

Decision 97-11-056 November 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Landmark Communications, Inc., a California Corporation, for a Certificate of Public Convenience and Necessity to Resell Local, InterLATA, and IntraLATA Telecommunications Services Within the State of California.

ORIGINAL
Application 97-07-008
(Filed July 10, 1997;
Supplemented September 5 and
September 17, 1997)

O P I N I O N

Summary

Landmark Communications, Inc. (applicant), a California corporation, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 for authority to resell local, interLATA,¹ and intraLATA telecommunications services as both a competitive local carrier (CLC)² and a nondominant interexchange carrier (NDIEC). We deny the application on the basis that applicant lacks the managerial competence needed to operate as a CLC and/or NDIEC.

Regulatory Background

By Decision (D.) 84-01-037) and later decisions, we authorized interLATA entry generally. However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public as providing intraLATA service. Subsequently, by D.94-09-065, we authorized competitive intraLATA interexchange services effective January 1, 1995, for carriers

¹ California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

² A CLC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

meeting specified criteria. In D.97-06-107, we established a simplified registration process for applicants seeking authority to operate as an NDIEC. However, applicants seeking authority to operate as both an NDIEC and a CLC must continue to file an application.

In D.95-07-054, D.95-12-056, and D.97-06-107, we set forth procedures to govern applications for authority to offer competitive local exchange service within the service territories of Pacific Bell and GTE of California Incorporated. Applicants seeking authority to provide competitive local exchange service must meet the same general criteria as NDIECs.

Technical Qualifications of Applicant

An applicant for authority to operate as a CLC and/or NDIEC must state whether any person employed or associated with the applicant was previously employed or associated with a carrier that had filed for bankruptcy. In compliance with this requirement, applicant stated that its president and chief executive officer (CEO), William J. Kettle, had been associated with Thrifty Tel, Inc., which filed for bankruptcy and went out of business in 1994. Thrifty Tel was a publicly traded company that was certificated by this Commission to provide long distance service between 1986 and 1994.

At the request of assigned Administrative Law Judge Kenney, applicant provided supplemental information, including Thrifty Tel's Securities and Exchange Commission (SEC) Form 10-KSB for the fiscal year ended May 31, 1994.³ Contained within this document were the following statements regarding Kettle:

"On August 10, 1994, the Board of Directors [of Thrifty Tel] removed Mr. William J. Kettle from his position as President and Chief Executive Officer. Mr. Kettle's dismissal was based upon the breach

³ Thrifty Tel's Form 10-KSB was filed with the SEC on December 16, 1994.

in terms of the Fidelity [financing] agreement' which occurred under Mr. Kettle's direction and other improprieties which the Board believed may have occurred between the Company and Mr. Kettle.

"Following Mr. Kettle's removal, management discovered that federal excise and certain state taxes which the Company was obligated to collect from its customers were not paid over to the relevant taxing authorities.

"The Company has recorded accounts payable of \$500,000 at May 31, 1994, representing management's estimate of a compromised [sic] settlement which could be reached. The actual amount of taxes, interest, and penalties which could be asserted is substantially higher than this amount, and there is no assurance that the Company will be able to negotiate a settlement at, or near, management's estimate.

"In May 1994, a provision for various taxes and fees regulated by the California Public Utilities Commission which were not properly collected from customers and not remitted to the appropriate taxing authorities in the amount of \$250,000 was charged against cost of goods sold. The actual amount of such liability cannot be accurately determined at this time, but management feels that \$250,000 is the lower limit of the range and \$500,000 is the upper limit of the range. Although the actual amount of such taxes may be significantly higher, management is of the opinion that an offer in compromise can be negotiated with the various taxing authorities.

"During the course of [the] investigation into the Company's former President & Chief Executive Officer, Mr. W.J. Kettle, it was revealed that Travis Industries Inc. and Mr. Kettle had agreed to allow Travis to pay for telephone service rendered by the Company to Travis, by delivery to Mr. Kettle by Travis of its common stock in the name of Mr. Kettle. The Company further believes Mr. Kettle sold such stock, which was rightfully the property of the Company and wrongfully asserted dominion and control over the proceeds upon sale by not remitting such sums to the Company. The Company has filed a claim against the bankruptcy estate of Mr. Kettle, however, there is no

' Thrifty Tel's SEC Form 10-KSB states that during June 1994 the company sold its accounts receivable to Fidelity Funding of California, Inc. (Fidelity). Subsequently, in August 1994, Fidelity informed Thrifty Tel that Thrifty had defaulted on the financing agreement. The ensuing investigation by Thrifty found that the accounts receivable sold to Fidelity included duplicate accounts and accounts which had already been collected.

assurance that the Company will be successful in recovering such monies.

"In August 1994, the Company filed suit against [William Kettle and Travis Industries, Inc.,] alleging [c]onversion, unfair competition and misappropriation of trade secrets, interference with business relations, fraud and breach of fiduciary duties. Upon service of this case, both [William Kettle and Travis Industries, Inc.,] filed for Chapter 11 bankruptcy protection. The Company has filed the suits in the appropriate Bankruptcy courts. At this time, it cannot be determined what the outcome of the court proceedings will be."

According to applicant, Kettle was removed from his position as president and CEO of Thrifty Tel based upon the false allegations of Thrifty's chief financial officer (CFO). Applicant acknowledges that Kettle signed falsified documents that resulted in Thrifty's breach of a financing agreement with a third party; but applicant states that Kettle signed the documents based upon the assurances of the CFO, and, therefore, was unwittingly involved in the CFO's efforts to mislead the lender. Applicant goes on to state that Kettle was unaware of any instances while he was president of Thrifty Tel in which Thrifty Tel failed to remit federal and state taxes collected from its customers to the appropriate taxing authorities.

After leaving Thrifty Tel, Kettle became president of Landmark International, Inc., which is affiliated with the applicant. An SEC Form 8-K prepared by Landmark International, Inc., indicates that one of its subsidiaries, STM Communications, Inc., filed for bankruptcy on December 16, 1996. According to applicant, STM Communications was a sales agent for several large telecommunications carriers, including Pacific Bell, GTE of California Incorporated, and A&N Telecom, Inc.

Discussion

The record in this proceeding is clear that Thrifty Tel, while under Kettle's stewardship, failed to remit at least \$250,000 in various taxes and fees as required by this Commission. Because of this, we find that Kettle is unfit to manage a public utility.

We shall deny the application with prejudice. We shall also order William Kettle to disclose his direct or indirect association as part of the application of any future applicant seeking a CPCN to provide public utility service in California.⁵

Findings of Fact

1. Application (A.) 97-07-008 was filed on July 10, 1997.
2. Notice of A.97-07-008 appeared in the Commission's Daily Calendar on July 14, 1997.
3. By D.97-06-107, applicants for NDIEC and CLC authority are exempt from Rule 18(b) of the Rules of Practice and Procedure.
4. There were no protests to the application.
5. Applicant filed supplements to its application on September 5 and September 17, 1997.
6. A hearing is not required.
7. An applicant for authority to operate as a CLC and/or NDIEC switchless reseller must indicate whether anyone employed or associated with the applicant was previously employed or associated with another carrier that filed for bankruptcy.
8. William J. Kettle, the president and CEO of the applicant, was previously the president and CEO of Thrifty Tel, Inc., a publicly traded company that was certificated by this Commission to provide long distance service between 1986 and 1994.
9. Thrifty Tel, Inc., filed for bankruptcy and went out of business in 1994.
10. Kettle, as president and CEO of Thrifty Tel, Inc., signed falsified documents that resulted in Thrifty Tel's breach of a financing agreement with a third party.
11. During Kettle's tenure as president and CEO of Thrifty Tel, Inc., the company failed to remit federal and state taxes collected from customers to the appropriate taxing authorities.

⁵ If in the future Kettle ceases his association with applicant, then applicant may file a petition for modification of this decision removing the order contained herein that the application be dismissed with prejudice.

12. Kettle was fired from his position as president and CEO of Thrifty Tel, Inc.

13. After leaving Thrifty Tel, Kettle became president of Landmark International, Inc., which is affiliated with the applicant.

14. An SEC Form 8-K prepared by Landmark International, Inc., indicates that one of its subsidiaries, STM Communications, Inc., filed for bankruptcy on December 16, 1996. STM Communications was a sales agent for several large telecommunications carriers, including Pacific Bell, GTE of California Incorporated, and A&N Telecom, Inc.

15. Based on the facts in this application, Kettle is unqualified to manage a public utility in the State of California.

Conclusions of Law

1. Applicant is exempt from Rule 18(b) pursuant to D.97-06-107.
2. Applicant lacks managerial competence to provide the proposed services.
3. The application should be denied with prejudice.
4. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The application by Landmark Communications, Inc. (applicant), for a certificate of public convenience and necessity (CPCN) to operate as a reseller of local exchange, interLocal Access and Transport Area, and intraLocal Access and Transport Area telecommunications services within California is denied with prejudice.

2. William J. Kettle shall disclose his direct or indirect association as part of the application of any future applicant seeking a CPCN to provide public utility service.

3. Application 97-07-008 is closed.

This order is effective today.

Dated November 19, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners