

P-3162/CI-93-1331 ORDER TERMINATING INVESTIGATION AND CLOSING DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Initiated
Investigation into the Status of Downtown
Telecom With Respect to the Resale of
CENTRON Services

ISSUE DATE: July 20, 1994

DOCKET NO. P-3162/CI-93-1331

ORDER TERMINATING INVESTIGATION
AND CLOSING DOCKET

PROCEDURAL HISTORY

On January 19, 1993, the Commission issued its ORDER AUTHORIZING RESALE OF CENTRON SERVICE in Docket No. P-999/CI-90-235.¹ In its Order, the Commission found that under specified conditions, the resale of U S West Communications, Inc.'s (USWC)'s CENTRON service was in the public interest. The Commission directed Enhanced Telemanagement, Inc. (ETI), then a holder of an interim certificate of authority to resell CENTRON, to apply for permanent authority. See Order at page 18, Ordering Paragraph 4.

The Commission clarified that its Order (the January 19, 1993 Order in the 235 Docket) simply found that CENTRON resale was in the public interest (under certain conditions) but did not grant ETI or any other CENTRON reseller authority to resell CENTRON. The Commission stated that to obtain a permanent certificate of authority to resell CENTRON, ETI and any other CENTRON reseller desiring permanent authority to resell CENTRON would have to petition the Commission for that authority as required by Minn. Stat. § 237.16 (1992). See Ordering Paragraph 5 of the January 13, 1993 Order in the 235 Docket.

On February 23, 1993, ETI submitted an application for permanent territorial authority to resell CENTRON service on an "individual case based" (ICB) pricing basis. The Company's application was assigned to Docket No. P-449/NA-93-127.

In the course of that docket, P-449/NA-93-127, USWC stated that it provided CENTRON services under its joint users tariff to two resellers in addition to ETI: Downtown Telecom and University Technologies.

January 14, 1994, the Commission issued its ORDER TO SHOW CAUSE to Downtown Telecom directing that company to present arguments to establish why the Commission should

¹ In the Matter of a Commission-Initiated Proceeding to Determine Whether Resale of Local Telephone Service is in the Public Interest, Docket No. p-999/CI-990-235, ORDER AUTHORIZING THE RESALE OF CENTRON (January 19, 1993).

not direct USWC to terminate provision of CENTRON services to the Company and/or take other appropriate remedial action.

On February 14, 1994, Firstcom, Inc. filed a response to the January 14, 1994 ORDER TO SHOW CAUSE. Firstcom stated that it had purchased all the assets and liabilities of Downtown Telecom in June 1993 and dissolved that company shortly thereafter. Firstcom argued that Downtown Telecom had been a PSTS provider, not a reseller; that PSTS is not a telephone service; and that as such, both Downtown's actions and Firstcom's PSTS activities are outside the reach of the Commission's regulatory powers.

On June 28, 1994, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

Analysis of Downtown Telecom's Provision of Telecommunications Service

For a period of years prior to its purchase by Firstcom in May 1993, Downtown Telecom provided telecommunications service to end-users in five office parks in Minneapolis and suburban areas by means of USWC's CENTRON service. The service also involved what Firstcom asserted was Downtown's own "premises equipment in those buildings." Downtown did not own and operate a PBX in any of the serviced buildings. Essentially, the Company purchased CENTRON service from U S West Communications, Inc. (USWC) and resold it to its customers.

Firstcom, the successor in interest to Downtown Telecom, asserted that what Downtown provided its customers was private shared tenant services (PSTS). Firstcom argued that CENTRON was an appropriate vehicle for PSTS and that the equipment that Downtown owned and used in connection with the provision of that service was "premises equipment" within the meaning of the PSTS statute, Minn. Stat. § 237.68 (1992).

At issue, of course, is whether Downtown Telecom had been operating legally in providing telecommunications service (CENTRON) to its end-users or whether it should have obtained a certificate of authority from the Commission pursuant to Minn. Stat. § 237.16 (1992) before doing so. If its service was PSTS as defined in Minn. Stat. § 237.68 (1992), it would have been exempt under Minn. Stat. § 237.68 (1992) from the certification requirement. If it did not meet the statutory definition of PSTS, it would have been required to obtain a certificate of authority before operating.

The Commission finds that Downtown is and at all time relevant was a CENTRON reseller subject to the certification requirement and was not, as Firstcom asserted, a PSTS provider.

PSTS is defined in Minn. Stat. § 237.68, subd. 1 (1992) as

...The provision of telephone services and equipment within a user group located in discrete private premises, in building complexes, campuses, or high-rise buildings, by a commercial shared service provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to long-distance telephone companies.

This definition of PSTS does not encompass the provision of telecommunications using CENTRON, as was done by Downtown Telecom. To qualify as PSTS, the statute requires that the service *and* equipment be provided "within a user group located in discrete private premises." Contrary to the statute's requirement for PSTS, Downtown's vehicle for providing telecommunications service, CENTRON, connects the end-user to the facilities of an outside exchange and to (outside lines) by means of a switch that is entirely off-premises, i.e. in the USWC central office.

In addition, the Commission does not view the statutory phrase "customer premises equipment" as broadly as Downtown would have it. The phrase customer premises equipment refers to a PBX, not to "station equipment" and "equipment to process end-user switching commands and service actuation codes", as Firstcom asserted.²

In light of this analysis, the Commission concludes that Downtown's operation did not qualify for the PSTS exception to the certification requirement. The company's operation without having obtained a certificate of authority from the Commission was unauthorized.

Analysis of Firstcom's Provision of Telecommunications Service

After purchasing Downtown Telecom's assets and liabilities in May 1993, Firstcom continued Downtown's manner of providing telecommunications service to Downtown's former customers. In accord with the preceding analysis, therefore, Firstcom's operation without having obtained a certificate of authority from the Commission was also unauthorized.

The Good Faith of Downtown and Firstcom

The following facts emerge, based on the uncontradicted representations of Firstcom. Downtown began its telecommunications operations in 1985. The company originally contemplated using PBXs to provide its PSTS services but was persuaded by USWC (then Northwestern Bell Telephone Company) to use CENTRON service instead. During 1984 and 1985, Northwestern Bell heavily promoted CENTRON as a Shared Services vehicle, and urged Downtown to subscribe to CENTRON for its planned PSTS operations. USWC expended considerable time and effort in convincing Downtown that CENTRON was the best local service option to use for PSTS service. Without USWC's urging, Downtown would have subscribed to PBX trunks in its PSTS projects.

In 1988, in response to the Notice of Solicitation of Comments for Proposed Rules Governing Resale and Sharing Local Telephone Service, Downtown filed comments as part of a five member group expressing views as private shared tenant service providers. Together with

² This finding is consistent with and reaffirms the Commission's determination in the generic local resale case that the only existing technology that satisfies the statutory definition of "privately owned customer premises equipment" in the context of the PSTS statute is a PBX. In the Matter of a Commission-Initiated Proceeding to Determine Whether Resale of Local Telephone Service is in the Public Interest, Docket no. P-999/CI-90-235, ORDER AUTHORIZING THE RESELL OF CENTRON, p. 17.

USWC's statements to Downtown, the letter demonstrates that a good faith belief existed in the minds of the owners of these companies that their activities at the time were PSTS.

It was not until the Commission's January 19, 1993 Order in the local resale docket (P-999/CI-90-235) that the Commission made the authoritative finding that the PSTS exemption only applied to the provision of PBX services to user groups in the same premises.

Based on these facts, the Commission finds that Downtown and Firstcom had a good faith belief that their operation was PSTS and needed no certificate to provide that service.

Furthermore, Downtown Telecom no longer exists and following Firstcom's purchase and dissolution of Downtown, the protracted illness of Firstcom's owner substantially interfered with Firstcom's ability to make its local resale filing earlier than it did.

Finally, Firstcom has agreed that all the local telecommunications business it currently conducts (including the operations that it has argued heretofore was PSTS), as well as the expanded resale of CENTRON that it contemplates, is subject to the Commission's certificate authority and under the jurisdiction of the Commission. Firstcom assures that it will operate its business in accordance with the statutory requirements applying to all telecommunications carriers. See Minn. Stat. § 237.01, subd. 6 and 237.74, subd. 12 (1993).

Commission Action

Taking these circumstances into account, the Commission determines that it will take no remedial action against Downtown or Firstcom in regard to their unauthorized pre-certification telecommunications operations. Instead, the Commission will conclude its investigation and close the docket.

ORDER

1. The investigation is hereby terminated. The docket shall be closed.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)