

Decision 98-02-115 February 19, 1998

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.

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

ORIGINAL**ORDER GRANTING REHEARING OF DECISION 97-11-056**

By Application (A.) 97-07-008, Landmark Communications, Inc. (Landmark) sought a certificate of public convenience and necessity (CPCN) under Public Utilities Code § 1001 for authority to resell local, interLATA, and intraLATA telecommunications services as both a competitive local carrier (CLC) and a nondominant interexchange carrier (NDIEC). By D.97-11-056, we denied the application "on the basis that the Applicant lacked the managerial competence needed to operate as a CLC and/or NDIEC." (D.97-11-056, p. 1)

The Commission made specific findings of fact in support of its conclusion that Applicant lacked fitness. These related to actions taken by Thrifty Tel., Inc., while Applicant was president of the company. Among these were previous association with another carrier that filed for bankruptcy, signing of a false document relating to a financing agreement, failure to remit federal and state taxes collected from customers, and the fact that Applicant was eventually fired from his position as President of Thrifty Tel., Inc. (D.91-11-056, pgs. 5, 6).

The above findings, if proven, might indeed be sufficient to support the decision denying the application. However, as Applicant points out, the

decision was issued with no protest, without a hearing, and was insufficiently supported by the evidence.

The evidence consisted chiefly of Securities and Exchange Commission Form 10-KSB for 1994, submitted by Applicant at the request of the Administrative Law Judge. However, the document, quoted beginning at page 2 of the Decision, is not entirely clear to what extent the improprieties alleged were those of Thrifty, Inc. or of Applicant, Mr. Kettle, individually.

The evidence is therefore insufficient to support the decision denying the application, which constitutes a denial of due process as guaranteed by the California and Federal Constitutions. This constitutes legal error.

Rehearing should therefore be granted on the question of whether Applicant is sufficiently qualified for the grant of a CPCN as requested. This matter shall be set for evidentiary hearing at a time and place to be set by the Administrative Law Judge. The Consumer Services Division should participate in the rehearing and make independent recommendations regarding the application.

IT IS ORDERED that:

1. The Application for Rehearing of D.97-11-056 is granted.

This order is effective today.

Dated February 19, 1998, at San Francisco, California.

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