

SEP 16 1992

Decision 92-09-076 September 16, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
EXECUTONE INFORMATION SYSTEMS, INC.)
For a Certificate of Public)
Convenience and Necessity to Provide)
InterLATA Telecommunications Services)
Within the State of California.)

ORIGINAL
Application 92-07-026
(Filed July 17, 1992)

A.92-07-026

O P I N I O N

Executone Information Systems, Inc. (Executone or applicant) seeks a certificate of public convenience and necessity to provide 24-hour interLATA long distance telephone services between points within California as a nondominant interexchange carrier (NDIEC). In particular, Executone requests authorization to operate as a nonfacilities based, switchless reseller of intrastate, interLATA long distance toll service.

Executone is incorporated in Virginia and is in good standing under the laws of that state. Executone is authorized to do business as a foreign corporation in California. Its principal office is in Darien, Connecticut. Executone alleges that it is in the business of designing, manufacturing, marketing, installing and servicing voice and data communications systems for business and is especially active in developing specialized communications equipment and services for business. Applicant is also in the business of reselling telecommunications services. Applicant's products and services are sold under the Executone, Isoetec, Infostar, IDS, Starplus and Infinite brand names through a nationwide network of company-owned direct sales and service offices and independent distributors.

Executone requests authorization to resell interLATA, intrastate WATS and MTS type long distance services to the public in equal access areas throughout California as an NDIEC. Executone requests authorization to operate as a switchless reseller, relying completely upon the facilities of selected underlying facilities based carriers and, therefore, does not propose to acquire, own, construct or extend any telecommunications facilities.

A proposed tariff containing the rates to be charged for the provision of the proposed service is attached to its application. Executone believes that the rates, and conditions contained in its proposed tariff are competitive and are reasonable.

Executone asserts that it has been a leader in designing, manufacturing, marketing, installing and servicing voice and data communications systems and services for over 50 years and has been especially active in developing specialized communications equipment and services for businesses. Executone is presently authorized to resell long distance services in a number of states, including Florida, Maryland, New Mexico, North Carolina and South Carolina. Executone alleges that it has a competent and experienced management staff.

Executone alleges that it has sufficient financial resources to provide the services for which it is requesting authorization. Its current financial statements demonstrate that Executone meets the Commission's requirement for minimum uncommitted cash or equivalent financial resources for switchless resellers established in Decision (D.) 91-10-041.

Executone maintains that its request for a certificate is in the public interest because resellers such as Executone purchase basic telecommunications services in bulk from underlying facilities based carriers and resell to customers who may be too small to purchase such bulk services. The existence of NDIEC's such as Executone encourage the telecommunications market to

develop in a manner which increases efficiency in the utilization of its services and facilities, gives rise to greater customer choice and more diversified service offerings, and encourages providers of telecommunications services to offer higher quality service, and to develop more innovative ways of marketing and using such service.

In Decision (D.) 90-08-032, as modified by D.91-10-041, the Commission established two major criteria for determining whether a CPCN should be granted. An applicant who does not own, control, operate, or manage telephone lines (switchless reseller) must demonstrate that it has a minimum of \$75,000 in uncommitted cash or equivalent financial resources. This minimum requirement increases 5% per year starting in 1992. Thus, for applications filed during 1992, the minimum requirement is \$78,750. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

We will authorize the interLATA service that applicant seeks to provide; but to the extent that the application seeks authority to provide intraLATA service, we will deny it.

Findings of Fact

1. Applicant served a copy of the application upon the telephone corporations with which it is likely to compete.
2. Because applicant is not proposing any construction of facilities service on cities and counties is not needed and is waived, as we have done for other similarly situated applicants, as in D.91-06-035 and D.87-08-022.
3. A notice of the filing of the application appeared in the Daily Calendar on July 21, 1992.
4. No protests have been filed.
5. A hearing is not required.
6. Applicant has a minimum of \$78,750 in uncommitted cash or equivalent financial resources, as required by D.90-08-032, as modified by D.91-10-041.

7. Applicant has made a reasonable showing of technical expertise in telecommunications as required by D.90-08-032. This showing includes a complete draft of applicant's initial tariff.

8. Applicant is technically and financially able to provide the proposed services.

9. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

10. Public convenience and necessity require the service to be offered by applicant.

Conclusions of Law

1. Applicant is a telephone corporation operating as a telecommunication service supplier.

2. Applicant is subject to:

a. The current 4.0% surcharge applicable to service rates of intralATA toll and intrastate interLATA toll to fund Universal Lifeline Telephone Service (ULTS) (PU Code § 879; Resolution T-14960);

b. The current 0.3% surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf (PU Code § 2881; Resolution T-13061); and,

c. The user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1992-93 fiscal year (Resolution M-4760).

3. The application should be granted to the extent set forth below.

4. Because of the public interest in competitive interLATA service, the following order should be effective immediately.

The State may grant any number of operative rights and may cancel or modify the monopoly feature of those rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Executone Information Systems, Inc. (applicant) to operate as a reseller of the interLATA telecommunication service offered by communication common carriers in California, subject to the following conditions:

- a. Applicant shall offer its services only on an interLATA basis;
- b. Applicant shall not offer intraLATA services;
- c. Applicant shall not hold out to the public that it has authority to provide, or that it does provide, intraLATA services; and
- d. Applicant shall advise its subscribers that they should place their intraLATA calls over the facilities of the local exchange company.

2. To the extent that applicant requests authority to provide intraLATA telecommunication service, it is denied.

3. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

4. a. Applicant is authorized to file with this Commission, 5 days after the effective date of this order, tariff schedules for the provision of interLATA service. Applicant may not offer service until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

b. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032, as modified by D.91-12-013:

- "5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:
 - "a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.
 - "b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.
 - "c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
 - "d. Uniform minor rate increases, as defined in D.90-11-029 for existing services shall become effective on not less than 5 working days' notice. Customer notice is not required for such minor rate increases.
 - "e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

"f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice."

5. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 2.

6. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 4, a service area map.

7. Applicant shall notify this Commission in writing of the date service is first rendered to the public within 5 days after service begins.

8. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC rules.

9. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Attachment A.

10. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

11. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

12. The corporate identification number assigned to applicant is U-5292-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

14. Applicant is exempted from the provisions of PU Code §§ 816-830.

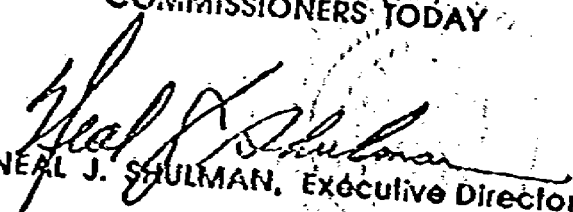
15. The application is granted, as set forth above.

This order is effective today.

Dated September 16, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director

ND

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call
(415) 703-1961.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)