

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03C-371T

IN THE MATTER OF THE TRANSFER OF ASSETS GRANTED BY THE UNITED STATES
BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO FROM FUTUREONE, INC.
TO ON SYSTEMS TECHNOLOGY, LLC WITHOUT COMMISSION APPROVAL

**ORDER TO SHOW CAUSE
AND NOTICE OF HEARING**

Mailed Date: August 29, 2003
Adopted Date: August 27, 2003

I. BY THE COMMISSION

A. Statement

1. On January 13, 2003, the United States Bankruptcy Court for the District of Colorado granted the Trustee's motion for authority to sell FutureOne, Inc.'s (FutureOne) membership interest in Amcom LLC (Amcom), a wholly owned limited liability company, to On Systems Technology, LLC (On Systems). Among the assets of Amcom are a certificate of public convenience and necessity (CPCN) to provide local exchange telecommunications in the State of Colorado, a CPCN to provide emerging competitive telecommunications in the State of Colorado, the customer base, and the interconnection agreement between Amcom and Qwest Corporation.

2. Amcom holds CPCNs issued by the Colorado Public Utilities Commission (Commission). As such, Amcom is a regulated public utility under the jurisdiction of the Commission. *See* § 40-15-201(2), C.R.S.; and 4 *Code of Colorado Regulations* (CCR) 723-25-4.

3. In a letter dated February 24, 2003, Staff of the Public Utilities Commission (Staff) notified FutureOne of the statutory requirement to file an application to transfer assets. The Commission retains jurisdiction over a transfer of assets of a regulated public utility irrespective of the order issued by the U.S. Bankruptcy Court, by virtue of the Commission's state police powers pursuant to Article XXV of the Colorado Constitution and Title 40 of the Colorado Revised Statutes.

B. Discussion

4. Pursuant to § 40-5-105, C.R.S., the Commission is authorized to promulgate rules for the transfer of a telecommunications providers' assets, including the transfer of authority to provide local exchange and emerging competitive telecommunications services. The Commission has promulgated such rules, which are found at 4 CCR 723-25-8.

C. Findings of Fact

5. Staff has determined that as of the date of this order, FutureOne has not filed an application to transfer assets, and therefore may have failed to comply with the requirements of § 40-5-105, C.R.S., and 4 CCR 723-25-8.

6. Staff alleges FutureOne is not authorized to transfer the assets of Amcom, used in the provision of regulated telecommunications services, to On Systems until such time as that transfer of assets is approved by the Commission.

D. Conclusions

7. Sufficient cause exists to hold a hearing to determine the facts of the matter, to hear material arguments, to receive evidence and testimony, and to determine what penalty or remedy, if any, shall be imposed by order of the Commission.

8. If the Commission determines that it is appropriate to do so, the Commission may issue a decision, including but not limited to: a) an order to cease and desist the provisioning of telecommunications services in the State of Colorado; b) an order to refund, with interest, charges or fees collected for jurisdictional telecommunications services; c) an order to pay fees, penalties, and interest required under § 40-2-113, C.R.S.; d) an order to pay penalties under § 40-7-105, C.R.S., including monetary fines against company officers; and e) an order to revoke the CPCNs held by Amcom and transferred to On Systems without Commission approval.

II. ORDER

A. The Commission Orders That:

1. FutureOne, Inc., shall appear before the Commission, as set forth below, to show cause why the Commission should not take action and enter a decision, including but not limited to: a) an order to cease and desist the provisioning of telecommunications services in the State of Colorado; b) an order to refund, with interest, charges or fees collected for jurisdictional telecommunications services; c) an order to pay fees, penalties, and interest required under § 40-2-113, C.R.S.; d) an order to pay penalties under § 40-7-105, C.R.S., including monetary fines against company officers; and e) an order revoking the certificates of public convenience and necessity held by Amcom LLC, and transferred to On Systems Technology, LLC, without Commission approval.

2. Docket No. 03C-371T is set for hearing before an Administrative Law Judge of the Colorado Public Utilities Commission:

Date: October 14, 2003
Time: 9:00 a.m.
Place: Colorado Public Utilities Commission
Logan Tower, Office Level 2
1580 Logan Street
Denver, Colorado

3. The Staff of the Public Utilities Commission shall file, at least 30 days prior to hearing: a) two copies of a list containing the name, address, and title of each of its witnesses; and b) two copies of each of the exhibits which it plans to present at the hearing. Copies of the witness list and exhibits shall be served upon all parties to the proceeding.

4. FutureOne, Inc., shall file, at least 20 days before hearing: a) two copies of a list containing the name, address, and title of each of their witnesses; and b) two copies of each of the exhibits which they plan to present at the hearing. Copies of the witness list and exhibits shall be served upon all parties to the proceeding.

5. No witness shall be permitted to testify, nor shall any document be received in evidence, except in rebuttal, unless filed and served as provided in this Order.

6. If Staff of the Public Utilities Commission or FutureOne, Inc., fail to meet the above requirements, the Commission may dismiss the proceeding or any defense, upon motion filed by any other party, unless good cause for non-filing is shown.

7. No motion for continuance shall be granted if filed within 20 days before the first day of the hearing, except for good cause shown.

8. No exception to the procedure in the Order shall be made except upon timely motion showing good cause.

9. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 27, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners