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Decision 97-08-041 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Mission Telecommunications Corporation (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 certain assets used in seller's celllular resale business.	Application 92-10-008 (Filed October 7, 1992)

ORIGINAL

OPINION

Statement of Facts

Mission Telecommunications Corporation (Mission), a California corporation, was authorized by Decision (D.) 88-02-012 to operate as a reseller of cellular services in California. Mission presently resells these cellular services in the Los Angeles and San Diego metropolitan statistical areas.

Cellular Service, Inc. (Cellular), a California corporation, was authorized by D.84-06-109 to provide cellular service on a resale basis in California, and presently has an extensive resale operation in the Los Angeles and San Diego areas.

Mission has and continues to experience financial difficulties in its cellular resale business and desires to transfer its customer base to a reseller entity in better financial condition, and to exit the business, surrendering its certificate of public convenience and necessity (CPCN) upon completion of such a transfer.

Accordingly, on or about August 8, 1992, Mission and Cellular made an agreement entitled "Cellular Accounts Purchase Agreement" whereby Mission would convey to Cellular its customer base for an amount equal to, on an ongoing basis, a 75% share of net operating revenue. Pending Commission approval of the transaction, Cellular agreed to assume billing and collection for Mission's accounts as Mission's agent, and conforming to Mission's tariffs on file with the Commission.

On October 7, 1992, the parties filed the present application with the Commission, seeking ex parte approval of the sale, and granting authorization to Mission to withdraw from the cellular resale business and return the CPCN granted by D.88-02-012.

Notice of this application appeared in the Commission's Daily Calendar on October 16, 1992. There were no protests received by the Commission.

Discussion

It would appear to be in the public interest that this proposed sale and transfer be approved. Mission is experiencing financial problems in its cellular reseller business. On the other hand, Cellular is doing well. Cellular's annual report (as of December 31, 1993) shows assets of $9,180,831 and stockholder equity of $1,324,413. Moreover, with an extensive existing resale operation of its own in the same Los Angeles and San Diego areas, Cellular would be well qualified to service the Mission customers, and with tariffs already in place which, in all material respects, are the same or more favorable than those of Mission, the end-users would not be subject to higher rates or more onerous service conditions.

The problem posed by this application, however, is in the open-ended payment mode by which the acquisition is to be financed. After the closing, under their purchase agreement, Cellular, with no termination date into the future, would pay Mission 75% of net operating revenues earned from the services Cellular would provide to Mission's former customers.

As set forth in their agreement, net operating revenues would include all cash receipts from the former Mission customers, less taxes and surcharges, less all customary and reasonable operating expenses incurred by Cellular in providing these services (these expenses would be based on sliding scales related to the number of customers serviced and applied to Cellular service personnel and telephone expenses), plus an 86 cents monthly charge per customer for invoicing and postage. As collateral security for Cellular's obligations, Mission would hold a first priority lien to all the accounts transferred, pursuant to a Security Agreement.

It has long been Commission policy to regard an operating right as indivisible, and not to look with favor on attempts to divide or split such rights, either by sale or leases. The Administrative Law Judge discussed his concerns with the purchaser's attorney who asked for time to confer with his principal and the seller. No resolution was forthcoming and no amendment has been offered, although Cellular's attorney has been cooperative in furnishing clarification details. However, as noted below, such resolution or amendment are now moot.

The federal Omnibus Budget Reconciliation Act of 1993 (Budget Act) signed into law on August 10, 1993, affected the Commission's regulatory jurisdiction over commercial mobile radio service (CMRS) providers and, while generally removing entry and rate regulation from our purview, left in place the states' authority to regulate "other terms and conditions" of service.

By D.95-10-032 issued October 18, 1995, the Commission, in Order Instituting Investigation 93-12-007, resolved outstanding issues concerning the extent of our remaining jurisdiction. By that decision, while concluding that transfers of ownership of a CMRS entity are not tantamount to market entry regulation and thus not preempted by the Budget Act, the Commission, pursuant to provisions of Public Utilities (PU) Code § 829, determined that it would extend to all CMRS carriers, except for three categories not relevant here, exemptions from the provisions of Articles 5 (PU Code §§ 816-830) and 6 (PU Code §§ 851-855). For exempted transactions, the Commission will not require the carriers to seek authorization through its Executive Director, but will require an informational filing under our Wireless Registration Procedures adopted in D.94-10-031 to report changes in ownership interests.

As applications or advice letters for authority to execute these exempted transactions need not be filed , the Commission by D.95-10-032 ordered dismissal of any such filings presently pending before the Commission. Application 92-10-008 falls within this category of transaction and accordingly will be dismissed.

Findings of Fact

1. As CMRS entities within our jurisdiction, Mission and Cellular, by the captioned application, sought authorization for a sale and transfer of Mission to Cellular under provisions of PU Code § 851.

2. The Budget Act signed into law August 10, 1993, affected the Commission's regulatory jurisdiction over and treatment of CMRS providers.

3. By D.95-10-032, the Commission resolved outstanding issues concerning the extent of its remaining jurisdiction, and as relevant here, concluded that, except for three categories of transactions (not relevant here), it would exempt CMRS providers from the requirement to file applications or advice letters to execute transactions covered under Articles 5 and 6 of the PU Code; instead requiring such carriers to make an informational filing under our Wireless Registration Procedures.

Conclusion of Law

The application should be dismissed and resubmitted as a Wireless Identification Registration pursuant to the procedures adopted in D.94-10-031.

ORDER

IT IS ORDERED that Application 92-10-008, filed October 7, 1992, is dismissed.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners