Decision **PROPOSED DECISION OF ALJ TSEN (Mailed 4/25/2016)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of KDDI America, Inc. for a Certificate of Public Convenience and Necessity to operate as a Reseller of Wireless Telecommunication Services in the State of California.	Application 14-04-036 (Filed April 23, 2014)

DECISION DENYING APPLICATION

KDDI America, Inc. (KDDI or Applicant) was a registered wireless reseller with the Commission. Its original registration as a wireless reseller was revoked by the Commission in Resolution T-17206 in 2009 for failure to remit user fees and surcharges. The Commission's Communications Division (CD) learned that KDDI was continuing to operate in California without a license and notified the company in late 2013 that it needs to cease operations in California or apply for a registration.

On April 23, 2014, KDDI America, Inc. (KDDI or Applicant) filed an application for a Certificate of Public Convenience and Necessity (CPCN) to operate as a reseller of wireless telecommunication services. On June 6, 2014, the assigned Administrative Law Judge issued a ruling requiring Applicant to submit a Wireless ID Registration Application (WIR). KDDI submitted its WIR application on December 17, 2015, with a supplemental filing on January 6, 2016. Commission staff ensured that KDDI submitted all appropriate user fees and surcharges, and on March 30, 2016, CD approved KDDI's WIR application.

The Federal Communications Act, Section 47 USC 332(c)(3)(a) prohibits states from regulating wireless entry, but the Commission retained jurisdiction to

set terms and conditions for wireless carriers, as well as require ministerial registrations. Review of a CPCN application necessitates a decision on whether an applicant may enter the wireless market, and as such, the Commission cannot issue a CPCN to a wireless reseller.

1. Categorization and Need for Hearing

In Resolution ALJ 176-3336 dated May 15, 2014, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. There is no need to change the preliminary determinations.

2. Comments on Proposed Decision

The proposed decision of ALJ Tsen in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and procedure. ~~Comments were filed by _____ and reply~~No comments were ~~filed by_____ on _____~~received.

3. Assignment of Proceeding

Michael Picker is the assigned Commissioner and S. Pat Tsen is the assigned Administrative Law Judge (ALJ) in this proceeding.

Findings of Fact

1. On April 23, 2014, KDDI filed a Certificate of Public Convenience and Necessity Application with the Commission.
2. KDDI is a reseller of wireless telecommunication services in California.
3. The Commission is pre-empted by the Federal Communications Commission from regulating wireless market entrants but can require registration.

4. KDDI's authority to operate as a wireless reseller was revoked by the Commission in Resolution T-17206 in 2009 for failure to submit user fees and surcharges.

5. On June 6, 2014, the assigned ALJ issued a ruling directing KDDI to file a Wireless ID Registration (WIR) application pursuant to California Pub. Util. Code § 1013.

6. On December 17, 2015, KDDI filed a WIR application with the Communications Division (CD).

7. On January 6, 2016, KDDI submitted a supplement to its WIR application with the CD.

8. On March 30, 2016, CD approved KDDI's WIR.

Conclusions of Law

1. The Commission cannot issue a CPCN to KDDI because it cannot regulate wireless entry.

2. The Commission can require KDDI to register through the WIR registration process.

3. The record should be closed and the Application for a CPCN be denied since Applicant has already received WIR registration through the Communications Division.

O R D E R

IT IS ORDERED that:

1. Application 14-04-036 is denied.
2. Application 14-04-036 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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