

P-3139/SA-93-644 ORDER REQUESTING ENFORCEMENT ACTION BY THE ATTORNEY
GENERAL AND GRANTING CONTINGENT CERTIFICATE OF AUTHORITY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Marshall Johnson
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of EXECUTONE Information Systems, Inc.'s Request for a Certificate of Authority

ISSUE DATE: October 18, 1994

DOCKET NO. P-3139/SA-93-644

ORDER REQUESTING ENFORCEMENT ACTION BY THE ATTORNEY GENERAL AND GRANTING CONTINGENT CERTIFICATE OF AUTHORITY

PROCEDURAL HISTORY

On July 6, 1993 EXECUTONE Information Systems, Inc. (EXECUTONE or the Company) filed an application for a certificate of authority to resell long distance service within the state of Minnesota. While examining the application, the Department of Public Service (the Department) learned that the Company had been providing long distance service in Minnesota since December 6, 1991.

On December 2, 1993 the Department filed its report and recommendation. The Department stated EXECUTONE had violated Minn. Stat. §§ 237.16, subd. 4 and 237.74, subd. 12¹ by providing long distance service without authority. The Department recommended referring the violations to the Attorney General for enforcement proceedings and granting the Company a certificate of authority contingent upon compliance with the outcome of those proceedings.

On December 13, 1993 the Company filed a response admitting it had violated the statutes, but stating those violations had been inadvertent. The Company argued no one had been harmed by the violations and that penalties of any sort were unnecessary.

The matter came before the Commission on October 4, 1994. At that time the Company offered to refund in the form of bill credits the estimated profits earned on intrastate service from the time it began operating in this state to the date it applied for a certificate of authority.

The Department continued to support its original recommendation.

FINDINGS AND CONCLUSIONS

I. Statutory Violations Found

The Commission finds that the Company has been engaged in the unauthorized provision of intrastate long distance service from December 6, 1991 to the present. This unauthorized provision of service violated Minn. Stat. § 237.16, subd. 4 before August 1, 1993 and has violated Minn. Stat. § 237.74, subd. 12 since that date.

The Commission finds that the Company's violation of these statutes was knowing and

¹ The Company was in violation of the first statute, the original prohibition against unauthorized provision of telephone service, until August 1, 1993. On that date the second statute, which applies to resellers like Executone, went into effect. From that point forward, the Company was in violation of the second statute.

intentional under Minn. Stat. §§ 237.461, subd. 2 and 237.74, subd. 11. The Company is a multi-state provider of long distance services. It held certificates of authority in 16 other states when it began providing service in Minnesota. It now holds certificates of authority in more than 40 states.

The Company was and is responsible for monitoring where it provides service and for complying with the regulatory requirements of all jurisdictions in which it operates. It knew or should have known that it was providing service in Minnesota and should have taken steps to comply with Minnesota regulatory requirements. Its failure to do so constitutes a knowing and intentional violation of Minnesota law.

II. Enforcement Action Requested

Both the statutes violated may be enforced by the Attorney General at the request of the Commission. Minn. Stat. §§ 237.461, subd. 2 and 237.74, subd. 11. The Commission will refer the Company's conduct to the Attorney General for enforcement proceedings.

The Commission understands that the Company appears to have been providing reliable service at reasonable rates, that there have been no consumer complaints filed against the Company, and that no palpable harm seems to have come from the Company's unauthorized provision of service. While these facts may influence the outcome of the enforcement action, the Commission does not believe they eliminate the need for it.

The Commission cannot ignore the unauthorized provision of telephone service. To do so would be inconsistent with its duty to maintain the integrity of the Minnesota regulatory process. It would send the wrong signal to other companies and individuals under the jurisdiction of Commission. It would be unfair to the Company's competitors, who have borne the cost of regulatory compliance from the day they began doing business in Minnesota.

The Commission will therefore refer this case to the Attorney General for enforcement action.

III. Contingent Certificate of Authority Granted

The Commission agrees with the Department that the Company has the technical, financial, and managerial resources necessary to provide reliable telephone service to Minnesota consumers. The Commission finds that the Company has also demonstrated its willingness and ability to comply with regulatory requirements now and in the future.

The Company came forward and applied for authority to operate as soon as it came to its attention that authority was needed. It has cooperated with the Department throughout the course of this investigation. It has assured the Commission that it now has procedures in place to ensure full regulatory compliance. It has explained that the non-compliance at issue resulted from rapid growth which has now stabilized.

For all these reasons, the Commission believes the Company is fit and able to provide long distance service to the Minnesota public. The Commission will therefore grant the Company a certificate of authority contingent upon receiving a final report from the Attorney General detailing the outcome of the enforcement action and confirming Company compliance therewith.

ORDER

1. The Commission finds that EXECUTONE Information Systems, Inc. has knowingly and intentionally violated Minn. Stat. §§ 237.16, subd. 4 and 237.74, subd. 12 by engaging in the unauthorized provision of intrastate long distance telephone service.
2. The Commission asks the Attorney General to bring enforcement actions under Minn.

Stat. §§ 237.461, subd. 2 and 237.74, subd. 11 against EXECUTONE Information Systems, Inc.

3. The Commission grants EXECUTONE Information Systems, Inc. a certificate of authority to provide long distance intrastate service, contingent upon receiving a final report from the Attorney General detailing the outcome of the enforcement action and confirming Company compliance therewith.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)