exact amount of financing authority sought.

Kings does, however, refer to Exhibit G to the application, stating that it includes a pro forma Income Statement, Balance Sheet, and Statement of Cash Flows, which documents have been approved by the lender as the basis of the loan to Kings of the funds necessary to construct and operate the system. (Application, ¶ X., p. 10.) Page 3 of Exhibit G is Kings' Statement of Cash Flows. It shows under Loan Proceeds \$2,526,450 for 1991 and \$483,000 for 1992. The sum of these two figures is \$3,009,450, the amount of financing authority that Kings alleges in its petition that it requires.

The allegations of the application, and the exhibits thereto, support Kings request for an order amending D.91-05-026 to increase the amount of financing authorized from \$3,000,000 to \$3,009,450. Accordingly, in the following order we will so provide.

Having decided to increase Kings' financing authority, we will also order an increase in the fees required by PU Code § 1904(b) from \$4,000 to \$4,010.

Finally, Kings points out that Conclusion of Law 8 contains a sentence that is inconsistent with the Commission's opinion. The questioned language is as follows:

"Proceeds from the security issue may not be charged to operating expenses or income."
(D.91-05-026, p. 12)

In the opinion the Commission notes that the lender will provide both construction funds and working capital for Kings' initial operating requirements. The Commission goes on to approve Kings' financing plans without condition. (Id., p. 11.)

PU Code § 818 sets forth the requirements for orders approving financing. As relevant here, § 818 requires that such an order shall state:

1. The amount of the financing;
2. The purposes to which the proceeds will be applied;
3. That, in the opinion of the Commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order; and,
4. That, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The emphasized language gives the Commission authority in the case of bonds, notes, or other evidences of indebtedness to allow the proceeds of such instruments to be applied to purposes chargeable to operating expenses or to income. In the case of start-up companies, such as Kings, it appears reasonable to allow lender furnished funds to be used as initial operating capital while the company is developing a stream of income from operations. Accordingly, we will grant Kings' request for an order amending Conclusion of Law 8 to delete the second sentence.

Kings has withdrawn its request that an order modifying D.91-05-026 be issued nunc pro tunc as of the effective date of the decision. Accordingly, we will make the following order effective when Kings pays the additional \$10 fee required by § 1904(b).

Findings of Fact

1. Notice of the filing of the application appeared in the Daily Calendar. No protests have been filed. A hearing is not necessary.

2. Kings seeks financing authority totaling \$3,009,450, rather than the \$3,000,000 approved in D.91-05-026.

3. PU Code § 1904(b) requires that an additional \$10 in fees be paid in connection with the proposed change in the amount of financing authorized.

4. As a start-up company, Kings will require working capital in amounts sufficient to meet initial operating requirements.

Conclusions of Law

1. The petition of Kings for modification of D.91-05-026 should be granted, as set forth in the following order.

2. The order should be effective upon payment of the additional fee of \$10 required by PU Code § 1904(b).

SECOND INTERIM ORDER

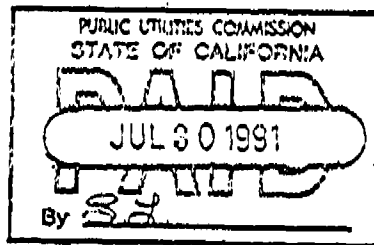
IT IS ORDERED that:

1. Decision 91-05-026 is modified as follows:
 - a. Conclusion of Law 8 is amended to delete the second sentence.
 - b. Ordering Paragraph 13 is amended to delete "\$3,000,000" and to substitute "\$3,009,450" in its place.
 - c. Ordering Paragraph 14 is amended to delete "\$4,000" and to substitute "\$4,010" in its place.

2. This order shall become effective when the issuer pays the additional amount of \$10, required by PU Code § 1904(b) in connection with the change in the amount to be financed.

Dated July 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners



Rec # 34789
\$ 10.00

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


NEAL J. SCHULMAN, Executive Director