



Public Service Commission

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RECORDS AND REPORTING

DATE: FEBRUARY 8, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYB)

FROM: DIVISION OF COMPETITIVE SERVICES (ISLER) *PI*
DIVISION OF LEGAL SERVICES (ELLIOTT) *JAE*

RE: DOCKET NO. 001224-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST BN1 TELECOMMUNICATIONS, INC. FOR APPARENT VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 02/20/01 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001224.RCM

CASE BACKGROUND

- **07/19/94** - This company obtained Florida Public Service Commission Certificate No. 3567.
- **11/25/98** - Docket No. 981732-TI was established for nonpayment of the 1997 Regulatory Assessment Fee (RAF). On March 5, 1999, the Commission received a settlement proposal from the company to resolve the docket. On April 5, 1999, the company paid the 1997 and 1998 RAFs. On August 4, 1999, Order No. PSC-99-1535-AS-TI was issued, which approved the company's settlement offer. On August 13, 1999, the Commission received the company's \$100 settlement and the docket was closed.
- **04/05/99** - The Commission received the company's payment for the 1998 RAF return. The company reported no revenues for the

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period ended December 31, 1998. The company paid the statutory penalty and interest charges on June 10, 1999.

- **12/08/99** - The Division of Administration mailed the 1999 RAF notice. The due date was January 31, 2000.
- **02/29/00** - The Division of Administration mailed a delinquent letter.
- **05/22/00** - In a separate proceeding, Docket No. 000614-TI was established. By Order No. PSC-00-2119-PAA-TI issued on November 7, 2000, the Commission approved the assignment of BN1 Telecommunications, Inc.'s certificate to First Communications, LLC, effective December 1, 2000.
- **12/12/00** - The Division of Administration mailed the 2000 RAF notice. The due date was January 30, 2001.
- **01/31/01** - As of this date, the past due 1999 and 2000 RAFs, including penalty and interest charges, remain unpaid.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.337, and 364.285, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should BN1 Telecommunications, Inc. be ordered to show cause why a fine of \$1,000 should not be imposed for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: Yes. The Commission should order BN1 Telecommunications, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$1,000 for apparent violation of Rule 25-4.0161, F.A.C. The company's response should contain specific allegations of fact or law. If BN1 Telecommunications, Inc. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the fine should be deemed assessed and the right to a hearing should be deemed waived. If the fine and fees are not paid within ten business days after the Order becomes final, they should be forwarded to the Office of the Comptroller for collection. If the fine and fees are paid, the fine should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Isler)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company refuses to comply with Commission rules. Rule 25-4.0161, Florida Administrative Code, which implements Section 364.336, Florida Statutes, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration's records show that the company had not paid its 1999 RAF, plus statutory penalty and interest charges. Therefore, on August 24, 2000, this docket was established. In addition, the 2000 RAF was due by January 30, 2001, and as of January 31, 2001, it remains unpaid. Therefore, it appears the company has failed to comply with Rule 25-4.0161, Florida Administrative Code.

This is the second docket opened against BN1 Telecommunications, Inc. (BN1) for nonpayment of the RAF. On August 4, 1999, Order No. PSC-99-1535-AS-TI was issued in Docket No. 981732-TI, which approved the company's settlement offer. The company paid the past due fees and the \$100 settlement, and the docket was closed.

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In a separate proceeding in Docket No. 000614-TI, the Commission approved the assignment of BN1's certificate to First Communications, LLC by Order No. PSC-00-2119-PAA-TI. Order No. PSC-00-2291-CO-TI (Consummating Order) made that Order final and effective on December 1, 2000, which became the inactive date for the certificate in BN1's name and the active date for the certificate in First Communications, LLC's name. The docket was subsequently closed.

Because this docket, No. 001224-TI, was opened prior to cancellation of BN1's certificate, staff believes that a show cause is the appropriate method in the disposition of this matter. The fine amount recommended in this docket is consistent with amounts used for recent, similar violations. In addition, to staff's knowledge, there has been only one other case, Docket No. 991980-TX, in which a show cause order was issued to impose a fine when a company's certificate was cancelled in a separate docket. In that case, by Order No. PSC-00-1227-SC-TX issued July 7, 2000, the Commission ordered USA Tele Corp. to show cause why a fine of \$500 should not be imposed for nonpayment of the 1998 RAF. USA Tele Corp. did not respond to the show cause order, therefore, the fine was deemed assessed and the fine and fees were forwarded to the Comptroller's Office for further collection efforts.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Staff believes that the conduct of BN1 Telecommunications, Inc., by not paying the regulatory assessment fees, including statutory penalty and interest charges, has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional

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act, such as the conduct of BN1 Telecommunications, Inc. at issue here, would meet the standard for a "willful violation."

Accordingly, staff believes that the Commission should order BN1 Telecommunications, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$1,000 for apparent violation of Rule 25-4.0161, F.A.C. The company's response should contain specific allegations of fact or law. If BN1 Telecommunications, Inc. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the fine should be deemed assessed and the right to a hearing should be deemed waived. If the fine and fees are not paid within ten business days after the Order becomes final, they should be forwarded to the Office of the Comptroller for collection. If the fine and fees are paid, the fine should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issue 1, the company will have 21 days to respond in writing to the Commission's show cause order explaining why it should not be fined in the amount proposed. If the company timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the company fails to respond to the show cause order, and the fine and fees, including statutory penalty and interest charges, are not received within ten business days after the expiration of the show cause response period, then the fine should be deemed assessed for the violation cited in Issue 1 and the fine and fees forwarded to the Comptroller's Office for collection. This docket can then be closed. (Elliott)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, the company will have 21 days to respond in writing to the Commission's show cause order explaining why it should not be fined in the amount proposed. If the company timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the company fails to respond to the show cause order, and the fine and fees, including statutory penalty and interest charges, are not received within ten business days after the expiration of the show cause response period, then the fine should be deemed assessed for the violation cited in Issue 1 and the fine and fees should be forwarded to the Comptroller's Office for collection. This docket can then be closed.